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United States  
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### **Acronyms**

BPA	Blanket Purchase Agreement
CICA	Competition in Contracting Act
CIFA	Counterintelligence Field Activity
COR	Contracting Officer's Representative
DFARS	Defense Federal Acquisition Regulation Supplement
DISA	Defense Information Systems Agency
DITSCAP	Defense Information Technology Security Certification and Accreditation Process
DOI	Department of the Interior
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
GSA	General Services Administration
IG	Inspector General
JITC	Joint Interoperability Test Command
MIPR	Military Interdepartmental Purchase Request
NAVSEA	Naval Sea Systems Command
NCR	National Capital Region
O&M	Operation and Maintenance
OMC	Open Market Corridor
QASP	Quality Assurance Surveillance Plan
RDT&E	Research, Development, Test, and Evaluation
SBA	Small Business Administration



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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January 16, 2007

MEMORANDUM FOR DISTRIBUTION

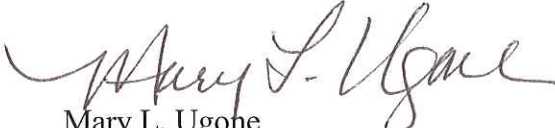
SUBJECT: Report on FY 2005 DoD Purchases Made Through the Department of the Interior (Report No. D-2007-044)

We are providing this report for review and comment. We considered comments from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer; the Deputy Under Secretary of Defense for Intelligence; the Department of the Army; the Department of the Navy; the Department of the Air Force; Defense Information Systems Agency; and the Counterintelligence Field Activity on a draft of this report in preparing the final report. However, the Naval Criminal Investigative Service and the Air Force Office of Special Investigations did not respond to the draft report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. Recommendations D.3.a. and D.3.b. remain unresolved. Therefore, we request that the Naval Criminal Investigative Service and the Air Force Office of Special Investigations provide comments by February 16, 2007.

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

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

  
Mary L. Ugohe  
Deputy Inspector General  
for Auditing

cc: Inspector General, Department of the Interior

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AUDITOR GENERAL, DEPARTMENT OF THE ARMY

## Department of Defense Office of Inspector General

Report No. D-2007-044

January 16, 2007

(Project No. D2005-D000CF-0276.000)

### FY 2005 DoD Purchases Made Through the Department of the Interior

#### Executive Summary

**Who Should Read This Report and Why?** DoD contracting officials, program managers, and financial managers should read this report because it discusses contracting and funding issues related to DoD procurements made through an outside agency. The audit identified 22 potential violations of appropriation laws.

**Background.** This report is one of several reports on DoD purchases made through non-DoD agencies. We performed this audit as required by section 811, "Inspector General Reviews and Determinations," of Public Law 109-163, "National Defense Authorization Act for Fiscal Year 2006." We conducted this audit jointly with the Department of the Interior (DOI) Inspector General. The audit focused on whether purchases of goods and services made by DOI on behalf of DoD were made in accordance with applicable laws and regulations. Specifically, we examined the policies, procedures, and internal controls to determine whether DoD had a legitimate need to use DOI, whether DoD clearly defined requirements, whether DOI and DoD properly used and tracked funds, and whether DOI complied with Defense procurement requirements.

The audit focused on two DOI contracting centers that procure goods and services for DoD:

- GovWorks, located in Herndon, Virginia, which is a franchise fund authorized by the Government Management Reform Act; and
- Southwest Acquisition Branch, National Business Center, a working capital fund located at Fort Huachuca, Arizona.

In FY 2005, GovWorks and the Southwest Acquisition Branch procured goods and services worth \$1.66 billion for DoD.

**Results.** Both DoD and DOI did not comply with laws and regulations. Specifically, DoD and DOI had the following problems.

- DoD used DOI contracting officials who did not adequately document and support that the prices paid were fair and reasonable. Multiple inadequacies occurred in the areas of sufficient support for decisions, technical reviews, legal views, Government cost estimates, and Government surveillance. Also, competition was not usually obtained. Therefore, DoD has no assurance that it is obtaining best value for its purchases. Acquisition Executives for the Army, Navy, Air Force, and Defense agencies should make program and contracting offices aware of recurring deficiencies in the development of independent



Government cost estimates, technical evaluations, and price negotiation memorandums, and implement an enforcement program that ensures those deficiencies do not reoccur (finding A).

- DoD customers permitted GovWorks to retain and use funds that had expired. Violation of the bona fide needs rule and other financial rules resulted in 22 potential violations of the Antideficiency Act. Additionally, we identified about \$393 million in potentially expired appropriations that were still on the books at GovWorks and being used to purchase goods and services for DoD. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should review the funds and require all expired funds to be deobligated and returned to the treasury (finding B).
- The Southwest Acquisition Branch and the Naval Postgraduate School implemented an Internet-based procurement system, the Open Market Corridor, before obtaining security accreditation, reviewing internal controls, performing a legal review, or obtaining agency head approval. Further, the Southwest Acquisition Branch contracting officer granted contract-ordering authority to a DoD employee who issued \$135 million in contract awards without having a contracting officer warrant. The Under Secretary of Defense for Acquisition, Technology, and Logistics should terminate DoD use of the Open Market Corridor (finding C).
- The Counterintelligence Field Activity did not follow the required procedures for obtaining leased office space in the National Capital Region. The Counterintelligence Field Activity, through GovWorks, obtained a 10-year, \$100 million lease that violates a myriad of laws including potential violations of the Antideficiency Act. The contracting process also circumvented the required congressional review for leases of this size. The Deputy Under Secretary of Defense for Intelligence should notify the General Services Administration and various congressional committees of the violations and form a planning committee to explore the best way to remedy the problems. In addition, the Counterintelligence Field Activity and its co-tenants should halt payment on the lease to avoid further potential violations of the Antideficiency Act. The lease may have cost the Counterintelligence Field Activity up to \$2.7 million annually more than if leased through the General Services Administration (finding D).
- The Southwest Acquisition Branch contracting officers improperly delegated many of their responsibilities to the contracting officer's representative for support contracts for the Joint Interoperability Test Command. As a result, no one determined price reasonableness or provided fair opportunity for purchases of goods and services under the multiple-award contracts (finding E).

The DoD internal controls over management of appropriated funds were not adequate. We identified a material internal control weakness pertaining to DoD management of appropriated funds. We believe that some purchases made by the Counterintelligence Field Activity may have intentionally violated the Antideficiency Act. Therefore, we referred these matters to the Deputy Inspector General for Investigations for further review.

Based on the severity of the problems at the Southwest Acquisition Branch, we recommend the Under Secretary of Defense for Acquisition, Technology, and Logistics should not initiate new DoD contracts or orders at the Southwest Acquisition Branch until DOI establishes acquisition controls to resolve those problems. The Acquisition

Executives for the Army, Navy, Air Force, and Defense agencies also need to make program and contracting offices aware of any recurring deficiencies in the development of independent Government cost estimates, technical evaluations, and price negotiation memorandums, and implement an enforcement program that ensures those deficiencies do not reoccur. Other recommendations to the Under Secretary of Defense for Acquisition, Technology, and Logistics that will correct deficiencies identified in this report are contained in DoD Inspector General Report No. D-2007-007, "FY 2005 DoD Purchases Made Through the General Services Administration," October 30, 2006. Recommendations to the Under Secretary of Defense (Comptroller)/Chief Financial Officer are included in DoD Inspector General Report No. D-2007-042, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," January 2, 2007. Recommendations to DOI are in DOI Inspector General Report No. X-IN-MOA-0018-2005, "Audit of FY2005 Department of the Interior Purchases Made on Behalf of the Department of Defense," January 9, 2007.

**Management Comments and Audit Response.** The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Under Secretary of Defense (Comptroller)/Chief Financial Officer; the Deputy Under Secretary of Defense for Intelligence; the Acquisition Executives for the Army, Navy, and Air Force; the Director, Defense Information Systems Agency; and the Acting Director, Counterintelligence Field Activity provided comments to our draft report.

The Director of Defense Procurement and Acquisition Policy (Director of Defense Procurement), commenting on behalf of the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, concurred with the recommendations. The Director of Defense Procurement stated that DOI provided information indicating that DOI has established more vigorous operational practices and procedures to ensure actions taken on behalf of DoD are compliant with statute, policy, and regulation. The Director requested that we ascertain the results of these corrective actions during our next review. The Director of Defense Procurement also stated that because the most recent option to extend the contract for the Open Market Corridor was not exercised, termination of the use of the Open Market Corridor System was not necessary.

The Acquisition Executives for the Army, Navy, and Air Force concurred with the recommendations.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer concurred with the recommendations. The Acting Deputy Chief Financial Officer identified new policy published October 16, 2006, that provides guidance on the need for specificity when preparing purchase orders and funding documents. The Comptroller also directed all Components to review interagency agreements and coordinate the return of expired funds with the outside agency. As of January 2007, the DoD Component reviews have resulted in the deobligation of \$451.3 million for DoD. Additionally, the Acting Deputy Chief Financial Officer stated that they were working with DOI to identify and facilitate the return of expired or excess funding.

The Acting Director of the Counterintelligence Field Activity neither concurred nor nonconcurred with the recommendations. The Acting Director questioned whether the statutory restrictions were applicable to the Counterintelligence Field Activity. We maintain that the CIFA contract is a lease and not a service contract as illustrated by the contract language and by the parties involved in the lease. Considering this lease to be a service contract could allow any DoD activity to obtain leased space without going through the General Services Administration and cause numerous violations of law in each instance.

The Director for Procurement, Defense Information Technology Contracting Organization concurred with the recommendations. The Director stated that Defense Information Systems Agency head of the contracting activity is creating a contracting branch at the Joint Interoperability Test Command at Fort Huachuca. The Director also stated that a September 2005 review by the Defense Information Systems Agency Inspector General also concluded that too much authority had been delegated by the DOI contracting officer to the Joint Interoperability Test Command contracting officer's representative.

We request that the Naval Criminal Investigative Service and the Air Force Office of Special Investigations provide comments on the final report by February 16, 2007. See the Findings section of the report for a discussion of the management comments and the Management Comments section of the report for the complete text of the comments.



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## Background

We performed this audit to meet requirements of section 811, Public Law 109-163, “National Defense Authorization Act for Fiscal Year 2006,” January 6, 2006. Section 811 states:

“(a) INSPECTOR GENERAL REVIEWS AND DETERMINATIONS.—

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

(A) review—

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

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

(B) determine in writing whether—

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

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

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

This report addresses the Department of the Interior (DOI), one of the non-defense agencies we are required to audit under section 811. Separate audit reports will address DoD purchases made through other non-defense agencies: the Department of the Treasury, the General Services Administration (GSA), and the National Aeronautics and Space Administration. To comply with the FY 2006 Defense Authorization Act, the DoD Inspector General (IG) and the DOI IG reviewed contract actions made by DOI on behalf of DoD. We reviewed contracts at two DOI contracting activities: GovWorks and the Southwest Acquisition Branch.

**GovWorks.** GovWorks is a franchise fund in Herndon, Virginia, authorized by the Government Management Reform Act of 1994 (Public Law 103-356). The Interior Franchise Fund was established by Public Law 104-208 and the fund life was extended through September 2006 by Public Law 109-115. In October 2005, DOI transferred GovWorks, which was part of the DOI Minerals Management Service, to the DOI National Business Center.

**Southwest Acquisition Branch.** The Southwest Acquisition Branch, National Business Center, is part of a working capital fund authorized by section 1467, title 43, United States Code (43 U.S.C. 1467). The Southwest Acquisition Branch is located at Fort Huachuca, Arizona. The contracting center was initially known as the Directorate of Contracting Mission Team and was operated by the U.S. Army Intelligence Center and Fort Huachuca. The contracting center was transferred from DoD to DOI on January 14, 2001. Although the Southwest Acquisition Branch is a working capital fund and may choose to operate under working capital rules, it has elected to operate under the Economy Act. Therefore, Government customers to the Southwest Acquisition Branch must follow special rules pertaining to the Economy Act provided in the Federal Acquisition Regulation (FAR) Subpart 17.5.

**Interagency Purchases Through DOI.** During FY 2005, DOI awarded 16,017 purchases totaling \$2.6 billion for other governmental activities. Of those purchases, GovWorks and the Southwest Acquisition Branch on behalf of DoD awarded 8,784 contract actions (purchases) valued at \$1.66 billion. Of the 8,784 contract actions, 49 were awarded from existing DoD contracts. Contract actions awarded on behalf of DoD represent about 55 percent of the purchases awarded by DOI on behalf of others. Table 1 shows FY 2005 interagency purchases made through DOI.

**Table 1. FY 2005 Interagency Purchases Made Through DOI**

<b>Contracting Center</b>	<b>FY 2005 DoD Purchases</b>	<b>FY 2005 Total Purchases</b>	<b>FY 2005 DoD Dollars (in billions)</b>	<b>FY 2005 Total Dollars (in billions)</b>
<b>Southwest Acquisition Branch</b>	2,034 (46%)	4,443	\$0.731 (60%)	\$ 1.210
<b>GovWorks</b>	6,750 (58%)	11,574	0.929 (67%)	1.377
<b>Total</b>	8,784 (55%)	16,017	\$1.660 (64%)	\$ 2.587

We reviewed 49 DOI contracts actions awarded during FY 2005 for purchases valued at \$277.1 million. The 49 contracts from which the contract actions were awarded had an estimated value of \$2.9 billion. Of the 49 contracts reviewed, 25 were for products and 24 were for services. See Appendix C for a list of contracts reviewed. For each contract reviewed, we reviewed selected issues including competition involving only one offer, price reasonableness decisions, reviews of contractor proposals, Government cost estimates, legal reviews, and Government surveillance. We reviewed Government cost estimates, reviews of contractor proposals, and Government surveillance only for contracts for services.

## Objectives

Our overall audit objective was to review DoD procedures for purchases through DOI. Specifically, we examined the policies, procedures, and internal controls to determine whether DoD had a legitimate need to use DOI, whether DoD clearly

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defined requirements, whether DOI and DoD properly used and tracked funds, and whether DOI complied with Defense procurement requirements. We also examined how DOI accepted and fulfilled the DoD requirements. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

## **Review of Internal Controls**

We identified systemic material internal control weaknesses as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. Defense Components did not always use the proper appropriations and sometimes used appropriated funds that had expired to procure goods and services through DOI. These practices potentially violated the Antideficiency Act. Additionally, Defense Components did not perform recurring reviews of their obligations, as required by the Defense Financial Management Regulation, to determine whether the funds could be deobligated. Finally, Defense Components did not always define requirements with sufficient specificity to meet legal requirements for forming a valid obligation. This practice permitted the Military Interdepartmental Purchase Request to be used like a deposit slip for a bank rather than a well-defined list of supplies and services to be procured. We believe that failure to perform the required obligation reviews and the lack of specificity when defining requirements were contributing factors to the potential funding violations. We discuss these problems in detail in finding B. Implementing Recommendation B. should correct these control weaknesses.

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## A. Contracting Problems

In FY 2005, GovWorks and Southwest Acquisition Branch contracting offices awarded DoD purchases valued at \$1.66 billion that could have been awarded by DoD contracting offices. These purchases included \$592 million that GovWorks awarded from GSA Federal supply schedules, and \$5 million from existing DoD contracts. For the 49 contracts reviewed, DOI contracting officials awarded contracts and orders for DoD purchases in a sole-source environment, especially for the purchase of services. Also, contracting officials did not adequately document and support that the prices paid were fair and reasonable. Of the 49 contracts reviewed, we identified the following problems:

- competition involving only one offer (27/49<sup>1</sup> contracts or 55 percent),
- unsupported price reasonableness decisions (25/49 contracts or 51 percent),
- inadequate technical review of contractor proposals (19/24<sup>2</sup> or 79 percent),
- inadequate Government cost estimates (22/24 or 92 percent),
- inadequate legal review (18/49 or 37 percent), and
- inadequate Government surveillance (23/24 or 96 percent).

Contracting officials used the competition regulations to justify their award decisions after receiving only one offer instead of fostering a competitive environment involving head-to-head competition. In three instances, contracting officials violated the competition regulations. In addition, contracting officials relied on incomplete and cursory reviews of contractor-proposed costs to determine that prices paid were fair and reasonable. Accordingly, DoD has no assurance that it is obtaining best value for purchases awarded by contracting officials.

### Contracting Criteria

**Public Law 98-369, “The Competition in Contracting Act of 1984.”** This act generally provides that full and open competition should be used when soliciting offers and awarding Government contracts. Contracting through the Section 8(a) Program is one of the statutory exceptions to the rule requiring full and open competition of procurements.

**Public Law 100-656, “The Business Opportunity Development Reform Act of 1988.”** This act states that an acquisition offered under the Section 8(a) Program

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<sup>1</sup> 49 reviewed, including both products and services.

<sup>2</sup> 24 of the 49 contracts reviewed were for services.

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to the Small Business Administration (SBA) must be awarded on the basis of competition if the anticipated award price of the contract (including options) exceeds \$3 million (for service contracts), and if a reasonable expectation exists that at least two Section 8(a) firms will submit offers at a fair market price.

**FAR 19.805, “Competitive 8(a).”** This section implements Public Law 100-656. Neither Public Law 100-656 nor the FAR excludes indefinite-delivery, indefinite-quantity contracts from the \$3 million threshold. Competition of orders below the competitive threshold is possible with SBA approval. FAR 19.805 also permits contracts valued at more than the \$3 million competitive threshold to be awarded on a sole-source basis if the SBA accepts the requirement on behalf of a business owned by an Indian tribe or an Alaskan Native Corporation.

**FAR 16.504(c), “Multiple Award Preference.”** This section requires that contracting officers must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. FAR 16.504 also requires that contracting officers document the decision whether or not to use multiple awards in the acquisition plan or contract file. For contracts for advisory and assistance services that exceed \$10 million and 3 years, contracting officers are required to use multiple-award contracts.

**FAR Part 10, “Market Research.”** This section requires that agencies use the results of market research to determine the sources capable of satisfying the agency’s requirements.

**FAR 7.105, “Content of Written Acquisition Plans.”** This section states that acquisition plans should indicate the prospective sources of supplies and services that can meet the DoD requirement.

**FAR 15.404-1, “Proposal Analysis Techniques.”** This section states that the contracting officer is responsible for evaluating the reasonableness of the offered prices.

**FAR 15.402, “Pricing Policy.”** This section states that contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.

**FAR 15.406-3, “Documenting the Negotiation.”** This section states that the contracting officer must document in the contract file the principal elements of the negotiation agreement including documentation of fair and reasonable pricing.

**FAR 13.106-3, “Award and Documentation.”** This section states that before awarding contracts, the contracting officer must determine that the proposed price is fair and reasonable.

**FAR 17.104, “General.”** This section states that multiyear contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.



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**The National Defense Authorization Act for Fiscal Year 2002, Section 803, (Section 803).** Section 803 places more stringent competition requirements for contracts for services awarded using Federal supply schedules. It requires contracting officials to compete Federal supply schedules orders for purchases of services in excess of \$100,000 or justify waivers of this requirement. Defense Federal Acquisition Regulation Supplement (DFARS) 208.404-70 implements Section 803.

**DFARS 208.404-70(d).** This section states that a single or multiple blanket purchase agreement (BPA) may be established against Federal supply schedules if the contracting officer reviews established BPAs no less than annually to determine whether the BPA still represents the best value.

## Market Research

DoD requiring activities used DOI to purchase products and services normally purchased by DoD activities. These purchases included information technology hardware, software, and support services, as well as low-dollar purchases of military clothing and equipment. See Appendix C for a complete list of items purchased. DoD incurs additional costs when using DOI because it pays fees to DOI for its services. We reviewed whether DoD had a legitimate need to use DOI to make purchases of low-dollar military equipment, the use of DOI to purchase products and services from the GSA Federal supply schedules, and the use of DOI to purchase items from existing DoD contracts. In all of these situations, DoD should have been able to award contracts for these types of purchases, which would have been a better business decision.

**Low-Dollar Military Purchases.** We reviewed 29 contracts awarded by GovWorks, including 13 contracts awarded for low-dollar purchases of military equipment. For 12 of these contracts, DoD paid GovWorks a 4-percent fee for its services. For one of these contracts, DoD paid GovWorks a 3-percent fee. Southwest Acquisition Branch contracting officials also awarded at least two low-dollar contracts for the purchases of military-related items under an indefinite-delivery, indefinite-quantity contract awarded to Networld Exchange, Inc. For those contracts, Networld collected a 2-percent fee from DoD requiring activities and then distributed 0.50 percent of the fee to the Naval Postgraduate School and 0.25 percent to the DOI National Business Center. See finding C for a detailed analysis of audit issues related to the Networld contract. Table 2 lists the 13 GovWorks and 2 Southwest Acquisition Branch contracts awarded for the purchases of low-dollar military items for DoD requiring activities.

**Table 2. Low-Dollar Purchases of Military Items**

DOI Contract	Purchase Description	Cost	DOI Fee (percent)
<b>GovWorks</b>			
40385	Weapons Cleaning Kits	\$ 3,390.00	4
43150	Men's Explosive Handler's Coveralls	7,650.00	4
43270	Body Armor	61,112.00	3
40387	Waterproof Gloves	10,170.00	4
43280	Goggles and Balaclavas	1,328.00	4
42985	Waterproof Gloves	13,038.00	4
41907	Radio Pouches	3,168.00	4
42912	Body Armor	71,137.60	4
42981	Tactical Knee and Elbow Pads	604.55	4
42925	Combat Helmets and Covers	19,740.00	4
43329	Tactical Knee and Elbow Pads	1,158.60	4
43349	Duffel Bags	1,369.00	4
42987	9-Millimeter Pistol Holsters	9,706.20	4
<b>Southwest Acquisition Branch</b>			
NBCHD020037 Order 1670	Body Armor	15,052.00	2
NBCHD020037 Order 1596	Military Clothing	65,120.26	2

DoD requiring activities should have contracted directly with the vendors for these purchases because they were low-dollar purchases and of a type routinely made within DoD. Furthermore, it is likely that DoD already has a contract in place for items such as body armor, weapons cleaning kits, clothing, and 9-millimeter pistol holsters. If DoD had used existing DoD contracts, it would have avoided DOI fees and could have put the money to better use.

**Purchases From Federal Supply Schedules.** GovWorks and Southwest Acquisition Branch provided information showing that they awarded \$1.66 billion of purchases for DoD in FY 2005. This amount included GovWorks purchases of \$928,778,444.85 and Southwest Acquisition Branch purchases of \$730,924,804.28. GovWorks used GSA Federal supply schedules for at least \$550.3 million of its DoD purchases (58.1 percent), and Southwest Acquisition Branch used GSA Federal supply schedules for at least \$41.7 million (5.7 percent) of its DoD purchases. For most of these awards, DoD paid GovWorks a 4-percent fee (\$22 million). DoD also paid GSA, through the contractor, a 0.75-percent fee for the use of its Federal supply schedule. Had DoD gone directly to GSA Federal supply schedules, it could have avoided the \$22.8 million of DOI fees. That money could have been used to increase the DoD acquisition workforce or other DoD priority needs.

For 19 of the 49 contracts we reviewed in detail, valued at \$102 million, GovWorks and Southwest Acquisition Branch contracting officials used GSA Federal supply schedules to make purchases for DoD, including five GSA Federal supply schedule blanket purchase agreements. The amount of time and effort expended by contracting officials to award the Federal supply schedule orders was minimal. The DoD contracting activities could have purchased the products and services directly from the schedules via e-Buy. Had DoD requiring activities performed market research, they would have also identified the Federal supply schedule contracts that DOI used to purchase the items and services.

**Purchases From Existing DoD Contracts.** In FY 2005, GovWorks awarded 49 contract actions, valued at \$5 million, from existing DoD contracts. Although our sample did not include any of the 49 contract actions, we did evaluate four contract actions, valued at \$507,727.54. Three of the four orders issued were for low-dollar amounts ranging from \$22,000 to \$29,000. The two DoD contracts and four orders are shown in Table 3.

**Table 3. Existing DoD Contracts Used By DOI to Award DoD Purchases**

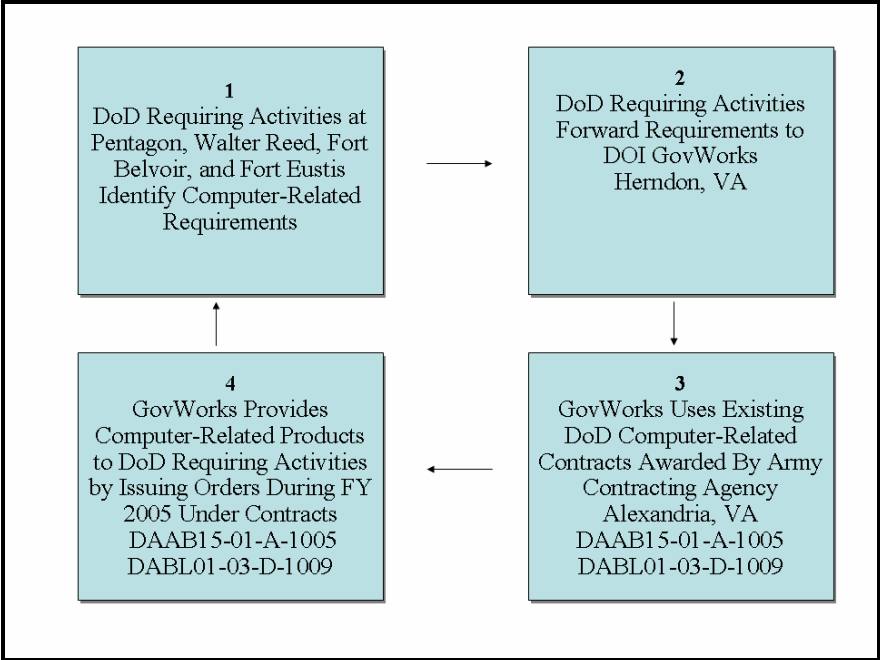
Contracts and Orders	Value	DoD Contracting and Requiring Activity
DABL01-03-D-1009	\$ 500,000,000.00	Army Contracting Agency
Order 43000	428,532.00	Army Civilian Personnel Regionalization
Order 40379	29,316.00	Army Command and Control Support Agency
DAAB15-01-A-1005	BPA (No Value)	Army Contracting Agency
Order 44214	27,825.04	Deployment Process Modernization Office
Order 41019	22,054.50	Walter Reed Army Medical Center
<b>Order Total</b>	<b>\$507,727.54</b>	

DoD requiring activities provided various reasons for using GovWorks instead of going directly to the DoD contracts. A contracting official at one DoD requiring activity stated that its Army contracting office was responding very slowly to other actions, especially those involving open market solicitations; the contracting official was concerned that they would not be able to award a new contract before the existing contract expired. A contracting official at another DoD requiring activity stated that:

We used DOI because they are able to expedite the contracting process. DOI supported CCSA's [Command and Control Support Agency] ability to operate continuously through time sensitive equipment purchases in an environment when DoD contract specialists appeared to be overwhelmed with numerous actions.

A contracting official at another DoD requiring activity stated that it had stopped using its DoD contracting office because the office did not have enough contracting people to handle the requirements. Had contracting officials at DoD requiring activities performed adequate market research, they should have been able to identify the existing DoD contracts as DOI did. However, based on the statements of contracting officials at the DoD requiring activities, they would not have used DoD contracting offices even if they identified the existing DoD contracts. Although DoD contracting offices may be overburdened with work,

paying DOI a fee to use DoD contracts does not make good business sense. A better solution would be to increase the staff or the numbers of DoD contracting offices. Figure 1 illustrates how the process worked.



**Figure 1. DOI Use of DoD Contracts for DoD Requirements**

**Competition Involving Only One Offer**

Of the 49 contracts reviewed, 27 contracts were awarded when only one offer was received. GovWorks and Southwest Acquisition Branch contracting officials used a variety of contracting approaches to award DoD purchases. These included awards to Section 8(a) contractors, the use of GSA BPAs and Federal supply schedule orders, multiple-award orders, and full and open competition awards. Regardless of the approach used, DOI contracting officials consistently awarded contracts in a sole-source environment after only obtaining one offer. Competition involving only one offer and price reasonableness problems occurred more for the purchases of services than for products at both GovWorks and Southwest Acquisition Branch. Price reasonableness problems for service contracts occurred because of the absence of detail in DoD reviews of contractor-proposed costs and independent Government cost estimates. Table 4 shows the types of contracts DOI used, how many we reviewed, and the number of contracts that had only one offer.

**Table 4. Contracts Awarded as a Result of One Offer**

<b>Contract Type</b>	<b>Contracts Reviewed</b>	<b>Only One Offer</b>
Section 8(a) Awards	9 (Including 2 Orders Under One Contract)	9
GSA Federal Supply Schedule Orders	14	6
GSA Federal Supply Schedule BPAs	5	3
Multiple-Award Orders	Task Orders 4	Task Orders 2
Open Market Purchases	12	5
Open Market Corridor Purchases	5	2
<b>Total</b>	<b>49</b>	<b>27</b>

**Section 8(a) Awards.** No competition occurred for 9 of the 49 DOI contracts reviewed because the contracts were awarded to Section 8(a) contractors. Public Law 98-369, “The Competition in Contracting Act of 1984,” states that full and open competition should be used when soliciting offers and awarding Government contracts. Contracting through the Section 8(a) Program is one of the statutory exceptions to the rule requiring full and open competition of procurements.

Public Law 100-656, “The Business Opportunity Development Reform Act of 1988,” implemented under FAR 19.805, “Competitive 8(a),” states that an acquisition offered under the Section 8(a) Program to the SBA must be awarded on the basis of competition if the anticipated award price of the contract (including options) exceeds \$3 million (for service contracts), and if a reasonable expectation exists that at least two Section 8(a) firms will submit offers at a fair market price. FAR 19.805 permits contracts valued at more than \$3 million to be awarded on a sole-source basis if the SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaskan Native corporation. Contracting officials awarded four of the eight Section 8(a) contracts to Alaskan Native corporations and one contract to a tribally-owned company. Neither Public Law 100-656 nor the FAR excludes indefinite-delivery, indefinite-quantity contracts from the \$3 million threshold. Competition of orders below the competitive threshold is possible with SBA approval.

