DEPARTMENT OF DEFENSE

AUDIT REPORT

CONTRACTING THROUGH INTERAGENCY AGREEMENTS
WITH THE LIBRARY OF CONGRESS

No. 90-034

February 9, 1990

Office of the
Inspector General

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

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MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION
ASSISTANT SECRETARY OF DEFENSE (PRODUCTION AND LOGISTICS)
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Report on the Audit of Contracting Through Interagency Agreements With the Library of Congress (Report No. 90-034)

This is our final report on the Audit of Contracting Through Interagency Agreements With the Library of Congress. We made the audit from February through May 1989. The audit was made in response to information provided to us by the General Counsel and the Inspector General of the Library of Congress. The information concerned possible improprieties relating to the practice by several DoD activities of providing funding to the Library of Congress for the purpose of contracting for services and supplies through the Library's Federal Library and Information Network (FEDLINK) procurement program. This included the contracting for non-library related services and supplies that were outside of the intended scope of the FEDLINK procurement program. The number of DoD activities participating in the FEDLINK procurement program increased from 551 in FY 1987 to 735 in FY 1988. The value of the interagency agreements entered into increased from $35.6 million in FY 1987 to $83.4 million in FY 1988. The audit objectives were to evaluate the practice by DoD activities of providing funding to the Library of Congress for the purpose of contracting for services and supplies and to evaluate the adequacy of DoD internal control procedures for monitoring these contracting activities.

The audit showed that DoD activities did not comply with Defense and Federal Acquisition Regulations' requirements regarding monitoring and controlling interagency acquisitions. We assessed internal controls that addressed the authority to approve interagency acquisitions, the appropriateness of the services and supplies being obtained, and the procedures for ensuring that contracts awarded under interagency acquisitions were effectively administered. We identified material internal control weaknesses that increased the risks of contract overpricing and increased the susceptibility of these procurements to mismanagement, abuse, and fraud. The results of

the audit are summarized in the following paragraphs, and the details and audit recommendations are in Part II of this report.

DoD program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials in placing orders for interagency acquisitions through the Library of Congress. Contractor services and supplies were obtained that were beyond those routinely and reasonably provided by the Library of Congress, and contracts awarded on DoD's behalf by the Library of Congress were not effectively administered. As a result, DoD program officials did not obtain the expertise available from DoD procurement professionals in determining whether an interagency acquisition through the Library of Congress was the most economical and efficient method to obtain the requested supplies or services. This may have resulted in excessive contract prices. The Library of Congress lacked the resources necessary to appropriately solicit, effectively evaluate, equitably negotiate, effectively award, and effectively administer major contracts for the DoD. Furthermore, as a Legislative Branch agency, the Library of Congress was not obligated to follow acquisition rules, regulations, and policies imposed on Executive Branch agencies, including the DoD. The lack of adequate internal controls also increased the susceptibility of these procurements to mismanagement, abuse, and fraud. We recommended that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense Agencies to establish internal control procedures and practices that will minimize the risk of orders for interagency acquisitions being placed by unauthorized DoD officials and to initiate appropriate training and consider disciplinary actions for officials who exceeded their authority. The Under Secretary should reemphasize that acquisitions of services and supplies should only be obtained through an interagency acquisition with another Federal agency when that agency has unique expertise not available within DoD, is able to obtain the services and supplies more economically and efficiently than through direct DoD contracting, and is able to comply with all Defense and Federal Acquisition Regulations' requirements in the award and administration of contracts awarded on DoD's behalf. We also recommended that the Under Secretary of Defense for Acquisition initiate actions to ensure that effective contract administration is provided for existing interagency acquisitions placed through the Library of Congress, and that the Under Secretary ensure that the material weaknesses identified are reported and tracked as required by DoD Directive 5010.38, "Internal Management Control Program" (page 5).

The audit identified internal control weaknesses as defined by Public Law 97-255, Office of Management and Budget (OMB) Circular A-123, and DoD Directive 5010.38. Controls were not established or effective to preclude unauthorized DoD officials from approving interagency acquisitions, and to ensure effective administration of contracts placed through the Library of

Congress. Recommendations 1., 2., and 3., if implemented, can substantially correct these internal control deficiencies. We could not determine the monetary benefits to be realized by implementing the recommendations (see Appendix C). The monetary benefits were not readily identifiable because the amount to be derived from complying with Defense and Federal Acquisition Regulation requirements depends on future DoD involvement with the Library of Congress FEDLINK procurement program. We expect this involvement to be greatly reduced because the Library of Congress has limited the types of procurement requests that will be accepted from the DoD. The senior officials responsible for internal controls within the Military Departments and the Defense Logistics Agency are being provided a copy of this report.

A draft of this report was provided on August 23, 1989, to the Under Secretary of Defense for Acquisition; Assistant Secretary of Defense (Production and Logistics); Assistant Secretary of the Army (Financial Management); Assistant Secretary of the Navy (Financial Management); Assistant Secretary of the Air Force (Financial Management and Comptroller); Director, Defense Contract Audit Agency; and Director, Defense Logistics Agency. Management comments were received from the Assistant Secretary of Defense (Production and Logistics) (Appendix E), Navy (Appendix F), Air Force (Appendix G), Defense Logistics Agency (Appendix H), Army Materiel Command (Appendix I), and Army Health Services Command (Appendix J).

In response to the management comments received, a meeting was held between the Deputy Assistant Secretary of Defense for Procurement and the Assistant Inspector General for Auditing. As a result of this meeting, we have revised the final report to consolidate the deficiencies addressed in the draft report into one finding. We have also consolidated our draft report recommendations for correcting contract administration deficiencies into Recommendation 3.

We have also reconsidered the position expressed in draft Finding C., "Contract Reporting Requirements," that there should be a consolidated reporting within the DoD contract reporting system of contracts awarded on DoD's behalf by other Federal agencies. We believe that the implementation of the recommendations contained in this report will provide adequate internal controls over interagency acquisitions without imposing an additional reporting requirement. We have therefore deleted draft audit report Finding C. from this final report.

The Assistant Secretary of Defense (Production and Logistics) concurred with Recommendations A.1. and A.2. (renumbered Recommendations 1. and 2.), and nonconcurred with Recommendation A.3. (renumbered Recommendation 4.). The Assistant Secretary also concurred with the substance of draft Finding B., "Contract Administration," that action needs to be implemented to ensure that effective contract administration is provided for contracts awarded on DoD's behalf by the Library of Congress.

The Assistant Secretary's nonconcurrence with Recommendation A.3. (renumbered Recommendation 4.) was based on the Assistant Secretary's position that it is not appropriate for the DoD Inspector General to recommend that an item is a material weakness that requires tracking. We disagree with this position and request that the Under Secretary of Defense for Acquisition and his representative, the Assistant Secretary of Defense (Production and Logistics), reconsider and provide concurrence with Recommendation 4. We believe that because the material weaknesses identified were widespread throughout DoD and involved a Legislative Branch agency that the material weaknesses should be included in the Secretary of Defense's annual internal control report to the President and the Congress.

The Navy and the Air Force either concurred or indicated agreement with the thrust of all the recommendations and reported that they had initiated actions to correct the deficiencies cited in this report.

The Defense Logistics Agency (DLA) concurred with Recommendations A.1. and A.3. (renumbered Recommendations 1. and 4.), and partially concurred with Recommendation A.2. (renumbered Recommendation 2.). The partial concurrence with Recommendation A.2. (renumbered Recommendation 2.) was based on DLA's position that disciplinary actions should be limited to those who knowingly falsified information to obtain contractor support through the Library of Congress. We emphasized in the report that disciplinary action should be considered only against DoD program officials who flagrantly disregarded the requirements of the Defense and Federal Acquisition Regulations. This would include any falsification of records as well as other flagrant actions that would lead a reasonable person to conclude that the DoD program official deliberately circumvented the requirements of the Defense and Federal Acquisition Regulations.

The Army Materiel Command either concurred or indicated agreement with the thrust of all the recommendations.

The Army Health Services Command either concurred or indicated agreement with the thrust of all the recommendations except for Recommendation A.2. (renumbered Recommendation 2.). The Army Health Services Command nonconcurred with the portion of Recommendation A.2. (renumbered Recommendation 2.) that recommended that disciplinary action be considered against those program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. The actions taken by program officials at the Army Health Services Command have been cited in Part II of this report as an example of the type of flagrant disregard of the procurement requirements established by the Defense and Federal Acquisition Regulations that warrant consideration for disciplinary action. We emphasized in the report that the highly unusual and convoluted procedures that program officials used at this Army command to

bypass DoD procurement channels to place a multimillion-dollar noncompetitive procurement should, in our opinion, result in appropriate disciplinary action by the Army against the program officials involved.

DoD Directive 7650.3 requires that all recommendations be resolved within 6 months of the date of the final report. In order to comply with this Directive, we request that the Under Secretary of Defense for Acquisition or his representative, the Assistant Secretary of Defense (Production and Logistics), provide us with final comments on the unresolved issues in this report within 60 days of the date of this report. These comments should indicate either concurrence or nonconcurrence with the results of the review and each of the recommendations. If you concur, please describe the actions taken or planned, completion dates of actions already taken, and estimated dates of completion of planned actions. We also ask that your comments indicate concurrence or nonconcurrence with the internal control weaknesses identified above. If appropriate, please describe alternative actions proposed to achieve the desired improvements. If you nonconcur, please state the specific reasons for the positions taken.