Southwest Acquisition Branch contracting officials awarded two Section 8(a) contracts each valued at exactly \$3 million. No competition occurred under these contracts. Contracting officials justified their decision not to compete two of these contracts because, according to the Small Business Act as implemented by FAR Part 19, competition among Section 8(a) contractors does not have to occur until the contract value exceeds \$3 million. Documentation for one of these contracts stated:

This requirement is being issued as an 8(a) directed contract. In accordance with FAR 19.805-1, a sole source contract that does not exceed the 8(a) competitive threshold may be awarded to an 8(a) concern that has been accepted by the Small Business Administration.

Shortly after award, the value of one of these contracts exceeded the \$3 million threshold. Southwest Acquisition Branch contracting officials awarded contract NBCHD050038 on September 1, 2005, for \$3 million. On September 2, 2005, Southwest Acquisition Branch contracting officials awarded task order 0001, valued at \$2,994,992.00. On September 30, 2005, they awarded task order 0002, valued at \$99,500.00.

Although Southwest Acquisition Branch contracting officials did not violate the regulations, they could have competed those two contracts among Section 8(a) companies. Table 5 lists the eight Section 8(a) contracts reviewed.

**Table 5. Section 8(a) Awards**

<b>Contract</b>	<b>Type of Company</b>	<b>Purchase Description</b>	<b>Value (millions)</b>
1435-04-03-RC-73024	Section 8(a) Alaskan Native Corporation	Building Lease	\$ 1.6
1435-04-03-RC-70941	Section 8(a) Alaskan Native Corporation	Building Lease	100.0
NBCHD050016	Service-Disabled Veteran Business Enterprise	Telecommunication Equipment	3.0
NBCHD020092	Section 8(a) Tribally-Owned Corporation	Products, Services, Studies, Systems Development	200.0
NBCHD010004	Section 8(a) Alaskan Native Corporation	Information Technology Systems Engineering Assistance	100.0
NBCHC050072	Section 8(a)	Step-Enabled Software Toolset	1.8
NBCHD050038	Section 8(a) Small Disadvantaged Hawaiian-Native-Owned	Computer Systems Design Services	3.0
NBCHD040033	Section 8(a) Alaskan Native Corporation	Hardware, Software, Technical Support Services	200.0
<b>Total</b>			<b>\$609.4</b>

**GSA Federal Supply Schedule Orders.** The National Defense Authorization Act for Fiscal Year 2002, Section 803, places more stringent competition requirements on contracts for services awarded using Federal supply schedules. It requires contracting officials to compete Federal supply schedule orders for purchases of services in excess of \$100,000 or justify waivers of this requirement. DFARS 208.404-70 implements Section 803.

Of the 49 contracts reviewed, 14 were GSA Federal supply schedule orders, including 11 orders issued by GovWorks and 3 orders issued by Southwest Acquisition Branch. For 3 of the 11 orders, GovWorks obtained only one offer, including one order for which GovWorks contracting officials did not comply with Section 803 competition requirements. Southwest Acquisition Branch



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contracting officials obtained only one offer for each of the three GSA Federal supply schedule orders they awarded, including two orders for which they did not comply with Section 803 requirements. We questioned the following three Federal supply schedule orders.

**Federal Supply Schedule Order 71705.** On February 4, 2003, GovWorks contracting officials awarded order 71705 for the purchase of management support services. The value of the order was \$608,663.28. Modification 0005, dated December 22, 2004, added \$640,242.48 to exercise option year 2. GovWorks sent a request for quote to three GSA schedule holders and received only one proposal. According to DFARS 208.404-70(c), for the acquisition of services valued more than \$100,000, if three offers are not received, contracting officials should have determined and stated in writing that no additional contractors could be identified despite reasonable efforts to fulfill the work requirements. The contract file did not contain documentation clearly explaining the efforts to obtain offers from at least three contractors.

**Federal Supply Schedule Order NBCHF030277.** On April 28, 2003, contracting officials awarded order NBCHF030277 for the purchase of technical support services. The value of the order was \$2,005,925. Modification 0011, dated September 2, 2005, added \$132,983.99 of incremental funding to the contract. Southwest Acquisition Branch awarded the order on a sole-source basis citing FAR 16.505(b)(2)(ii) and 6.302-1, stating that only one awardee was capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized. Although DFARS 208.404-70(b) allows competition to be waived based on FAR 16.505(b)(2)(ii), this exception does not seem to apply to this particular purchase. In December 2005, DOI Southwest Acquisition Branch contracting officials decided not to exercise a contract option and instead recompeted the contract. We commend the contracting officials for recompeting the contract.

**Federal Supply Schedule Order NBCHF040500.** On September 27, 2004, Southwest Acquisition Branch contracting officials awarded order NBCHF040500, valued at \$10,157,346, for the purchase of performance-oriented training services for the U.S. Army Quartermaster Center and School. Modification 0003, dated September 26, 2005, added \$195,000 of incremental funding to the contract. Contracting officials competed this purchase by submitting the request for quote to contractors under the GSA Advantage Logworld contract, a Federal supply schedule contract that helps Federal agencies procure comprehensive logistics solutions to enhance or replace existing operations. The contracting officer stated the following in a memorandum regarding competition:

Received statement of work on 24 Aug 2004 to submit proposal on GSA Advantage/Logworld Contract. RFQ [request for quote] 56454 was submitted and only one contractor from the Logworld sent quote. The quote was transmitted to the client at US Army Quartermaster at Fort Lee, VA. Was evaluated and client suggested that [contractor] was evaluated and accepted to meet the Governments requirements.

According to DFARS 208.404-70(c), for the acquisition of services valued more than \$100,000, if three offers are not received, contracting officials should have determined in writing that no additional contractors could be identified despite

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reasonable efforts to fulfill the work requirements. The documentation should clearly explain the efforts to obtain offers from at least three contractors. The contract file did not contain documentation explaining the efforts to obtain offers from three contractors as required by DFARS 208.404-70(c).

**GSA Federal Supply Schedule Blanket Purchase Agreements.** Contracting officials awarded 5 of the 49 contracts reviewed as GSA Federal supply schedule BPAs. GovWorks awarded four of the BPAs and Southwest Acquisition Branch awarded one BPA. For BPAs 1435-04-05-BP-41582 and 1435-04-05-BP-40699, GovWorks contracting officials issued the request for quote through e-Buy, the GSA electronic quote system. Contracting officials complied with the competition regulations despite receiving only one offer because DFARS 208.404-70(C)(2) states that e-Buy is one medium for providing fair notice to all contractors.

For BPAs 1435-04-04-BP-32178 and 1435-04-04-BP-32200, awarded in October 2003, another GovWorks contracting official made two awards after initially receiving three offers. In September 2005, the contracting official decided not to issue any further work under these BPAs because having only two companies on the BPAs would not satisfy future competition requirements. We commend this contracting official for promoting a competitive environment.

We reviewed BPA NBCHA010033, awarded on June 4, 2001, as part of our review of modification 0002 issued under order 0024 on December 17, 2004. Competition involving more than one offer did not occur for this BPA. Documentation in the files states:

Competition was conducted by reviewing Schedule 70, SIN [special item number] 132-51, of the GSA contract number GS-35F-0323J and comparing prices of the listed vendors.

In addition to no competition, the estimated cost of BPA NBCHA010033 increased significantly. The original not-to-exceed amount was \$1 million when BPA NBCHA010033 was awarded on June 4, 2001. However, as of November 2004, the total amount obligated was \$116.5 million. In addition, the period of performance for BPA NBCHA010033 was open-ended. The period of performance is discussed in detail later in the report.

In addition, on March 18, 2005, the contracting officer's representative performed a review of the BPA and stated that he did not see any evidence of compliance with Section 803. We also believe the award of BPA NBCHA010033 was inappropriate and not in compliance with Section 803. On March 30, 2006, a Southwest Acquisition Branch contracting supervisor stated that the contracting officer decided in late 2004 not to issue any further orders under BPA NBCHA010033. Table 6 identifies the BPAs reviewed.

**Table 6. Blanket Purchase Agreements Awarded for DoD Purchases**

Blanket Purchase Agreement Number	Award Date	Estimated Value (in millions)	Period (in years)	Competition
<b>GovWorks</b>				
1435-04-05-BP-41582	2/25/05	\$ 29.0	5	1 Offer
1435-04-05-BP-40699	1/28/05	103.6	5	1 Offer
1435-04-04-BP-32178	10/08/03	No Value Established	5	3 Offers
1435-04-04-BP-32200	10/29/03		5	2 Awards
<b>Southwest Acquisition Branch</b>				
NBCHA010033	6/4/01	1.0	Indefinite	1 Offer

Had GovWorks contracting officials made awards directly from the Federal supply schedules instead of using BPAs, competition would have occurred for each order awarded instead of only once when the BPA was awarded. Contracting officials did not always provide an adequate rationale for using BPAs, which limit competition. For example, according to documentation in the contract files, the benefit of using a BPA was to:

Eliminate contracting and open market costs such as: the search for sources; the development of technical documents and solicitations; and the evaluation of bids and offers.

That documentation suggests that contracting officials viewed competition and price reasonableness efforts as obstacles to the contract award process rather than ways to obtain products and services at fair prices.

**Use of Multiple-Award Contracts.** FAR 16.504 requires that contracting officers must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. FAR 16.504 also requires that contracting officers document the decision whether or not to use multiple awards in the acquisition plan or contract file. For contracts for advisory and assistance services that exceed \$10 million and 3 years, contracting officers are required to use multiple-award contracts.

Of the 49 contracts reviewed, 4 contracts were part of multiple-award arrangements. GovWorks contracting officials awarded three of the contracts and Southwest Acquisition Branch awarded one contract. However, GovWorks and Southwest Acquisition Branch each awarded four non-multiple-award contracts that may have been suitable for multiple-award contracts. None of these eight questionable non-multiple-award contracts had documentation in the contract files showing that contracting officials had evaluated whether these contracts were suitable for multiple-awards. Table 7 shows the eight contracts that may have been suitable for multiple awards, including the five BPAs discussed in the previous section.

**Table 7. Contracts Suitable for Multiple Award**

<b>Contract</b>	<b>Contract Value (millions)</b>	<b>Purchase Description</b>	<b>Period of Performance (in years)</b>
<b>GovWorks</b>			
40699 GSA BPA	\$103.6	Professional Engineering Services	5
32200 GSA BPA	None	Environmental Advisory Services	5
32178 GSA BPA	None	Develop Geospatial Representations of Naval Installation Boundaries	5
41582 GSA BPA	29.0	Contractor Support Services for the Defense Logistics Enterprise Services Program	5
<b>Southwest Acquisition Branch</b>			
NBCHF040532 GSA Federal Supply Schedule Order	38.6	Contractor Support Services for Business Processes	5
NBCHD030003 Full & Open	46.0	Personnel Security Research and Development Services	10
NBCHA010033 GSA BPA	1.0	Consultation, Facilitation, and Survey Services	Indefinite
NBCHC050174 Full & Open	39.0	Technical, Engineering, and Administrative Support Services	5

**Open Market Purchases.** Of the 49 contracts reviewed, 12 were awarded on the open market, including 5 contracts awarded after only one offer was received. GovWorks contracting officials awarded 4 of the one-offer open market contracts and Southwest Acquisition Branch awarded 1 of the one-offer open market contracts.

**Contract Periods of Performance Beyond 5 Years.** Four of 20 Southwest Acquisition Branch contracts reviewed had periods of performance in excess of 5 years. These awards resulted in a single contractor retaining the work for up to 15 years or more. Table 8 lists these contracts.

**Table 8. Contracts for Services With Performance Periods Greater Than 5 Years**

<b>Contract</b>	<b>Date Awarded</b>	<b>Period of Performance (in years)</b>	<b>Purchase Description</b>
NBCHD030003	February 11, 2003	10	Personnel Security Research and Development Services
NBCHA010033	June 4, 2001	Indefinite	Consultation, Facilitation, and Survey Services
NBCHD020037	July 8, 2002	15	Research and Development for Development of Electronic Storefront
NBCHC020001 NBCHC020002 NBCHC020003 (Multiple-Award)	October 9, 2001	8	Administrative, Testing, and Engineering Support

On May 7, 2005, contracting officials awarded task order 0004, valued at \$2,338,155.00, under contract NBCHD030003, awarded on February 11, 2003, valued at \$46 million. Southwest Acquisition Branch contracting officials stated that they could award the contract for a 10-year period of performance because the requirements were unknown. The acquisition plan for the contract states that contracting officials did not have to follow the procedures for multiyear contracting under FAR Part 17. The acquisition plan states:

After consulting FAR Part 17, the multi-year methodology of contracting is not applicable to this acquisition, as the quantity to be obtained cannot be defined. FAR 17.104 states that multi-year contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to five years unless otherwise authorized by statute. The services to be purchased for this requirement will be obtained through the issuance of task orders against the basic contract. The requirements and quantities are not known, and cannot be accurately estimated at this time therefore multi-year contract does not apply.

Southwest Acquisition Branch contracting official's rationale for the 10-year period of performance was not justified because extremely long contracts precludes flexibility in meeting changes in the marketplace. Further, the only offer received was from the incumbent contractor, who had been providing the services for the previous 5 years under an expiring contract. The acquisition plan states:

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[DoD requiring activity] has awarded previous contracts to obtain research and development support in the areas described in paragraph 1.b. above. The current contract was awarded via full and open competition to [contractor] for an estimated value of \$25,000,000, and a performance period of five-years. The current contract expires in June 2003.

For BPA NBCHA010033, awarded on June 4, 2001, the period of performance was initially open-ended. The contract files stated, "this BPA will continue for the duration of the [contractor] contracts, and any modifications there to." Based on that description, the BPA could continue indefinitely as long as the Federal supply schedule was extended. As of September 3, 2004, the period of performance was through September 30, 2004, and ultimately extended to March 31, 2009. Contracting officials decided in late 2004 not to issue any further orders under BPA NBCHA010033.

For contract NBCHD020037, awarded to Networld on July 8, 2002, we reviewed five orders awarded in FY 2005. Southwest Acquisition Branch contracting officials created a long-term sole-source environment with Networld under this contract. The 15-year contract period for contract NBCHD020037 was unusually long. Contractors other than Networld are not likely to receive future awards because Networld developed Open Market Corridor and is maintaining the system. See finding C for information on other problems with contract NBCHD020037.

Contract files for NBCHC020001, NBCHC020002, and NBCHC020003, part of a multiple-award arrangement awarded on October 1, 2001, did not explain the use of an 8-year period of performance.

Until DOI contracting officials base their price reasonableness determinations on the results of detailed analyses, there is no assurance that DoD customers are obtaining products and especially services at a fair and reasonable price.

## **Price Reasonableness Decisions**

Contracts for services tended to have more problems with price reasonableness than did the contracts for products. Of the 49 contracts reviewed, 24 were for the purchases of services and 25 were for products. For 20 of the 24 contracts for services and 5 of the 25 contracts for products, contracting officers did not adequately document and support that the prices paid were fair and reasonable.

GovWorks contracting officials did not adequately document and support price reasonableness decisions for 10 of 29 contracts reviewed. Eight contracts were for services and two contracts were for products. Contracting officials obtained only one offer for 9 of the 10 contracts. Southwest Acquisition Branch contracting officials did not adequately document and support price reasonableness decisions for 15 of 20 contracts reviewed. Twelve contracts were for services and three contracts were for products. Contracting officials obtained only one offer for 13 of these contracts.



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At both GovWorks and Southwest Acquisition Branch, contracting officials based price reasonableness decisions on brief statements and cursory reviews of contractor-proposed costs by DoD requiring activities instead of on detailed analyses of contractor-proposed costs. Contracting officials also accepted independent Government cost estimates developed by DoD requiring activities that did not adequately explain the basis for the estimates. Price reasonableness problems occurred more frequently on contracts for which only one offer was received.

## **Review of Contractor Proposals**

For 19 of 24 contracts for services, DoD requiring activities and DOI performed incomplete technical reviews of contractor proposals. Of the nine GovWorks contracts for services, eight contained incomplete reviews of contractor proposals. Of the 15 Southwest Acquisition Branch contracts for services, 11 contained incomplete reviews of contractor proposals. Table 9 provides some examples of cursory reviews performed of contractor-proposed costs.

**Table 9. Review of Contractor Proposals**

Contracts and Orders	Contract Value (millions)	Cursory Review
NBCHD030003 Order 0004	\$ 2.3	Technical evaluation for order 0004 consisted of an e-mail from the DoD requiring activity to the DOI contracting officer, which stated, “Approved.”
NBCHA010033 Order 0024	10.1	Technical evaluation for order 0024 consisted of an e-mail from the DoD requiring activity to the DOI contract specialist, which stated, “I have read the proposal and cost estimate and approve. I will be sending the MIPR tomorrow.”
NBCHF040500	10.2	Technical evaluation consisted of an e-mail from the DoD requiring activity stating: “The technical evaluation of the RFQ [request for quote] for the employ of instructors, admin, IT [information technology] armorers, and Logistics Warrior personnel for employment at the QMC&S [Quartermaster Center and School] is acceptable. Award the contract to [contractor]”
41582 Order 42525	28.0	Could not locate technical evaluation for order 42525. However, the award decision document stated: “The technical evaluation was based on the BPA evaluation and a quick review of the quote by [Contractor] for this task order was conducted by the COTR [contracting officer’s technical representative] and was determined to be acceptable. . . .”
NBCHF030277	2.0	Technical evaluation consisted of an e-mail stating: “I concur with [contractor’s] cost proposal and believe it is the best value for the support that Systems Engineering requires.”

Regardless of the contract value, technical evaluations of contractor proposals for services that we questioned consisted of brief statements and short e-mails containing general statements. When evaluations mentioned costs, they focused on labor rates and labor categories, and not labor hours. DOI contracting officials should have asked DoD requiring activities to provide more detail instead of accepting the prices and awarding the contracts. DoD requiring activities need to place more emphasis on documenting and supporting their reviews of contractor-proposed costs.

## Independent Government Cost Estimates

For 22 of 24 contracts for services, DoD requiring activities developed incomplete and inadequate estimates. Independent Government cost estimates usually consisted of lists of labor rates, labor categories, and labor hours with no explanation of how DoD requiring activities developed the estimates. One estimate did not have a list of labor rates or hours. Instead, the unsigned, undated

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estimate consisted only of a list of labor categories along with dollar values related to each labor category. Despite the lack of detail in these estimates, contracting officials awarded the contracts. DoD requiring activities need to place more emphasis on documenting and supporting information contained in independent Government estimates.

## Legal Reviews

A DOI memorandum from the Office of the Secretary, dated February 2, 2001, requires that the Office of the Solicitor perform legal reviews for all proposed solicitations in excess of \$500,000 for noncommercial items and in excess of \$2 million for commercial items. The memorandum also requires legal review for all proposed negotiated contractual documents prior to award on acquisitions in excess of \$500,000. The documents submitted for review should include but are not limited to technical and price negotiation memorandums, the proposal of the successful offeror, any audits or waivers of audit, and the independent Government cost estimate.

The DOI National Business Center decided not to comply with this policy. A DOI National Business Center report, "Acquisition Management Review for Acquisition Services Division Southwest Acquisition Branch," April 30, 2003, stated:

The DOI Acquisition Regulation (DIAR), as amended by the Department of the Interior Acquisition Policy Release (DIAPR) 2001-3, establishes Department wide legal review standards for acquisition-related documents. The office made a conscious decision not to comply with the stated policy because the Solicitor's office was unable to provide timely service to them. This is not to say that there was a complete absence of solicitor review, but it was considerably less than the Departmental regulation anticipated. Arrangements have been made for a dedicated solicitor to be assigned to their office, so the problem should be alleviated within the next six months. In addition, they asked that consideration be given to raising the review thresholds applicable to their office since the dollar values of their work are much higher than the rest of the Department.

It is interesting to note that part of the solution to the problem of untimely service by the solicitor's office was to increase the legal review thresholds.

On May 5, 2006, the Minerals Management Service Chief, Policy and Acquisition Information Systems Branch issued a memorandum to the Assistant Director, GovWorks Directorate, National Business Center. The memorandum states that DOI does not require its Office of the Solicitor to conduct a legal review of any DOI delivery or task order issued under any indefinite-delivery, indefinite-quantity contract. The chief also states that he researched the entire legal review policy and it does not require any type of legal review on any delivery or task order issued under a Federal supply schedule.

DOI did not perform legal reviews for 18 of 49 contracts reviewed, valued in excess of \$500,000. These included nine Federal supply schedule orders and nine indefinite-delivery, indefinite-quantity orders valued at more than \$500,000.

According to the May 5, 2006, Minerals Management Service Chief, Policy and Acquisition Information Systems Branch memorandum, DOI legal reviews were not required. Table 10 identifies some of the Federal supply schedule and indefinite-delivery, indefinite-quantity orders GovWorks and Southwest Acquisition Branch awarded even though DOI had not performed legal reviews of them.

**Table 10. Examples of DOI Contracts Awarded Without Legal Review**

<b>Contract</b>	<b>Contract Type</b>	<b>Value (in millions)</b>
<b>GovWorks</b>		
41582/Order 42525	GSA BPA Federal Supply Schedule Order	\$28.0
40699/Order41801	GSA BPA Federal Supply Schedule Order	9.4
32178/Order 73545	GSA BPA Federal Supply Schedule Order	1.5
1435-04-02-CT-85531/Order 43387	Indefinite-Delivery, Indefinite-Quantity Multiple-Award Order	3.9
<b>Southwest Acquisition Branch</b>		
NBCHF030277	GSA Federal Supply Schedule Order	2.0
NBCHF040532	GSA Federal Supply Schedule Order	38.6
NBCHF040500	GSA Federal Supply Schedule Order	10.2
NBCHA010033/Order 0024	GSA BPA Federal Supply Schedule Order	10.1
NBCHD020092/Order 0116	Indefinite-Delivery, Indefinite-Quantity	4.2
NBCHD030003/Order 0004	Indefinite-Delivery, Indefinite-Quantity	2.3
NBCHD010004/Order 0049	Indefinite-Delivery, Indefinite-Quantity	6.9

When GovWorks and Southwest Acquisition Branch legal officials did review contracts, the reviews were documented by signature of the person making the

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review but contained no explanation or details about potential legal issues identified during the legal review.

## Government Surveillance

We questioned the adequacy of Government surveillance for 23 of the 24 contracts for services reviewed. DFARS 201.6, “Contracting Authority and Responsibilities,” states that contracting officers may designate qualified personnel as their authorized representatives to assist in either technical monitoring or administration of a contract. It also states that a contracting officer’s representative must be designated in writing. Contract files for 3 of the 24 service contracts reviewed did not have contracting officer’s representative letters. Contract files for 9 of the 24 contracts had contracting officer’s representative letters that were not signed by the contracting officer and the contracting officer’s representative.

**Quality Assurance Surveillance Plan Requirements.** Twenty-three of the 24 service contracts reviewed did not have quality assurance surveillance plans (QASP). FAR 46.103, “Contracting Office Responsibilities,” states:

Contracting offices are responsible for receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan).

According to FAR Subpart 46.4, “Government Contract Quality Assurance,” a QASP should be prepared in conjunction with preparation of the statement of work. The QASP should specify all work requiring surveillance and the method of surveillance. FAR Subpart 46.4 states:

Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors’ plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify – (1) All work requiring surveillance; and (2) The method of surveillance.

A QASP enables thorough and comprehensive monitoring of contractor performance. A QASP is used to measure contractor performance and ensure that the Government receives the quality of services called for under the contract, paying only for services received in accordance with the terms of the contract. Acquisition Executives for the Army, the Navy, and the Air Force, and Defense agencies should provide adequate training to requiring activity personnel on preparing QASPs.

**Documentation.** Defense Procurement and Acquisition Policy recognizes the importance of adequately documenting pricing actions and the problems that can

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occur as a result of poor documentation. In its Contract Pricing Guide, dated September 16, 2002, Defense Procurement and Acquisition Policy states:

Need for Good Documentation. Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and other elements that are important in all aspects of contracting and pricing in particular.

While fresh in your mind, you should document:

- Events;
- Actions; and
- Decisions.

Problems from Poor Documentation. Lack of good documentation can create serious problems. Since you will not always be available to explain what you did, or why, other contracting personnel will not know what happened, or about any special circumstances that may have affected your decisions. If your files lack proper documentation:

- Other contracting personnel may take the time to accomplish an action or make a decision that you have already completed. These actions or decisions may conflict with yours.
- Legal advisors and management review teams may question your action or lack of action because they do not have all of the relevant information.
- You will find that the lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

## **Contributing Factors Related to Contracting Deficiencies**

Although contracting officials placed a high priority on obtaining customer satisfaction, they did not foster a competitive environment, demonstrate that the prices paid for DoD purchases were fair and reasonable, or adequately document contract files. Using the competition regulations to justify awards based on one offer was the rule rather than the exception, and price reasonableness determinations were based on incomplete and cursory reviews of contractor proposals.

## **Recommendations, Management Comments, and Audit Response**

The majority of the recommendations to help solve the deficiencies identified in finding A are included in DoD Inspector General Report No. D-2007-007,



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“FY 2005 DoD Purchases Made Through the General Services Administration,”  
October 30, 2006.

**A.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics not initiate new DoD contracts or orders at the Southwest Acquisition Branch until the Department of the Interior establishes a control environment and framework to resolve the contracting deficiencies.**

**Under Secretary of Defense for Acquisition, Technology, and Logistics Comments.** The Director, Defense Procurement and Acquisition Policy commented on behalf of the Under Secretary of Defense for Acquisition, Technology, and Logistics. He concurred with the recommendation. The Director stated that the amount of work performed at the Southwest Branch on behalf of the Military Departments had decreased significantly from FY 2005 to FY 2006. This decrease was due in part to the decision to proceed with new work at the Southwest Branch only on a selective basis. The Director stated that DoD has received information from DOI which documents that earlier this year, DOI established an aggressive corrective action plan to address and resolve identified contracting deficiencies within the National Business Center Southwest Acquisition Branch. DOI took specific action to rescind contracting officer warrants and performed assessments of each contracting officer’s work products. After a comprehensive internal and independent review of each contracting officer’s work, DOI took action to issue warrants to qualified contracting officers. The information provided indicates that they have established more vigorous operational practices and procedures to ensure actions taken on behalf of DoD are compliant with statute, policy, and regulation. The Director requested that we ascertain the results of these corrective actions during our next review.

**Audit Response.** The Director’s comments are responsive. We commend the Director and DOI for initiating corrective actions to address the serious problems that the joint audits found. As requested, we will evaluate the results of those corrective actions during our next review.

**A.2. We recommend that Acquisition Executives for the Army, Navy, Air Force, and Defense agencies make program and contracting offices aware of any recurring deficiencies in the development of independent Government cost estimates, technical evaluations, and price negotiation memorandums, and implement an enforcement program that prevents those problems from reoccurring.**

**Army Comments.** The Deputy Assistant Secretary of the Army (Policy and Procurement) concurred with the recommendation.

**Navy Comments.** The Deputy Assistant Secretary of the Navy (Acquisition Management) concurred with the recommendation. He stated that the Assistant Secretary of the Navy (Financial Management and Comptroller) and the Assistant Secretary of the Navy (Research, Development, and Acquisition) had participated in an interdepartmental working group to develop financial management policy for Non-Economy Act orders. The guidance stresses that development and review of proposed Non-Economy Act procurement requests is a collaborative effort of program, comptroller, and contracting personnel. Implementing this

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financial management policy on Non-Economy Act orders will inform program personnel of their roles and responsibilities under Non-Economy Act acquisitions.

**Air Force Comments.** The Assistant Secretary of the Air Force (Acquisitions) concurred with the recommendation. The Assistant Secretary stated that Air Force users of interagency acquisitions must provide independent Government estimates and should participate in technical evaluations as required for each acquisition. Air Force Contracting and Air Force Finance will issue an updated Air Force Military Interdepartmental Purchase Request (MIPR) guide in early 2007. The guide will address audit concerns by requiring that a contracting analyst and a financial analyst review all MIPRs for compliance with acquisition and financial policies and procedures. Additionally, the Assistant Secretary stated that she would issue a memorandum reiterating the importance of compliance with applicable policies and regulations when using MIPRs. Further, Air Force Acquisition will implement the corrective actions put forth by the Under Secretary for Defense for Acquisition, Technology, and Logistics in its response to this draft report.

**Audit Response.** The Army, Navy, and Air Force comments are responsive to the recommendation.

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## B. Funding Issues Relating to the Department of the Interior Contracting

DoD and DOI did not always follow the bona fide needs rule when acquiring goods and services with 1-year operation and maintenance (O&M) funds. DoD activities “banked” funds at DOI for future use and did not deobligate the funds after they were no longer needed or had expired. GovWorks routinely used the expired funds to purchase DoD requirements. In some cases, GovWorks used expired funds to obtain goods and services 4 years after the funds expired. Overall, we identified up to \$393 million in expired DoD appropriations still on GovWorks accounting records. DoD fund managers should review and deobligate these appropriations. Use of appropriated funds after they expired and bona fide needs rule violations resulted in 22 potential Antideficiency Act violations on the 49 contracts we reviewed.

### Funding Criteria

**Bona Fide Needs Rule.** Appropriations are available for limited periods. An agency must incur a legal obligation to pay money within an appropriation’s period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations. Expired funds retain their “fiscal year identity” for 5 years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations. However, expired funds are not available for new obligations nor can they be used to purchase new requirements.