We appreciate the courtesies and cooperation extended to the audit staff. Audit team members are listed in Appendix K. Please contact Mr. Richard Jolliffe, Program Director, at (202) 694-6260 (AUTOVON 224-6260) or Mr. Dennis Payne, Project Manager, at (202) 694-6259 (AUTOVON 224-6259) if you have any questions concerning this report. The distribution of this final report is shown in Appendix L.

Stephen A. Trodden
Assistant Inspector General
for Auditing

cc:
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force

FINAL REPORT ON THE AUDIT OF CONTRACTING THROUGH INTERAGENCY AGREEMENTS WITH THE LIBRARY OF CONGRESS

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Prepared by:
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REPORT ON THE AUDIT OF CONTRACTING THROUGH INTERAGENCY AGREEMENTS WITH THE LIBRARY OF CONGRESS

PART I - INTRODUCTION

Background

In 1965, the Federal Library Committee (renamed the Federal Library and Information Center Committee [FLICC] in 1984) started operations under the direction of the Library of Congress for the purpose of making recommendations on Federal library and information policies. The FLICC's membership includes representatives from all Federal departments and major agencies.

In 1979, the FLICC organized the Federal Library and Information Network (FEDLINK). The primary function of FEDLINK is to provide information services to Federal libraries, information centers, and other Government activities through basic ordering agreements with contractors. FLICC/FEDLINK operates as a division of the Library of Congress and works through the Library's contracting office to obtain basic ordering agreements that are made available to other Federal agencies. This procurement program expanded rapidly, and by FY 1988 the Library of Congress had established basic ordering agreements with more than 100 contractors to provide services to more than 800 Federal libraries and more than 400 other Federal activities. The Library of Congress estimates that the value of contracts has increased from about $20 million in FY 1984 to about $100 million in FY 1988.

The number of DoD activities entering into interagency agreements with the Library of Congress to obtain contracted services and supplies through the FEDLINK procurement program increased from 551 in FY 1987 to 735 in FY 1988. The value of the DoD interagency agreements increased from $35.6 million in FY 1987 to $83.4 million in FY 1988. Although most of the interagency agreements entered into by DoD activities in FY 1988 were for relatively small amounts, as shown by the following schedule, 36 interagency agreements exceeded $500,000.

Value of Interagency Agreement	Number	Amount
Greater than $1,000,000	18	$ 34,392,874
$500,000 - $1,000,000	18	12,526,461
$100,000 - $500,000	111	25,105,276
Less than $100,000	588	11,336,721
Total	735	$ 83,361,332

On January 12, 1989, the Library of Congress General Counsel and Inspector General advised the Deputy Inspector General, DoD, that the large increase in contracting activity under the FEDLINK procurement program had been attributed to DoD activities placing contractual orders for services and supplies that appeared to be outside of the intended scope of FEDLINK. These contractual orders included labor hour and cost reimbursement-type contracts for non-library related consulting and design services such as database development, network studies, systems analysis and programming, conceptual management studies, and scanning and similar service requirements. They also included contracts for procuring computer equipment. The Library of Congress has initiated action to stop further contracting under FEDLINK for these types of services and supplies that are beyond those library related services and supplies routinely provided by the FEDLINK procurement program. The Library of Congress' Inspector General has also conducted an internal review of the Library's operation and management of the FEDLINK procurement program.

Objectives and Scope

The audit was made in response to information provided to us by the General Counsel and the Inspector General of the Library of Congress. The information concerned possible improprieties relating to the practice by several DoD activities of providing funding to the Library of Congress for the purpose of contracting for services and supplies through the Library's FEDLINK procurement program. Our announced objectives were to evaluate:

- the practice by several DoD activities of providing funding to the Library of Congress for the purpose of contracting for services and supplies, and

- the adequacy of DoD internal control procedures for monitoring these contracting activities.

The Defense and Federal Acquisition Regulation criteria used to conduct the audit are summarized in Appendix A. These criteria included Defense and Federal Acquisition Regulations Subpart 17.5, "Interagency Acquisitions Under the Economy Act," and Subpart 1.6, "Contracting Authority and Responsibilities."

The scope of the audit covered a review of information provided by the Library of Congress on its operation and management of the FEDLINK procurement program. This included information about acquisitions placed for DoD activities since FY 1987. The scope of the audit also covered an evaluation of records relating to the interagency acquisitions for seven judgmentally selected DoD activities that entered into agreements exceeding $1 million since FY 1987 for interagency acquisitions with the Library of Congress. These seven DoD activities and the principal interagency acquisitions reviewed are summarized in Appendix B. Statistical sampling procedures were not used because of the relatively small number of major interagency acquisitions

exceeding $1 million. The judgmental sample provided for a balanced coverage of Army, Navy, and Air Force activities.

This economy and efficiency performance audit was made from February through May 1989 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD, and accordingly, included such tests of internal controls as were considered necessary. The activities visited or contacted during the audit are listed in Appendix D.

Internal Controls

The internal control review determined compliance with Defense and Federal Acquisition Regulations' requirements, which limited the authority to approve interagency acquisitions to DoD contracting officers and certain designated senior DoD officials. The internal control review also assessed the adequacy of DoD internal control procedures for ensuring that interagency acquisitions between the Library of Congress and the DoD activities were effectively administered. We found material internal control weaknesses, which are addressed in the Finding in Part II of the report.

Prior Audit Coverage

We identified no prior audit coverage of this subject area during the last 5 years.

PART II - FINDING AND RECOMMENDATIONS

DoD Procurement Channels Bypassed

FINDING

DoD program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials in placing orders for interagency acquisitions through the Library of Congress. Contractor services and supplies were obtained that were beyond those routinely and reasonably provided by the Library of Congress, and contracts awarded on DoD's behalf by the Library of Congress were not effectively administered. This condition occurred primarily because internal controls were not adequate to ensure compliance with Defense and Federal Acquisition Regulations' requirements, and because of the more permissive procurement procedures of the Library of Congress. As a result, DoD program officials did not obtain the expertise available from DoD procurement professionals in determining whether an interagency acquisition through the Library of Congress was the most economical and efficient method to obtain the requested services or supplies. This may have resulted in excessive contract prices. The lack of adequate internal controls also increased the susceptibility of these procurements to mismanagement, abuse, and fraud.

DISCUSSION OF DETAILS

Background. Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 17.5, "Interagency Acquisitions Under the Economy Act," prescribe policies and procedures applicable to interagency acquisitions under the Economy Act (31 United States Code 1535). FAR 17.502 states that,

> Under the Economy Act, an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position . . . to . . . obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the Government's interest to do so.

DFARS 2.101 defines "head of the agency" within the DoD as being limited to

> . . . the Secretary of Defense, the Assistant Secretary of Defense (Production and Logistics), the Secretary, Under Secretary, and any Assistant Secretary of the Army, Navy, and Air Force, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order

limits the exercise of authority to specific individuals at the Secretarial level.

DFARS 17.502 defines the designee of the head of the requesting agency as being limited to the contracting officer. Except for these designated senior DoD officials and DoD contracting officers, no other DoD employee has the authority to approve orders for interagency acquisitions under the Economy Act.

The Defense and Federal Acquisition Regulations limit the authority to approve interagency acquisitions to contracting officers and certain designated senior DoD officials. The regulations were designed to ensure that the expert knowledge of DoD procurement professionals was fully used in determining that it was in the DoD's best interest to obtain required services or supplies through an interagency acquisition rather than through direct contracting by DoD. These DoD procurement experts are in the best position to ascertain compliance with the various provisions of the Defense and Federal Acquisition Regulations, which were designed to ensure that all DoD procurements are made at fair and reasonable prices and to ensure that contracts are adequately administered.

Decisions that it is in the best interest of the DoD to place interagency acquisitions for contracted services and supplies through other agencies, such as the Library of Congress, require especially close scrutiny. Such agencies may lack the resources and skills required to effectively award and administer contracts on DoD's behalf. This is particularly important when the requested services or supplies are not routinely purchased by the other agency. One cannot assume that such agencies can effectively adhere to Defense and Federal Acquisition Regulations' requirements and obtain the best price available for DoD. The Inspector General of the Library of Congress reported that there was little or no competition by the Library of Congress in establishing contract prices under the Library's FEDLINK procurement program. DoD procurement professionals have the expert skills to search the marketplace and determine whether the contract price offered through the other agency, including applicable fees charged by the other agency, is the best price available for the requested services and supplies. They also have the expertise to ensure that adequate contract administration is provided for contracts awarded on DoD's behalf by other agencies.

Details of the Audit. We evaluated seven DoD activities that entered into agreements exceeding $1 million since FY 1987 for interagency acquisitions with the Library of Congress. The evaluation disclosed that all of these interagency acquisitions were approved by DoD program officials who lacked the authority under FAR/DFARS 17.502 to approve such acquisitions. (See Appendix B for the seven DoD activities and the principal interagency agreements and acquisitions.) The audit also disclosed several major deficiencies in the contract administration process.

The principal reason cited by the DoD program officials for not obtaining appropriate approvals was their lack of understanding of Defense and Federal Acquisition Regulations' restrictions, which limited the authority to approve interagency acquisitions to certain designated senior DoD officials and DoD contracting officers. They also saw the Library of Congress as a means of awarding contracts that was quicker and easier than going through DoD procurement channels. Internal control procedures and practices were not adequate within these DoD activities to preclude violations of the Defense and Federal Acquisition Regulations' restrictions. Internal control procedures and practices also were not adequate to preclude the program officials from obtaining the funding required to enter into the interagency agreements. Internal control procedures and practices at the DoD funding offices did not require any approvals from DoD officials authorized to approve interagency acquisitions by FAR/DFARS 17.502 before transferring funds to the Library of Congress. Internal control procedures at the Library of Congress did not prohibit or prevent the acceptance of requests for interagency acquisitions from unauthorized DoD officials.