Appropriations are available only for the bona fide needs of an appropriation’s period of availability (31 U.S.C. 1502(a)). The bona fide needs rules 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.

**Antideficiency Act.** Congress passed the Antideficiency Act to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Antideficiency Act consists of several statutes that mandate administrative and criminal sanctions for the unlawful use of appropriated funds [31 U.S.C. 1341, 1342, 1350, 1351, and 1511-1519]. These statutory provisions enforce the Constitutional budgetary powers entrusted to Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may trigger violations of Antideficiency Act provisions (for example, the “bona fide needs rule,” 31 U.S.C. 1502(a)). Knowing and willful violators are subject to fines and imprisonment for up to 2 years.

**DoD Financial Management Regulation Guidance.** Annual Appropriation Acts define the use of each appropriation and set specific timelines

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for use of the appropriations. However, the DoD Financial Management Regulation (FMR), volume 2A, chapter 1, provides guidelines on most commonly used DoD appropriations for determining the correct appropriation to use when planning acquisitions.

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

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

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

**Minor Construction.** FMR volume 2B, chapter 6 states that an unspecified military construction project costing no more than \$750,000 may be funded from appropriations available for O&M. Minor construction projects costing more than \$750,000 may not be performed unless 10 U.S.C. 2805 requirements are met.

## Requirements for Obligation of Funds for Interagency Orders

When a Government agency orders supplies or services through another agency, it must create an obligation that legally defines the items it is procuring and obligates agency funds to pay for the procurement. DoD Components generally use the Military Interdepartmental Purchase Request (MIPR) (DD Form 448) as the obligating document for interagency orders. The obligation must also meet several legal and regulatory requirements.

- An obligation must be definite and certain. [GAO Red Book, volume II, page 7-3].
- Funds are to be obligated only for the purposes for which they were appropriated [31 U.S.C. 1301(a)].
- Funds are to be obligated only to satisfy the bona fide needs of the current fiscal year [31 U.S.C. 1502(a); DoD FMR, volume 3, chapter 8, paragraph 080303A].

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- Funds are to be obligated only if there is a genuine intent to allow the contractor to start work promptly and to proceed without unnecessary delay [DoD FMR, volume 3, chapter 8, paragraph 080303B].
  - Current funds are to be obligated when the Government incurs an obligation (or a liability) [DoD FMR, volume 3, chapter 8, paragraph 080302].
  - Funds are not to be obligated in excess of (or in advance of) an appropriation, or in excess of an apportionment or a formal subdivision of funds [31 U.S.C. 1341 and 1517].

The Comptroller General has also held that it is improper to “bank” appropriated funds with another agency to cover future year needs.<sup>3</sup>

**Requirements for Review of Outstanding Obligations and Commitments.** Defense agencies are required by DoD FMR, volume 3, chapter 8, section 080401 to perform reviews of unliquidated obligations and commitments three times each year:

Fund holders, with assistance from supporting accounting offices, shall review commitment and obligation transactions for timeliness, accuracy, and completeness during each of the four month period ending on January 31, May 31, and September 30 of each fiscal year. Fund holders are DoD officials that receive a documented administrative subdivision of funds including apportionments, allocations, suballocations, allotments, and suballotments through their funding chain of command or from other government departments, agencies, and activities holding an administrative subdivision of funds. The requirement for reviews of commitments and obligations applies to all appropriations and funds of all DoD Components. This requirement applies not only to direct appropriations, but also to all reimbursable transactions, as well as the Department’s revolving and trust funds.

## **DoD Compliance With Fiscal Law and Defense Regulations on Specificity of Obligations, Obligation Amounts, and Bona Fide Needs**

DoD Components did not always comply with appropriations law when procuring goods and services through GovWorks. We found 22 potential Antideficiency Act violations, including potential violations of the bona fide needs rule and obligating documents that did not have the required level of specificity. Additionally, large sums of money were transferred to GovWorks by MIPRs without the required support for how the amount of funds was determined and with a nonspecific description of goods or services to be acquired. Although the DoD agencies have the primary responsibility for compliance with fiscal law,

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<sup>3</sup> Implementation of the Library of Congress FEDLINK Revolving Fund, B-288142, September 6, 2001; Continued Availability of Expired Appropriation for Additional Project Phases, B-286929, April 25, 2001.

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certain GovWorks advice to its customers and specified GovWorks procedures fostered these practices.

**Requirement for Specificity in Obligations.** To establish a valid obligation and satisfy requirements in 31 U.S.C. 1501, an agency has to be specific in defining its requirements. However, the GovWorks Web site encouraged its customers to submit MIPRs with undefined requirements and to use MIPRs primarily as a vehicle to transfer funds into an account (bank account) instead of assigning a specific requirement to a specific amount.

The Comptroller General has defined an obligation as “a definite commitment which creates a legal liability of the Government for the payment of appropriated funds for goods and services ordered or received.” The Comptroller General has cautioned that the obligating of appropriations must be “definite and certain” and that an advance of funds to a working fund does not in itself serve to obligate the funds. The statute requires documentary evidence of a binding agreement for *specific* goods or services. An agreement that fails this test is not a valid obligation. The Comptroller General has ruled that a purchase order that lacks a description for the products to be provided is not sufficient to create a recordable obligation. When the Comptroller General determines an obligation does not meet the specificity test, the obligation has been ruled invalid.

The FAR and DoD FMR have requirements for specificity for Economy Act Orders but do not provide specific guidance on franchise fund orders such as GovWorks. Nevertheless, we believe that these same rules are applicable. FMR volume 11A, paragraph 030401, states that intragovernmental support agreements need to be specific, definite, and certain in naming the work encompassed by the order and the terms of the order itself. Both FMR volume 11A, paragraph 030501, and FAR 17.504 require that the ordering official provide a description of the supplies and services on the order.

GovWorks encouraged its customers to describe requirements in general rather than specific terms when developing MIPRs as shown in the Project Description (see Figure 2). However, when the terms are not specific, they do not meet the requirements for a valid obligation and GovWorks will not have the necessary detail to immediately process the order as required by DoD FMR, volume 3, chapter 8, paragraph 080303B. Also, the sample document encourages customers to submit a statement of work *if available*; the statement of work should be a mandatory requirement for acquisition of services to meet the requirement for specificity. We reviewed descriptions used for 103 MIPRs that funded 29 contract actions at GovWorks to determine whether the MIPRs met the specificity requirements. Sixty-five (63.1 percent) of the 103 MIPRs did not meet the requirement for specificity. For example:

- Contract action 43270 for the purchase of body armor used a MIPR that stated “Funding provided for the procurement and fielding of AT/FP [Anti-Terrorism/Force Protection] shipboard equipment utilized for the protection of Navy Afloat Assets.”
- Contract action 41432 for the purchase of three wide-screen plasma television screens was based on a MIPR that stated, “Purpose of this MIPR is to provide funds for the purchase of DMS [Defense

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Messaging System] equipment through the Pentagon IT [information technology] Store.”

An order should be sufficiently detailed to permit the contracting officer to immediately place the order without the need for further customer consultation. For supplies, we believe that the description should include a listing of the items, with specifications, to be procured. It should also specify the required quantities of each item, delivery requirements, and fund citation. For services, the ordering official needs to attach a detailed statement of work to the MIPR.

MILITARY INTERDEPARTMENTAL PURCHASE REQUEST					PAGE 1 of 2	
2. FSC	3. CONTROL SYMBOL NO.	4. DATE PREPARED XX/XX/XXXX	5. MIPR NUMBER XXXXXXXXXXXXXXXX	6. AMEND NO Base		
7. TO: GovWorks ATTN: Contracting Officer's Name 381 Elden Street, MS 2510 Herndon, VA 20170 703- 787-1100 FAX :703-787-1839 fundingdocuments@GovWorks.gov			8. FROM: Your Agency Name Agency Address City, State USA ZIP POC: Commercial Phone Number: Fax: Email:			
9. ITEM ARE ARE NOT INCLUDED IN THE INTERSERVICE SUPPLY SUPPORT PROGRAM AND REQUIRED INTERSERVICE SCREENING HAS HAS NOT BEEN ACCOMPLISHED.						
ITEM NO. a	(Federal stock number, nomenclature, specification and/or drawing No., etc.) b		QTY c	UNIT d	ESTIMATED UNIT PRICE e	ESTIMATED TOTAL PRICE f
<p><b>*Project Description</b> : Brief (attach SOW or SOO if available)</p> <p><b>GovWorks Service Charge</b>: 4% cost of contract or agreement</p> <p><b>*Dun &amp; Bradstreet Number</b> : Site placing the order</p> <p><b>*Dun &amp; Bradstreet Number</b> : GovWorks # 059627781</p> <p><b>*ALC</b> : Agency Location Code for IPAC (8 digits)</p> <p><b>*POC Information</b>: Contact Name Address, phone, fax, e-mail</p> <p><b>POC Alternates</b>: Contact Name Address, phone, fax, e-mail</p> <p><b>*COTR</b>: Contact Name Address, phone, fax, e-mail</p> <p><b>Alternate COTR</b>: Contact Name Address, phone, fax, e-mail</p> <p><b>*Invoicing POC</b>: Contact Name Address, phone, fax, e-mail</p> <p><b>Alternate Invoicing POC</b>: Contact Name Address, phone, fax, e-mail</p> <p><b>*POC Finance</b> : Contact Name Finance Office Address, phone, fax, e-mail:</p> <p><b>Station Code</b>:</p> <p><b>Trading Partner Number</b> : Department Code that will be charged for purchase</p> <p><b>*Funding Agency/aka FIPS Code</b>: Agency Credit Number for Awards</p> <p><b>*Office ID Code (DODAAC #)</b>: Office Credit Number for Awards</p> <p>GMRA Authority: THIS ORDER IS ISSUED UNDER THE EXPRESS AUTHORITY OF THE GOVERNMENT MANAGEMENT REFORM ACT OF 1994 (P.L. 103-356)</p> <p><b>*INFORMATION REQUESTED IS MANDATORY</b></p>						<b>Estimated Cost</b>
10. SEE ATTACHED PAGES FOR DELIVERY SCHEDULES, PRESERVATION AND PACKAGING INSTRUCTIONS, SHIPPING INSTRUCTIONS AND INSTRUCTIONS FOR DISTRIBUTION OF CONTRACTS AND RELATED DOCUMENTS.					11. GRAND TOTAL <b>Estimated Cost</b>	
12. TRANSPORTATION ALLOTMENT (Used if POB Contractor's plant)			13. MAIL INVOICES TO (Payment will be made by)			

rev. 4/12/06

**Figure 2. Sample MIPR From the GovWorks Web Site<sup>4</sup> Used to Help Customers Prepare MIPRs**

<sup>4</sup> [https://www.govworks.gov/docs/MIPRsample\\_04122006.pdf](https://www.govworks.gov/docs/MIPRsample_04122006.pdf)



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**Obligation Amount.** The GAO Red Book, volume II, states that the precise amount of the Government's liability should be recorded as the obligation when that amount is known. However, an agency's best estimate should be used when the precise amount is not known, and the basis for the estimate must be shown on the obligating document. DoD customers did not always supply to GovWorks support for the obligation amounts. The MIPRs appeared to be serving as a way to transfer funds into a "bank" rather than as a way to place orders. To ensure that the MIPR is properly used as an obligating document and not just a means to transfer funds, we believe that DoD needs to require that MIPRs be supported by an attached Government cost estimate. The Government cost estimate could provide the required support for the obligated amount, could be used by the contracting officer as partial support for cost reasonableness, and should be consistent with the description of the supplies or services being procured. Our review of the 29 contracts placed through GovWorks showed that only 37 (36.3 percent) of the 103 MIPRs funded were within 10 percent of the total listed on the MIPR.

**Potential Violations of the Bona Fide Needs Rule.** Overall, we identified 22 potential Antideficiency Act violations relating to the 49 contracts reviewed. We believe that some of the violations are the result of DoD customers not understanding the bona fide needs rule and GovWorks promoting the franchise fund as a way to circumvent time limits on the use of appropriated funds.

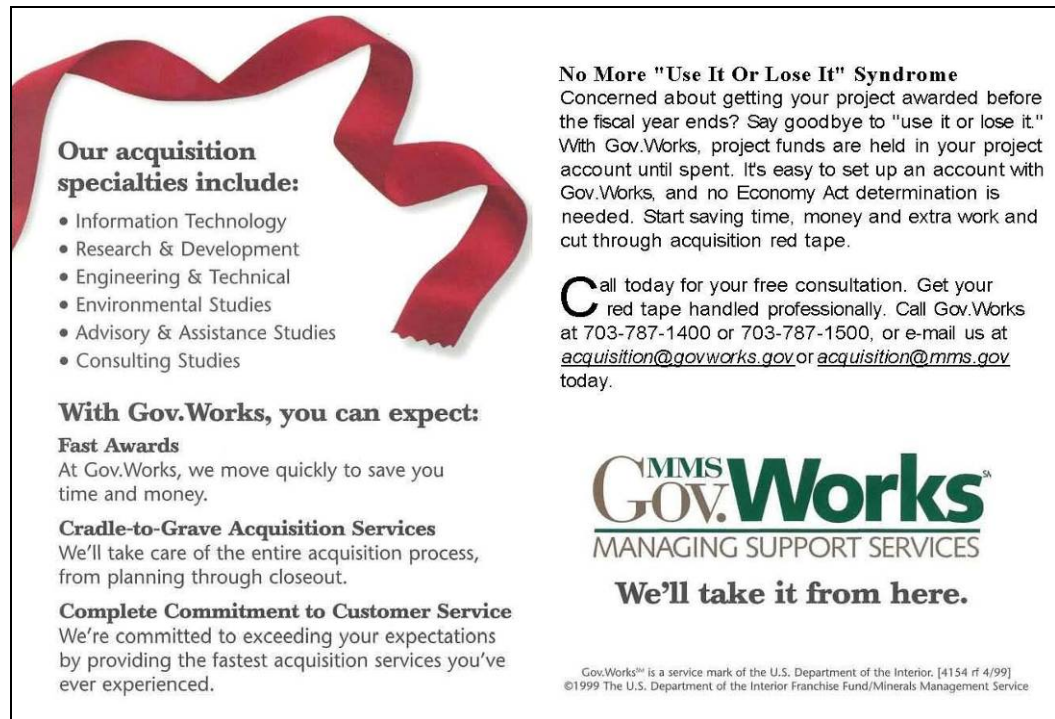
Since 1999, GovWorks has advertised to its customers that the customers may use appropriated funds submitted to GovWorks until the funds are exhausted, irrespective of the appropriation fund period of availability. GovWorks has relied on legal opinions from its Solicitor to support that position. Demonstrating this position, GovWorks included the following "Frequently Asked Question" on its Web site:

**4. Is there a legal opinion that supports GovWorks retaining project funds in the Interior Franchise Fund until expended or bona fide?**

Yes. Under the authority of the Government Management Reform Act (GMRA) and guidance from GAO, GovWorks may retain project funds obligated by the requesting agency under an order to GovWorks for a bona fide need. Project funds are retained until expended.

[retrieved from the GovWorks Web site [www.govworks.gov](http://www.govworks.gov) on May 18, 2006]

Similarly, a 1999 GovWorks brochure (Figure 3) emphasized that funds may be sent to GovWorks and held until spent.



The advertisement brochure features a red ribbon graphic on the left side. The text is organized into several sections:

- Our acquisition specialties include:**
  - Information Technology
  - Research & Development
  - Engineering & Technical
  - Environmental Studies
  - Advisory & Assistance Studies
  - Consulting Studies
- With Gov.Works, you can expect:**
  - Fast Awards**  
At Gov.Works, we move quickly to save you time and money.
  - Cradle-to-Grave Acquisition Services**  
We'll take care of the entire acquisition process, from planning through closeout.
  - Complete Commitment to Customer Service**  
We're committed to exceeding your expectations by providing the fastest acquisition services you've ever experienced.
- No More "Use It Or Lose It" Syndrome**  
Concerned about getting your project awarded before the fiscal year ends? Say goodbye to "use it or lose it." With Gov.Works, project funds are held in your project account until spent. It's easy to set up an account with Gov.Works, and no Economy Act determination is needed. Start saving time, money and extra work and cut through acquisition red tape.
- Call today for your free consultation.** Get your red tape handled professionally. Call Gov.Works at 703-787-1400 or 703-787-1500, or e-mail us at [acquisition@govworks.gov](mailto:acquisition@govworks.gov) or [acquisition@mms.gov](mailto:acquisition@mms.gov) today.
- MMMS Gov.Works<sup>SM</sup>**  
MANAGING SUPPORT SERVICES
- We'll take it from here.**
- Gov.Works<sup>SM</sup> is a service mark of the U.S. Department of the Interior. [4154 rf 4/99]  
©1999 The U.S. Department of the Interior Franchise Fund/Minerals Management Service

**Figure 3. Advertisement Brochure From GovWorks**

Appendix F identifies the orders that did not follow the bona fide needs rule and potentially violated the Antideficiency Act. We found 22 potential violations of the bona fide needs rule including 2 potential violations of the purpose statute [31 U.S.C. 1301(a)].

Many of the bona fide needs rule violations occurred when DoD activities transferred funds in bulk to GovWorks using MIPRs that described the acquisition only in general terms; then, DoD activities would convey the actual requirements to GovWorks via telephone or e-mail well after the date on which they submitted the MIPR. We believe the date that the specific requirements were conveyed to GovWorks was the date of the requirement—not the date that the MIPR was submitted.

For example, on December 21, 2004, GovWorks contracting officials awarded contract 41181, valued at \$108,196, for the purchase of decision network equipment for the Pentagon Telecommunications Service Center. Instead of using FY 2005 O&M funds to pay for this purchase, GovWorks contracting officials used portions of funds from four expired O&M MIPRs to fund the purchase, including 3 MIPRs in which the funds expired on September 30, 2001, and one MIPR in which the funds expired on September 30, 2004. Further, on January 18, 2005, GovWorks contracting officials deobligated \$26,399.03 from one MIPR in which the funds expired on September 30, 2001. GovWorks replaced those funds with funds from four other expired O&M MIPRs, including

one MIPR in which the funds expired on September 30, 2000. Use of FY 2000, 2001, and 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule. Table 11 shows the four MIPRs initially used to initially fund contract 41181. Table 12 shows the four additional MIPRs used to replace one of the original MIPRs (MIPR1JDIT0N046). Appendix F provides more detail on funding issues identified with contract 41181 and other contracts reviewed.

**Table 11. MIPRs Initially Used to Fund DOI Contract 41181<sup>5</sup>**

<b>MIPR</b>	<b>MIPR Amount</b>	<b>MIPR Date</b>	<b>Description of Acquisition on MIPR</b>
MIPR1MINTPR070	\$ 6,831.30	September 14 , 2001	“Funds are provided for the acquisition of ADP [automatic data processing] and supplies through the Pentagon IT [information technology] store”
MIPR1JDIT0N046	26,399.03	July 10, 2001	“Funds are provided for the acquisition of toner cartridges through the Pentagon IT store”
MIPR1KINTWS058	38,803.30	July 24, 2001	“Funds are provided for the acquisition of ADP and supplies through the Pentagon IT store”
MIPR4MINTMM125	36,162.37	September 17 , 2004	“The purpose of this MIPR is to provide funds for equipment through the Pentagon IT store”
<b>Total</b>	<b>\$108,196.00</b>		

<sup>5</sup> Awarded December 21, 2004.

**Table 12. MIPRs Used to Replace MIPR Number MIPR1JDIT0N046**

<b>MIPR</b>	<b>MIPR Amount</b>	<b>MIPR Date</b>	<b>Description of Acquisition on MIPR</b>
MIPR0MGSAIT092	\$ 160.00	September 29 , 2000	“Funds are provided for the acquisition of ADP [automatic data processing] products and services through the Pentagon IT [information technology] store, under project number DOI84011”
MIPR1MITST0074	3,176.76	September 24 , 2001	“Funds are provided for the acquisition of ADP and supplies through the Pentagon IT store”
MIPR4LINTMM111	11,393.50	August 18, 2004	“The purpose of this MIPR is to provide funds for equipment through the Pentagon IT store”
MIPR4MINTMM130	11,668.77	September 24 , 2004	“The purpose of this MIPR is to provide funds for the purchase of DMS [defense messaging system] equipment through the Pentagon IT store”
<b>Total</b>	<b>\$26,399.03</b>		

## Expired Appropriations at GovWorks

About \$393 million in “banked” DoD funds at GovWorks may have expired. DoD Components need to review these funds for possible deobligation to preclude their use in future acquisitions that may result in additional violations of the bona fide needs rule.

**Summary of Expired Funds.** At our request, GovWorks prepared a spreadsheet showing outstanding fund balances, by funding document, for all of its customers as of October 27, 2005. We filtered the spreadsheet by removing all non-DoD customers, funding documents that cited current funds or working capital funds, and MIPRs with a balance of \$1 or less. About 12.5 percent of the remaining transactions had either missing or erroneous information on the appropriations used. For those transactions, we identified and excluded MIPRs that had been received during FY 2005 and later. Two of the appropriations specified multiple periods of availability. The appropriation account sublimits were used to distinguish the period of availability. Because GovWorks did not record appropriation sublimits in its management system, we could not determine whether those funds expired; therefore, we included funds over 1 year as potentially expired for those two appropriations.

The remaining MIPRs appear to be expired funds that DoD fund managers should deobligate. Table 13 provides a summary of our analysis.

On February 17, 2006, we provided the spreadsheet showing expired MIPRs to staff of the Deputy Under Secretary of Defense (Comptroller)/Chief Financial Officer. The Comptroller’s staff noted that a substantial amount of the funds

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were FY 2005 O&M funds. The staff believed that a significant portion of the funding could be orders for services that are still in process and may be legitimately used. We agreed that there might be a portion of the funds identified that could be legitimately used. However, we disagree with the Comptroller's staff on the potential magnitude without a thorough analysis. The cutoff period for the data we obtained was 27 days after the end of the fiscal year, and the majority of the purchases by GovWorks were for products instead of services. Fund managers should further research the funds listed in the spreadsheet and deobligate the funds that have expired.

**Table 13. Summary of Potentially Expired DoD Appropriated Funds on the Books at GovWorks as of October 27, 2005**

<b>Appropriation Account and Availability</b>	<b>Amount</b>	<b>Percent</b>
<b>Operation &amp; Maintenance (1 Year Appropriation)</b>		
2002	\$ 4,016.28	0.0
2003	29,796,230.95	7.6
2004	46,211,939.67	11.7
2005	185,107,140.73	47.1
<b>Other Procurement (3 Years Appropriation)</b>		
2003	574,388.14	0.1
<b>Research, Development, Test, and Evaluation (2 Years Appropriation)</b>		
2002	33,628.46	0.0
2003	5,243,082.62	1.3
2004	1,045,824.99	0.3
<b>Family Housing Operation and Maintenance, Navy and Marine Corps (1 Year Appropriation)</b>		
2003	42,220.13	0.0
2004	11,817.53	0.0
<b>Defense Health Program, Defense</b>		
2002	9,746.81	0.0
2003	2,384,143.33	0.6
2004	17,244,420.42	4.4
2005	56,790,402.84	14.4
<b>Office of Inspector General</b>		
2004	52,839.00	0.0
2005	1,697.41	0.0
<b>Aircraft Procurement (3 years Appropriation)</b>		
2003	2,310.70	0.0
<b>Blank-Appropriation Account or Invalid Account</b>		
1998	17,842.47	0.0
1999	3,423.95	0.0
2000	234,435.29	0.1
2001	354,613.12	0.1
2002	4,139,278.29	1.1
2003	4,709,446.37	1.2
2004	883,334.33	0.2
2005	38,416,568.70	9.8
<b>Total</b>	<b>\$393,314,792.53</b>	<b>100.0</b>

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**Reviewing Appropriations Three Times a Year.** The large sums of expired appropriations on GovWorks' books indicate that DoD Components are not performing the reviews three times a year and deobligating appropriations when orders have been completed or the funds have expired. To reinforce the requirement, the Under Secretary of Defense (Comptroller)/Chief Financial Officer released the March 27, 2006, memorandum "Proper Use of Interagency Agreements with Non-Department of Defense Entities Under Authorities Other Than the Economy Act." The memorandum directed DoD Components to:

- review all interagency agreements to determine their status, close out all completed agreements, and return all funds remaining on completed agreements no later than June 30, 2006;
- deobligate expired funds unless they meet criteria identified in the prior memorandum, "Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act," dated March 25, 2005;
- mark on future interagency agreement funding documents that funds are available for services for period not to exceed 1 year from the date of obligation and acceptance of the order, and require the servicing agency to return unobligated funds to the ordering activity after 1 year from the acceptance of the order or upon completion of the order;
- certify that the goods acquired under the agreement are legitimate, specific requirements representing a bona fide need of the fiscal year in which the funds are obligated;
- attest on obligation reviews three times a year that all existing interagency agreements are consistent with DoD policy; and
- report to the Comptroller's office on amounts reviewed and deobligated no later than July 15, 2006.

## **Recommendations, Management Comments, and Audit Response**

Recommendations to the Under Secretary of Defense (Comptroller)/Chief Financial Officer to initiate preliminary reviews of potential Antideficiency Act violations are in DOD Inspector General Report No. D-2007-042, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," January 2, 2007.

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

- 1. Issue guidance to DoD Components on the need for specificity when they prepare the Military Interdepartmental Purchase Requests to order goods and services.**

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**2. Review the \$393 million potentially expired funds and require all expired funds to be deobligated and returned to the treasury.**

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

**Comments.** The Acting Deputy Chief Financial Officer provided comments on behalf of the Under Secretary of Defense (Comptroller)/Chief Financial Officer. He concurred with Recommendations B.1. and B.2. He stated that policy published on the Comptroller's Web site on October 16, 2006, provides guidance on the need for specificity when preparing purchase orders. Additionally, the Comptroller had directed all Components to review interagency agreements and coordinate the return of excess funds with the outside agency by June 30, 2006. As of January 2007, DoD Components have deobligated \$451.3 million in expired funds. Additionally, the Acting Deputy Chief Financial Officer stated that they were working with DOI to identify and facilitate the return of expired or excess funding.

**Audit Response.** The Acting Deputy Chief Financial Officer's comments are responsive. The Comptroller's staff told us that the \$451.3 million deobligations were from all agencies that do procurements for DoD, and the Comptroller office could not breakout obligations for DOI.



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## C. Open Market Corridor

The Open Market Corridor (OMC) is an Internet-based contracting system developed by a contractor working for the Naval Postgraduate School, with contracting support provided by the DOI Southwest Acquisition Branch. The OMC was implemented before requirements for security accreditation, internal controls, legal review, and agency head approval had been satisfied. Additionally, the Southwest Acquisition Branch did not adequately oversee the system once it was implemented. As a result, activities used the system to award contracts totaling more than \$238.7 million without adequate reviews. Additionally, the Southwest Acquisition Branch granted contract-ordering authority to a lecturer at the Naval Postgraduate School who did not have a contracting officer warrant. Subsequently, the lecturer, using the OMC, made awards totaling about \$135 million on behalf of the Naval Postgraduate School and other Army, Navy, and Air Force activities.

### Requirements for Implementing an Internet-Based Procurement System

FAR Subpart 4.5, “Electronic Commerce in Contracting,” encourages the Federal Government to use electronic commerce whenever practicable or cost-effective. However, before an automated system can be brought on-line, several steps have to be completed to ensure that system has the proper security, internal controls, legal sufficiency, and approval to operate. These steps are necessary to ensure that the system operates as designed and data and controls have a reduced risk for compromise.

**Security Accreditation.** DoD Instruction 5200.40, “DoD Information Technology Security Certification and Accreditation Process (DITSCAP),” December 30, 1997, establishes a standard DoD-wide process, set of activities, general tasks, and a management structure to certify and accredit information systems.<sup>6</sup> DITSCAP protects and secures information systems and other elements that make up the Defense Information Infrastructure. The instruction applies to DoD Components, their contractors, and their agents. It implements requirements of the Computer Security Act of 1987 (Public Law 100-235); Office of Management and Budget Circular 130, “Management of Federal Information Resources”; and other DoD instructions.

**Internal Controls.** Management controls are the organization, policies, and procedures used to reasonably ensure that:

- programs achieve their intended results;
- resources are used consistent with agency mission;

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<sup>6</sup> On July 6, 2006, the DoD Chief Information Officer issued the “Interim Department of Defense (DoD) Information Assurance (IA) Certification and Accreditation (C&A) Process Guidance,” which superseded the DITSCAP.

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- programs and resources are protected from waste, fraud, and mismanagement;
  - laws and regulations are followed; and
  - reliable and timely information is obtained, maintained, reported, and used for decision-making.

The Office of Management and Budget Circular A-123, Federal Managers' Financial Integrity Act (Public Law 97-255); the Federal Financial Management Improvement Act (Public Law 101-576); Federal Information Security Management Act of 2002; Chief Financial Officers Act of 1990; and "Standards for Internal Control in the Federal Government," Report No. GAO/AIMD-00-21.3.1, November 1999, require sound internal controls.

**Legal Sufficiency.** FAR 1.602-2 states that contracting officers must ensure performance of all necessary actions for effective contracting, ensure compliance with the terms of the contract, and safeguard the interests of the United States in its contractual relationships. To perform these responsibilities, contracting officers have wide latitude to exercise business judgment but are required to request and consider the advice of specialists, including legal staff, as appropriate.

**Approval to Operate an Internet-Based Accounting System.**

FAR 4.502(b) states that agencies have broad discretion in selecting the hardware and software used for electronic commerce. However, after consulting with the Administrator of the Office of Federal Procurement Policy, the agency head must determine that the system conforms with requirements of section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426) and specific standards identified in FAR 4.502(b) before deploying electronic commerce systems.