Increased Risks of Contract Overpricing and Increased Susceptibility to Mismanagement, Abuse, and Fraud. The lack of adequate internal control procedures and practices at the seven activities and funding offices increased the risks of contract overpricing and increased the susceptibility of the procurements to mismanagement, abuse, and fraud. We believe the same conditions existed at most of the other DoD activities that had interagency agreements with the Library of Congress under the FEDLINK procurement program. The following two examples show the increased risks associated with the internal control deficiencies.

Army, Health Care Systems Support Activity, Tactical Systems Division, San Antonio, Texas. The Army, Health Care Systems Support Activity, Tactical Systems Division, San Antonio, Texas, used the Library of Congress' FEDLINK procurement program as a mechanism for awarding a subcontract to Flight Safety Services Corporation. Program officials at this Army activity preselected this firm to design computer-based training systems based on their belief that this firm was the best qualified to perform the required services. Instead of contacting the appropriate DoD contracting office and attempting to justify a sole-source procurement, the officials explored various opportunities for obtaining the services through interagency agreements with other Federal agencies who had less restrictive procurement rules and practices.

Army officials reported that they selected an interagency agreement with the Library of Congress as the vehicle for obtaining this noncompetitive procurement because the Library had a FEDLINK contractor, Innovative Technology, Incorporated, that

was willing to subcontract on the Army's behalf with Flight Safety Services Corporation. Army officials also reported that the Library's 5-percent administrative fee for placing the contract was lower than the fees required by the other Federal agencies they contacted (many of whom were also Executive Branch agencies with procurement restrictions similar to DoD). Part of the agreement with Innovative Technology, Incorporated, required the Army to purchase a $4,190 subscription to the Technical Logistics Reference Network (TLRN) services, the standard service that Innovative Technology, Incorporated, offered through the Library's FEDLINK procurement program. The Army was unable to provide us a reason for needing this service. In FY 1988, the Army provided $4,328,000 in total funding to the Library of Congress to facilitate these contracting arrangements. This amount included $207,562 in administrative fees assessed by the Library of Congress.

In addition to the $4,190 subscription that apparently was not needed, the Army's actions, at a minimum, increased the costs of the services provided by Flight Safety Services Corporation by the amount of overhead fees and service charges provided to the Library of Congress and to Innovative Technology, Incorporated. Even if it was likely that a sole-source noncompetitive procurement could have been justified by appropriate DoD procurement officials, additional overpricing may have occurred because procedures in FAR/DFARS Part 15, "Contracting by Negotiation," for negotiating fair and reasonable prices were not followed. Neither the Library of Congress nor the Army required the contractor to support its proposed price by submitting cost and pricing data certified for accuracy, currency, and completeness as required by FAR 15.804. The Government did not perform any independent cost or price analysis or audit of the contractor's proposed price. Independent analyses and audits are normally required by FAR/DFARS Part 15 for noncompetitive procurements.

Naval Reserve Force, Information Systems, New Orleans, Louisiana. The Naval Reserve Force, Information Systems, New Orleans, used the FEDLINK procurement program to obtain services from West Coast Information Systems, Incorporated, for developing and maintaining a computerized financial management system. Total funds transferred by the Navy to the Library of Congress in FY 1988 (when these contract services began) amounted to $1.6 million, including fees of $76,429 assessed by the Library.

This Navy activity had previously obtained such contract services through an interagency agreement with the Department of Energy. The Naval Audit Service, in its June 26, 1986, Audit Report No. S47525, "Acquisition of Automated Information Systems at Commander, Naval Reserve Force, New Orleans, Louisiana," criticized this practice. Despite this criticism and an agreement to take corrective action, on April 6, 1988, nearly 2 years later, the Navy entered into an interagency

agreement with the Library of Congress to obtain similar contracted services. The Navy justified this interagency acquisition on the basis of urgency and reported that it was only an interim measure until competitive award procedures could be completed. The Navy estimated it would be September 30, 1989, more than 3 years after the Naval Audit Service report was issued and agreed to, before competitive award procedures could be completed. In our opinion, the Navy could not adequately explain why such a lengthy period would be required to comply with DoD competitive procurement procedures.

In connection with the placement of this interagency agreement with the Library of Congress, the Library of Congress requested that the Navy provide a certification that the Navy was in compliance with FAR 16.703. FAR 16.703 requires that competition be obtained in accordance with Part 6 of the FAR. Although the Navy provided the requested certification to the Library of Congress on May 3, 1988, the Navy did not provide any evidence that any of the competitive requirements of Part 6 of the FAR had been met.

The Navy's actions, at a minimum, increased the costs of the services provided by West Coast Information Systems by the amount of administrative fees paid to the Library of Congress. In addition, even if it was likely that a sole-source noncompetitive procurement could have been justified by appropriate DoD procurement officials, overpricing may have occurred because, as in the case with the Army Health Care Support Activity, FAR/DFARS Part 15, "Contracting by Negotiation," procedures for negotiating fair and reasonable prices were not followed. Neither the Library of Congress nor the Navy required the contractor to support its proposed price by submitting cost and pricing data certified for accuracy, currency, and completeness as required by FAR 15.804. The Government did not make an independent cost or price analysis or audit of the contractor's proposed price as normally required by FAR/DFARS Part 15 for such noncompetitive procurements.

Contracts Not Effectively Administered. In addition to the conditions discussed above concerning the contract award process, contracts awarded through the Library of Congress FEDLINK procurement program were not effectively administered. The most obvious departure from DoD contract administration procedures, was the practice by the Library of Congress of making contract payments without receiving any assurances that contractor services or supplies had been performed or received. This practice increased DoD's risks. For the seven DoD activities we reviewed, none had consistently approved the contractor's invoices before payment by the Library of Congress. The following two examples involving contracts placed by the Library of Congress for the Naval Aviation Depot, Cherry Point, North Carolina, and the Army Laboratory Command, Adelphi, Maryland, further illustrate the major problems encountered because of the lack of effective contract administration.

Large Advance Payment Made Without Justification. On July 14, 1988, the Naval Aviation Depot, Cherry Point, North Carolina, entered into Interagency Agreement Number 1455 with the Library of Congress to obtain computer equipment and services from STS, Incorporated. Soon thereafter, the Navy transferred $2,509,970 to the Library of Congress to pay for the requested equipment and services. On July 22, 1988, the Library of Congress amended its FY 1988 basic ordering agreement with STS, Incorporated, to incorporate the statement of work provided by the Navy for this effort. STS, Incorporated, had prepared the statement of work, including pricing provisions, on the Navy's behalf. On July 28, 1988, STS, Incorporated, submitted an invoice to the Library of Congress for $1,048,190 for the Naval Aviation Depot effort. Although the invoice was not clearly labeled as an advance payment, this was obviously its intent. The Library of Congress, apparently without contacting the Navy or performing any steps to verify the need for an advance payment, approved the invoice for payment on August 19, 1988. When approving and making this advance payment, the Library of Congress apparently did not adhere to the strict requirements in FAR Subpart 32.4, "Advance Payments," for protecting the Government's interest.

Large Labor Rate Increases Accepted. On May 12, 1987, the Army Laboratory Command in Adelphi, Maryland, entered into Interagency Agreement Number 0972 with the Library of Congress for $1,530,000 to obtain contract services for the Material Parts Availability Control Program. The services were obtained from Innovative Technology, Incorporated, primarily on a labor-hour reimbursement basis. On March 7, 1988, this interagency agreement was renewed by the Army for an additional $2,021,150. Since the contract was awarded in May 1987, the labor hour rates charged by Innovative Technology, Incorporated, increased substantially as illustrated by the following schedule:

	Labor Hour Rates		
Labor Category	May 1987	June 1987	October 1987
Senior Consultant	$75	$ 105	$186
Project Manager	47	49	109
Lead Systems Analyst	65	64	95

The Library of Congress apparently accepted these substantial increases in labor hour rates without reviewing their reasonableness and incorporated them in its basic ordering agreement with Innovative Technology, Incorporated. Despite the major effect these rate increases had on the cost of the contract services obtained, the Army Laboratory Command apparently did not object to these rate increases or initiate any audit or independent cost or price analysis of their reasonableness.

Need to Establish Effective Internal Controls. These four examples show that there is a need to establish effective internal control procedures and practices to minimize the risk that unauthorized DoD officials will approve orders for interagency acquisitions. We doubt that authorized DoD procurement professionals for the cited examples would have determined that it was in DoD's best interest to make these procurements through the Library of Congress. We found similar internal control deficiencies at the other three DoD activities. Authorized procurement professionals generally have the expert skills and requisite training necessary to determine if the other Federal agency has unique expertise that will enable the agency to obtain the requested services or supplies more economically and efficiently than through direct DoD contracting. They are also in the best position to assess whether the other Federal agency is able to comply with all Defense and Federal Acquisition Regulations' requirements in the award and administration of contracts awarded on DoD's behalf. By bypassing the internal controls inherent in compliance with the Defense and Federal Acquisition Regulations, DoD activities substantially increased the susceptibility of the procurements to mismanagement, abuse, and fraud. It is very important that the internal controls include steps to ensure that no funds are transferred to the Library of Congress for interagency acquisitions without obtaining approval from DoD officials authorized by FAR/DFARS 17.502.

Need for Training and Disciplinary Action. The finding that unauthorized DoD program officials placed orders for interagency acquisitions at the seven DoD activities indicates that there is a widespread misunderstanding of the Defense and Federal Acquisition Regulation requirements for placing interagency acquisitions. To correct this deficiency, appropriate training must be provided to DoD program officials. The training should focus on why the approval of DoD procurement professionals is required whenever an interagency procurement is contemplated. The training should emphasize that interagency acquisitions should only be approved when the other Federal agency

- Has unique expertise not available within DoD,

- Is able to obtain the services or supplies more economically and efficiently than would be available through direct DoD contracting, and

- Is able to comply with all Defense and Federal Acquisition Regulations' requirements in the award and administration of contracts awarded on DoD's behalf.

Appropriate disciplinary action should also be considered against the DoD program officials who have flagrantly disregarded the requirements of the Defense and Federal Acquisition Regulations in their placement of interagency acquisitions. In our opinion, the actions taken by program officials at the Army Health Care

Systems Support Activity, San Antonio, Texas, and at the Naval Reserve Force, Information Systems, New Orleans, Louisiana, are examples of flagrant disregard for Defense and Federal Acquisition Regulations.

Need for Actions to Improve Contract Administration. The Library of Congress has advised the appropriate DoD officials of its inability to provide effective contract administration for most of the major outstanding FEDLINK contracts it has awarded on DoD's behalf. DoD contract administration officials have taken over most of the contract administration responsibilities required for these contracts. Actions need to be taken to ensure that adequate contract administration is provided for the other existing FEDLINK contracts placed on DoD's behalf by the Library of Congress.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense Agencies to:

1. Establish internal control procedures and practices to minimize the risk that orders for interagency acquisitions will be placed by unauthorized DoD program officials. These internal control procedures and practices should include steps to ensure that no funds are transferred to the Library of Congress for interagency acquisitions without the approval of the DoD officials authorized by FAR/DFARS 17.502.

2. Initiate appropriate training and consider disciplinary actions for the program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. Reemphasize that acquisitions of services or supplies should only be obtained through an interagency acquisition with another Federal agency when that agency has unique expertise not available within DoD, is able to obtain the services or supplies more economically and efficiently than through direct DoD contracting, and is able to comply with all Defense and Federal Acquisition Regulations' requirements in the award and administration of contracts awarded on DoD's behalf.

3. Establish arrangements with the Library of Congress to ensure that effective contract administration is provided for all existing interagency acquisitions placed through the Library of Congress. This includes steps to ensure that either the Library of Congress or DoD carries out all of the contract administration responsibilities specified in FAR Part 42, "Contract Administration."

4. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." Because the material weaknesses identified were widespread throughout DoD and involved a Legislative Branch agency these material weaknesses should be included in the

Secretary of Defense's annual internal control report to the President and Congress as required by Title 31, United States Code, Section 512, and by OMB Memorandum, "Year-End Internal Control Report," September 26, 1983.

MANAGEMENT COMMENTS

Under Secretary of Defense for Acquisition/Assistant Secretary of Defense (Production and Logistics)

The Assistant Secretary of Defense (Production and Logistics) concurred with Recommendations A.1. and A.2. (renumbered Recommendations 1. and 2.). The Assistant Secretary also concurred with the substance of draft audit report Finding B., "Contract Administration," (draft Finding B. has been consolidated with this Finding) that actions need to be implemented to ensure that effective contract administration is provided for contracts awarded on DoD's behalf by the Library of Congress. The Assistant Secretary voiced concern that the Library of Congress accepted a fee for performing these contract administration services and that if the Library is not in a position to provide these services the Library should refund a portion of its fees.

The Assistant Secretary nonconcurred with Recommendation A.3. (renumbered Recommendation 4.) stating that it was not appropriate for the DoD Inspector General to recommend that an item is a material weakness that requires tracking.

The complete text of the Assistant Secretary's comments is in Appendix E.

Navy

The Navy concurred with Recommendations A.1., A.2., and A.3. (renumbered Recommendations 1., 2., and 4.) and has initiated corrective actions. The Navy also was in agreement that action was needed to ensure that DoD contracting through interagency agreements is properly administered. The complete text of the Navy's comments is in Appendix F.

Air Force

The Air Force concurred with Recommendations A.1., A.2., and A.3. (renumbered Recommendations 1., 2., and 4.) and has initiated corrective actions. The Air Force also was in agreement that action was needed to ensure that DoD contracting through interagency agreements is properly administered. The complete text of the Air Force's comments is in Appendix G.

Defense Logistics Agency

The Defense Logistics Agency (DLA) concurred with Recommendations A.1. and A.3. (renumbered Recommendations 1. and 4.) and partially concurred with Recommendation A.2. (renumbered Recommendation 2.). The DLA also was in agreement that action was needed to ensure that DoD contracting through interagency agreements is properly administered. The partial concurrence with Recommendation A.2. (renumbered Recommendation 2.) was based on DLA's position that disciplinary actions should be limited to those who knowingly falsified information to obtain contractor support through the Library of Congress. DLA also suggested that one way to remedy confusion would be to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to either clarify which agency the approving contracting officer is within, or delete the current DFARS coverage and require adherence to the Federal Acquisition Regulation (FAR) agency head or designee criteria. The complete text of the Defense Logistics Agency's comments is in Appendix H.

Army

The Army's comments were provided by the Army Materiel Command and the Army Health Services Command.

The Army Materiel Command concurred with the finding and stated that improvements need to be made in the DoD's and Army's guidance and procedures for interagency acquisitions. The complete text of the Army Materiel Command's comments is in Appendix I.

The Army Health Services Command nonconcurred with the portion of Recommendation A.2.(renumbered Recommendation 2.) that disciplinary action be considered for program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. The Army Health Services Command stated that its officials acted in good faith and that there was no intentional wrongdoing. The complete text of the Army Health Services Command's comments is in Appendix J.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

Under Secretary of Defense for Acquisition/Assistant Secretary of Defense (Production and Logistics)

We are in agreement with the Assistant Secretary's position that the Library of Congress received a fee for performing contract administration services and should have provided these services. However, as we have stated in the report, the Library of Congress is not in a position to effectively administer major contracts for the DoD. The two most important issues that need to be addressed are first the need to ensure that adequate contract administration is provided for existing interagency acquisitions, and second the need to ensure that future requests

for interagency acquisitions are not approved until a determination is made that the Library of Congress is in a position to effectively administer the contract. We have therefore recommended that arrangements be established with the Library of Congress to ensure that effective contract administration is established for existing interagency acquisitions (Recommendation 3.). Accomplishment of Recommendations 1. and 2. should ensure that future interagency acquisitions with the Library of Congress are approved only after a determination is reached that the Library of Congress will be in a position to effectively administer the contract. Recommendation 3. has already been substantially implemented through agreements that have been reached between the Library of Congress and appropriate DoD officials for DoD to take over most of the contract administration responsibilities for existing major FEDLINK contracts awarded by the Library of Congress on DoD's behalf.

We disagree with the Assistant Secretary's position that it is not the responsibility of the DoD Inspector General to advise DoD management of material weaknesses uncovered during the audit process, and to recommend that these material weaknesses be reported and tracked as required by DoD Directive 5010.38, "Internal Management Control Program." We have emphasized in this report that, because the material weaknesses identified were widespread throughout DoD and involved a Legislative Branch agency, these material weaknesses should be included in the Secretary of Defense's annual internal control report to the President and Congress as required by Title 31, United States Code, Section 512, and by OMB Memorandum, "Year-End Internal Control Report," September 26, 1983.

On January 16, 1990, the Assistant Inspector General for Auditing met with the Deputy Assistant Secretary of Defense for Procurement, to discuss the proposed memorandum the Assistant Secretary planned to issue to the Services and Defense Agencies to correct the deficiencies cited in this report. Preliminary agreements were reached that the memorandum should:

- Be signed by the Under Secretary of Defense for Acquisition to emphasize its importance and the need to take prompt corrective action.

- Emphasize the need to promptly implement internal control procedures that will ensure that no funds are transferred to another Federal agency for interagency acquisitions without the approval of the DoD officials authorized by FAR/DFARS 17.502.

- Emphasize the need to limit future interagency acquisitions to the acquisition of supplies and services where the other Federal agency has unique expertise not available within DoD, is able to obtain the supplies or services more economically and efficiently than through direct DoD contracting, and is able to comply with all Defense and Federal Acquisition

Regulations' requirements in the award and administration of any contracts awarded on DoD's behalf.

Defense Logistics Agency

We agree with the Defense Logistics Agency's position that disciplinary action should not be taken against all DoD program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. As stated in the report, it is our position that appropriate disciplinary action be considered only against DoD program officials who have flagrantly disregarded the requirements of the Defense and Federal Acquisition Regulations in their placement of interagency acquisitions. This would include any instances of falsification of records as well as other flagrant actions that would lead a reasonable person to conclude that the DoD program official deliberately circumvented the requirements of the Defense and Federal Acquisition Regulations. We have provided two examples in the report of flagrant disregard.

We do not believe that there is a need to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to state that only a DoD contracting officer can serve as the designee of the head of the requesting agency within DoD. DFARS 17.502(a) states clearly, "For the purpose of FAR 17.502, the designee of the head of the requesting agency within DoD (underlining added) is the contracting officer unless otherwise directed by departmental regulations." FAR 17.502 establishes the requirement that the head of the requesting agency (DoD), or designee, determine that it is in the Government's interest for the requesting agency (DoD) to place an order with another agency (Library of Congress) to obtain supplies or services that the servicing agency (Library of Congress) may be in a position to obtain by contract. Such a determination by its very nature would need to be made by an official of the requesting agency (DoD), not the servicing agency (Library of Congress).