**Other Compliance Requirements.** Office of Management and Budget Circular A-127, "Financial Management Systems," July 30, 1993, states that financial management systems and processing instructions must be clearly documented in accordance with the Federal Financial Management Systems Requirements published by the Joint Financial Improvement Program and other applicable requirements. All documentation (for example, software, system, operations, user manuals, operating procedures) must be up to date and readily available for examination. Acquisition systems such as the OMC should conform to requirements in "Acquisition/Financial Systems Interface Requirements," Joint Financial Improvement Program, report number JFMIP-SR-02-02, June 2002.

## **Contracting for the Development and Operation of the OMC**

OMC operates under contract number NBCHD020037, an indefinite-delivery, indefinite-quantity contract awarded by the Southwest Acquisition Branch on July 18, 2002, to Electronic-Co, Inc., which does business as Networld Exchange (Networld). The OMC system began as a research project sponsored by the Naval Postgraduate School in Monterey, California, to streamline the Federal acquisition process. The OMC contract was competed in compliance with FAR Part 15.

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Because Networkworld developed the OMC system at its own expense, the contract made Networkworld eligible for a fixed-price percentage fee of 1.25 percent of each award made through OMC. The contract also states that the Naval Postgraduate School and DOI will receive 0.50 percent and 0.25 percent respectively, on each of the awards. The Southwest Acquisition Branch has contracting authority for the OMC, but the contracting officer has the authority and option to delegate administrative contract authority to any Federal Government employee with a contracting warrant. The OMC contract will extend to the year 2017 if the Southwest Acquisition Branch exercises all contract options.

The OMC contract can be used to procure commercial products or services as defined in FAR Part 12. Networkworld is the prime contractor, and any vendor that signs up to sell its goods or services through the OMC becomes a subcontractor to Networkworld. All contractors who have registered in the central contractor registration database are eligible to become subcontractors to Networkworld. As of August 2006, OMC had 952 participating vendors and 120 Government activities registered to make purchases through OMC. Participating vendors received contracts totaling \$131.1 million during FY 2005 from both DoD and non-DoD business.

## OMC Problems

We reviewed five DoD orders placed through the OMC in detail, the overall operations of the system, and the documentation available for the system. Additionally we surveyed other acquisitions made through the system by administrative ordering officers approved by DOI Contracting Officer and for whom DOI contracting officer was to provide oversight.

DOI and the Naval Postgraduate School did not complete many of the required steps before bringing the system on-line. The DOI contracting officer did not adequately oversee the system and transactions processed through the system.

**Security Accreditation.** The Naval Postgraduate School had not performed the required DoD Information Technology Security Certification and Accreditation Process (DITSCAP) prior to deploying the OMC. DITSCAP is a process that helps ensure systems operate at an acceptable level of risk. DITSCAP certification is typically required for connection to DoD and other Federal systems, networks, and applications. Security is important to an acquisition system because of the need to provide confidentiality, maintain continuity of operations, and ensure integrity of the data.

**Internal Controls.** Neither the Naval Postgraduate School nor DOI evaluated internal controls prior to deploying the OMC. We observed weaknesses in system documentation, internal control procedures, and in operation of the system. Additionally, the Southwest Acquisition Branch did not adequately oversee the system.

**Documentation.** Neither the Southwest Acquisition Branch nor the Naval Postgraduate School could provide system documentation for the OMC. System documentation of dataflow and control points within the system is needed to facilitate internal control reviews of the system.

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**Vendor Selection and Bid Period.** The OMC permitted ordering officers to select which vendors would receive solicitations. Participating OMC vendors could not see the solicitations posted in the OMC unless they were a designated recipient of the solicitation; therefore, vendors had no opportunity to protest if they believed they were not given a fair opportunity to participate in a solicitation. Additionally, the OMC did not have built-in restrictions on how short of a period vendors were given to respond to the solicitations. Contracting officers are required by FAR 5.203(b) to provide a reasonable opportunity to respond to a solicitation. Unreasonable response times limit competition. Some OMC awards were made within hours of the solicitation.

**Separation of Duties.** The OMC permitted the ordering officer to select the list of eligible vendors and conduct the solicitation. The contracting officer's role was to ratify the actions taken by the ordering officer. Accordingly, the ordering officer could influence the award process by restricting eligible vendors. Additionally, the ordering officers performed functions normally performed by a contracting officer.

**Oversight.** Initially, the contracting officer, who was responsible for overseeing the system, was unable to provide a list of either the customers or participating vendors who were using the system, or information on orders being placed through the system, other than orders she had placed. After inquiring with Networld and the Naval Postgraduate School, the contracting officer learned that she could obtain that information from the on-line system. The lack of continuous monitoring of the solicitations made through the OMC was an internal control weakness.

**Contracting Practices.** Inadequate oversight and other internal control weaknesses contributed to what we believe were abusive contracting practices:

- Sixteen vendors to the OMC appeared to be Government employees or firms that appeared to be affiliated with Government employees. Awards to Government employees are prohibited by FAR Subpart 3.6 and may result in violations of criminal statutes pertaining to Government ethics.
- Sole-source awards did not have required justifications.
- Awards were made to vendors that did not appear to be vendors for the commodities being sought. For example:
  - A contract for office furniture was awarded to a company that did not appear to be a furniture dealer, while another participating vendor that specialized in office furniture sales, Office Depot, was not given an opportunity to bid on the solicitation. The company that received the award did not have a commercial address, and the company's central contractor registration did not indicate that it was a furniture dealer. The solicitation did not identify the type and quantity of furniture items being procured.
  - An order for armor protection for use on Army military vehicles located in combat zones was awarded to a Section 8(a) vendor specializing in software development and building construction.

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The solicitation did not include any technical specifications for the armor protection, and the proposal did not identify a manufacturer. Staff of the Army Tank-automotive and Armaments Command told us that the company was not a recognized dealer in armor protection for military vehicles. Because the solicitation lacked specifications and the proposal did not identify the manufacturer, we could not determine whether the purchase created a safety issue for military personnel who relied on the armor for protection.

- Fair and reasonable prices were not paid for all purchases. We reviewed specified purchases and compared prices paid to vendors through the OMC with suggested retail prices and prices available through GSA schedules and found what we believed was overpricing.

We referred selected transactions to the DoD Deputy Inspector General for Investigations and the Navy Acquisition Integrity Office for further review. Certain matters were subsequently referred to the Naval Criminal Investigative Service and the Naval Audit Service.

**Legal Review of OMC Contract.** The Southwest Acquisition Branch did not obtain a legal review of the OMC prior to deploying the system. After the system was deployed, the Deputy Assistant Secretary of the Navy for Acquisition Management requested that DOI review legal issues pertaining to the OMC. Subsequently, the DOI Solicitor did a legal review on October 3, 2002, and identified several deficiencies that needed to be corrected. However, as of August 2006, the contracting officer has not addressed the legal deficiencies. In addition, we believe that the OMC contract raises several other complex legal issues that have not been adequately recognized or addressed.

- Because the OMC contract required Networld to develop the OMC system at its own cost and did not require the Government to purchase a minimal amount or to make any commitment on its part, the contract may not be enforceable. For the contract to be binding, the minimum quantity in the contract must be more than a nominal quantity.
- Because the Networld contract treated all participating vendors as subcontractors to Networld, the legal authority for the Government to oversee any transactions made through the OMC is unclear. The FAR is not likely to apply to such transactions. Instead, competition between subcontractors is traditionally under the purview of the prime contractor, not the Government, and is subject to applicable State laws. This situation also raises questions on the ability of participating vendors to successfully protest unfair competitions because the Government generally declines to get involved with disputes between prime contractors and its subcontractors.
- Ordering agencies are precluded from making procurements from a performing agency that fails to comply with the Competition in Contracting Act (CICA) when contracting for a requirement [10 U.S.C. 2304(f)(5)(B); 41 U.S.C. 253(f)(5)(B)]. Executive agencies cannot contract without providing full and open competition unless one of the statutory exceptions listed in FAR 6.302 applies. Contracts awarded without full and open competition must cite the

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applicable statutory exception. Because the level of competition under the OMC is restricted to the 952 participating vendors, and even those vendors do not have access to all the solicitations, and because none of the solicitations we reviewed cited exceptions to the CICA, we do not believe that the OMC complies with CICA requirements.

- FAR 2.101(b) states that the General Services Administration Web site [FedBizOpps.gov](http://FedBizOpps.gov) is to be the single Government point-of-entry for Federal Government procurement opportunities over \$25,000. The OMC did not comply with requirement.
- The contract with Networld had options to extend the contract until the year 2017. We understand the desire of the Southwest Acquisition Branch to provide adequate incentives for Networld to participate in the venture because Networld developed the system at its own expense. However, the contract period seemed excessive and had no mechanism for other vendors to compete against Networld in future years. This issue is discussed in further detail in finding A.
- The legal model for Networld as a prime contractor with participating vendors as subcontractors precludes contracting officers from incorporating standard and optional contract clauses into the individual orders awarded through the OMC. Contract clauses apply to the prime contractor and the FAR has no mechanism to make contract clauses applicable only to specific subcontractors. Contract clauses, when used appropriately, can protect both the Government's and the contractor's interest by clearly defining the terms and conditions of the solicitation. Additionally, permitting Networld to serve as a prime contractor for the broad array of supplies and services processed through the system did not appear to be within the scope of the contract. The contract was for Networld to implement and manage an Internet-based electronic storefront.
- The Networld contract did not have provisions requiring that data records pertaining to the solicitations be retained or protected as prescribed by FAR Subpart 4.7.

**Approval to Operate the OMC.** Neither the Southwest Acquisition Branch nor the Naval Postgraduate School obtained approval from the agency head as required by FAR 4.502(b) before deploying the OMC. The Naval Postgraduate School told us that the President of the school had approved its operation. DOI senior acquisition management overseeing the Southwest Acquisition Branch told us that they were not aware that the system existed.

## **Procurements by the Naval Postgraduate School**

In August 2003, a lecturer at the Naval Postgraduate School applied to the OMC contracting officer for ordering officer authority under that contract. The contracting officer knew that the lecturer did not have a contracting officer warrant. However, because the lecturer had graduated from law school and had training equivalent to that required of a contracting officer, the contracting officer

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granted the lecturer ordering authority, with a \$5 million limit on each transaction. The contracting officer then decided in May 2005 to revoke the lecturer's ordering authority, citing the fact that he did not have a contracting officer warrant as the reason for the revocation.

During his appointment, the lecturer awarded 1,616 contract actions totaling almost \$135 million through the OMC on behalf of the Naval Postgraduate School and all of the Services. Table 14 summarizes the awards made by the lecturer.

**Table 14. Awards Made by a Naval Postgraduate School Lecturer Who Lacked a Contracting Officer Warrant**

<b>Activity</b>	<b>Award Amount</b>
Air Force Real Property Agency	\$ 1,136,403.60
Air Force Directorate of Strategic Planning-AF/XPX	1,529,690.28
Army Base Realignment and Closure Office	546,221.20
Army Central Technical Support Facility	569,070.30
Army National Guard, California	172,459.96
Army Office of Economic Manpower Analysis	10,131,687.74
Combating Terrorism Center	103,255.00
Commander, Naval Surface Force, Atlantic Fleet	249,532.80
Commander, Navy Installations	5,884,142.66
Commander, Navy Region Southwest	288,815.96
Commander, Submarine Force, Atlantic Fleet	59,670.00
Commander, U.S. Army Dugway Proving Ground	25,000.00
Commander, U.S. Pacific Fleet	153,245.00
Fleet Numerical Meteorology and Oceanography Center	18,456,075.48
Fort Leavenworth Directorate of Installation Support	22,075,977.94
Headquarters, 3rd Brigade, 91st Division	931,179.41
Headquarters, Fifth U.S. Army	2,203,112.28
Headquarters, Marine Corps	78,336.00
Headquarters, U.S. Army Europe	117,300.00
Joint Special Operations University	10,812.20
Marine Corps Air Station, Yuma, Arizona	151,136.58
Naval Air Depot, North Island	350,000.00
Naval Facilities Engineering Command	5,624,878.19
Naval Health Research Center	688,852.77
Naval Postgraduate School	35,791,077.42
Naval Special Warfare Command	8,142,801.07
Naval Strike and Air Warfare Center	2,151,834.99
Naval Weapons Station Seal Beach	46,331.00
Navy Public Works Center	365,254.96
Office of Naval Intelligence	250,000.00
Office of the Under Secretary of Defense for Personnel and Readiness	300,000.00
Space and Naval Warfare Systems Command, Tampa	7,240,711.49
U.S. Army Engineer District, Sacramento District	239,686.56
U.S. Central Command Air Force	8,073.50
U.S. Army 222d Base Support Battalion	757,723.14
U.S. Army Garrison, Hawaii	4,754,053.71
U.S. Army Heidelberg Germany	2,807,560.82
U.S. Naval Ship Repair Facility	268,506.17
U.S. Army Medical Department Center and School	113,147.84
<b>Total</b>	<b>\$134,773,618.02</b>

Making purchases without a contracting warrant violates FAR 1.601. The awards made by the lecturer were not posted to the DD-350 system or the Federal



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Procurement Data System as required by FAR Subpart 4.6; therefore, DoD and DOI acquisition managers, the Office of Management and Budget, the Congress, and the public had limited ability to oversee these contracts. We referred the procurements made by the lecturer to the Navy Acquisition Integrity Office for further review.

## **Actions by Management**

On January 27, 2006, and February 13, 2006, we briefed the Naval Postgraduate School and the Southwest Acquisition Branch on the issues. Both the Southwest Acquisition Branch and the Naval Postgraduate School agreed to stop processing new orders using the OMC until corrective actions had been taken. In March 2006, the Naval Postgraduate School took the OMC offline and initiated the DITSCAP through the Space and Naval Warfare Systems Command. On August 29, 2006, the DITSCAP certification was completed. We commend management for taking action to correct the security accreditation problem; however, DoD should not continue to manage or use the OMC system because of the serious legal issues and other problems we found.

## **Recommendation, Management Comments, and Audit Response**

**C. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics terminate DoD use of the Open Market Corridor system.**

**Under Secretary of Defense for Acquisition, Technology, and Logistics Comments.** The Director, Defense Procurement and Acquisition Policy provided comments on behalf of the Under Secretary of Defense for Acquisition, Technology, and Logistics. He concurred in principle with the recommendation. The Director stated that because the most recent option to extend the contract for the Open Market Corridor (July 2006) was not exercised and no new orders can be placed against that contract, terminating the use of the Open Market Corridor System was not necessary.

**Audit Response.** The Director's comments are responsive to the recommendation.

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## D. Contract for Leased Office Space

The Counterintelligence Field Activity (CIFA) did not follow the required procedures for obtaining office space in the National Capital Region (NCR)<sup>7</sup> before deciding to contract for leased space through the GovWorks. As a result, its 10-year, \$100 million lease was obtained through a Section 8(a) contractor rather than the General Services Administration as required by law. CIFA violated a myriad of statutes including potential violations of the Antideficiency Act, and precluded the required congressional review and approval process. The potential Antideficiency Act violations stemmed from lack of authority to enter the lease and lack of authority to alter the building, violation of the bona fide needs rule, purpose violations, and obligations of appropriations for future years. Additionally, other Government components who leased excess space from CIFA also had committed potential Antideficiency Act violations. Furthermore, two GSA appraisals of the CIFA lease determined that CIFA may have paid up to \$2.7 million more per year than it would have cost if CIFA had obtained the same space through GSA. Finally, the SBA determined that the contractor did not meet the required size standards for the SBA and announced that it intends to terminate the lease contract. The resulting dilemma is that CIFA cannot make payments on its leased space without potentially violating the Antideficiency Act, finding alternate suitable space capable of handling CIFA special security requirements may take years, and its existing lease could be terminated by SBA at any time.

### Lease of Office Space for the Counterintelligence Field Activity

We reviewed two contracts awarded by GovWorks to TKC Communications on behalf of CIFA.

Contract 1435-04-03-RC-70941 was for a 10-year lease of commercial office space in Arlington, Virginia. The contract included monthly rent and other direct costs for a monthly facilities lease with nine option years. The award summary showed total price of \$96,411,630; however, the contract amount was only \$2,029,082.

Contract 1435-04-03-CT-73024, initially awarded for \$1,615,439, was for transition activities to include relocation of contractor staff and Government furnished equipment within buildings. The amount of the original contract was increased to \$16,937,035.

The contractor for the lease, TKC Communications, Inc., was a Section 8(a), Alaskan Native Corporation contractor. Alaskan Native Corporations have a special status among Section 8(a) contractors. Under 13 Code of Federal

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<sup>7</sup> The NCR includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria and Falls Church in Virginia; and all cities and other units of Government within those jurisdictions.

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Regulations (C.F.R.), section 124.506(b), Alaskan Native Corporations can receive sole-source contracts without having to compete for the award; they are not subject to the competition requirements under FAR 19.805. TKC Communications fulfilled the contract requirements by entering a lease agreement with Charles E. Smith and Company, which owned the office space in Arlington, Virginia, and subleasing that space to CIFA under a contract between DOI and TKC Communications. The lease contract also included charges for space alterations made by the TKC Communications for CIFA at the beginning of the lease.

## **DoD Requirements for Obtaining Office Space in the National Capital Region**

DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001, paragraph 7.4, makes the Washington Headquarters Services the principal DoD liaison with GSA for all administrative services and real property matters, including lease administration and enforcement in the NCR. DoD Instruction 5305.5, "Space Management Procedures, National Capital Region," June 14, 1999, is the applicable guidance for obtaining space within the NCR and prescribes procedures for obtaining space. Space requests are to be submitted through the Washington Headquarters Services. DoD Instruction 5305.5 states that requests for space that exceed the Prospectus Threshold Authority, which the CIFA lease did, normally require about 3 years to process because of the need for coordination with GSA and the Office of Management and Budget, and the need for congressional approval.

## **Authority to Enter Lease**

The 41 C.F.R. Part 101 (known as the Federal Property Management Regulation) gives the GSA exclusive authority for leases. Title 10 U.S.C. 2676, "Acquisition: Limitation," precludes Military Department leases without specific statutory authority.

(a) No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. . .

**Meeting With GSA.** On October 28, 2005, we met with the GSA Director, Leasing Policy and Performance Division about the TKC Communications contract. He told us that his office had not issued a delegation of procurement authority to CIFA for this project and that congressional approval would be needed to approve a lease of this size. He believed the TKC Communications contract was a lease under the guise of a service contract. He told us that GSA would not be willing to ratify the CIFA action.

**Legal Review of the Contract for Lease.** The DOI Solicitor performed a legal review of the TKC Communications contract on June 12, 2003; the Solicitor completed a form with a check mark indicating that the contract was legally sufficient. The Solicitor told us that he had initially decided not to approve the contract, but after learning that a Department of Justice attorney had approved it,

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decided to approve it. CIFA had asked the Chief Counsel of the U.S. Department of Justice, Foreign Terrorist Tracking Task Force, to review the proposed lease; the Chief Counsel concurred with use of the contractor to provide the office space.

We reviewed the letter containing the Chief Counsel's concurrences. It appears to us to be an acknowledgement of the requirement for leased space rather than a legal opinion. In any event, that office would not be the complete authority to provide a legal review on DoD leases.

## Requirements for Congressional Approval

**Restrictions on Leases and Alterations That Exceed Prospectus Thresholds Authority.** Title 40 U.S.C. 3307 establishes prospectus thresholds for Federal agencies that are subject to GSA authority. The thresholds apply to construction, alteration, purchase, and acquisition of any building to be used as a public building, and to lease any space for use for public purposes. The prospectus threshold value for each fiscal year is posted on the GSA Web site <http://www.gsa.gov>. If the value of a proposed lease or alterations to a building exceeds the thresholds, a prospectus has to be presented to the Senate and the House of Representatives for approval. Only GSA is authorized to enter into leases that exceed the prospectus thresholds.

**Leased Building Alterations.** For FY 2003 and FY 2004, the period that building alterations were made to the CIFA leased space, the Prospectus Threshold Authority for alterations was \$1.1066 million and \$1.1450 million, respectively. The total cost of space alterations made by CIFA in FY 2003 was \$14.7 million and at least \$7.9 million in FY 2004. The \$14.7 million alteration was part of contract 1435-04-03-RC-70941. The \$7.9 million alteration was also made through TKC Communications but under contract 1435-04-03-CT-73024.

**Lease Thresholds.** The Prospectus Threshold Authority for leases for FY 2003 was \$2.21 million per year. The CIFA lease agreement required lease payments of at least \$6.575 million per year for 2004 and subsequent periods.

By not going through GSA when contracting for the lease and space alterations, and because the cost of the lease and alterations exceeded the Prospectus Threshold Authority without congressional approval, CIFA potentially violated the Antideficiency Act for both the lease amounts and for the alterations to its leased space.

**Approval for Computer Space or National Defense Related Space.** Title 40 U.S.C. 3307(f)(1) prohibits Federal agencies from leasing any space to accommodate computer and telecommunications operations and secure or sensitive activities related to the national defense or security if the average annual net rental would exceed the prospectus threshold. However, Federal agencies may lease such space if the Administrator of General Services first determines that leasing such space is necessary to meet requirements that cannot be met in public buildings, and then submits that determination to the Committee on Environment and Public Works of the Senate and the Committee on

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Transportation and Infrastructure of the House of Representatives in accordance with 40 U.S.C. 3307(f)(1).

By not submitting the lease requirements pertaining to computer and telecommunications operations and national security through GSA, and because the lease exceeded the Prospectus Threshold Authority, CIFA potentially violated the Antideficiency Act. Additionally, because CIFA did not comply with these regulations, the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives were not able to review the lease.

**Restrictions on Leases for More Than \$1.5 Million in Annual Rental Costs.**

Title 40 U.S.C. 3307, “Congressional approval of proposed projects,” states that resolutions are required by the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives before an appropriation can be made to construct or alter any building which involves a total expenditure in excess of \$1.5 million or to lease any space at an average annual rental in excess of \$1.5 million.

Because the CIFA lease contract exceeded both \$1.5 million thresholds in 40 U.S.C. 3307, CIFA also violated this restriction with its lease and alterations. This provision further supports our conclusion that CIFA payments on the lease potentially violated the Antideficiency Act.

**Notification Requirements.** Title 10 U.S.C. 2662(a)(1)(B) requires the Secretary of the Military Department to notify Congress of leases of real property that will be at an annual rental in excess of \$750,000. The section requires a 30-day notice by providing a report about the proposed transaction to the Senate Armed Services Committee and the Committee on Armed Services of the House of Representatives. If the lease is made by or on behalf of an intelligence component of the DoD, the notification is also to be sent to the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate. The contract files did not contain copies of any such notification.

## **Potential Funding Violations Resulting From the Lease Contract**

As stated above, CIFA and DOI circumvented numerous laws in contracting for leased space. By not following the proper procedures, they entered into a lease without the legal authority to do so. Without a legal and authorized agreement, no basis exists to obligate and expend Government funds. Because Government funds have been obligated, DOI, CIFA, and other organizations renting the leased space may have potentially violated the Antideficiency Act. Also, any subsequent expenditure of Government funds for this rental space may result in additional Antideficiency Act violations. No future payments should be made until a legal basis exists to make the payments.

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The contract with TKC Communications had a termination clause, effectively obligating the Government to make lease payments for at least a 12-month period and repayment of capital improvements. Therefore, the termination provision could obligate appropriations of future years, which would violate 31 U.S.C. 1341(a)(1)(A) and the U.S. Constitution, Article I, Section 9.

CIFA paid TKC Communications for its lease building alterations using O&M appropriated funds. CIFA should have used military construction funds for alterations of that magnitude, and military construction projects costing over \$1.5 million have to be specifically approved by Congress. By not using military construction funds, CIFA potentially violated 31 U.S.C. 1301 (known as the “Purpose Statute”) and 10 U.S.C. 2805.

The TKC Communications contract permitted CIFA to repay the costs for its building alterations incurred during FY 2003 over the life of the lease. In effect, the contractor made a loan of the funds to CIFA and permitted CIFA to repay the loan over time. The contract even had an amortization schedule showing interest charges. Interest charges are unallowable costs prohibited by FAR 31.205-20. Government agencies are required to follow the bona fide needs rule [31 U.S.C. 1502(a)] and CIFA should have paid for the alterations during the fiscal year in which the expenses were incurred. Obligations which require payments from appropriations which have not yet been provided by the Congress potentially violate 31 U.S.C. 1341(a)(1)(A) and the U.S. Constitution, Article I, Section 9.

**Moving Expenses Within the National Capital Region.** Section 8020 of the Department of Defense Appropriations Act, 2003 (Public Law 107-248, House Report No. 5010) restricts use of funds exceeding \$500,000 for relocations within the NCR unless waived by the Secretary of Defense. Restrictions on moving costs within the NCR have been a recurring section in Defense Appropriation Acts since FY 1991. DoD Instruction 5305.5, paragraph 5.2.1.2, requires DoD agencies to include a “\$500,000 Move Certification” to Washington Headquarters Services with its request for space within the NCR. The Move Certification is the established control for Washington Headquarters Services to ensure that the planned moving costs are below the \$500,000 threshold or that the Secretary of Defense or his designee has waived the restriction. On October 5, 2005, the Acting Deputy Secretary of Defense delegated responsibilities for actions pertaining to enforcement of Section 8020 to the Director, Administration and Management. Because CIFA did not submit its request through the Washington Headquarters Services as required, an independent party needs to determine the costs pertaining to the move and determine whether CIFA exceeded the threshold for relocation costs. If CIFA relocation costs exceeded the threshold, CIFA needs to either advise the Defense Committees of the breach or obtain a retroactive waiver of the moving expense restrictions from the Secretary of Defense or his designee.

## **Violation of SBA Size Standards**

We requested that the SBA Office of Government Contracting determine whether TKC Communications met SBA size restrictions imposed by the SBA “Table of Small Business Size Standards Matched to North American Industry

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Classification System Codes.” SBA performed the analysis and concluded that TKC Communications did not meet the SBA size standards when it entered into the CIFA lease contract. As a result, on April 18, 2006, the Associate Deputy Administrator for Government Contracting and Business Development, SBA stated that SBA intends to terminate the contract for the convenience of the Government.

## Appraisal of the CIFA Lease

**GSA Appraisals.** We requested that the GSA Director, Leasing Policy and Performance Division, appraise the CIFA lease to determine whether the Government paid too much for the lease and whether GSA had available and suitable space in its inventory when the CIFA lease was signed. GSA appraisers used two approaches to appraise fair lease prices at the time that the lease was negotiated. The first approach was a standard appraisal that compared the space with comparable properties available for lease at the time. Using that approach, GSA appraisers concluded that comparable properties would rent for \$36.93 per rentable square foot.

The second approach compared existing offers to the Government in the Advanced Acquisition Program at the time of the lease. GSA recognized and made adjustments for differences between a traditional commercial lease and a lease under the Advanced Acquisition Program. GSA concluded that comparable properties were \$31.87 per rentable square foot through the Advanced Acquisition Program. GSA determined that the TKC Communications lease to CIFA cost \$44.82 per rentable square foot.

GSA found that some of the CIFA lease terms were not clear about what costs were included in the base rent such as the base operating costs. According to GSA, the base rent was not determined from the structure of the CIFA lease. GSA stated that base rent includes the insurance, property management, equity, base construction, parking, basic lighting, basic electrical distribution, exterior, and windows. They also noted that base operating costs include utilities such as water, electric, gas, cleaning costs, trash removal, window cleaning, and maintenance. In an Advanced Acquisition Program offer, the base operating costs are always separate.

GSA also observed the following differences between the CIFA lease through TKC Communications and a lease through the GSA Advanced Acquisition Program.

- In the CIFA lease, the base rent is subject to annual escalations. However, in an Advanced Acquisition Program offer, the base rent is a flat rate for the lease term.
- GSA concluded that the base operating expense rate of \$10.59 per rentable square foot under the CIFA lease is very high compared with what they believed to be the typical occupancy rate of \$5 to \$7 per rentable square foot for basic office space. GSA also concluded that the base operating expense rate under the CIFA lease allowed pass-through of additional expenses, above the base amount, such as utility

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rate hikes. In the Advanced Acquisition Program offer, the base operating expense rate increases are limited to the Consumer Price Index, thus shifting the risk of increases to the lessor rather than to CIFA.

- The Advanced Acquisition Program offer included a 3-percent broker commission which could be converted into 3 ½ months of free rent. Since no realtor is involved with finding lease space for the tenant in an Advanced Acquisition Program offer, the broker commission is incorporated into rent as an added benefit. GSA could not determine whether the CIFA lease included a 3-percent broker commission as in the Advanced Acquisition Program offer or whether a realtor was involved in locating the space, which would mean the realtor received the commission.
- The CIFA lease had a 12-month termination right. GSA noted that the cost to terminate might be included in the base rent but it was unclear from the lease.

GSA determined that the CIFA lease cost was as much as \$1.6 million to \$2.7 million more per year for its lease through TKC Communications than it would have cost through GSA.

GSA believes the CIFA lease was high and that the lease will always be ambiguous concerning several key terms. They also pointed out that the problem is only partially the dollar-to-dollar comparative costs but also the potential risks and costs associated with the life of the CIFA lease.

**GovWorks Analysis.** On June 23, 2006, we provided copies of the two appraisals to CIFA and subsequently permitted CIFA to provide copies of the appraisals to GovWorks. GovWorks disagreed with the appraisal results and stated that certain costs were included in the lease agreement that were not considered by the appraisal. On August 21, 2006, GovWorks provided us with a comparative analysis of the TKC lease with other leases available at the time. The analysis was performed by a Section 8(a) contractor from Bethesda, Maryland, that was licensed as a real estate broker in Virginia, Maryland, and the District of Columbia. The analysis concluded that the TKC lease “was extremely fair and reasonable.” The analysis did not indicate that it was performed in accordance with Uniform Standards of Professional Appraisal Practice, nor did it indicate that it complied with the Department of Justice Uniform Appraisal Standards for Federal Land Acquisition. Additionally, the contractor was not a licensed appraiser in Maryland or Virginia, and was not qualified by the SBA to perform appraisals. Because of the deficiencies in the analysis procedures and the qualifications of the company and its staff, we cannot draw any conclusions from the analysis.