Army

We agree with the Army Materiel Command's position that improvements need to be made in the DoD's and Army's guidance and procedures in the area of interagency acquisitions.

As detailed in the report, we found that the actions taken by program officials at the Army Health Services Command showed a flagrant disregard for the procurement requirements established by Defense and Federal Acquisition Regulations. These program officials preselected the company they wanted to perform the work. Then, instead of using appropriate DoD procurement channels to justify their desire for a noncompetitive procurement, they explored opportunities for carrying out their desire for a noncompetitive procurement through interagency agreements with at least three other Federal agencies. These program officials then entered into a convoluted arrangement

through the Library of Congress, whereby one of the Library's contractors (Innovative Technology, Incorporated) agreed to enter into a subcontract with the Army's preselected company if the Army would purchase a $4,190 subscription to the standard library service offered by Innovative Technology, Incorporated. These Army program officials then initiated actions to provide $4,328,000 to the Library of Congress to facilitate these highly unusual contracting arrangements. The procedures that these Army program officials used to bypass DoD procurement channels (to place a multimillion-dollar noncompetitive procurement) should result in the Army taking appropriate disciplinary action against the program officials involved.

COMPENDIUM OF FEDERAL AND DEFENSE ACQUISITION REGULATIONS APPLICABLE TO INTERAGENCY ACQUISITIONS

FAR/DFARS Subpart 1.6, "Contracting Authority and Responsibilities" - Makes the contracting officer responsible for ensuring that contracts are effectively administered; the contracting officer must either administer contracts directly or delegate responsibilities to contract administration offices, as provided for by FAR Subpart 42.2, "Assignment of Contract Administration."

FAR/DFARS 2.101, "Definitions" - Defines "Head of the Agency" within the DoD as being limited to the Secretary of Defense; the Assistant Secretary of Defense (Production and Logistics); the Secretary, Under Secretary, and Assistant Secretaries of the Army, Navy, and Air Force; and the Directors and Deputy Directors of Defense agencies, except to the extent that any law or Executive order limits the exercise of authority to specific individuals at the Secretarial level.

FAR/DFARS Subpart 4.6, "Contract Reporting" - Establishes reporting requirements and procedures for reporting all contracting actions, including actions involving the placement of an order under another agency's contract, such as Library of Congress FEDLINK contracts. These data are the basis of recurring and special reports to the President, the Congress, the General Accounting Office, and the general public. The data are used to measure and assess the impact of Federal contracting on the Nation's economy. The data are also used for other policy and management control purposes.

FAR 5.101 and 5.201, "Publicizing Contract Actions" - Requires contracting officers to publicize in the Commerce Business Daily most contractual actions expected to exceed $25,000.

FAR/DFARS Part 6, "Competition Requirements" - Establishes requirement for full and open competition for all contractual requirements. Limits the use of sole source and less than fully competitive contracting procedures and requires substantial justification for any exceptions to full and open competition.

FAR/DFARS Part 7, "Acquisition Planning" - Requires agencies to perform acquisition planning and to conduct market surveys for all acquisitions in order to promote and provide for full and open competition, or to obtain competition to the maximum extent practicable.

FAR/DFARS Part 15, "Contracting by Negotiation" - Defines procedures and requirements for establishing contract prices for contracts not awarded through competitive sealed bidding procedures. Covers negotiation requirements for both competitive and noncompetitive procurements. Includes several requirements to ensure the reasonableness of negotiated contract prices, including requirements for performing cost or price analysis,

obtaining field pricing support, obtaining from the contractor cost and pricing data, and requiring the contractor to provide a certificate of current cost or pricing data certifying to the accuracy, currency, and completeness of the cost and pricing data provided.

FAR 16.703., "Basic Ordering Agreements" - A basic ordering agreement is a written instrument of understanding (not a contract) negotiated between an agency, contracting activity, or contracting office and a contractor, containing terms and clauses that apply to future contracts (orders) between the parties during its term. It contains a description of the supplies or services to be provided and the methods for pricing, issuing, and delivering future orders under the basic ordering agreement. Basic ordering agreements are intended to be used only when a substantial recurring requirement is expected for the same type of supplies or services. Before reaching any decision to issue an order under a basic ordering agreement, the contracting officer is required to obtain competition in accordance with FAR Part 6, to ensure that the use of the basic ordering agreement is not prejudicial to other offerors, and to meet all contractual requirements that would be required if the order were a contract awarded independently of a basic ordering agreement.

FAR/DFARS Subpart 17.5, "Interagency Acquisitions Under the Economy Act" - Provides that an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position to obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the Government's interest to do so. FAR/DFARS 2.101 defines the head of the agency in DoD as including only a limited number of senior-level officials. DFARS 17.502(a) defines the designee of the head of the requesting agency within the DoD as being limited to contracting officers unless otherwise directed by departmental regulations. FAR 17.504 requires the servicing agency to comply fully with the competition requirements of FAR Part 6 when an interagency acquisition requires the servicing agency to award a contract.

FAR/DFARS Subpart 32.4, "Advance Payments" - Establishes procedures and requirements that must be met before any contractor request for advance payments can be authorized.

FAR/DFARS Subpart 42.3, "Contract Administration Office Functions" - Provides that actions be taken to ensure that contracts are effectively administered in circumstances where the procuring contracting officer delegates all or a portion of the responsibilities for contract administration to a contract administration office.

PRINCIPAL DOD ACTIVITIES AND INTERAGENCY ACQUISITIONS REVIEWED

DoD Activity	FY	IAG* No.	Contractor	Estimated Contract Value	Library Admin. Fees	Total IAG Value
Army Health Care Systems Support Activity San Antonio, TX	1988	1465	Innovative Technology	$4,121,666	$206,334	$4,328,000
Army Laboratory Command Adelphi, MD	1987	0972	Innovative Technology	1,443,160	86,840	1,530,000
	1988	0972	Innovative Technology	1,924,714	96,436	2,021,150
Army Office of Chief of Staff for Operations and Plans Washington, DC	1988	1197	C.A.C.I., Inc.	4,146,247	207,562	4,353,809
Naval Aviation Depot Cherry Point, NC	1988	1455	STS, Inc.	2,390,210	119,760	2,509,970
Naval Military Sealift Command Washington, DC	1988	0818	Advanced Technology	2,090,590	104,780	2,195,370
Naval Reserve Force New Orleans, LA	1988	1373	West Coast Information Systems	1,523,571	76,429	1,600,000
Air Force Logistics Center - Cyber Rehost Office Wright-Patterson Air Force Base, OH	1988	1446	West Coast Information Systems	1,266,237	63,561	1,329,798

* IAG is an Interagency Agreement.

SCHEDULE OF POTENTIAL MONETARY AND OTHER BENEFITS RESULTING FROM AUDIT

Recommendation Reference	Description of Benefit	Amount and Type of Benefit
1.	Improve internal control procedures by reducing risk that further orders for interagency acquisitions will be placed by unauthorized DoD program officials.	Nonmonetary Nonquantifiable
2.	Improve internal control procedures by providing training on requirements for placing interagency acquisitions and disciplinary action for those who violate these requirements.	Nonmonetary Nonquantifiable
3.	Improve internal control procedures by ensuring effective administration of existing interagency acquisitions.	Nonmonetary Nonquantifiable
4.	Help ensure implementation of Recommendations 1., 2., and 3.	Nonmonetary Nonquantifiable

ACTIVITIES VISITED OR CONTACTED

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Washington, DC
Assistant Secretary of Defense (Production and Logistics), Washington, DC

Department of the Army

Assistant Secretary of the Army (Financial Management), Washington, DC
Assistant Secretary of the Army (Research, Development, and Acquisition), Washington, DC
Army Laboratory Command, Material Parts and Availability Control Program Office, Adelphi, MD
Office of Chief of Staff for Operations and Plans, Information Management Office, Washington, DC
Health Care Systems Support Activity, Tactical Systems Division, San Antonio, TX

Department of the Navy

Assistant Secretary of the Navy (Financial Management), Washington, DC
Assistant Secretary of the Navy (Shipbuilding and Logistics), Washington, DC
Naval Aviation Depot, Cherry Point, NC
Naval Military Sealift Command, Technical Information Office, Washington, DC
Naval Reserve Force, Information Systems Office, New Orleans, LA

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller), Washington, DC
Air Force Logistics Command, Engineering Services Division, Wright-Patterson AFB, OH

Defense Contract Audit Agency

Headquarters, Alexandria, VA
Annandale Branch Office, Annandale, VA
Germantown Branch Office, Germantown, MD
Reston Branch Office, Reston, VA

Defense Logistics Agency

Headquarters, Alexandria, VA
Defense Technical Information Center, Alexandria, VA

Non-DoD

Library of Congress, Washington, DC

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS

October 20, 1989

P/CPA

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Draft Report on the Audit of Contracting Through Interagency Agreements With the Library of Congress (Project No. 9CA-5009)

This is in response to your request for comments on the subject draft report. Attached for your consideration are specific comments on the recommendations pertaining to USD(A).

It should be noted that the main reason for the inappropriate circumvention of DoD contracting procedures described in your report is the mounting frustration of program officials who generate requirements with the lengthy competition process. They evidently believed that the Library of Congress was not subject to recent laws that have caused the DoD procurement process to become ever more cumbersome and complex. These laws have increased lead times on non-major system competitive awards to an average of 6 to 8 months. The Library of Congress was able to issue orders on a sole source basis in a few days.

Jack Katzen

Attachment

We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense Agencies to:

Recommendation A. 1. Establish internal control procedures and practices to minimize the risk that orders for interagency acquisitions will be placed by unauthorized DoD program officials. These control procedures and practices should include steps to ensure that no funds are transferred to the Library of Congress for interagency acquisitions without obtaining approval from the authorized DoD officials denoted in FAR/DFARS 17.502. 1.

ASD(P&L) position: Concur. ASD(P&L) will issue a memorandum to the Services and Defense Agencies highlighting the DoDIG findings and reminding DoD program officials of their responsibilities to use their contracting offices.

Recommendation A. 2. Initiate appropriate training and consider disciplinary actions for the program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. This should apply to those actions disclosed by this report and those likely to be disclosed when the recommendations on contract administration in Finding B are implemented. 2.

ASD(P&L) position: Concur. Pursuant to the ASD(P&L) memorandum and the DoDIG report, the Services and Defense Agencies should take actions to ensure that program officials are aware of their responsibilities.

Recommendation A. 3. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." 4.

ASD(P&L) position: Nonconcur. DoD Directive 5010.38, "Internal Management Control Program," in its enclosure 4, paragraph C provides direction on "Determining a Material Weakness." It specifies that the determination is a management decision. Therefore, it is not appropriate for the DoDIG to recommend that an item is a "material weakness," and subsequently put that recommendation in the audit followup cycle. We suggest that it is an aberration - not a material weakness that requires tracking.

Final Report Reference

We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense Agencies to:

Recommendation B. 1. Establish arrangements with the Library of Congress for the cognizant DoD contract administration office to perform contract administration functions for all existing and future interagency acquisitions placed through the Library of Congress. *

ASD(P&L) position: Partially concur. When the Library of Congress accepted the funding from DoD program officials, it agreed to perform a service by placing a contract and performing associated responsibilities, including performing contract administration services. The Library of Congress charged a fee to accomplish these services. The ASD(P&L) memorandum discussed earlier will also direct the Services and Defense Agencies to perform contract administration services only if the Library of Congress either refunds a portion of the fee for existing interagency acquisitions or reduces its fee for future, legitimate interagency acquisitions.

Recommendation B. 2. Establish arrangements with the Library of Congress to ensure that the Library does not make further contractor payments until a certification is received from the cognizant DoD contract administration official that the required contractor work has been performed or equipment delivered. *

ASD(P&L) position: Concur, if DoD contract administration is used.

Recommendation B. 3. Ensure that interagency agreements for procurements placed through the Library of Congress that exceeded $500,000 and procurements for lesser amounts where warranted, which were awarded on a cost-type, time and material, or labor-hour reimbursement basis, are not closed by the Library of Congress until the Defense Contract Audit Agency performs an independent audit to verify the incurrence of the costs and hours claimed. *

ASD(P&L) position: Concur assuming charges are adjusted as noted in Recommendation B. 1. above. *

Recommendation B. 4. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." 4.

ASD(P&L) position: Nonconcur. See response to A. 3. 4.

* Revised and consolidated into Recommendation 3.

We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense Agencies to:

Final Report Reference

Recommendation C. 1. Establish internal control procedures and practices that will ensure that contract reporting requirements of Defense Federal Acquisition Regulation 4.6 are met for future interagency acquisitions made through the Library of Congress. These internal control procedures and practices should include steps to ensure that future interagency acquisitions are made through DoD procurement offices. *

ASD(P&L) position: Nonconcur. When the Library of Congress, or any other agency, places an order or other contract action on behalf of the DoD under its contract/BOA, that agency assumes the responsibility for reporting the transaction, not the DoD. It should be noted that the DFARS reporting system does not apply to Congressional Agencies. If the DoD contracting office places the order or other contract action, it assumes the responsibility of reporting in the DD 350 system by using codes 7 or 8 under DFARS 204.6, as appropriate. Implementation of Recommendation A. 1. should address the steps to ensure future interagency acquisitions are made through DoD procurement offices.

Recommendation C. 2. Report and track the material weaknesses identified as required by DoD 5010.38, "Internal Management Control Program." *

ASD(P&L) position: Nonconcur. See response to A. 3. *

* Recommendation deleted.

DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, D.C. 20360-5000

1 NOV 1989

MEMORANDUM FOR DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL (AUDITING)

Subj: DRAFT REPORT ON THE AUDIT OF CONTRACTING THROUGH INTERAGENCY AGREEMENTS WITH THE LIBRARY OF CONGRESS (PROJECT NO. 9CA-5009)

Encl: (1) Navy Comments on Subject Draft Report

The subject draft report has been reviewed. We concur in general with the findings and recommendations. Navy corrective action will be addressed to the broader issue of interagency transfers of funds; it will include but not be limited to contracting with the Library of Congress.

Enclosure (1) provides additional information on the Navy's plan to correct problems of the type identified by the subject report. Questions or comments should be directed to Mr. Joseph Sousa, 692-4672/3.

Frank Swofford

FRANK W. SWOFFORD
By Direction of the Secretary of the Navy

Copy to:
NAVINSGEN
NCB-53
NAVAIR IG
NAVSUP IG
Naval Reserve Force
MSC IG

Final Report Reference

Navy Comments on DoDIG Draft Report on Contracting through Interagency Agreements with the Library of Congress

1.

Recommendation A(1):

1. Establish internal control procedures and practices to minimize the risk that orders for interagency acquisitions will be placed by unauthorized DoD program officials. These internal control procedures and practices should include steps to ensure that no funds are transferred to the Library of Congress for interagency acquisitions without obtaining approval from the authorized DoD officials denoted in FAR/DFARS 17.502.

Navy Position:

Concur with the recommendation. The Navy has independently identified additional unauthorized interagency acquisitions. We have determined that internal control procedures and practices are needed to minimize risk over all interagency acquisitions, not solely those with the Library of Congress. An important initial step has been taken; all interagency acquisitions involving automatic data resources now require approval by legal counsel (see Attachment 1). Additional action will include (i) alerting cognizant personnel of the need to follow statutory and regulatory requirements in interagency acquisition; (ii) issuing a SECNAV instruction requiring activities to establish appropriate financial and managerial controls; and (iii) monitoring activity implementation as a special interest item through at least one Procurement Management Review cycle. Action is anticipated to be completed as set forth in Attachment 2.

2.

Recommendation A(2):

2. Initiate appropriate training and consider disciplinary action for the program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. This should apply to those actions disclosed by this report and those likely to be disclosed when the recommendations on contract administration in Finding B. are implemented.

Navy Position:

Concur with the recommendation. Lack of understanding of the regulations appears to be the principal reason for the actions disclosed by the report. Program officials throughout the Navy need a better understanding of the correct way to utilize interagency agreements. The Navy plans to alert program and other cognizant officials of the regulations, as discussed in the response to A(1) above. Disciplinary action will be taken where appropriate, giving consideration to the obscurity and lack of clarity of our regulations governing interagency transfers.

Recommendation A(3):

3. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." 4.

Navy Position:

Concur. Have implemented. See Attachment 2.

Recommendations B(1-4): *

We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense agencies to:

1. Establish arrangements with the Library of Congress for the cognizant DoD contract administration office to perform contract administration functions for all existing and future interagency acquisitions placed through the Library of Congress.

2. Establish arrangements with the Library of Congress to ensure that the Library does not make further contractor payments until a certification is received from the cognizant DoD contract administration official that the required contractor work has been performed or equipment delivered.

3. Ensure that interagency agreements for procurement placed through the Library of Congress that exceed $500,000 and procurements for lesser amounts where warranted, which were awarded on a cost-type, time and material, or labor-hour reimbursement basis, are not closed by the Library of Congress until the Defense Contract Audit Agency performs an independent audit to verify the incurrence of the costs and hours claimed.

4. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program."

Navy Position:

The Navy agrees that action is necessary to ensure that DoD contracting through interagency agreement is properly administered. Since contract administration in DoD has been centralized, we cannot concur that the individual services should each take action to resolve the problem. The contract administration procedures with Library of Congress and other civilian agencies should be established by OSD/DLA for all the services.

* Revised and consolidated into Recommendation 3.

We suggest that DLA consider establishing a program of monitoring the effectiveness of civilian agency administration of interagency contracts with DoD, and publish in the DFAR a list of agencies which have adequate administrative controls. It would then be practicable for cognizant officials to ensure that suitable contract administration resources were available prior to entering into an interagency agreement.

Recommendations C(1-2) *

1. Establish internal control procedures and practices that will ensure that contract reporting requirements of Defense Federal Acquisition Regulation 4.6 are met for future interagency acquisitions made through the Library of Congress. These internal control procedures and practices should include steps to ensure that future interagency acquisitions are made through DoD procurement offices.

2. Report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program."

Navy Position:

Concur. Our action in response to the recommendations in Section A of the report will ensure that DD350 reporting required by existing regulation will be accomplished. We do not propose to treat the inadequate DD350 reporting as a separate internal control weakness, because it appears directly related to the problem of issuance of orders by unauthorized officials.

An additional control worth considering would be to require agencies, federally funded research and development centers and other activities accepting interagency transfers to ensure that only work which is within or at least closely related to their mission is accepted. If the Library of Congress had adhered to this principle, the problems cited in the report would not have occurred. This control could best be initiated at the OSD level, as it would require cooperation of numerous DoD activities and civilian agencies.