## Other Issues

Because the leased space was larger than it needed, CIFA made the excess space available to the Air Force Office of Special Investigations, the Naval Criminal Investigative Service, and another non-DoD intelligence component. The



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components paid a portion of the CIFA lease cost by sending MIPRs directly to GovWorks or directly to CIFA. The payments by those components also potentially violated the Antideficiency Act because CIFA did not obtain the legal authority to enter into the original lease.

The GovWorks contracting officer lacked the special warrant required by DOI for lease agreements. The contracting officer had a warrant for Level IV Delegation of Authority but did not have the space lease warrant required by DOI.

## Referral for Investigation

On May 18, 2006, and on May 30, 2006, we briefed senior management and staff of CIFA on our audit findings. We advised CIFA during the briefing that it had potentially violated the Antideficiency Act and warned that any future payments made on the lease could potentially result in additional violations of the Antideficiency Act. Specifically, a slide used for both briefings stated:

We believe CIFA and GovWorks lacked authority to enter the lease. This resulted in potential violations of the Antideficiency Act and other laws. Payments by CIFA co-tenants (NCIS, AFOSI, and a non-DoD Intelligence component) may also result in violations. **Accordingly, the CIFA should not make new obligations to GovWorks for the office space. If payments continue, further potential violations of the Antideficiency Act occur. [emphasis added]**

Subsequently, we learned that CIFA had continued to make lease payments, totaling \$2.9 million, from June through August 2006 for the lease. Because we believe that CIFA made the subsequent obligations with the full knowledge that they may violate the Antideficiency Act, and 31 U.S.C. 1350 establishes criminal sanctions against willful violations, we referred this matter to the Deputy Inspector General for Investigations for further review.

## Management Comments on the Finding and Audit Response

**Counterintelligence Field Activity Comments on the Finding.** The Acting Director of CIFA stated that the potential violations identified in the report resulted from IG conclusions that CIFA had failed to comply with procedural rules applicable to DoD activities for leases of real estate. The finding is based on the fact that CIFA acquired its office space in Crystal Square 5, Arlington, Virginia, using services contracts obtained by GovWorks, rather than occupancy agreements with GSA. The Acting Director stated that although outside the scope of the report, the Defense Information Technology Contracting Organization had obtained a similar services contract for space in Crystal Square 5 on behalf of CIFA. In determining the applicability of rules for Government leases, there is no Government lease for the space CIFA is occupying. GovWorks and the Defense Information Technology Contracting Organization—both are charged by statute and regulation with ensuring that contracts comply with law—maintain they did not err in obtaining office space for CIFA through services contracts.

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The Acting Director stated that because the contracts did not involve a Government leasehold, the congressional review and approval process did not apply. Instead, TKC, an Alaskan Native enterprise, leased the space and the SBA, on behalf of TKC, entered into services contracts with GovWorks for CIFA's use of the leased space. The Defense Information Technology Contracting Organization contracted directly with TKC for CIFA's other space. CIFA agreed to reimburse GovWorks and the Defense Information Technology Contracting Organization with MIPRs. Legal counsel at both GovWorks and the Defense Information Technology Contracting Organization did not object to this acquisition strategy. The Acting Director believed that the report imprecisely refers to this contractual arrangement as subleasing.

The Acting Director stated that no funds in excess of amounts available in its O&M appropriations were obligated by CIFA to acquire its space. He stated that the O&M funds that CIFA expended to reimburse GovWorks and the Defense Information Technology Contracting Organization were from the same appropriation that would have been used to reimburse GSA for leased space under an occupancy agreement. Therefore, he believes there were no problems with obligating that appropriation.

The Acting Director stated that the CIFA decision to use commercially leased space under Government services contracts was the result of an unusual set of circumstances. CIFA, its predecessor Office of the Secretary of Defense elements, and the defense contractors providing mission support to those agencies were already in contractor-furnished office space located in Crystal City buildings that CIFA currently occupies at the time CIFA was created in the wake of the September 11 terror attacks. CIFA (along with its predecessor Office of the Secretary of Defense element) was also serving as the host for, and working closely with the Federal Bureau of Investigations Foreign Terrorist Tracking Task Force created on October 29, 2001. Some limited GSA leased space was also available and being used by CIFA and the Task Force. At the time, though, more than 80 percent of CIFA employees were contractors, as were in any of the Task Force workers. CIFA sought to consolidate its operation by having this mixed work force located primarily in contractor-furnished space. The OIG report, in determining that the GSA lease model should have been followed to meet CIFA space requirements, does not address the impact of the high ratio of contractor personnel who were supporting the mission. This is an issue for consideration in the Antideficiency Act violation reviews.

The Acting Director stated that the report suggests that the termination provisions of the contract, calling for payment of unamortized tenant improvement allowances and 12 months' rent, potentially violate the Antideficiency Act because it obligates funds from future year appropriations. He stated that in fact, these contracts treat each option year or month as a new order. As severable services contracts, CIFA funds the orders up to 12 months with its current year appropriation. If CIFA elects to terminate its lease, the contracting office must issue notice at least 12 months prior. At that time, CIFA will use the current appropriation to reimburse GovWorks and Defense Information Technology Contracting Organization for services received during the period covered by the termination notice. The unamortized buildout allowance is a contingent liability and funds are not obligated against it until a certain amount is ascertained. The appropriation available at the time the notice is issued will be obligated to fund the reimbursement of the unamortized concessions to GovWorks and Defense

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Information Technology Contracting Organization. The Acting Director believed that this financial arrangement is consistent with the way GSA charges its tenants who vacate space that has been obtained under a non-cancelable lease prior to eliding the occupancy agreement term.

Regarding the potential violation of the Antideficiency Act involving Military Construction funds, the Acting Director stated that he did not believe CIFA would have to use Military Construction funds. GovWorks and the Defense Information Technology Contracting Organization were responsible for paying the contractor, not CIFA. CIFA only reimburses the contracting offices. The Acting Director stated that the CIFA preliminary review of the potential Antideficiency Act violation addressed this funding issue. Because this issue has not been factually resolved, and the Government does not have a leasehold interest in this contractor-furnished space, final determination of a potential Antideficiency Act violation will have to wait for the Comptroller review.

The Acting Director stated that use of loans to fund tenant improvements was a common practice in the commercial real estate business, and GSA employs this practice when leasing space for Government tenants. GSA regulations allow the agency to add the cost of the amortized tenant improvements to the shell rent in its occupancy agreements, allowing the lessor to include interest in the amortization amount. The Acting Director stated that this issue was also covered in the preliminary review submitted to the DoD Comptroller.

The Air Force Office of Special Investigations was occupying space in Crystal Square 5 when the Office of the Secretary of Defense element that eventually became CIFA (Joint Counterintelligence Analysis Group) first moved into the building. Subsequently, at the request of the Air Force Office of Special Investigations, additional adjacent space was acquired for Air Force use. The space occupied by the Naval Criminal Investigative Service and by the non-DoD Federal counterintelligence activity was also acquired at request of the Air Force Office of Special Investigations. The Acting Director believes the statement in the report that CIFA acquired this space in excess of its bona fide needs and made it available to these other organizations is factually incorrect.

**Audit Response.** The Acting Director stated that because the contract for the CIFA leased space was not signed by a Government agency, it did not violate statutes giving the GSA exclusive authority for leasing Government space. Additionally, the Acting Director believed that our use of the term “subleasing” was incorrect. We disagree. The GovWorks contract made the TKC Communications lease part of the GovWorks contract. Additionally, the GSA Director, Leasing Policy reviewed the GovWorks contract and termed it “a lease under the guise of a service contract.” CIFA is now using and paying GovWorks for the space that TKC Communications leased from a third party. We conclude that the appropriate legal term for this arrangement is “sublease.”

The Acting Director also stated that the high percentage of contractor personnel at CIFA should have been considered when determining whether GSA was required to enter the lease. We do not believe that the ratio of contractor to Government employees was an appropriate or authorized factor in whether GSA was required to make the lease. This ratio conferred no legal authority on CIFA to enter a sublease.

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In fact, CIFA has previously made this argument to GSA, and GSA rejected this argument. A May 27, 2003, e-mail from a CIFA contractor asked for clarification on whether the GSA rules were applicable to space for contractor personnel. The contractor's e-mail stated:

...We have been working with GovWorks for many months now to obtain a lease for our contractor work force. They want a Delegation of Procurement Authority before they allow their contractor, TKC Communications, to sign the lease with Charles E. Smith for the space that we need here in Crystal City...

2. CIFA is currently located throughout different buildings in Crystal City, VA. This haphazard arrangement results in operational inefficiency and direct cost to the government in time spent traveling between meetings. In order to perform CIFA's mission more efficiently and expediently, [the] Director, CIFA has determined that CIFA must consolidate into one facility. In addition, CIFA continues to grow rapidly to respond to the dynamic threat environment created by world events. CIFA must quickly obtain space to accommodate additional personnel.

3. CIFA is heavily outsourced; comprised of 90% contractor staff and 10% government. CIFA contractor staff is derived from in excess of 30 separate contracts. While CIFA's government personnel currently occupy GSA and specialty contractor-leased space, CIFA's contractor personnel require space proximately located to CIFA Headquarters.

We are seeking a confirmation that GSA does not lease space for contractors and therefore a delegation of procurement authority is not required. We think that this, either in writing or verbally to the GovWorks/DOI staff, will allow us to proceed. . .

The Deputy Director, Metropolitan Service Center, GSA, responded on the same day as follows:

Although GSA does lease space for DoD elements that house contractor personnel, we do not provide space directly for contractor companies, they lease their own space.

If a private corporation that is under contract to the Government is going to sign as the lessee, then there is a private sector deal and not a government deal and GSA and all our regulation are not involved. If any direct Government entity is going to sign as the lessee, then all Federal regulations and delegations of authority are involved.

We believe that the question posed to GSA was somewhat misleading. The e-mail to GSA presented the situation as a requirement for space solely for contractors rather than space for both CIFA and its contractor personnel. It appeared that CIFA elected to interpret the GSA guidance as justification that CIFA would not need to obtain a Delegation of Lease Authority from GSA as long as no Federal agency signed the lease. In fact, as we discuss in the finding, the lease was too large to permit use of a Delegation of Lease Authority and GSA would have had to enter into the lease itself.

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On May 28, 2003, the CIFA Director sent a letter to the Team Leader, Procurement Operations Branch, GovWorks stating that CIFA had contacted the Deputy Director of GSA regarding CIFA's need to collocate with CIFA contractor personnel. The CIFA Director also provided the GovWorks Team Leader with the GSA Deputy Director's statements from the May 27, 2003, e-mail.

We believe that this practice of using a contractor to obtain Government space avoids congressional and senior DoD oversight and could allow other DoD activities to avoid similar oversight. Additionally, this practice circumvents the review process designed by Congress and makes it difficult to maintain public confidence in the DoD procurement process.

On May 11, 2005, the Deputy Director, Space Policy and Acquisition Directorate, Washington Headquarters Services asked GSA in an e-mail about the guidance they provided to CIFA on its lease. In an e-mail response, the GSA Deputy Director of Metropolitan Service Center said:

They probably talked to me. As I recall I was asked if a private company leased space for a government contract was that ok, and I said yes as a private company is a private company. They also asked if a government agency had a company do a lease for them was it ok and I said no. And I told them they needed to talk to WHS [Washington Headquarters Services] before they did any leasing.

I have been expecting this to hit the auditors someday. Although they said they talked to a "Deputy Director at Metropolitan Service Center", they did not get a delegation of authority, and statement verbally or in writing that what they described was ok with either GSA or WHS, and what they did get is direction to go through the process.

I am ready to talk to any IG or other entity to testify as to what I said when asked. As you recall I even spoke with the Director of GSA IT [Information Technology] in Auburn, Washington to advise her that DOD-WHS and we at Metropolitan were deeply concerned with the leases we were hearing about going through IT contracts and the pain they caused when that happened. . . .

We also spoke with GSA Deputy Director of the Metropolitan Service Center. He had since retired from the Government but recalled his discussion with CIFA and his e-mail to the Washington Headquarters Services. He also told us that he had met with the CIFA staff to explain the GSA rules, including the Title 10 requirements and the requirements for a prospectus. The staff told him that they would take that information back to CIFA management. He said that he was disappointed that CIFA had elected to go forward with its lease nevertheless.

We were unable to determine the exact chain of events between the initial inquiry to GSA and the subsequent lease arranged through GovWorks. The GovWorks contracting officer no longer worked at GovWorks and could not be located. Her replacement had since retired. Also, key personnel at CIFA no longer worked at CIFA. However, it appeared that CIFA was provided sound advice on the rules from GSA but elected to ignore them.

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In response to our draft audit report, the Acting Director also stated that because CIFA used O&M funding, which is the same type of funding that would have been used had CIFA contracted through GSA, and because it did not exceed its O&M appropriation, he did not believe that he had violated the Antideficiency Act. This statement, however, ignores a key component of fiscal law—authorization.

A federal agency is a creature of law and can function only to the extent authorized by law. The Supreme Court has expressed what is perhaps the quintessential axiom of “appropriations law” as follows:

“The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”<sup>8</sup>

The statutes we cite in finding D show that the Congress specifically prohibited agencies from making their own leases without GSA involvement. Leases expected to be below the prospectus threshold authority can be made only with a GSA delegation of lease authority; leases expected to be above that threshold can be made only by the GSA.

CIFA was not authorized to obligate funds because they had no authority to enter into a sublease. By obligating Government funds, they violated 31 U.S.C. 1501(a)(1)(A), which requires such authority prior to obligating funds, and 31 U.S.C. 1502(a), which requires compliance with 31 U.S.C. 1501.

Additionally, even if CIFA had the necessary congressional authorization, another Supreme Court ruling<sup>9</sup> precludes the use of 1-year appropriated funds (that is, O&M funds) to enter a lease beyond a 1-year period. In that Supreme Court case, an agency had entered into a long-term lease for office space with 1-year funds, but the contract specifically provided that payments for periods after the first year were subject to the availability of future appropriations. The court rejected the theory that the lease was binding on the Government only for 1 fiscal year, stating,

And since at the time they were made there was no appropriation available for the payment of rent after first fiscal year, it is clear that in so far as their terms extended beyond that year they were in violation of the express provisions of the [Antideficiency Act]. . .

GSA has authority under 40 U.S.C. 490(e) to obligate funds for its multiyear leases one year at a time. CIFA does not have this authority.

As additional support for the CIFA lease procurement strategy, the Acting Director noted that the Defense Information Technology Contracting

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<sup>8</sup> United States v. MacCollom, 426 U.S. 317, 321 (1976).

<sup>9</sup> Leiter v. United States, 271 U.S. 204 (1926)

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Organization had entered a similar lease on behalf of CIFA. The Defense Information Technology Contracting Organization lease of real property through a contractor is outside the scope of this audit; however, we will consider that contract a subject for review in our future audits.

The Acting Director also questioned whether Military Construction appropriated funds were required for the building improvements made by TKC Communications. He also questioned whether CIFA had violated the bona fide needs rule with the TKC loan and the termination clause within the contract. We presume that these arguments are part of the CIFA review of the potential Antideficiency Act violations identified in the finding. If so, the merit of those arguments will be evaluated by the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer and its legal counsel. We will review the General Counsel's opinion when it is released.

The DOI Inspector General addressed the role of GovWorks in the CIFA leased space contract in Report No. X-IN-MOA-0018-2005, "Audit of FY2005 Department of the Interior Purchases Made on Behalf of the Department of Defense," January 9, 2007.

## **Recommendations, Management Comments, and Audit Response**

Recommendations for the Under Secretary of Defense (Comptroller)/Chief Financial Officer to initiate preliminary reviews of Antideficiency Act violations relating to lease payments and building alterations for the CIFA lease are included in DoD IG Report No. D-2007-042, "Potential Antideficiency Act Violations on Purchases Made Through Non-DoD Agencies," January 2, 2007.

### **D.1. We recommend that the Deputy Under Secretary of Defense for Intelligence:**

**a. Provide notice to the General Services Administration, Washington Headquarters Services, and the various affected congressional committees of the Counterintelligence Field Activity's failure to follow prescribed procedures when it obtained its office space in Arlington, Virginia. The congressional notice should include the Defense Committees, the Intelligence Committees, the Appropriations Committees, the Senate Committee on Environment and Public Works, and the House Committee on Transportation and Infrastructure.**

**b. Form an action committee to include representatives from the Counterintelligence Field Activity and affected agencies that use the Counterintelligence Field Activity space that can assess the issues, identify options available to the Counterintelligence Field Activity and its co-tenants for suitable office space, and make recommendations on the best strategy that will result in the least disruption to the Counterintelligence Field Activity and co-tenant's missions and that will mitigate any potential losses to DoD from termination of the Counterintelligence Field Activity lease contract.**

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**Deputy Under Secretary of Defense for Intelligence Comments.** The Deputy Under Secretary of Defense for Counterintelligence and Security provided comments on behalf of the Deputy Under Secretary of Defense for Intelligence. He stated that the significant disparity between the draft audit report and the CIFA response to the report's finding precluded him from commenting at this time. When those differences are resolved, the Deputy Under Secretary agreed to provide notification of actions taken.

**Audit Response.** The Deputy Under Secretary's comments were responsive. We believe that the statutory requirements pertaining to real property leases and the potential impact of not following those requirements is clear. CIFA had no statutory authority to enter into a lease agreement. The way CIFA obtained the lease circumvented the congressional review and approval process and violated fiscal law. Resolving this dilemma may require legislative relief. It is critical for the Deputy Under Secretary and the CIFA to quickly develop a plan of action and to consult with the respective congressional committees for a possible resolution.

Nevertheless, the new General Counsel for CIFA advised us that the CIFA legal analysis on these issues has been submitted to the Under Secretary of Defense (Comptroller)/Chief Financial Officer for a decision. Once their General Counsel makes that legal determination, we believe the Under Secretary of Defense for Intelligence will need to consult with Congress on a suitable remedy.

**D.2. We recommend that the Director, Counterintelligence Field Activity:**

**a. Determine whether the Counterintelligence Field Activity violated funding restrictions imposed by Section 8020 of Defense Appropriation Act, 2003 and any other fiscal year in which relocation expenses were incurred. If such a violation occurred, and a waiver to the restriction cannot be obtained retroactively from the Secretary of Defense or his designee and provided to the Congressional Defense Committees as required:**

**(1) Provide notification to the Defense Committees of Congress that the violation occurred.**

**(2) Conduct an Antideficiency Act investigation in accordance with volume 14 of the Financial Management Regulation.**

**Counterintelligence Field Activity Comments.** The Acting Director of the Counterintelligence Field Activity neither concurred nor nonconcurred with the recommendation. He questioned whether the statutory restrictions were applicable to CIFA because CIFA was a new organization at the time and it was not clear to CIFA that the restriction applied to newly formed organizations. Also, the Acting Director stated that CIFA has been in the same building it and its predecessor Office of the Secretary of Defense element had occupied from the beginning. Nevertheless, the CIFA preliminary analysis concluded that payments to TKC to move equipment and furnishings were below the \$500,000 threshold. Subsequently, however, the Washington Headquarters Services had told CIFA that not all costs were considered in the CIFA initial analysis. As a result, the CIFA investigation on whether the \$500,000 threshold had been breached was ongoing.



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**Audit Response.** The Acting Director's comments were responsive. The applicability of the threshold to new organizations and the costs that should be recognized in that analysis are decisions that should be made by the Washington Headquarters Services based on advice from its legal counsel.

**D.3. We recommend that the Directors of Counterintelligence Field Activity, Naval Criminal Investigative Service, and the Air Force Office of Special Investigations:**

**a. Cease payments of funds under contract numbers 1435-04-03-CT-73024 and 1435-04-03-RC-70941, to avoid further potential violations of the Antideficiency Act.**

**b. Submit a request for alternate office space to Washington Headquarters Services as required by DoD Instruction 5305.5, "Space Management Procedures, National Capital Region," June 14, 1999.**

**Counterintelligence Field Activity Comments.** The Acting Director of CIFA neither concurred nor nonconcurred with the recommendation. The Acting Director stated that the report attributes a number of potential Antideficiency Act violations to the procedures employed. CIFA promptly initiated a preliminary review of the potential violations after receiving the IG briefing. That review provided documentation of the transactions and sought to identify those procedural irregularities that might rise to the level of Antideficiency Act violations. On August 25, 2006, the CIFA preliminary review was forwarded to the DoD Comptroller. If the DoD Comptroller determines there is evidence of potential Antideficiency Act violations, she will direct that a formal investigation be conducted. CIFA anticipates that a review of its preliminary evaluation will resolve these issues.

Immediately following the OIG briefing to senior staff and management in May 2006, CIFA began working with Washington Headquarters Services and GSA to find a resolution consistent with the finding. CIFA provided data to document its space requirements to Washington Headquarters Services, which forwarded the space request to GSA; GSA is reviewing the request. Because of Base Realignment and Closure Commission 2005, CIFA is scheduled to move to Quantico, Virginia, by 2011. GSA has not ruled out the possibility of taking over the lease for the space occupied by CIFA. Other DoD agencies in Crystal Square 5 are working directly with the Washington Headquarters Services; the non-DoD agency is making its arrangements with GSA.

The Acting Director stated that the necessary reviews are underway to determine the extent to which violations of the Antideficiency Act may have occurred. Where violations are found, CIFA will take appropriate action.

The Acting Director stated that CIFA was advised that the SBA no longer plans to terminate its contract with TKC. Unless otherwise directed by the DoD Comptroller or the Under Secretary of Defense for Intelligence, CIFA does not intend to stop reimbursing the Government contracting offices for payments to TKC. He believes that until there is a comprehensive plan in place, unilateral action of that magnitude would likely create more problems than it would solve, especially in view of the SBA decision.

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**Audit Response.** The Acting Director's comments were responsive. In our opinion, resolving this problem will not be easy and may not be possible without legislative relief. The Acting Director also stated in his comments that the OIG was aware of the CIFA lease since 2004 but had not raised this as an issue until now. Our audit began during calendar year 2005 and the TKC lease was one of several contracts selected for review.

According to CIFA, SBA does not plan to terminate the TKC contract. DoD has documentation from SBA which indicates that SBA will terminate the contract. DoD has not received documentation stating otherwise from the SBA. Regardless of whether SBA terminates the lease, every lease payment made by CIFA is another potential Antideficiency Act violation.

We did not receive comments on Recommendation D.3. from the Naval Criminal Investigative Service or the Air Force Office of Special Investigations. Therefore, we request they provide comments in response to the final report.

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## E. Joint Interoperability Test Command

Southwest Acquisition Branch contracting officers did not follow FAR, DFARS, and financial management regulations when awarding purchases for the Joint Interoperability Test Command (JITC) under a multiple-award omnibus contract valued at \$1 billion. Southwest Acquisition Branch contracting officers:

- did not provide multiple awardees a fair opportunity to be considered because the contracting officers were not involved at all in the contractor selection process,
- did not make price reasonableness determinations for any of the orders, and
- delegated too much authority to the contracting officer's representative and permitted the contracting officer's representative to perform functions that the contracting officer should have performed.

As a result, the JITC did not comply with Economy Act requirements and did not meet requirements of 31 U.S.C. 1501(a) for creating a valid obligation. Additionally, there is no assurance that the prices DoD is paying under this \$1 billion, multiple-award contract are fair and reasonable or that the multiple-award contracts are being used properly.

### Criteria

FAR 16.504(c), "Multiple-Award Preference," requires the contracting officer to determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file.

FAR 16.505(b)(1), "Fair Opportunity," requires the contracting officer to provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 issued under multiple delivery-order contracts or multiple task-order contracts.

FAR 16.505(b)(4), "Decision Documentation for Orders," requires the contracting officer to document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any trade-offs among cost or price and noncost considerations in making the award decision. This documentation does not have to quantify the trade-offs that led to the decision. The contract file needs to identify the basis for exceptions to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale has to describe a logical relationship between the initial order and the follow-on (for example, in terms of scope, period performance, or value).

FAR 15.404-1, "Proposal Analyses Techniques," states that the contracting officer must evaluate the reasonableness of the offered prices.

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FAR 15.402, “Pricing Policy,” states that contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.

FAR 15.406-3, “Documenting the Negotiation,” states that the contracting officer must document in the contract file the principal elements of the negotiation agreement, including fair and reasonable pricing.

FAR 13.106-3, “Award and Documentation,” states that before making award, the contracting officer must determine that the proposed price is fair and reasonable.

DFARS 201.602-2, “Responsibilities,” permits contracting officers to designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A contracting officer’s representative (COR) must be designated in writing. The contracting officer must provide a copy of this designation to the contractor and the contract administration office specifying the extent of the COR authority to act on behalf of the contracting officer. The contracting officer may not delegate authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

## **Background**

JITC is a component of the Defense Information Systems Agency (DISA) and is located at Fort Huachuca, Arizona. JITC has no contracting officers of its own at Fort Huachuca and relies on the Southwest Acquisition Branch for its contracting support. JITC supports the warfighters’ efforts to manage information on and off the battlefield. JITC responsibilities include:

- being an independent operational test and evaluation assessor of DISA and other DoD Command, Control, Communications, Computers, and Intelligence acquisitions;
- identifying and solving combat support systems interoperability deficiencies;
- providing joint interoperability testing, evaluation, and certification;
- bringing interoperability support, operational field assessments, and technical assistance to the combatant commands, Services, and agencies; and
- providing training on Command, Control, Communications, Computers, and Intelligence systems, as appropriate.

On October 9, 2001, the DOI National Business Center, Acquisition and Property Management Services Division, Southwest Acquisition Branch awarded three contracts (NBCHC020001, NBCHC020002, and NBCHC020003), under a multiple-award arrangement on behalf of JITC. The purpose of these multiple-award contracts was to provide JITC with administrative, testing, and engineering support required to perform its missions and functions. The period of performance included a 2-year base period and three 2-year option periods (total

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8 years). When we began the audit in August 2005, the contracts were in the first option period, which expired on February 28, 2006. If all options are exercised on all three contracts, the total maximum contract amount will be slightly less than \$1 billion. The total amount obligated on all three contracts through FY 2005 was slightly more than \$300 million. The total amount obligated as of July 2006 was slightly more than \$411 million.

Multiple-award contracts are normally indefinite-delivery, indefinite-quantity contracts. Contracting officers make purchases by issuing delivery and task orders. The procedures under FAR Subpart 16.5 apply to multiple-award contracts and are designed for the use of delivery orders and task orders. Before contracting officers award multiple-award contracts, they are required to document whether a multiple-award contract is suitable. After awarding the contracts, contracting officers must provide fair opportunity to all contractors for orders issued under the multiple-award contracts, or cite one of four exceptions to fair opportunity.

## **Fair Opportunity**

FAR 16.505(b) states that the contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 issued under multiple delivery-order contracts or multiple task-order contracts. The contract file needs to identify the basis for exceptions to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale has to describe a logical relationship between the initial order and the follow-on (for example, in terms of scope, period performance, or value).

Section H.4 of the multiple-award contracts states that the Government, not the contracting officer, will give each contractor an opportunity to compete for orders of over \$2,500. Use of the word “Government” instead of the words “contracting officer” is misleading.

Southwest Acquisition Branch contracting officials did not comply with FAR 16.505(b) and did not make fair opportunity for individual purchases under the omnibus multiple-award contracts. In fact, the contracting officer delegated the entire contractor selection process for individual purchases to the COR.

The Southwest Acquisition Branch contracting officer stated that she was not involved in the contractor selection process for individual purchases made under the multiple-award contracts. A Southwest Acquisition Branch chief also stated that contracting officers had not made fair opportunity determinations for individual purchases under the multiple-award contracts from the time the contracts were awarded on October 9, 2001, through June 2006.

## **Price Reasonableness Determinations**

FAR 16.505(b)(4), “Decision Documentation for Orders” states that the contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any

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trade-offs among cost or price and noncost considerations in making the award decision. This documentation need not quantify the trade-offs that led to the decision. The contract file must also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale must describe why the relationship between the initial order and the follow-on is logical (for example, in terms of scope, period of performance, or value).

In addition to not performing fair opportunity analyses, Southwest Acquisition Branch contracting officers also did not make price reasonableness determinations for individual purchases of goods and services under the multiple award contracts. As of July 2006, individual purchases valued at approximately \$411 million of the overall \$1 billion contracts have been awarded without fair opportunity and price reasonableness determinations made by contracting officers.

## **Contracting Officer Responsibilities**

DFARS 201.602-2, "Responsibilities," permits contracting officers to designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. The contracting officer must designate the COR in writing and must provide a copy of that designation to the contractor and the contract administration office. The designation must specify the extent of the COR authority to act on behalf of the contracting officer. The COR may not delegate authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

As stated earlier, the Southwest Acquisition Branch contracting officer delegated the entire contractor selection process to the COR, including the decision on which multiple-award contractor would receive awards of individual purchases of goods and services. We believe that the contracting officer delegated too much authority to the COR. The following example obtained from an e-mail developed by a JITC COR describes how the decision was made to select a particular multiple-award contractor for the award of a particular requirement. The e-mail states:

I have awarded the [requirement] competitive TEP [technical evaluation proposal] to [contractor]. There were three possible choices. I based my decision on my previous flying experience and my technical enlisted background. 1) Technical Approach: [contractor] had a defined and logical approach to the testing and certification process that clearly described their methodology. 2) Experience: [contractor] showed a superior background in aviation, communications, and Naval platform interoperability certification.

In a recent command assessment of JITC, a team of DISA subject matter experts, including the DISA Office of Inspector General, also determined that the contracting officer had delegated too much authority to the COR. In a memorandum responding to the DISA report, the Southwest Acquisition Branch disagreed that the contracting officer's authority had been improperly delegated.

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## Contributing Factors

Southwest Acquisition Branch contracting officials' decision to not administer the omnibus multiple-award contracts as indefinite-delivery, indefinite-quantity contracts and their decision to not make individual purchases through the use of funded delivery and task orders resulted in the problems identified. Even though Southwest Acquisition Branch contracting officials awarded the omnibus multiple-award contracts as indefinite-delivery, indefinite-quantity contracts, they did not consider them indefinite-delivery, indefinite-quantity contracts. According to documentation in the contract file:

These are "C" contracts, as the government did not consider the contract a true IDIQ contract with task and/or delivery orders. The Contracting Officer Representative is issuing Letters of Instruction (LOI) that are not considered Delivery Orders or Task Orders.

Other documentation states:

It is noted that the contract is a "C" contract and the entire SOW is described in the contract. All funds are obligated by the contracting officer at the contract level. The COR has absolutely no authority to obligate funds on the contract.

Finally, other documentation states that:

LOIs [letters of instruction] do not constitute "contracts" in themselves because they do not obligate money on the contract and do not effect changes in price, quality, quantity, delivery, or other terms and conditions of the contract.

This information along with contracting officers not making fair opportunity and price reasonableness determinations for individual purchases raises the question as to whether the requirements were suitable for a multiple-award arrangement in the first place. Southwest Acquisition Branch contracting officers should have treated the letters of instruction as orders, obligated funds for individual purchases at the order level, and followed the procedures contained in FAR 16.505(b)(1). Had contracting officials done this, the problems we identified may not have occurred. The Southwest Acquisition Branch approach for making purchases under the omnibus multiple-award contracts does not promote fair opportunity and the spirit of the multiple-award process.

## Conclusion

The Southwest Acquisition Branch contracting officials' approach for awarding individual purchases under the omnibus multiple-award contracts has resulted in approximately \$411 million of the overall \$1 billion estimated value being awarded with no contracting officer involvement in the contractor selection process, no contracting officer fair opportunity analyses, and no contracting officer price reasonableness

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## Recommendations, Management Comments, and Audit Response

**E. We recommend that the Director, Defense Information Systems Agency:**

**1. Appoint a resident contracting officer at Fort Huachuca, Arizona; and**

**2. Appoint a Defense Information Systems Agency contracting officer to review the duties performed by contracting officer's representatives assigned to the Joint Interoperability Test Command multiple-award contracts. The review should focus on whether Southwest Acquisition Branch contracting officers delegated too much authority to the contracting officer's representatives.**

**Defense Information Systems Agency Comments.** The Director for Procurement, Defense Information Technology Contracting Organization, provided comments on behalf of the Director, Defense Information Systems Agency. He concurred with Recommendations E.1. and E.2. Regarding Recommendation E.1., the Director stated that the head of the contracting activity for DISA, who was in charge of the Procurement Directorate of the Defense Information Technology Contracting Organization, is creating a contracting branch at JITC at Fort Huachuca. The contracting branch will consist of a GS-1102-14 contracting officer, one GS-1102-13 contracting officer, and one GS-1102-11/12 contract specialist. The DISA head of the contracting activity will be a part of the chain of command for those employees. The Director anticipated that these individuals would report for duty by the end of January 2007.

Regarding Recommendation E.2., the Director stated that DISA had performed a review and concluded that DOI contracting officers had delegated too much authority to the JITC contracting officer's representatives. The Director stated that a September 2005 review by the DISA Inspector General, which included two staff members from the Procurement Directorate Defense Information Technology Contracting Organization, had reached the same conclusions. Additionally, DISA legal opinions on this issue concluded that "a Contracting Officer's Representative (COR) does not have authority to award task orders nor may CORs be delegated such authority." This legal opinion was based on regulations (FAR 1.601, DFARS 201.602-2, and Defense Acquisition Regulation Supplement 1.602-2-90).

**Audit Response.** The Director's comments are responsive to Recommendations E.1. and E.2.



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## Appendix A. Scope and Methodology

We performed this audit jointly with the Department of the Interior Inspector General from August 2005 through August 2006 in accordance with section 811 of the National Defense Authorization Act for 2006. We reviewed 49 DOI contract actions awarded during FY 2005 for purchases valued at \$277.1 million. The 49 contracts from which the contract actions were awarded had an estimated value of \$2.9 billion.

We reviewed two DOI sites that award contracts for DoD: GovWorks, located in Herndon, Virginia, and the Southwest Acquisition Branch, located at Fort Huachuca, Arizona. For each site, we judgmentally selected contracts or contract actions awarded during FY 2005. Our audit primarily focused on the following six areas of review.

**Bona Fide Need.** We determined whether the DoD requiring activity had a bona fide needs for the requirement included on MIPRs sent to DOI. Specifically, we determined whether the need was for the fiscal year of the appropriation used to finance the requirement.

**Market Research.** We determined whether DoD had a legitimate need to use DOI to make purchases of low-dollar military equipment, the use of DOI to purchase products and services from the GSA Federal supply schedules, and the use of DOI to purchase items from existing DoD contracts.

**Competition.** We determined whether DOI adequately competed DoD purchases according to FAR and DFARS. We reviewed orders issued under multiple-award contracts, orders and BPAs issued under GSA Federal supply schedules, and awards made to Section 8(a) contractors.

**Price Reasonableness Determinations.** We determined whether DOI contracting officers adequately documented that the prices paid for DoD goods and services were fair and reasonable. We reviewed documentation DOI contracting organizations maintained to support DoD purchases made. The documentation reviewed included MIPRs, MIPR acceptances, statements of work, price negotiation memorandums, technical evaluations, independent Government estimates, legal reviews, and determination and findings documents.

**Monitoring Contractor Performance.** We reviewed the 24 contracts awarded for services and determined whether DOI contracting officers officially designated contracting officer's representatives in writing and whether QASPs were prepared in order to specify all work requiring surveillance and the method of surveillance.

**Use of Computer-Processed Data.** The audit relied on data from the General Services Administration Federal Procurement Data System—Next Generation (FPDS-NG), the GovWorks Business Information System, and the National Business Center, Southwest Acquisition Branch, business activity data to identify contracts for review. Although we did not perform detailed testing of the data from these systems, we did not identify significant errors in the data.

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**FPDS-NG.** On September 27, 2005, the Government Accountability Office (GAO) sent a memorandum to the Director, Office of Management and Budget, called “Improvements Needed to the Federal Procurement Data System-Next Generation.” The memorandum stated:

Based on our review, we have concerns regarding whether the new system has achieved the intended improvements in the areas of timeliness and accuracy of data, as well as ease of use and access to data. We also are concerned as to whether the FPDS-NG system has the flexibility to capture data on interagency contracting transactions. Completion of the FPDS-NG transition provides an opportunity for assessing the implementation of the system to date and for considering needed adjustments as the contractor begins its next period of performance. We are recommending actions to help achieve the intended improvements for FPDS-NG, which should be considered as part of that assessment.

Despite the GAO concerns on accuracy of the FPDS-NG system, we relied on the data to identify contracting orders that had been fulfilled by DOI through DoD contracts and contracts let by other Federal agencies because we believed that the FPDS-NG was the best available source for that information.

**GovWorks Business Information System.** The audit relied on data from the GovWorks Business Information System to identify orders for our review and identify MIPRs that were still open. The system had automated links to source documents contained in an Adobe Acrobat™ file format. The information contained in the system generally agreed with information on the supporting documents and selected contract files. One exception was information on DoD appropriation symbols, which we found to have about a 12.5 percent error rate. We discuss this error and its effect on the audit in finding B.

**Southwest Acquisition Branch, Interior Department Electronic Acquisition System Procurement Desktop.** We used data from the Interior Department Electronic Acquisition System Procurement Desktop. We did not discover any errors in the system that would effect our audit conclusions.

**Use of Technical Assistance.** Computer engineers from the DoD IG Information Technology Branch, Technical Assessment Directorate, reviewed the System Security Authorization Agreement for the Open Market Corridor to determine whether the contractor to the Naval Postgraduate School properly assessed the system’s risk level. The GSA Director, Leasing Policy and Performance Division performed independent appraisals of the Counterintelligence Field Activity lease with TKC Communications to determine whether the Government paid a fair price for the lease. We relied on advice from our General Counsel on interpretations of appropriation law and other matters.

**Government Accountability Office High-Risk Area.** The Government Accountability Office has identified several high-risk areas in DoD. This report provides coverage of the Contract Management, Interagency Contracting, and Weapons System Acquisition high-risk areas.

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## Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the Department of Defense Inspector General (DoD IG), the Army Audit Agency, the Air Force Audit Agency, and the DOI Inspector General (DOI IG) issued 24 reports relating to interagency contracting and military interdepartmental purchases. 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 DOI IG reports can be accessed at <http://www.doi.oig.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

DoD IG Report No. D-2007-042, "Potential Antideficiency Act Violations on DoD Purchases Made Through Non-DoD Agencies," January 2, 2007

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

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

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

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

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

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

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

## **Army Audit Agency**

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

## **Air Force Audit Agency**

Air Force Audit Agency Report No. F2005-0006-FBP000, "General Services Administration Military Interdepartmental Purchase Request, 353d Special Operations Group, Kadena AB, Japan," November 10, 2004

Air Force Audit Agency Report No. F2004-0046-FBP000, "General Services Administration Military Interdepartmental Purchase Request, 390th Intelligence Squadron, Kadena AB, Japan," August 11, 2004

## **DOI IG**

KPMG, under contract with the DOI IG, Report No. E-IN-MMS-0006-2005, "Independent Auditors' Report on the Minerals Management Service's Financial Statements for Fiscal Years 2004 and 2003," March 3, 2005

KPMG, under contract with the DOI IG, Report No. E-IN-DMO-0058-2004, "Independent Auditors' Report on the Departmental Offices' Financial Statements for Fiscal Years 2004 and 2003," December 6, 2004

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," DOI Assignment, July 16, 2004

KPMG, under contract with the DOI IG, Report No. E-IN-MMS-0066-2003, "Independent Auditors' Report on the Minerals Management Service's Financial Statements for Fiscal Years 2003 and 2002," December 9, 2003

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KPMG, under contract with the DOI IG, Report No. 2003-I-0038, “Independent Auditors’ Report on the Interior Franchise Fund’s Financial Statements for Fiscal Years 2002 and 2001,” March 21, 2003

DOI IG Report No. 2002-I-0050, “GovWorks Gainsharing Program and Recovery of Costs Related to the Interior Franchise Fund Minerals Management Service,” September 2002

## Appendix C. Department of the Interior Contract Actions Reviewed

DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
<b>GovWorks</b>						
1) 40966	\$ 521,679.38	\$ 521,679.38	Pentagon Telecommunications Center	Computer Servers	Products	GSA Federal Supply Schedule Delivery Order
2) 41181	108,196.00	108,196.00	Pentagon Telecommunications Center	Decision Agent Network Equipment	Products	GSA Federal Supply Schedule Delivery Order
3) 41242	113,838.00	113,838.00	Pentagon Telecommunications Center	Computer Software Licenses	Products	GSA Federal Supply Schedule Delivery Order
4) 1435-04-02-CT-85531 Task Order 41160	555,738.00	1,000,000,000.00	Pentagon Telecommunications Center	Communications Gateway System	Products	Multiple-Award Task Order
5) 43852	94,075.78	94,075.78	Army Training Support Center	Training Ammunition Calculator	Services	GSA Federal Supply Schedule Delivery Order
6) 71705	608,663.28	608,663.28	Office of the Secretary of the Army for Manpower & Reserve Affairs	Management Support Services	Services	GSA Federal Supply Schedule Delivery Order
7) NASS-02146 Task Order 44435	37,643.10	37,643.10	Pentagon Telecommunications Center	LaserJet Printers	Products	Multiple-Award Task Order.

DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
8) 41582 Task Order 42525	28,052,976.38	29,000,000.00	Office of the Deputy Under Secretary of Defense Logistics and Materiel Readiness	Contractor Support for the Defense Logistics Enterprise Services Program	Services	GSA Federal Supply Schedule Blanket Purchase Agreement
9) 41063	3,840.00	3,840.00	Pentagon Telecommunications Center	IBM Server Warranty	Products	GSA Federal Supply Schedule Order
10) 41432	7,476.00	7,476.00	Pentagon Telecommunications Center	HD Plasma TVs	Products	GSA Federal Supply Schedule Delivery Order
11) 1435-04-02-CT-85531 Task Order 43387	3,908,420.00	Overall Contract Value Already Identified Under Number 4	Pentagon Telecommunications Center	Contractor Support for Communications Gateway System	Services	Multiple-Award Task Order
12) 40385	3,390.00	3,390.00	NAVSEA-Fleet-AT/FP	Weapons Cleaning Kits	Products	Open Market
13) 43150	7,650.00	7,650.00	Pearl Harbor Navy Shipyard	Men's Explosive Handler's Coveralls	Products	GSA Federal Supply Schedule Delivery Order
14) 43270	61,112.00	61,112.00	NAVSEA-Fleet-AT/FP	Body Armor	Products	GSA Federal Supply Schedule Delivery Order
15) 40387	10,170.00	10,170.00	NAVSEA-Fleet-AT/FP	Waterproof Gloves	Products	Open Market
16) 43280	1,328.01	1,328.01	NAVSEA-Fleet-AT/FP	Goggles and Balaclavas	Products	Open Market

DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
17) 42985	13,038.00	13,038.00	NAVSEA Embarked Security Team	Waterproof Gloves	Products	Open Market
18) 41907	3,168.00	3,168.00	NAVSEA-Fleet-AT/FP	Radio Pouches	Products	Open Market
19) 42912	71,137.60	71,137.60	NAVSEA MSFC	Body Armor	Products	Open Market
20) 42981	604.55	604.55	NAVSEA Embarked Security Team	Tactical Knee Pads	Products	Open Market
21) 42925	19,740.00	19,740.00	NAVSEA-Fleet-AT/FP	Combat Helmets and Covers	Products	GSA Federal Supply Schedule Delivery Order
22) 43329	1,158.60	1,158.60	NAVSEA MSFC	Tactical Knee and Elbow Pads	Products	Open Market
23) 43349	1,369.00	1,369.00	NAVSEA MSFC	Duffel Bags	Products	Open Market
24) 42987	9,706.20	9,706.20	NAVSEA Security Team	9mm Pistol Holsters	Products	GSA Federal Supply Schedule Order
25) 1435-04-03-RC-70941 Task Order 73001	96,411,630.33	100,000,000.00	Counter Intelligence Field Activity	Consolidate CIFA Programs & Provide Space for Multiple Activities	Services	Section 8(a) Alaskan Native Corporation
26) 1435-04-03-RC-73024	1,615,439.01	1,615,439.01	Counter Intelligence Field Activity	Building Lease	Services	Section 8(a) Alaskan Native Corporation



DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
27) 40699 Task Order 41801	9,403,642.00	103,600,000.00	SAF/AAX	Contractor Support for Horned Owl Program	Services	GSA Federal Supply Schedule Blanket Purchase Agreement
28) 32200 Task Order 32231	156,900.50	0 BPA	Naval Facilities Engineering Command	Develop Geospatial Representations of Navy Installation Boundaries	Services	GSA Federal Supply Schedule Blanket Purchase Agreement
29) 32178 Task Order 73545	1,559,085.08	0 BPA	Naval Facilities Engineering Command	Develop Geospatial Representations of Navy Installation Boundaries	Services	GSA Federal Supply Schedule Blanket Purchase Agreement
<b>Southwest Acquisition Branch</b>						
1) NBCHF030277	2,005,925.00	2,005,925.00	Under Secretary of Defense for AT&L	Technical Support Services	Services	GSA Federal Supply Schedule Task Order
2) NBCHD050016 Delivery Order 0001	2,805,897.25	3,000,000.00	DoD, PM Defense Communications and Transmission Systems	Cisco Equipment for the Sonet Inside Plant, Okinawa Japan	Products	Service-Disabled Veteran Business Enterprise Set-Aside
3) NBCHD020092 Task Order 0116	4,154,002.29	200,000,000.00	DoD, PM Defense Communications and Transmission Systems	Transmission Equipment & Related Engineering & Testing	Services	Section 8(a) Small Disadvantaged Hubzone Tribally Owned

DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
4) NBCHF040532	38,634,694.00	38,634,694.00	SAF/IA	Contractor Support for Business Processes	Services	GSA Federal Supply Schedule Task Order
5) NBCHD040033 Task Order 0003	6,819,977.00	200,000,000.00	Defense Logistics Agency	Two-Year Lease for Equipment	Products	Section 8(a) Alaskan Native Corporation
6) NBCHF040500	10,157,346.00	10,157,346.00	US Army Quartermaster Center and School	Training Services	Services	GSA Federal Supply Schedule Task Order
7) NBCHD030003 Task Order 0004	2,338,155.00	46,000,000.00	Department of Defense Personnel Security Research Center	Contractor Support Services for Research Projects	Services	Open Market
8) NBCHD010004 Task Order 0049	6,885,000.00	100,000,000.00	Defense Logistics Agency	Systems and Technical Services	Services	Section 8(a) Alaskan Native Corporation
9) NBCHA010033 Task Order 0024	10,112,523.40	1,000,000.00	Defense Supply Center-Richmond	Computer Software, and System Support	Services	GSA Federal Supply Schedule BPA
10) NBCHC050072	1,862,350.00	1,862,350.00	U.S. Army Research Development Engineering Command/Armament Research Development Engineering Center Armament System Integration Center	Contractor Support to Define Tasks Required to Provide One Or More Components of an Operational STEP-Enabled Mechanical Software Toolset	Services	Section 8(a)

DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
11) NBCHC050174	39,036,631.00	39,036,631.00	Office of the Under Secretary of Defense (Acquisition, Technology and Logistics)	Technical, Engineering and Administrative Support	Services	Open Market
12) NBCHD050038 Task Order 0001	2,994,992.00	3,000,000.00	OASD for Health Affairs, Joint Medical Information Systems Office Theater Medical Information Program Joint Program Management Office	Support for the Joint Medical Workstation Application	Services	Section 8(a) Small Disadvantaged Hawaiian-Native-Owned
13) NBCHD050038 Task Order 0002	99,500.00	Task Order 0002 Issued Under NBCHD050038	Womack Army Medical Center	Installation & Maintenance Support	Services	Section 8(a) Small Disadvantaged Hawaiian-Native-Owned
14) NBCHC040127	1,592,298.00	1,592,298.00	Defense Advanced Research Projects Agency	Administrative Support Services	Services	Open Market
15) NBCHD020037 Delivery Order 1670	15,052.00	No Estimated Value	Naval Special Warfare Groups (One and Three)	Body Armor	Products	Open Market Corridor
16) NBCHD020037 Delivery 1533	473,257.56	No Estimated Value	Naval Coastal Warfare Group Two	Engagement Training Simulators	Products	Open Market Corridor
17) NBCHD020037 Delivery 1596	65,120.26	No Estimated Value	Army, HQ Company 1st Battalion	Military Clothing	Products	Open Market Corridor

DOI Contract Number	Value of Contract Action	Value of Overall Contract	DoD Requiring Activity	Purchase Description	Products Or Service	Contract Vehicle Used
18) NBCHD020037 Delivery 1559	40,800.00	No Estimated Value	Naval Special Warfare Command	Contractor Support for Environment Course.	Service	Open Market Corridor
19) NBCHD020037 Delivery 1496	3,675,984.82	No Estimated Value	Army Manpower & Reserve Affairs	Freedom Team Salute Program	Services	Open Market Corridor
20) NBCHC020001 NBCHC020002 NBCHC020003	Did Not Review Specific Orders	1,000,000,000.00	Joint Interoperability Test Command	Did Not Review Specific Orders	Services	Multiple Award
<b>Total 49 Contracts</b>						

## Appendix D. GovWorks Contracting Problems

Contract Action	Products or Service	Competition Involving Only One Offer	Unsupported Price Reasonableness Decisions	Inadequate Review of Contractor Proposals	Inadequate Government Cost Estimate
1) 40966	Products			Did Not Review	Did Not Review
2) 41181	Products			Did Not Review	Did Not Review
3) 41242	Products			Did Not Review	Did Not Review
4) 1435-04-02-CT85531 Task Order 41160	Products	•	•	Did Not Review	Did Not Review
5) 43852	Services	•	•	•	•
6) 71705	Services	•	•	•	•
7) 44435	Products			Did Not Review	Did Not Review
8) 41582 Task Order 42525	Services	•	•	•	•
9) 41063	Products			Did Not Review	Did Not Review
10) 41432	Products			Did Not Review	Did Not Review
11) 1435-04-02-CT-85531 Task Order 43387	Services	•	•	•	•
12) 40385	Products			Did Not Review	Did Not Review

Contract Action	Products or Service	Competition Involving Only One Offer	Unsupported Price Reasonableness Decisions	Inadequate Review of Contractor Proposals	Inadequate Government Cost Estimate
13) 43150	Products			Did Not Review	Did Not Review
14) 43270	Products	•		Did Not Review	Did Not Review
15) 40387	Products			Did Not Review	Did Not Review
16) 43280	Products	•		Did Not Review	Did Not Review
17) 42985	Products			Did Not Review	Did Not Review
18) 41907	Products			Did Not Review	Did Not Review
19) 42912	Products	•	•	Did Not Review	Did Not Review
20) 42981	Products			Did Not Review	Did Not Review
21) 42925	Products			Did Not Review	Did Not Review
22) 43329	Products	•		Did Not Review	Did Not Review
23) 43349	Products	•		Did Not Review	Did Not Review
24) 42987	Products			Did Not Review	Did Not Review
25) 1435-04-03-RC-70941 Task Order 73001	Services*	•	•	•	•
26) 1435-04-03-RC-73024	Services	•	•	•	•

\* Although the contract file describes 1435-04-03-RC-70941 as a "service" contract, we view the contract as a lease.

Contract Action	Products or Service	Competition Involving Only One Offer	Unsupported Price Reasonableness Decisions	Inadequate Review of Contractor Proposals	Inadequate Government Cost Estimate
27) 40699 Task Order 41801	Services	•	•	•	•
28) 32200 Task Order 32231	Services				•
29) 32178 Task Order 73545	Services		•	•	•
<b>Total</b>	<b>Products 20 Services 9</b>	<b>Products 6 of 20 Services 7 of 9</b>	<b>Products 2 of 20 Services 8 of 9</b>	<b>Services 8 of 9</b>	<b>Services 9 of 9</b>

## Appendix E. Southwest Acquisition Branch Contracting Problems

Contract Action	Products or Service	Competition Involving Only One Offer	Unsupported Price Reasonableness Determination	Inadequate Review of Contractor Proposals	Inadequate Government Cost Estimate
1) NBCHF030277	Services	•	•	•	•
2) NBCHD050016 Delivery Order 0001	Products	•	•	Did Not Review	Did Not Review
3) NBCHD020092 Task Order 0116	Services	•	•	•	•
4) NBCHF040532	Services	•	•	•	•
5) NBCHD040033 Task Order 0003	Products	•	•	Did Not Review	Did Not Review
6) NBCHF040500	Services	•	•	•	•
7) NBCHD030003 Task Order 0004	Services	•	•	•	•
8) NBCHD010004 Task Order 0049	Services	•	•	•	•
9) NBCHA010033 Task Order 0024	Services	•	•	•	•
10) NBCHC050072	Services	•	•	•	•
11) NBCHC050174	Services				
12) NBCHD050038 Task Order 0001	Services	•	•	•	•
13) NBCHD050038 Task Order 0002	Services	•	•	•	•



Contract Action	Products or Service	Competition Involving Only One Offer	Unsupported Price Reasonableness Determination	Inadequate Review of Contractor Proposals	Inadequate Government Cost Estimate
14) NBCHC040127	Services		•	•	•
15) NBCHD020037 Delivery Order 1670	Products			Did Not Review	Did Not Review
16) NBCHD020037 Delivery 1533	Products	•	•	Did Not Review	Did Not Review
17) NBCHD020037 Delivery 1596	Products			Did Not Review	Did Not Review
18) NBCHD020037 Delivery 1559	Service				•
19) NBCHD020037 Delivery 1496	Services	•	•	•	•
20) NBCHC020001 NBCHC020002 NBCHC020003	Services		•		
<b>Total</b>	<b>5 Products 15 Services</b>	<b>3 of 5 Product 11 of 15 Services</b>	<b>3 of 5 Product 12 of 15 Services</b>	<b>11 of 15 Services</b>	<b>13 of 15 Services</b>

# Appendix F. Potential Antideficiency Act Violations

## GovWorks

**1. DOI Contract 41181.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 41181 to purchase decision agent network equipment for the Pentagon Telecommunications Service Center. The value of the contract was \$108,196.00. A potential bona fide needs rule violation occurred because the contract, awarded on December 21, 2004, was funded with three FY 2001 Army O&M MIPRs that expired on September 30, 2001, and one FY 2004 Army O&M MIPR 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, that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY 2001 and FY 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule. Table F-1 identifies the MIPRs initially used to fund contract 41181.

**Table F-1. MIPRs Used to Initially Fund DOI Contract 41181**

MIPR Number	MIPR Amount Used	MIPR Date	Description of Acquisition on MIPR
MIPR1MINTPR070	\$ 6,831.30	September 14, 2001	“FUNDS ARE PROVIDED FOR THE ACQUISITION OF ADP AND SUPPLIES THROUGH THE PENTAGON IT STORE”
MIPR1JDITON046	26,399.03	July 10, 2001	“Funds are provided for the acquisition of toner cartridges through the Pentagon IT Store for supply”
MIPR1KINTWS058	38,803.30	July 24, 2001	“FUNDS ARE PROVIDED FOR THE ACQUISITION OF ADP AND SUPPLY THROUGH THE PENTAGON IT STORE”
MIPR4MINTMM125	36,162.37	September 17, 2004	“The purpose of this MIPR Is to provide funds for equipment through the Pentagon IT Store”
<b>Total</b>	<b>\$108,196.00</b>		

**2. Modification 0001.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer issued modification 0001 to contract 41181 on January 18, 2005. Under modification 0001, the contracting officer removed \$26,399.03 from one of the original Army O&M MIPRs used to fund contract 41181, MIPR1JDITON046, dated July 10, 2001, and replaced it with funds from four other expired Army O&M MIPRs: one FY 2000 MIPR, one FY 2001 MIPR, and two FY 2004 MIPRs. Use of FY 2000, FY 2001, and FY 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the

intent of the bona fide needs rule. Table F-2 identifies the four Army O&M MIPRs that replaced Army O&M MIPR1JDIT0N046.

**Table F-2. Additional MIPRs Used to Fund DOI Contract 41181**

MIPR Number	MIPR Amount Used	MIPR Date	Description of Acquisition on MIPR
MIPR0MGSAIT092	\$ 160.00	September 29, 2000	“Funds are provided for the acquisition of ADP products and services through the Pentagon IT Store, Under Project Number DOI84011”
MIPR1MITST0074	3,176.76	September 24, 2001	“FUNDS ARE PROVIDED FOR THE ACQUISITION OF ADP AND SUPPLIES THROUGH THE PENTAGON IT STORE PROJECT ID0184880”
MIPR4LINTMM111	11,393.50	August 18, 2004	“The purpose of this MIPR is to provide funds for equipment through the Pentagon IT Store”
MIPR4MINTMM130	11,668.77	September 24, 2004	“THE PURPOSE OF THIS MIPR IS TO PROVIDE FUNDS FOR THE PURCHASE OF DMS EQUIPMENT THROUGH THE PENTAGON IT STORE”
<b>Total</b>	<b>\$26,399.03</b>		

**3. DOI Contract 40966.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 40966 to purchase 71 computer servers for the Pentagon Telecommunications Service Center. The value of the contract was \$521,679.38. A potential bona fide needs rule violation occurred because contract 40966, awarded on November 30, 2004, was funded with 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, that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**4. DOI Contract 41063.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 41063 to purchase an IBM Server Warranty for the Pentagon Telecommunications Service Center. The value of the contract was \$3,840.00. A potential bona fide needs rule violation occurred because contract 41063, awarded on November 24, 2004, was funded with O&M funds and Other Procurement that had already expired. Two of the MIPRs cited FY 2002 Army O&M funds that expired on September 30, 2002.

One of the MIPRs cited FY 2004 Army O&M funds that expired on September 30, 2004. One of the MIPRs cited FY 2002 other procurement funds that expired on September 30, 2004. Use of FY 2002 and FY 2004 Army O&M funds and FY 2002 Other Procurement funds that expired on September 30, 2004 to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule. Table F-3 identifies the four MIPRs used to fund contract 41063.

**Table F-3. MIPRs Used to Fund DOI Contract 41063**

MIPR Number	MIPR Amount Used	Appropriation	MIPR Date
MIPR2MINTMM077	\$1,428.57	FY 02 Army O&M	September 4, 2002
MIPR2MINTMM081	158.20	FY 02 Army O&M	September 23, 2002
MIPR4BINTMM012	1,382.79	FY 04 Army O&M	November 19, 2003
MIPR2LINTMM075	870.44	FY 02 Army Other Procurement	August 9, 2002
<b>Total</b>	<b>\$3,840.00</b>		

**5. DOI Contract 41432.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 41432 to purchase three 42-inch high-definition plasma televisions for the Pentagon Telecommunications Service Center. The value of the contract was \$7,476.00. A potential bona fide needs rule violation occurred because contract 41432, awarded on February 8, 2005, was funded with 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, 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.