* Recommendations deleted.

DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, D.C. 20350-1000

28 AUG 1989

MEMORANDUM FOR DISTRIBUTION

Subj: ENHANCING COMPETITION IN THE ACQUISITION OF AUTOMATIC DATA PROCESSING (ADP) RESOURCES

Ref: (a) SECNAV Memorandum of 6 June 1989, "Acquisition of Automatic Data Processing Resources" (NOTAL)
(b) DONIRM Memorandum 5230, DONIRM(C) No. 442 of 17 July 1989 (NOTAL)
(c) Navy Acquisition Procedures Supplement (NAPS) 7.103(d)(3)
(d) NAPS 7.103(g)(90)

Encl: (1) Acquisition Plan format for commercially available ADP hardware
(2) Format for Competition Briefing Paper
(3) Format for Documenting Action Taken in Response to Vendor Comments

Reference (a) requires increased communication with industry to maximize effective competition in ADP procurement. Reference (b) implements reference (a) requirements under ASN(FM) cognizance. To complete the implementation of reference (a), I direct the following, effective 1 October 1989:

a. Acquisition Plans (APs)

The exemption from the requirement for APs included in reference (c) for ADP resources managed under SECNAVINSTs 5231.1 and 5236.1 is canceled. APs are now required to be approved prior to formal solicitation issuance for all ADP resources with acquisition cost meeting or exceeding the following thresholds:

(i) Commercially available ADP hardware - $5,000,000 contractual cost for all years (ASN(S&L) approval required: see enclosure 1)

(ii) Other ADP resources - $5,000,000 in any one year; or $15,000,000 for all years (approval in accordance with reference (d))

b. Competition Briefing Paper

A "Competition Briefing Paper" utilizing the format of enclosure (2) shall be prepared for all procurements of commercially available ADP hardware costing $300,000 or more for which an acquisition plan is not required.

It shall be reviewed by the activity Competition Advocate to ensure action has been taken to maximize full and open competition.

c. Draft RFPs/Specification Review Conferences

Draft requests for proposal (RFPs), pre-solicitation conferences, and specification review conferences are encouraged for all negotiated solicitations with a commercially available hardware cost of $300,000 or more, unless the Contracting Officer determines that their use will not enhance competition.

d. Site Plans

Solicitations for commercially available hardware with an expected cost of over $100,000 shall contain a current site plan setting forth the ADP hardware in use, and describing available power, heating, air conditioning, operating software, and other pertinent site information. This requirement does not apply if the hardware is to be distributed over numerous sites.

e. Correcting Restrictive Specifications

The contracting activity's Competition Advocate and the Contracting Officer will be responsible for ensuring that offerors' comments regarding restrictive specifications are fully considered, and that action taken is appropriately documented. Enclosure (3) is a suggested format for summarizing this information.

f. Combining Requirements

Requiring activities, contracting officers, and review/approval authorities shall take full advantage of opportunities to save money by combining requirements.

g. Economy Act Procurements

A written determination by legal counsel that each proposed interagency purchase of ADP resources is compliant with the Brooks Act and the Competition in Contracting Act shall be obtained prior to approval of the funding document.

I expect the Navy to be a model of fairness in ADP acquisition.

Frank Swofford

FRANK W. SWOFFORD
By Direction of the Secretary of the Navy

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, DC 20000-0000

17 OCT 1989

MEMORANDUM FOR DIRECTOR OF ADMINISTRATIVE SERVICES

Subj: FY89 MANAGEMENT CONTROL PROGRAM STATUS REPORT

The following is provided for inclusion in the FY 89 Management Control Program Annual Certification Statement.

A. Accomplishments:

(1) Title: Procurement Management Reviews (PMRs)

Source: Self assessment

Description: During FY 89 we conducted two special Procurement Management Reviews (PMRs): (1) Navy Public/Private Competitive Procurement Processes and (2) Contracting Via Navy Laboratories and Federally Funded Research and Development Centers. The four triennial reviews of major buying commands originally planned for FY 89 had to be rescheduled to FY 90 due to PMR team member direct, full time involvement in support of "Operation Ill Winds".

(2) Title: Consolidation and reduction of Navy acquisition regulations

Source: Self assessment

Description: In April 1989 the Navy Acquisition Procedures Supplement (NAPS) was issued to replace and cancel the Navy Acquisition Regulation Supplement (NARSUP) and the Supply Acquisition Regulation Supplement (SUPARS). The NAPS was formatted in the FAR format to facilitate its use. The NAPS is 108 pages in length as compared to over 450 pages of the NARSUP.

B. Material Weaknesses:

1. Title: Inadequate controls on contracting via interagency agreements

2. Source: (a) PMR report to SECNAV: "Contracting through Navy Laboratories and use of Federally Funded Research and Development Centers" of July 1989
(b) Draft DoDIG report 9CA-5009: "Audit of Contracting through Interagency Agreements with the Library of Congress" of 23 Aug 88
(c) Other PMR observations and findings

3. Description: DFARS 17.502(a) currently requires a contracting officer determination that interagency transfer is the appropriate method of contracting. Many Navy program program officials are unaware of this and other FAR/DAR requirements governing interagency agreements. As a result, adequate competition has not been obtained, obligations have not been accurately recorded in the DD350 system, and numerous other irregularities have occurred.

4. Corrective Action: (a) Issue an alert to all program officials and contracting officers advising them of the need to ensure compliance with statutory and regulatory requirements governing interagency acquisition.

Milestones:	Completion Date
Submit to ASN(S&L) for signature	15 Dec 1989
Sign, distribute	1 Jan 1990

(b) Issue SECNAV instruction on interagency acquisition, requiring activities to establish appropriate financial and other controls.

Milestones:	Completion Date
Prepare draft instruction	1 Apr 1990
Circulate draft	1 Aug 1990
Incorporate comments, issue instruction	30 Oct 1990

(c) Make implementation of DoD/Navy policy on interagency transfers a special interest item for at least one PMR cycle.

Milestone:	Completion Date
Issue memorandum to all Navy activities with PMR function, alerting them to the additional special interest item.	21 Jan 1990 (dependent on completion of (a) above)

C. FY 90 Planned Management Control Initiatives:

(1) A complete re-certification of the Navy procurement system to the Secretary of Defense is scheduled for fall/winter. This will encompass a self assessment by all levels within the Navy's procurement system as to compliance with criteria established by the Office of Federal Procurement Policy and the Deputy Assistant Secretary of Defense for Procurement.

(2) An on-going review of acquisition regulations, directives and policies which may be hindering the acquisition process will be completed. The results are anticipated to be a reduction, consolidation or clarification of acquisition regulations which impact the Navy's acquisition process thereby improving the acquisition management process.

ERNEST G. CAMMACK
Director
Contracts & Business Management

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330-1000

OFFICE OF THE ASSISTANT SECRETARY

NOV. 14 1989

Final
Report
Reference

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

SUBJECT: Draft Report on the Audit of Contracting Through Interagency Agreements with the Library of Congress (Project No. 9CA-5009, Aug 23, 1989) - INFORMATION MEMORANDUM

This is in reply to your memorandum for Comptroller of the Air Force requesting comments on the findings and recommendations made in subject report. With the exception of finding C., Contract Reporting Requirements, the Air Force concurs with the report and will be instituting corrective action to prevent recurrence. Specific comments are provided below.

Reference Finding A., DoD Procurement Channels Bypassed: *

a. The Air Force concurs with this finding and recommendation for corrective action. The Air Force will prepare a message notifying both our contracting and finance offices of the requirements of FAR 17.5. We will also begin revising applicable guidance and regulations to prevent monies being transferred for interagency acquisitions without proper authority.

b. Additionally, per recommendation A. 2., we are providing a copy of this audit report to the Air Force Inspector General (AF/IG) and requesting their opinion as to whether any disciplinary action should be taken against Air Force officals. 2.

c. Estimated completion date for implementation of new procedures is February 28, 1990. Estimated date to contact the AF/IG is December 15, 1989.

Reference Finding B., Contract Administration, the Air Force concurs with this finding and recommendation. We will ensure the recommended actions and training are incorporated into the corrective items identified in finding A. Estimated completion date for implementation of new procedures is February 28, 1990. *

* Consolidated into one Finding.

*

Reference Finding C., Contract Reporting Requirements:

a. The Air Force does not concur with this finding or recommendation.

b. The statement "In our opinion, the best method to correct the substantial underreporting that has been found is to ensure that all future interagency acquisitions are made through DoD procurement offices," indicates a misunderstanding of the action required by the initiating activity. DFARS 217.502 designates the contracting officer as the designee of the head of the requesting agency to approve the determination required by FAR 17.502 and 17.503. In addition, when the interagency acquisition requires the servicing agency to award a contract, that agency is responsible for compliance with all legal and regulatory requirements applicable to the contract (FAR 17.504 (d)).

c. DFAR 204.671-2 states "The DD Form 350 is used to collect data on contract placement statistics within DoD", for individual contract actions over $25,000. Even if a DoD contracting officer IAW FAR 17.503 had approved the interagency acquisition, the transfer of monies between Federal agencies does not constitute a contract action and does not require a DD 350 report. Per FAR 4.6, Contract Reporting, it is the responsibility of the contracting officer conducting the actual acquisition to prepare a report for the Federal Procurement Data System (FPDS). In the case of a contract awarded by the Library of Congress, a SF 279, Federal Procurement Data Systems (FPDS), Individual Contract Action Report, must be completed by the cognizant Contracting Officer.

d. If tracking of DoD monies obligated by contracts written by agencies outside the DoD is desired, suggest the SF 279 be modified to include a field to capture that data.