**6. DOI Contract 1435-04-02-CT-85531/Order 43387.** A potential bona fide needs rule violation occurred for 14 of 17 MIPRs used to fund multiple-award order 43387, on June 30, 2005, to purchase technical and functional support services for the Pentagon Telecommunications Service Center. The value of order 43387 was \$3,908,420.00 and the period of performance was from July 1, 2005, through December 31, 2005. The appropriation codes on these MIPRs show that FY 2003 O&M funds were cited for one of the MIPRs, FY 2004 O&M funds were cited for 13 of the MIPRs, and FY 2005 O&M funds were cited for 3 of the MIPRs. MIPRs 1 through 13 that we questioned are identified in Table F-4.

**Table F-4. MIPRs Used to Fund DOI Order 43387**

<b>MIPR Number</b>	<b>MIPR Amount Used</b>	<b>Type of Funds</b>	<b>MIPR Date</b>	<b>MIPR Acceptance Date</b>	<b>Availability of Funds</b>
1) MIPR3LINTMM101	\$1,038,376.96	FY 03 O&M	8/29/03	8/29/03	8/29/04
2) MIPR4GINTMM058	70,000.00	FY 04 O&M	4/23/04	4/26/04	4/26/05
3) MIPR4GINTMM059	25,680.01	FY 04 O&M	4/23/04	4/26/04	4/26/05
4) MIPR4HINTMM069	146,090.92	FY 04 O&M	5/26/04	5/26/04	5/26/05
5) MIPR4JINTMM072	516.00	FY 04 O&M	6/4/04	6/7/04	6/7/05
6) MIPR4JINTMM080	28,000.00	FY 04 O&M	6/22/04	6/24/04	6/24/05
7) MIPR4JINTMM086	9,033.00	FY 04 O&M	6/25/04	6/28/04	6/28/05
8) MIPR4JINTMM089	34,000.00	FY 04 O&M	6/25/04	6/28/04	6/28/05
9) MIPR4KINTMM093	140,100.00	FY 04 O&M	7/08/04	7/9/04	7/9/05
10) MIPR4KINTMM095	3,500.00	FY 04 O&M	7/16/04	7/16/04	7/16/05
11) MIPR4KINTMM096	66,500.00	FY 04 O&M	7/16/04	7/16/04	7/16/05
12) MIPR4LINTMM115	147,000.00	FY 04 O&M	8/31/04	8/31/04	8/31/05
13) MIPR4MINTMM123	570,000.00	FY 04 O&M	9/9/04	9/10/04	9/10/05
14) MIPR4MINTMM129	119,733.76	FY 04 O&M	9/24/04	9/24/04	9/24/05
15) MIPR5BINTMM005	84,000.00	FY 05 O&M	11/9/04	11/10/04	11/10/05
16) MIPR5CINTMM013	1,375,000.00	FY 05 O&M	12/13/04	12/15/04	12/15/05
17) MIPR5HINTMM058	50,918.00	FY 05 O&M	5/25/05	5/26/05	5/26/06
<b>Total</b>	<b>\$3,908,448.65</b>				

A potential bona fide needs rule violation occurred related to MIPR number 1 because the funds expired on September 30, 2003, but were used to partially fund order 43387 awarded on June 30, 2005. Potential bona fide needs rule violations occurred for MIPRs number 2 through number 8 because the GovWorks contracting officer also used them beyond their period of availability to partially fund order 43387. A potential bona fide needs rule violation occurred for MIPRs

number 9 through 14 due to the unusually long period between the MIPR acceptance dates and the contract award date. Use of FYs 2003 and 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**7. DOI Contract 1435-04-02-CT-85531/Order 41160.** A potential bona fide needs rule and purpose violation occurred when a GovWorks contracting officer awarded contract 41160, a multiple-award order, on December 30, 2004, to purchase a transitional enhanced communications gateway system and associated installation and support for the Pentagon Telecommunications Service Center. The value of the contract was \$555,738.00. The delivery of the system was no later than 120 days from the date of contract 41160, December 30, 2004. A GovWorks contracting officer used funds from five MIPRs, totaling \$555,738.00, to fund the contract. The appropriation codes on these MIPRs show that FY 2003 Army O&M funds were cited on three of these MIPRs, FY 2002 Army other procurement funds were cited for one of the MIPRs, and FY 2003 Army other procurement funds were cited on one of the MIPRs. Table F-5 identifies the five MIPRs used to fund contract 41160. The MIPRs that we questioned are italicized.

**Table F-5. MIPRs Used to Fund DOI Contract 41160**

<b>MIPR Number</b>	<b>MIPR Amount Used</b>	<b>Appropriation</b>	<b>MIPR Date</b>	<b>MIPR Acceptance Date</b>
<i>MIPR3MINTMM113</i>	<i>\$120,000.00</i>	<i>FY 03 Army O&amp;M</i>	<i>9/24/03</i>	<i>9/24/03</i>
<i>MIPR3MINTMM112</i>	<i>120,000.00</i>	<i>FY 03 Army O&amp;M</i>	<i>9/24/03</i>	<i>9/24/03</i>
<i>MIPR3MINTMM114</i>	<i>200,000.00</i>	<i>FY 03 Army O&amp;M</i>	<i>9/25/03</i>	<i>9/25/03</i>
MIPR-2-F-D0IIT-045	95,709.55	FY 02 Army Other Procurement	3/15/02	3/22/02
MIPR3HINTMM058	20,028.45	FY 03 Army Other Procurement	5/21/03	5/22/03
<b>Total</b>	<b>\$555,738.00</b>			

A potential bona fide needs rule violation occurred because the contracting officer used funds from three Army O&M MIPRs that expired on September 30, 2003, and funds from one FY 2002 Other Procurement Fund MIPR that expired on September 30, 2004, to fund order 41160, awarded on December 30, 2004. There was no bona fide need in FY 2003 for the funds in the FY 2003 Army O&M MIPRs used to partially fund contract 41160 awarded in FY 2005. The GovWorks contracting officer did not use the funds until December 30, 2004, which was 15 months after the issuance dates of the three O&M MIPRs. Use of FY 2003 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

A potential violation of the purpose statute also occurred under contract 41160. According to information in the contract file, \$492,791 of the \$555,739 contract value was related to equipment; however, the contracting officer only obligated \$115,738.00 of other procurement funds under two MIPRs to fund the equipment portion of the purchase. The remaining \$377,053.20 of equipment was therefore funded with the O&M funds used to fund contract 41160.

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Two other procurement fund MIPRs contained incorrect information. For example, other procurement funds were used for MIPR-2-F-D0IIT-045, issued on March 15, 2002. Information in MIPR-2-F-D0IIT-045 states that the funds expire on September 30, 2002. Other procurement funds are 3-year funds and accordingly would not expire until September 30, 2005. Other procurement funds were also used on MIPR3HINTMM058 issued on May 21, 2003. Information in MIPR3HINTMM058 states that the funds expire on September 30, 2003. Again, other procurement funds are 3-year funds and would not expire until September 30, 2006.

**8. DOI Contract 44435.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 44435 to purchase 40 laser jet printers for the Pentagon Telecommunications Service Center. The value of the contract was \$37,643.10. A potential bona fide needs rule violation occurred because the contract, awarded on August 29, 2005, was funded with 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, 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.

**9. DOI Contract 41242.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 41242 on December 10, 2004, to purchase 75 Microsoft Windows server enterprise 2003 software licenses for the Pentagon Telecommunications Service Center. The value of the contract was \$113,388.00. A potential bona fide needs rule violation occurred because the contracting officer used FY 2004 Army O&M funds from MIPR4MINTMM125 that expired on September 30, 2004, to fund the contract. The equipment consisted of commercial items and 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 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**10. DOI Blanket Purchase Agreement 40699 (Task Order 41801 Modification 0002).** A potential bona fide needs rule violation occurred when a GovWorks contracting officer issued modification 0002 under the task order on May 5, 2005. The purpose of modification 0002 was to add incremental funding of \$920,970.87 to purchase services related to the U.S. Air Force Horned Owl Program for the Army Program Management Office for Airborne Reconnaissance Low. DOI contracting officials used a portion of the funds from two existing MIPRs to fund modification 0002. MIPR4DINT04166 was signed on January 10, 2004, and accepted on January 15, 2004. A potential bona fide needs rule violation occurred because of the unusually long period between the January 15, 2004, MIPR acceptance date and the May 5, 2005, date that the funds were obligated under modification 0002. Use of FY 2004 O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**11. DOI Contract 43852.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 43852 on July 31, 2005, to purchase services for the Army Training Support Center. The services related to a training ammunition calculator used to calculate ammunition requirements

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for training purposes at Army locations. The value of the contract was \$94,075.78. Contracting officials used funds from MIPR4KBELG3066 issued on July 12, 2004, and accepted on July 15, 2004. The period of performance was from July 31, 2005, until 3 months after receipt of order, or October 31, 2005. A potential bona fide needs rule violation occurred because the GovWorks contracting officer used FY 2004 Army O&M funds after their period of availability. The MIPR was accepted July 15, 2004 and had a 12-month period of availability that ended on July 15, 2005. Also, a potential bona fide needs rule violation occurred because of the unusually long period between the July 15, 2004, MIPR acceptance date and the July 31, 2005, contract award date. Use of FY 2004 Army O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**12. DOI Contract 40385.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 40385 on October 15, 2004, to purchase 226 weapons cleaning kits for Naval Sea Systems Command (NAVSEA) Fleet Anti-Terrorism Force Protection. The value of the contract was \$3,390.00. A potential bona fide needs rule violation occurred because the contract was funded with MIPR N6553804MP00018, citing 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, that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. The items were scheduled to be delivered by November 26, 2004. Use of FY 2004 Navy O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**13. DOI Contract 43270.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 43270 on May 20, 2005, to purchase 50 sets of T1 special body armor and 100 gamma plates for NAVSEA Fleet Anti-Terrorism Force Protection, valued at \$61,112.00. A potential violation occurred because contract 43270 awarded on May 20, 2005, was funded with MIPR N6553804MP00018, citing 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. While there was evidence that the purpose of contract 43270 was to replenish inventory, 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.” However, we question the use of FY 2004 Navy O&M funds that expired on September 30, 2004, to fund this purchase made almost 8 months after the end of FY 2004. Use of FY 2004 Navy O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**14. DOI Contract 40387.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 40387 on October 17, 2004, to purchase 226 pairs of gloves and goggles, valued at \$10,170.00, for NAVSEA Fleet Anti-Terrorism Force Protection. A potential violation occurred because the contract was funded with 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, that a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were scheduled to be delivered by November 26, 2004. Use of FY 2004 Navy O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.



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**15. DOI Contract 43280.** A potential bona fide needs rule violation occurred when a GovWorks contracting awarded contract 43280 to purchase 15 pairs of goggles and 15 balaclavas, valued at \$1,328.01, for NAVSEA Fleet Anti-Terrorism Force Protection. A potential violation occurred because the contract, awarded on May 17, 2005, was funded with MIPRN6553804MP00018, 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, that a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were scheduled to be delivered by November 26, 2004. Use of FY 2004 Navy O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**16. DOI Contract 41907.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 41907 to purchase 132 radio pouches, valued at \$3,168.00, for NAVSEA Fleet Anti-Terrorism Force Protection. A potential violation occurred because the contract, awarded on January 24, 2005, was funded with MIPR N6553804MP00018, citing 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, that a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were scheduled to be delivered by February 11, 2005. Use of FY 2004 Navy O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**17. DOI Contract 42912.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 42912 to purchase 40 desert camouflage body armor systems, valued at \$71,137.60, for NAVSEA Mobile Security Force Command. A potential violation occurred because the contract, awarded on April 19, 2005, was funded with MIPR N6553803MP00013, citing 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.

**18. DOI Contract 43329.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 43329 to purchase 20 pairs of knee pads and 20 pairs of elbow pads, valued at \$1,158.60, for NAVSEA Mobile Security Force Command. A potential violation occurred because the contract, awarded on May 20, 2005, was funded with MIPR N6553804MP00018, citing 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, that a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The items were scheduled 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.

**19. DOI Contract 43349.** A potential bona fide needs rule violation occurred when a GovWorks contracting officer awarded contract 43349 to purchase 12 seal bags, valued at \$1,369.00, for NAVSEA Mobile Security Force Command. A potential violation occurred because the contract, awarded on May 24, 2005, was funded with MIPR N6553804MP00018, citing 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, that a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. The

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items were scheduled to be delivered by June 27, 2005. Use of FY 2004 Navy O&M funds to satisfy FY 2005 requirements does not meet the intent of the bona fide needs rule.

**20. DOI Blanket Purchase Agreement 32178 (Task Order 73545).** A potential bona fide needs rule violation occurred under task order 73545, awarded on October 9, 2003, when GovWorks contracting officials used FY 2003 Office of the Secretary of Defense O&M funds beyond the funds availability of use. This task order was for technical services related to the development of geospatial representations of Navy installation boundaries for the Naval Facilities Engineering Command. The period of performance was from October 1, 2003, through September 30, 2004. The funds used under NMIPR039209671, dated August 14, 2003, and accepted on August 18, 2003, were only available for use for a 12-month period ending August 18, 2004. At least some of the \$1,559,085.08 was used beyond August 18, 2004, because no additional funding was added to the task order until April 6, 2005. Use of Office of the Secretary of Defense O&M funds after the funds expire does not meet the intent of the bona fide needs rule.

**21. DOI Contract 1435-04-03-RC-70941 and DOI Contract 1435-04-03-RC-73024.** The Counterintelligence Field Activity (CIFA) did not follow the required procedures for obtaining office space in NCR. Specifically, its 10-year, \$100 million lease was obtained through a Section 8(a) contractor rather than the General Services Administration as required by statute. As a result, the lack of authority for CIFA to enter the lease violated a myriad of statutes including the Antideficiency Act, and circumvented the required congressional review and approval process. See finding D for the detailed discussion of lease-related issues. The potential Antideficiency Act violations are as follows.

**Lack of Authority to Enter the Lease.** Title 40 U.S.C 3307 establishes a Prospectus Threshold Authority of \$2.21 million for leases in FY 2003. Only the General Services Administration is permitted to enter leases in excess of the threshold. A potential bona fide needs rule violation occurred because the CIFA lease agreement required lease payments of at least \$6.575 million per year for 2004, which was significantly more than the \$2.21 million Prospectus Threshold Authority. Because CIFA did not follow the prescribed procedure for obtaining lease space, it circumvented required congressional notification and approval process prescribed in 10 U.S.C. 2662(a)(2), 40 U.S.C. 3307(a), and Federal Management Regulation 102-73.65.

**Lack of Authority to Make Building Alterations.** Title 40 U.S.C. 3307 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 \$1.106 million. A potential bona fide needs rule violation occurred because CIFA made leased space alterations of \$14.7 million under contract 1435-04-03-RC-70941 during FY 2003 and did not obtain the required approval from the Senate and House of Representatives. The Prospectus Threshold Authority for lease space alternations in FY 2004 was \$1.1450 million. A potential bona fide needs rule violation occurred because CIFA made space alterations of at least \$7.9 million under contract 1435-04-03-RC-73024 during FY 2004 and did not obtain the required approval from the Senate and House of Representatives.

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**Potential Violations of the Bona Fide Needs Rule.** The TKC Communications contract had provisions that permitted CIFA to repay, over the life of the lease, the costs for its building alterations incurred during FY 2003. In effect, the contractor performed the construction during FY 2003 but permitted CIFA to pay for the construction over the duration of the lease. The contract also had an amortization schedule showing the interest charges. A potential bona fide needs rule violation 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 they occurred. Additionally, the terms of the contract created a liability to the Government before Congress had appropriated the funds. This contract potentially violated 31 U.S.C. 341(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 potentially 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. Military construction funds should have been used and the failure to use these funds potentially violated 31 U.S.C. 1301 and 10 U.S.C. 2805.

## **Southwest Acquisition Branch**

**22. Others.** A potential bona fide needs rule violation occurred for five orders issued by Southwest Acquisition Branch contracting officials under contract NBCHD020037. The five orders purchased equipment for the DoD Office of Inspector General (DoD OIG). Southwest Acquisition Branch contracting officials awarded the five orders between September 25 and September 29, 2005. For four of the orders, the DoD OIG did not receive the items until FY 2006, thus creating a potential bona fide needs rule violation. For the other order, we were unable to determine the date items were received; however, it is likely that they were not received until FY 2006 because the contract was awarded 5 days before the end of the fiscal year. There was no evidence that the items were needed to replenish the inventory, that a long lead-time was required to purchase these items, or that there was an unforeseen delay in purchasing these items. Table F-6 identifies the five orders that potentially violated the bona fide needs rule. Use of FY 2005 funds to satisfy FY 2006 requirements does not meet the intent of the bona fide needs rule.

**Table F-6. Potential DoD OIG Antideficiency Act Violations  
Under Southwest Acquisition Branch Contract NBCHD020037**

<b>Order Number</b>	<b>MIPR Date</b>	<b>Date Awarded</b>	<b>Item Description</b>	<b>Order Amount</b>	<b>Date Received</b>
1681	9/15/2005	9/29/2005	Laptop Computer System	\$ 175,032.00	12/16/2005 12/21/2005 12/27/2005
1685	9/15/2005	9/25/2005	Desktop Computer Systems	94,909.00	Unknown
1687	9/15/2005	9/26/2005	Port Replicators and Adapters	40,776.00	10/14/2005
1688	9/15/2005	9/28/2005	Audio and Video Simulcast System	54,569.84	12/9/2005
1691	9/16/2005	9/28/2005	5JW011 MetBotz Monitoring Equipment	31,436.66	11/10/2005 11/14/2005
<b>Total</b>				<b>\$396,723.50</b>	

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## **Appendix G. Report Distribution**

### **Office of the Secretary of Defense**

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

### **Department of the Army**

Assistant Secretary of the Army (Financial Management and Comptroller)  
Auditor General, Department of the Army  
Office of the Administrative Assistant to the Secretary of the Army

### **Department of the Navy**

Assistant Secretary of the Navy (Financial Management and Comptroller)  
Assistant Secretary of the Navy for Research, Development and Acquisitions  
    Deputy Assistant Secretary of the Navy for Acquisition Management  
Naval Inspector General  
Auditor General, Department of the Navy  
Commander, Naval Sea Systems Command  
Commander, Naval Supply Systems Command  
Commander, Space and Naval Warfare Systems Command  
President, Naval Postgraduate School  
Assistant General Counsel, Acquisition Integrity Office

### **Department of the Air Force**

Assistant Secretary of the Air Force (Financial Management and Comptroller)  
Auditor General, Department of the Air Force

### **Other Defense Organizations**

Director, Defense Contract Audit Agency  
Director, Defense Finance and Accounting Service  
Director, Defense Information Systems Agency  
    Joint Interoperability Test Command Office of the Commander  
Director, Defense Logistics Agency

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## **Other Defense Organizations (cont'd)**

Director, Counterintelligence Field Activity  
Director, Washington Headquarters Services

## **Non-Defense Federal Organization**

Office of Management and Budget  
  Director, Federal Procurement Policy  
  Chairman, Acquisition Advisory Panel  
Secretary, Department of the Interior  
  Deputy Secretary  
  Director, Minerals Management Service  
  Director, National Business Center  
  Assistant Director, GovWorks  
  Team Chief, Southwest Acquisition Branch  
Administrator, General Services Administration  
  Director, Leasing Policy, and Performance Division  
  Director, Financial Systems Integration Office  
Administrator, Small Business Administration  
Inspector General, Small Business Administration  
Director, Central Intelligence Agency  
Inspector General, Department of the Interior

## **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 Environment and Public Works  
Senate Committee on Homeland Security and Governmental Affairs  
Senate Committee of Select Committee on Intelligence  
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 Committee on National Security  
House Subcommittee on National Security, Emerging Threats, and International  
  Relations, Committee on Government Reform  
House Committee on Permanent Select Committee on Intelligence  
House Committee on Transportation and Infrastructure



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



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

DEC 27 2006

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL, ACQUISITION AND  
CONTRACT MANAGEMENT, DODIG

✕ THROUGH: DIRECTOR, ACQUISITION RESOURCES ANALYSIS

*Ed Vennart*  
12/29/06

SUBJECT: Response to DoDIG Draft Report Project No D2005-D000CF-0276.000,  
"FY 2005 DoD Purchases Made Through the Department of Interior," dated  
October 27, 2006

As requested, I am providing responses to the general comment and  
recommendations contained in the subject report.

**General Content:**

Thank you for this report. We look forward to working with you and your staff in  
our continued efforts to identify and eliminate shortcomings in the Interagency  
Acquisition process.

**Recommendations:**

***DoDIG Recommendation A.1.*** We recommend that the Under Secretary of Defense for  
Acquisition, Technology, and Logistics not initiate new DoD contracts or orders at the  
Southwest Acquisition Branch until the Department of Interior establishes a control  
environment and framework to resolve the contracting deficiencies.

***DoD Response: Concur in principle.*** The Department has received information from  
the Department of Interior (DoI) which documents that earlier this year DoI established  
an aggressive corrective action plan to address and resolve identified contracting  
deficiencies within the National Business Center's Southwest Acquisition Branch. DoI  
took specific action to rescind contracting officer warrants and performed assessments of  
each contracting officer's work products. After a comprehensive internal and  
independent review of each contracting officer's work, they took action to issue warrants  
to qualified contracting officers. The information provided indicates that they have  
established more vigorous operational practices and procedures to ensure actions taken  
on behalf of DoD are compliant with statute, policy and regulation. Based on the



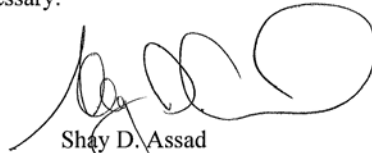


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foregoing, I am requesting that you ascertain whether or not these changes have been implemented by DoI prior to the Department making a determination on whether or not DoI has established controls, processes, and procedures that sufficiently address previously identified contracting deficiencies at the National Business Center's Southwest Acquisition Branch.

***DoDIG Recommendation C:*** We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics terminate DoD use of the Open Market Corridor system.

***DoD Response: Concur in principle.*** Based on information provided from the Department of Interior and the Department of the Navy, the most recent option (July 2006) to extend the contract ordering period, under the contract for the Open Market Corridor System, was not exercised and no new orders can be placed against that contract. The contract ordering period has ended and terminating the use of the Open Market Corridor System is not necessary.



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JAN 05 2007

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL, ACQUISITION AND  
CONTRACT MANAGEMENT, DODIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES ANALYSIS

RD NonD  
1/5/07

SUBJECT: Response to DoDIG Draft Report Project No D2005-D000CF-0276.000,  
"FY 2005 DoD Purchases Made Through the Department of Interior," dated  
October 27, 2006 – Letter of Clarification

This letter is to provide clarification regarding our response of December 27, 2006 to  
DoDIG Draft Report Project No. D2005-D000CF-0276.000, "FY 2005 DoD Purchases Made  
Through the Department of the Interior," (October 27, 2006).

In our previous response, we indicated that we *concurred in principle* with Recommendation  
A.1. We would like to clarify our response. We *concur* with Recommendation A.1.

Based upon information provided by and actions taken by the Department of Interior, we  
understand that DoI has established the necessary controls, processes, and procedures that  
sufficiently address previously identified contracting deficiencies at the National Business  
Center's Southwest Acquisition Branch so that DoD would be able to selectively proceed with  
new work at the Southwest Acquisition Branch. Our understanding is based upon the following  
actions taken by DoI:

- rescinded all (18) contracting officer warrants and performed an assessment of each contracting officer's work products. To date, only three of the eighteen previously issued warrants have been reinstated.
- established internal quality reviews performed by experienced independent personnel prior to actions being submitted to a PCO for signature.
- implemented legal review for all non-commercial actions greater than \$500,000 and \$2M for commercial item transactions.
- reviewed all active contracts, whose performance will go beyond September 30, 2006, for proper terms and conditions.
- assessed the organization structure, including an analysis of workload, staffing levels and capabilities.
- established independent review procedures of all contracts prior to award.
- developed and implemented standard checklists for each transaction type.



I would like to note that the amount of work performed at the Southwest Branch on behalf of the Military Departments was down significantly from FY2005 to FY2006. In part, this was due to our decision to only proceed with new work at the Southwest Branch on a selective basis. A comparison of work (including old and new work) between FY2005 and FY2006 summary is as follows:

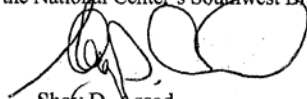
	FY 2005	FY2006
Army	\$ 71.4M	\$ 44.4M
Air Force	\$ 62.5M	\$ 24.8M
Navy	\$ 37.5M	\$ 5.7M
Marine Corps	\$ 1.8M	\$ .4M
Total	\$173.1M	\$ 75.2M

Other DoD organizations made up the bulk of the DoD work performed at the Southwest Branch. The other DOD organization work (including old and new work) between FY2005 and FY2006 was essentially flat (\$562.4M to \$569.4M). A major element of the other DOD work (both old and new) was performed on behalf of Defense Advanced Research Projects Agency (DARPA). In that regard, we directed DARPA to send a special DARPA contracting, legal and fiscal review team to review new work being performed on DARPA's behalf by the Southwest Branch. The DARPA team reviewed the new work and approved that new work for release to DoI contracting. DoI then executed the contracts on DARPA's behalf.

In light of the recent briefings we have received regarding your initial second year audit findings at the Department of the Interior and in order to validate our understanding of the improvements and corrective actions taken place at the Southwest Branch, we request that the DoD IG perform a review of contract actions signed after September 30, 2006 at the Southwest Branch, to assess the effectiveness of the enhanced procedures discussed above.

We are also in process of negotiating a Memorandum of Agreement (MOA) with DoI to ensure that the necessary controls, processes, and procedures that were put in place to address the previously identified contracting deficiencies at the National Business Center's Southwest Acquisition Branch are maintained.

In the event that results of the requested review validate our understandings we will proceed as described in this memorandum and with the MOA. If, however, you do not validate our understanding of the improvements made at DoI, we will reassess our present position to include the potential for ceasing all new work at the National Center's Southwest Branch.



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

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



COMPTROLLER

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

DEC 05 2006

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

SUBJECT: Draft Audit Report, "FY 2005 DoD Purchases Made Through the  
Department of the Interior," (Project No. D2005-D000CF-0276.000)

This memo is in response to the subject October 27, 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.

Robert McNamara  
Acting Deputy Chief Financial Officer

Attachments:  
As stated

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



COMPTROLLER

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

Attachment 1  
Response to Draft Audit Report Recommendations

Office of the Inspector General (OIG), Department of Defense (DoD)  
"FY 2005 DoD Purchases Made Through the Department of the Interior"  
OIG Project No. D2005-D000CF-0276.000

**OIG Recommendation B1.** Issue guidance to DoD Components on the need for specificity when they prepare the Military Interdepartmental Purchase Requests to order goods and services.

**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 providing guidance on the need for specificity when preparing purchase orders.

**OIG Recommendation B2.** Review the \$393 million potentially expired funds and require all expired funds to be deobligated and returned to the treasury.

**OSD Response.** Concur. We directed all components to review interagency agreements and coordinate the return of excess funds with the outside agency by June 30, 2006. The DoD components completed this review resulting in the deobligation of \$451.3 million for the Department. Additionally, we are working with the Department of the Interior to identify and facilitate the return of expired or excess funding. This initiative is expected to be completed by December 2006.

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# Office of the Under Secretary of Defense for Intelligence Comments



INTELLIGENCE

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
5000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-5000

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR  
ACQUISITION AND CONTRACT  
MANAGEMENT

SUBJECT: Report on FY 05 DoD Purchases Made Through the Department  
of the Interior (Project No. D2005-D000CF-0276.000)

I have reviewed the information contained in the draft DoD IG report concerning the Counterintelligence Field Activity (CIFA) and the response provided by CIFA to your office.

The significant disparity between the draft report and CIFA's response do not permit me to comment on the report's findings or recommendations concerning CIFA. When those differences are resolved, I will notify you of my actions.

  
27 DEC 06

Robert Andrews

Deputy Under Secretary of Defense  
(Counterintelligence & Security)



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# Department of the Navy Comments



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

NOV 28 2006

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR ACQUISITION  
AND CONTRACT MANAGEMENT, DOD INSPECTOR  
GENERAL

Subj: DRAFT REPORT ON FY 2005 DOD PURCHASES MADE THROUGH THE  
DEPARTMENT OF THE INTERIOR (PROJECT D2005-D000CF-0276.000)

Ref: (a) DoDIG memorandum of October 27, 2006

Encl: (1) DoN Response to Draft Report

In response to reference (a), enclosure (1) contains the Department of the Navy  
comments on the subject report.

  
M. F. J. J. J.  
Chief of Staff/Policy  
for Deputy Assistant Secretary of the Navy  
(Acquisition Management)

**DEPARTMENT OF THE NAVY (DON) RESPONSE TO DRAFT DODIG  
REPORT ON FY 2005 DOD PURCHASES MADE THROUGH THE  
DEPARTMENT OF THE INTERIOR  
(PROJECT D2005-D000CF-0276.000)**

The following comments are provided on factual matters in the draft report:

Page 44: The draft report states, "We referred selected transactions to the DoD Deputy Inspector General for Investigations and the Navy Acquisition Integrity Office for further review." It should be noted that the DoN Acquisition Integrity Office (AIO) reviewed the referrals and referred the matter to the Naval Criminal Investigative Service (NCIS) for investigation and the Naval Audit Service (NAVAUDSVC) for an audit of Navy procurements made through the Open Market Corridor (OMC). AIO will continue to coordinate with NCIS and NAVAUDSVC and take appropriate remedies based on the findings of NCIS and NAVAUDSVC.

Revised

Page 44: Under the heading "**Legal Review of OMC Contract**," the title "Assistant Secretary of the Navy for Acquisition" should be corrected to read "Deputy Assistant Secretary of the Navy for Acquisition Management."

Revised

**Recommendation A.2:** We recommend that the Acquisition Executives for the Army, Navy, Air Force and Defense agencies make program and contracting office aware of any recurring deficiencies in the development of independent Government cost estimates, technical evaluations, and price negotiation memorandums, and implement an enforcement program that prevents those problems from recurring.

**DoN Response:** Concur. ASN(FM&C) and ASN(RDA) representatives participated in an inter-departmental working group in developing financial management policy for Non-Economy Act orders (Attachment I). The guidance stresses that development and review of proposed Non-Economy Act procurement requests is a collaborative effort of program, comptroller and contracting personnel. This policy:

- reemphasizes the requesting official's responsibility to provide Independent Government cost estimates with Non-Economy Act procurement requests;
- addresses program office need for participation, where appropriate, in technical evaluations.
- delineates program office responsibility on Non-Economy Act order oversight and fund status monitoring.
- requires contracting review in development of Non-Economy Act procurement requests, with warranted contracting officer review required for Non-Economy Act procurement requests in excess of \$500,000.



- 
- indicates that Non-Economy Act orders should be executed on DD Form 448—*Military Interdepartmental Purchase Request* with acceptance through the DD 448-2—*Acceptance of MIPR*. Use of DD Forms 448/448-2, or other stated requirements for alternate documentation, will permit more efficient oversight in program and financial systems.

The price negotiation memorandum is the responsibility of the procuring contracting officer and should be completed in accordance with the policies and procedures of that contracting chain of command.

Both the financial management and contracting communities are aware of issues with Non-Economy Act acquisition. We believe that implementation of this financial management policy on Non-Economy Act orders will inform program personnel of their roles and responsibilities under Non-Economy Act acquisitions.



COMPTROLLER

UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON DC 20301-1100



OCT 16 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDERS OF THE COMBATANT COMMANDS  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND  
COMMANDER, U.S. TRANSPORTATION COMMAND  
ASSISTANT SECRETARIES OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTORS OF DEFENSE AGENCIES  
DIRECTORS DOD FIELD ACTIVITIES

SUBJECT: Non-Economy Act Orders

Attached is the Department's revised financial management policy for Non-Economy Act orders. This policy should be implemented immediately throughout your respective organization. It will be included in the next update to the "DoD Financial Management Regulation," scheduled for first quarter of fiscal year 2007.

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.

Robert McNamara  
Acting Deputy Chief Financial Officer

Attachments:  
As stated

ATTACHMENT (1)



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### **NON-ECONOMY ACT ORDERS**

A. **Purpose.** Prescribe policy and procedures applicable to Department of Defense (DoD) procurement of goods and services from Non-DoD agencies under statutory authorities other than the Economy Act.

B. **Overview.** Non-Economy Act orders are for intra-governmental support, where a DoD activity needing goods and services (requesting DoD agency/customer) obtains them from a Non-DoD agency (assisting/servicing agency/performer). Specific statutory authority is required to place an order with a Non-DoD agency for goods or services, and to pay the associated cost. If specific statutory authority does not exist, the default will be the Economy Act, 31 U.S.C. 1535 which is discussed in volume 11A, Chapter 3 of the "DoD Financial Management Regulations" ("DoDFMR"). The more commonly used Non-Economy Act authorities include, but are not limited to, the following.

- **Acquisition Services Fund.** The Acquisition Service Fund was established by the General Service Administration Modernization Act that merged the General Supply Fund and the Information Technology Fund to carry out functions related to the uses of the Acquisition Services Fund including any functions previously carried out by the Federal Supply Service and the Federal Technology Service managed by General Service Administration.
- **Franchise Funds.** Franchise Funds were first established by P.L. 103-356, Title IV, Sec 403 to provide common administrative support services on a competitive and fee basis. Franchise fund programs originated within the Environmental Protection Agency (EPA), Department of Commerce, Department of Veterans Affairs (VA), Department of Health and Human Services (HHS), Department of Interior, and Department of the Treasury.

C. **Initiating a Non Economy Act Order.** Non-Economy Act orders in excess of the simplified acquisition threshold shall comply with Federal Acquisition Regulation (FAR) Part 7, "Acquisition Planning," and DoD Components' procedures for the "Proper Use of Non-DoD Contracts."

1. **Justification.** Non-Economy Act orders may be placed with another agency for goods or services if:

- Proper funds are available;
- The Non-Economy Act order does not conflict with another agency's designated responsibilities (*e.g.*, real property lease agreements with GSA).

- The requesting agency or unit determines the order is in the best interest of the Department; and
- The performing agency is able and authorized to provide the ordered goods or services.

2. Order. Non-Economy Act orders for work and services outside the Department of Defense (DoD) should be executed by issuance of a DD Form 448, "Military Interdepartmental Purchase Request (MIPR)" and accepted using DD Form 448-2, "Acceptance of MIPR." If an alternative execution document is used, it must provide information consistent with the MIPR to include the purchase request number and the Activity Address Code (DODAAC). A Non-Economy Act order shall comply with the documentation standards in Volume 11A, Chapter 1 of the "DoDFMR," and supported with the items identified in Figure 1. Non-Economy Act orders must include:

- A firm, clear, specific, and complete description of the goods or services ordered. The use of generic descriptions is not acceptable;
- Specific performance or delivery requirements;
- A proper fund citation;
- Payment terms and conditions (e.g., direct cite or reimbursement, and provisions of advanced payments); and
- Specific Non-Economy Act statutory authority such as those referenced in paragraph B above.
- DoD Activity Address Code (DODAAC)

3. Best Interest Determination. Each requirement must be evaluated in accordance with DoD Components' procedures to ensure that Non-Economy Act orders are in the best interest of DoD. Factors to consider include:

- Satisfying the requirements;
- Schedule, performance, and delivery requirements;
- Cost effectiveness, taking into account the discounts and fees; and
- Contract administration, to include oversight.

4. Specific, Definite and Certain. For Non-Economy Act orders in excess of the simplified acquisition threshold, the requesting official must provide:

- Evidence of market research and acquisition planning;
- A statement of work that is specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself.
- Unique terms, conditions, and requirements to comply with applicable DoD-unique statutes, regulations, directives and other requirements.

5. Contracting Officer Review. All Non-Economy Act orders greater than \$500,000 shall be reviewed by a DoD warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR to the Non-DoD activity. In addition to the review of the contracting officer, the requesting official shall further review the acquisition package to ensure compliance with the FAR part 7, and the DoD Components' procedures.

6. Certification of Funds. Non-Economy Act orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. Because the performing entity may not be aware of all the appropriation limitations, the DoD certifying official must certify that the funds cited on the order are available, meet time limitations, and are for the purpose designated by the appropriation.

7. Bona Fide Need. Non-Economy Act orders citing an annual or multiyear appropriation must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for new obligations.

D. Fiscal Policy.

1. Obligation. The provisions of 31 U.S.C. 1501 govern the recording of the obligation. An amount shall be recorded as an obligation only when supported by documentary evidence of an order required by law to be placed with an agency or upon meeting all the following criteria:

- Binding agreement (funding vehicle) between an agency and another person (including an agency);
- Agreement is in writing;
- For a purpose authorized by law;

- Serves a bona fide need arising, or existing, in the fiscal year or years for which the appropriation is available for obligation;
- Executed before the end of the period of availability for new obligation of the appropriation or fund used; and
- Provides for specific goods to be delivered, real property to be bought or leased, or specific services to be supplied.

2. Deobligation. Funding under Non-Economy Act orders shall be deobligated as outlined below.

a. Goods. Funds provided to a performing agency for ordered goods where the funds period of availability thereafter has expired shall be deobligated and returned by the performing agency unless the request for goods was made during the period of availability of the funds and the item(s) could not be delivered within the funds period of availability solely because of delivery, production or manufacturing lead time, or unforeseen delays that are out of the control and not previously contemplated by the contracting parties at the time of contracting. Thus, where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, provisions for delivery in the subsequent fiscal year do not violate the bona fide need rule as long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial off the shelf (COTS) items readily available from other sources. The delivery of goods may not be specified to occur in the year subsequent to funds availability.

b. Severable Services. An agreement for severable services that are continuing and recurring in nature and provide the Department a benefit each time the service is performed (e.g., maintenance and repair services, scientific, engineering, and technical services) is based on statutory authority other than the Economy Act, 10 U.S.C. 2410a permits the performance of severable services to begin in one fiscal year and end in the next provided the period of performance does not exceed one year. Thus, the performance of severable services may begin during funds period of availability and may not exceed one year. Therefore, annual appropriations provided to a performing agency that have expired shall be deobligated unless the performance of the services requested began during the funds period of availability and the period of performance does not exceed one year. The annual appropriation from the earlier fiscal year may be used to fund the entire cost of the one-year period of performance; however, an annual appropriations may not be used to enter into a severable services agreement where the period of performance for services requested is entirely in the following fiscal year. In no instance may the period of performance extend beyond September 30 of the subsequent year for services funded with annual appropriations.

c. Non-Severable Services. Non-severable services contracts must be funded entirely with appropriations available for new obligations at the time the contract is awarded, and the period of performance may extend across fiscal years. Funds provided to a performing agency that become excess shall be deobligated as identified.

d. Excess or Expired Funds. Activities shall reconcile all obligations and remaining funds available for orders. The purpose of this reconciliation is to ensure the proper use of funds and to identify and coordinate the return of expired or excess funds. Excess or expired funds must be returned by the performing agency and deobligated by the requesting agency to the extent that the performing agency or unit filling the order has not (1) provided the goods or services (or incurred actual expenses in providing the goods or services), or (2) entered into a contract with another entity to provide the requested goods or services. Expired funds shall not be available for new obligations.

3. Prohibitions. Non-Economy Act orders may not be used to violate provisions of law, nor may they be used to circumvent conditions and limitations imposed on the use of funds to include extending the period of availability of the cited funds.

E. Non-Economy Act Follow Up Procedures.

1. Non-Economy Act Order Oversight. The requesting official must establish quality surveillance plans for Non-Economy Act orders in excess of the simplified acquisition threshold to facilitate the oversight of the goods provided or services performed by the performing agency. The plan should include:

- a. Contract administration oversight in accordance with the surveillance plan;
- b. Process for receipt and review of receiving reports and invoices from the performing agency;
- c. Reconciliation of receiving reports and invoices; and
- d. Requirements for documenting acceptance of the goods received or services performed.

2. Monitor Fund Status. The requesting official must monitor fund status to:

- a. Monitor balances with the performing agency;
- b. Conduct tri-annual reviews of Non-Economy Act orders in accordance with the Financial Management Regulation, Volume 3,

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Chapter 8, Section 0804, "Tri-Annual Review of Commitments and Obligations;"

- c. Confirm open balances with the performing agency;
- d. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph D2 above; and
- e. Coordinate with the accounting office to ensure timely deobligation of funds.

3. **Payment Procedures.** Payment shall be made promptly upon the written request (or billing) of the performing agency. Under specific conditions, payment may be made in advance or upon delivery of the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the performing agency.

a. The requesting official must be cognizant of the performing agency's payment method. Should the performing agency elect to receive advances or conduct advance billing prior to providing goods or services, the requesting official must comply with the requirements related to advances of public money outlined in Volume 4, Chapter 5 of the "DoD Financial Management Regulation" which implements the general prohibition of advance payments in Title 31, U.S.C. Section 3324 and Title 10, U.S.C. Section 2307. When the conditions under which the advance was made are satisfied, the specific appropriation or law authorizing the advance must be cited on the order and any unused amounts of the advance shall be collected from the performing agency immediately and returned to the fund from which originally made.

b. Payments made for services rendered or goods furnished may be credited to the appropriation or fund of the agency performing the reimbursable work.

4. **Non Economy Act Order Close Out.** All Non-Economy Act orders shall be reviewed by the requesting official to determine if they are complete. Completed orders shall be fiscally closed out. The requesting official shall reconcile funds and coordinate the return of excess or expired funds held by the performing agency. This review will include:

- a. Identify and determine if there are outstanding invoices;
- b. Identify and determine existence of excess or expired funds;
- c. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph D2 above; and
- d. Coordinate with the accounting office to ensure the deobligation of funds.



NON-ECONOMY ACT  
ACQUISITION PACKAGE CHECKLIST

1. Documented evidence of market research and acquisition planning performed.
2. Package includes a specific, definite, and concise statement of work documenting a bona fide need in the fiscal year that the funds are available for new obligations.
3. Package includes specific performance and/or delivery requirements.
4. Package identifies the statutory authority permitting the performing agency to support the DoD Component for the goods/services required.
5. Package includes the purchase request number and the Activity Address Code (DODAAC).
6. Package includes written justification for the Non Economy Act order in accordance with DFARS Part 217.78 and the DoD Components' procedures.
7. Package documents review of fees/surcharges/contract administration/discounts to ensure the cost is reasonable and consistent with task to be accomplished by performing agency.
8. Package includes specific statutory authority authorizing advance payment or billing.
9. Package documents evidence that DoD competition requirements were followed in accordance with DFARS.
10. Order identifies DoD unique terms & conditions to the performing agency.
11. Order identifies unique reporting requirements not otherwise specified to the performing agency.

REQUESTING OFFICIAL RESPONSIBILITIES

1. Market Research
2. Acquisition Planning
3. Independent Government Cost Estimate (IGCE)
4. Statement of Work (SOW) to include evaluation criteria.
5. Ensure receipt and compliance of MIPR acceptance.
6. Assist in Technical Evaluation
7. Quality Assurance Plan
  - a. COR, COTR (Receiving Reports/Invoices - Inspection & Acceptance)
  - b. CDRL Procedural/Required Reports/Deliverables Report/Contract Performance
  - c. Property/Equipment Management
  - d. Perform Contract Oversight
8. Funds Management/Record Keeping
  - a. Draw Down
  - b. Contract Reconciliation
  - c. Initiate Deobligation
  - e. Oversight of Billing/Reporting
9. Update all POCs as necessary throughout acquisition.

Figure 1

# Department of the Air Force Comments



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

DEC 21 2006

MEMORANDUM FOR DEPUTY INSPECTOR FOR AUDITING  
ATTN: ASSISTANT INSPECTOR GENERAL

FROM: SAF/AQ

SUBJECT: Air Force Response to DoDIG Draft Audit Report, FY 2005 Purchases Made  
Through the Department of Interior, (Project No. D2005CF-0276)

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

**The Acquisition Executives for the Army, Navy, Air Force, and Defense agencies also need to make program and contracting offices aware of any recurring deficiencies in the development of independent Government cost estimates, technical evaluations, and price negotiation memorandums, and implement an enforcement program that ensures those deficiencies do not reoccur.**

Concur: The Air Force users of interagency acquisitions must provide independent government estimates and should participate in technical evaluations as required for each acquisition. Air Force Contracting and Air Force Finance will issue an updated Air Force MIPR guide in early 2007. This guide will address the concerns of this audit by requiring that all MIPRs be reviewed by a contracting analyst and financial analyst for compliance with acquisition and financial policies and procedures. In disseminating the guide to contracting and program offices, I will issue a memorandum reiterating the importance of compliance when using MIPRs. Further, Air Force Acquisition will implement the corrective actions put forth by the Under Secretary of Defense for Acquisition, Technology, and Logistics in its response to this draft report. With regards to price negotiations memorandums, the Air Force user is not responsible for the preparing the price negotiation memorandum. This responsibility falls on the assisting agency contracting officer.

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

A handwritten signature in cursive script that reads "Sue C. Payton".

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

# Defense Information Systems Agency Comments



IN REPLY  
REFER TO:

## DEFENSE INFORMATION SYSTEMS AGENCY

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

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

NOV 20 2006

MEMORANDUM FOR DEPARTMENT OF DEFENSE (DOD) INSPECTOR  
GENERAL (IG) THROUGH DISA IG

SUBJECT: Response to DoDIG's Draft Audit Report Titled "FY 2005 DoD Purchases  
Made through the Department of Interior, Project No. D2005-D000CF-  
0276.000, 27 Oct 06"

1. In response to the subject draft audit report, the Procurement Directorate (PLD) concurs with the DoDIG's recommendations.
2. DISA's concurrence, discussions, and plans for corrective actions are contained in the enclosure.
3. If you have any questions please contact Mrs. Doris Mayo, PL22 at 703-681-0925.

1 Enclosure a/s

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

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

Defense Information Systems Agency (DISA)

Concurrence and Responses to Draft Audit Report  
Project No. D2005-D000CF-0276.000, 27 Oct 2006

**DoDIG Recommendation E.1.** "We recommend that the Director, Defense Information Systems Agency: Appoint a resident contracting officer at Fort Huachuca, Arizona."

**DISA's Response.** Concur – target date for completion 31 January 2007.

DISA's Head of the Contracting Activity (HCA) who is in charge of the Procurement Directorate/Defense Information Technology Contracting Organization (PLD/DITCO) is standing up a contracting branch at the Joint Interoperability Test Command (JITC), Fort Huachuca, AZ (aka JITC-West).

This contracting branch will consist of one GS-1102-14 contracting officer, one GS-1102-13 contracting officer and one GS-1102-11/12 contract specialist. DISA's HCA will be a part of these individuals chain of command.

It is anticipated that these positions will be filled and the individuals will report on-board at JITC-West by the end of January 2007.

**DoDIG Recommendation E.2.** "...Appoint a Defense Information Systems Agency contracting officer to review the duties performed by contracting officer's representatives assigned to the Joint Interoperability Test Command multiple-award contracts. The review should focus on whether Southwest Acquisition Branch contracting officers delegated too much authority to the contracting officer's representative."

**DISA's Response.** Concur – action completed 30 September 2005. This review was accomplished and it was confirmed that too much authority was delegated by the DOI contracting officers to the JITC Contracting Officer's Representatives (CORs).

Two individuals from the Procurement Directorate/Defense Information Technology Contracting Organization (PLD/DITCO) participated in the DISA Inspector General's Command Assessment at the JITC-West from 26-30 September 2005.

One of the findings from that review stated: "Incorrect delegation authority, insufficient contract oversight, and violation of the regulations. The DOI/NBC's contracting officer has delegated the review and approval of all Task Orders to JITC's Contracting Officer's Representative (COR), who is not a GS-1102 series contract specialist nor has proper

Enclosure (1)

training in DoD contracting. DOI/NBC's contracting officer has in effect relinquished her contractual authority and does not have daily visibility into the work being performed by the contractors to ensure that the work is performed within the scope of the contract. This increases the risk for the COR to perform these responsibilities. For example, if the COR approves an out of scope task order this would result in an unauthorized commitment as defined by FAR 1.602-3 and has personal financial liability for the COR.

Legal opinion from DISA was sought regarding the DOI/NBC's contracting officer delegating to JITC's COR the approval/award of task orders. PLD's procurement attorney states: "A Contracting Officer's Representative (COR) does **not** have authority to award task orders nor may CORs be delegated such authority." This legal opinion was based on the regulations (FAR 1.601, DFARS 201.602-2, and DARS 1.602-2-90)."

The recommendation states: "That DOI/NBC contracting officer: (1) resend and modify its COR delegation letter to ensure compliance with the FAR, DFARS, and DISA's Acquisition Regulation Supplement (DARS) and (2) commence reviewing and approving all contractual documents, i.e., task orders, which commit and bind the Government."

The placement of two DISA contracting officers and one contract specialist on-site at the JITC-West will provide JITC-West with the appropriate and necessary contracting support. DISA's procurement regulations only allow the contracting officer to delegate to the COR the appropriate authority as delineated in the Federal Acquisition Regulations and the Defense Federal Acquisition Regulation Supplement (DFARS).

# Counterintelligence Field Activity Comments



**COUNTERINTELLIGENCE FIELD ACTIVITY**  
251 18th STREET  
CRYSTAL SQUARE 5, SUITE 1200  
Arlington, VA 22202-3537



NOV 30 2006

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR  
ACQUISITION AND CONTRACT MANAGEMENT

SUBJECT: Report on FY 05 DoD Purchases Made Through the Department of the Interior  
(Project No. D2005-D000CF-0276.000)

This memorandum provides management comments and a statement of actions in response to subject draft report.

- Management Comments:
  - The potential violations identified in the report result from the Office of the Inspector General (OIG) finding that the Counterintelligence Field Activity (CIFA) failed to comply with procedural rules governing the leasing of real estate for DoD activities. The OIG finding is based on the fact that CIFA acquired its office space in Crystal Square 5, Crystal City, using services contracts obtained by GovWorks (a Department of Interior agency), rather than occupancy agreements with General Services Administration (GSA). Although outside the scope of the report, the Defense Information Technology Contracting Office (DITCO) obtained a similar services contract for space in Crystal Square 5 on behalf of CIFA. In determining the applicability of rules for government leases, there is no government lease for the space CIFA is occupying. GovWorks and DITCO--both are charged by statute and regulation with ensuring that contracts comply with law--maintain they did not err in obtaining office space for CIFA through services contracts.
  - In the process described in the report, GSA, after obtaining congressional approval and required appropriation, will enter into leases for commercial space used by government tenants; tenants will reimburse the lease costs through an occupancy agreement. By contrast, the GovWorks and DITCO contracts did not involve a government leasehold; therefore, they did not trigger congressional approval and the appropriation process. TKC, an Alaska Native enterprise, leased the space and the Small Business Administration (SBA), on behalf of TKC, entered into services contracts with GovWorks for CIFA's use of the leased space. DITCO contracted directly with TKC for CIFA's space. CIFA agreed to reimburse GovWorks and DITCO for their payments to TKC using military interdepartmental purchase requests (MIPRs). This process was reviewed by counsel at GovWorks and DITCO, who found no legal objection. The report imprecisely refers to this contractual arrangement as subleasing; it is not.

- In considering whether Antideficiency Act (ADA) violations have occurred, no funds in excess of amounts available in its O&M appropriations were obligated by CIFA to acquire the space in Crystal City. The O&M funds that CIFA expended to reimburse GovWorks and DITCO for the service contracts of the Crystal City space were from the same appropriation that would have been used to reimburse GSA for leased space under an occupancy agreement. Therefore, no problems of obligating an appropriation or using the wrong color of money exist.
- The report attributes a number of potential ADA violations to the procedures employed. It begins with the premise that CIFA could not use contractor-furnished work space to house its contractor-heavy work force. Responding to advice from OIG concerning these issues, and in consultation with the office of the DoD Comptroller, CIFA promptly initiated a preliminary review of the potential violations after receiving the OIG briefing. That review provided documentation of the transactions and sought to identify those procedural irregularities that might rise to the level of ADA violations. On August 25, CIFA's preliminary review was forwarded to the DoD Comptroller for review. If the DoD Comptroller determines there is evidence of potential ADA violations, she will initiate a formal investigation. CIFA anticipates that reviewing the preliminary review will resolve these issues.
- CIFA's now-questioned occupancy of commercially leased space under government services contracts resulted from an unusual set of circumstances. CIFA, its predecessor OSD elements, and the defense contractors providing mission support to those agencies were already in contractor-furnished office space located in the Crystal City buildings CIFA currently occupies when CIFA stood up in the wake of the September 11 terror attacks. CIFA (along with its predecessor OSD element) was also serving as the host for and working closely with the FBI's Foreign Terrorist Tracking Task Force (FTTTF) created by the President on October 29, 2001. Some limited GSA leased space was also available and being used by CIFA and FTTTF. At the time, though, more than 80 percent of CIFA's employees were contractors, as were many of the FTTTF workers. CIFA sought to consolidate its operation by having this mixed work force located primarily in contractor-furnished space. The OIG report, in determining that the GSA lease model should have been followed to meet CIFA's space requirements, does not address the impact of the high ratio of contractor personnel who were supporting the mission. This is an issue for consideration in the ADA reviews.
- The report suggests that the termination provisions of the contract, calling for payment of unamortized tenant improvement allowances and 12 months' rent, obligate future years' appropriations in violation of the ADA. In fact, these contracts treat each option year or month as a new order. As severable services contracts, CIFA funds the orders up to 12 months with its current



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year appropriation. When termination is desired, the contracting office must issue notice at least 12 months prior. At that time CIFA will use the current appropriation to reimburse GovWorks and DITCO for services received during the period covered by the termination notice. The unamortized build-out allowance is a contingent liability and funds are not obligated against it until an amount certain is ascertained. The appropriation available at the time the notice is issued will be obligated to fund the reimbursement of the unamortized concessions to GovWorks and DITCO. This financial arrangement is consistent with the way GSA charges its tenants who vacate space that has been obtained under a non-cancellable lease prior to ending the occupancy agreement term.

- The OIG report also identified a potential ADA violation because MILCON vice O&M funds should have been used for improvements making the Crystal City space suitable for CIFA's national security work. Again, GovWorks and DITCO make payments to the leaseholder TKC; TKC pays the landlord. CIFA reimburses the government contracting offices. The ADA preliminary review described above addressed the MILCON issue. If the real property was under DoD jurisdiction when the work was done, then, as OIG suggests, use of O&M vice MILCON funds to make improvements could constitute a purpose violation of the ADA. Conversely, if the space was under the control of a contractor and not under DoD jurisdiction, an ADA violation is less likely. Because this issue has not been factually resolved, and the government does not have a leasehold interest in this contractor-furnished space, final determination of a potential ADA violation will have to wait for the comptroller review.
- The report finds a potential ADA violation arising from the fact that the contract with TKC permitted repayment of improvement costs incurred in 2003 over the period of the lease. While this is characterized as a problematic loan of funds, including interest payments classified as unallowable, such a tenant improvement allowance is a common practice in the commercial real estate business. GSA employs this practice when leasing space for government tenants. GSA regulations allow the agency to add the cost of the amortized tenant improvements to the shell rent in its occupancy agreements, allowing the lessor to include interest in the amortization amount. Again, this issue has been covered in the preliminary review submitted for DoD Comptroller review.
- The Air Force Office of Special Investigations (AFOSI) was occupying space in Crystal Square 5 when the OSD element that eventually became CIFA (Joint Counterintelligence Analysis Group) first moved into the building. Subsequently, at AFOSI's request, additional adjacent space was acquired for AFOSI's use. The space occupied by the Naval Criminal Investigative Service and by the non-DoD federal counterintelligence activity was also acquired at AFOSI's request. The statement in the report that CIFA acquired

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this space in excess of its bona fide needs and made it available to these other organizations is factually incorrect.

- Corrective Actions:
  - Immediately following the OIG briefing to senior staff and management in May, CIFA began working with Washington Headquarters Services (WHS) and GSA to find a resolution consistent with the OIG construct. CIFA provided data to document its space requirements to WHS, which forwarded the space request to GSA; GSA is reviewing the request. As a result of BRAC 2005, CIFA is scheduled to move to Quantico, VA, by 2011. GSA has not ruled out the possibility of taking over the lease for the space occupied by CIFA. Other DoD agencies in CS 5 are working directly with WHS; the non-DoD agency is making its arrangements with GSA.
  - The necessary reviews are under way to determine the extent to which violations of the ADA may have occurred, and, where violations are found, to take appropriate action. As stated above, a preliminary review was conducted and forwarded to the DoD Comptroller in August.
  - The report suggests the applicability of a provision regularly appearing in defense appropriations acts that restricts payment of moving expenses within the National Capital Region when costs exceed \$500,000. First, there is a factual issue of whether there was a relocation within the meaning of the restrictions. It is not clear that relocation expenses apply to a new organization. Second, when created, CIFA essentially expanded within the same buildings it and its predecessor OSD element had occupied from the beginning. When gathering material for the preliminary review of potential ADA violations, CIFA identified one contract line item titled, "Relocation of Contractor Staff and Government Furnished Equipment for Relocation of Staff at CS2, EADS, and CM2." Payments by GovWorks to TKC to move equipment and furnishings were below the \$500,000 threshold. CIFA discussed the matter with WHS and was advised that there are other costs in addition to moving expenses that must be considered in determining whether or not the threshold has been reached. As suggested in the report, this matter is being investigated.
  - CIFA was advised that the SBA no longer plans to terminate its contract with TKC. Unless otherwise directed by the DoD Comptroller or the Under Secretary of Defense for Intelligence, CIFA does not intend to stop reimbursing the government contracting offices for payments to TKC. Until there is a comprehensive plan in place, unilateral action of that magnitude would likely create more problems than it would solve, especially in view of the SBA's decision. GovWorks and DITCO continue to make payments to TKC under the services contracts for CIFA's space in Crystal City. Apparently, and notwithstanding the absence of an authoritative decision on

the ADA issues (properly characterized throughout the report by OIG as potential violations), OIG decided its briefing should have caused CIFA to create a crisis by cutting off payment of funds to these government contracting offices. This is true even though neither of the government contracting offices has concurred in OIG's assessment of the transactions. OIG has been aware of CIFA's use of contractor furnished work space since 2004. Nonetheless, CIFA's failure to immediately accept OIG's slide show as authoritative direction rather than wait for the DoD Comptroller review has apparently caused displeasure among the OIG staff.

- The new investigation raises questions about the appropriate role of the OIG in that (a) in May when the slide show was presented, the OIG report regarding this matter had not reached the draft report stage, and (b) even when final, an IG report is not an administrative adjudication. This expectation by OIG staff that CIFA would initiate precipitous action seems at odds with OIG's recognition of the dilemma it described in the introduction to this report, and it is inconsistent with the collaborative action committee approach being recommended. Such an expectation also assumes erroneously that the OIG staff's analysis was so patently thorough and persuasive on its face that immediate unquestioning acceptance without further discussion or review of the many complexities was the only viable course of action. Since the decision to initiate investigative activity rests solely with OIG, no additional management comment seems appropriate at this point.
- The CIFA point of contact is Curt McFarlin, Chief of Staff; 703-699-7799, [curt.mcfarlin@cifa.mil](mailto:curt.mcfarlin@cifa.mil)).



Daniel J. Baur  
Acting Director

cc:  
DUSD (CI&S)  
DOD GC (Intelligence)  
DOD GC (Fiscal)

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# Inspector General Department of Defense