We appreciate the opportunity to comment on the subject draft report. We understand that your office has already received * comments concerning Finding C and will be revising it appropriately. If your staff has any questions concerning the above, or require additional information, please have them contact Major Chip Mather, SAF/AQCO, at extension 46105.

DANIEL S. RAK
Deputy Assistant Secretary
(Acquisition Management & Policy)

* Finding deleted.

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22304-6100

IN REPLY REFER TO DLA-CI

10 OCT 1989

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: Draft Report on the Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

This is in response to your 23 Aug 89 memorandum requesting our comments pertaining to the audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009). The attached positions have been approved by Mr. William J. Cassell, Comptroller, Defense Logistics Agency.

FOR THE DIRECTOR:

8 Encl

for Stephen J. Zavada, Jr.
REATHEA E. HOLMES
Chief, Internal Review Division
Office of Comptroller

cc:
OASD(P&L) (Phil Degen)

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89 Final Report Reference

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

FINDING A: DoD Procurement Channels Bypassed. DoD program officials exceeded their authority by not obtaining the approval of DoD procurement officials in placing orders for interagency acquisitions through the Library of Congress. This condition occurred primarily because internal control practices were not adequate to ensure compliance with Defense and Federal Acquisition Regulations' requirements, which limited the authority to approve interagency acquisitions to DoD contracting officers and certain designated senior DoD officials. As a result, DoD program officials did not obtain the expertise available from DoD procurement professionals in placing interagency acquisitions with the Library of Congress. This resulted in possible excessive contract prices due to the failure by these DoD program officials to adhere to several Defense and Federal Acquisition Regulations' requirements. These included requirements for competition, sole source justifications, obtaining certified cost and pricing data, and cost and price analysis. The lack of adequate internal controls also increased the susceptibility of these procurements to fraud, abuse, and mismanagement.

DLA COMMENTS: Concur. The 'approvals' which the report states were not obtained are those covered in subsection 17.502 and 17.503 of the Federal Acquisition Regulation (FAR). These approvals are obtained by the signing of Determinations and Findings (D&Fs) by an agency head or his/her designee certifying that the conditions entering into interagency acquisitions (including interagency agreements) under the authority of the Economy Act (stated in FAR Subpart 17.5) have been met. The DoD Supplement to the FAR (DFARS) delegates this approval authority to the 'contracting officer,' but does not indicate whether this individual is located in the requesting or servicing agency. This, in absence of a specific delegation by a DoD agency head to someone within his/her organization, causes confusion to exist as to which contracting officer is responsible for D&F approvals. This is likely to be the primary reason for the lack of approvals for the interagency agreements reviewed by the DoD IG. One way to remedy this confusion would be to amend the DFARS to either clarify which agency the approving contracting officer is within or to delete the current coverage and require adherence to the FAR agency head or designee criteria.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

 * Consolidated with draft Finding B into one Finding.

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

PURPOSE OF INPUT: INITIAL POSITION

Final Report Refere

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

RECOMMENDATION A.1.: We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense agencies to establish internal control procedures and practices to minimize the risk that orders for interagency acquisitions will be placed by unauthorized DoD program officials. These internal control procedures and practices should include steps to ensure that no funds are transferred to the Library of Congress for interagency acquisitions without obtaining approval from the authorized DoD officials denoted in FAR/DFARS 17.502. 1.

DLA COMMENTS: Concur. However, the contracting office of the Library of Congress shares some responsibility for ensuring all requirements of the FAR are met before placing the order for goods and services. DoD program officials are not procurement specialists and were required to provide only what the Library of Congress contracting office needed to get the work done. If the LOC contracting officer did not require specific approval by the requesting agency's contracting officer, it would seem that the burden of neglect rests with the LOC and not the DoD program official.

DISPOSITION:
( ) Action is ongoing; Final Estimated Completion Date:
(X) Action is considered complete.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

PURPOSE OF INPUT: INITIAL POSITION

Final Report Referenc

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

RECOMMENDATION A.2.: We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense agencies to initiate appropriate training and consider disciplinary actions for the program officials who exceeded their authority by placing orders for interagency acquisitions with the Library of Congress. This should apply to those actions disclosed by this report and those likely to be disclosed when the recommendations on contract administration in Finding B are implemented. 2.

DLA COMMENTS: Partially concur. Concur with educating program officials on the do's and don'ts for interagency acquisitions of contractor support. Do not recommend disciplinary actions be made across the board. Authority guidelines to enter into agreements outside the DoD are vague. The IG report does not reference any regulatory documents and clauses pertaining to interagency agreements, but only addresses interagency acquisitions. The IG, as the report is written, assumes that DoD program officials should know all provisions of the FAR and DFAR. Contracting arrangements were made through agreements and should not have been permitted by the LOC. Disciplinary actions should be limited to only those who knowingly falsified information to obtain contractor support through the LOC.

DISPOSITION:
( ) Action is ongoing; Final Estimated Completion Date:
(X) Action is considered complete.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

PURPOSE OF INPUT: INITIAL POSITION

Final Report Referenc

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

RECOMMENDATION A.3.: We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense agencies to report and track the material weaknesses identified as required by DoD Directive 5010.38, "Internal Management Control Program." 4.

DLA COMMENTS: Concur. The report on page 3 states "the Library of Congress has initiated action to stop further contracting under FEDLINK for (those) types of equipment and purchases and services" subject of the IG's review. If this is true, then DoD cannot misuse the FEDLINK system. The material weakness lies in the improper use of interagency agreements wherein the scope is so broad that quick procurements can be made under existing contracts with that agency rather than going through a lengthy procurement cycle.

DISPOSITION:
( ) Action is ongoing; Final Estimated Completion Date:
(X) Action is considered complete.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

PURPOSE OF INPUT: INITIAL POSITION

Final Report Reference

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

FINDING B: Contract Administration. Contract awards made through the Library of Congress FEDLINK procurement program were not administered effectively. This situation occurred because interagency agreements with the Library of Congress did not clearly specify responsibilities for performing contract administration duties and the Library of Congress was ill-equipped, lacking the resources required to administer effectively major contracts for the DoD. This situation occurred also because DoD program officials did not use the expertise available from DoD procurement and contract administrative personnel. As a result, the Library of Congress made contract payments without any assurance that the DoD had received contracted supplies and services. In addition, a significant increase in a contractors time and material labor rates was accepted during contract performance with no review to assess their reasonableness; and no audits or other independent reviews were performed to verify claimed labor hours under time and material type contracts and claimed costs under cost-reim bursement type contracts. *

DLA COMMENTS: Concur. The responsibility to arrange for effective contract administration and proper pricing of orders placed under contracts used to support the interagency agreements is clearly that of the contracting officer in the servicing contracting office. The policies and procedures for carrying out this responsibility are clearly and amply stated in the FAR and DoD or agency supplements thereto. The problem in this case seems to reside primarily in a lack of contracting officer accountability for compliance with existing rules of procedure.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

* Consolidated with draft Finding A into one Finding.

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

Final Report Reference

RECOMMENDATION B.1.: We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense agencies to establish arrangements with the Library of Congress for the cognizant DoD contract administration office to perform contract administration functions for all existing and future interagency acquisitions placed through the Library of Congress. *

DLA COMMENTS: Concur. Delegation of contract administration functions is a responsibility of the servicing contracting officer under rules prescribed in FAR Subpart 42.2. Also, the DoD entity benefiting from the contracted services generally has program management responsibility, and can arrange with the contracting officer to have one of their qualified personnel appointed as the contracting officer's representative (COR) for technical and financial oversight of the contract proceedings. It appears that a primary cause of the contract administration deficiencies cited is more one of accountability with respect to contracting officer compliance with governing rules of procedure than a lack of governing rules.

DISPOSITION:
( ) Action is ongoing; Final Estimated Completion Date:
(X) Action is considered complete.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

* Revised and consolidated into Recommendation 3.

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

Final Report Reference

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

FINDING C: Contract Reporting Requirements. DoD contracting activity through the Library of Congress was not included in the DoD contract reporting system as required by Defense Federal Acquisition Regulation 4.6. This underreporting resulted from DoD procurement channels being bypassed by DoD program officials in placing interagency acquisitions for contracted services and supplies through the Library of Congress. As a result, internal DoD reports of contracting activity, as well as reports to the President, the Congress, and the general public, were not accurate and complete. This reduced the effectiveness of these reports for managing, controlling, and assessing the effectiveness of DoD acquisition policy and for assessing the impact of DoD contracting on the Nation's economy. *

DLA COMMENTS: Concur.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

* Finding deleted.

TYPE OF REPORT: AUDIT DATE OF POSITION: 27 Oct 89

PURPOSE OF INPUT: INITIAL POSITION

Final Report Reference

AUDIT TITLE AND NO.: Audit of Contracting through Interagency Agreements with the Library of Congress (Project No. 9CA-5009)

RECOMMENDATION C.1.: We recommend that the Under Secretary of Defense for Acquisition direct the Army, Navy, Air Force, and Defense agencies to establish internal control procedures and practices that will ensure that contract requirements of Defense Federal Acquisition Regulation 4.6 are met for future interagency acquisitions made through the Library of Congress. These internal control procedures and practices should include steps to ensure that interagency acquisitions are made through DoD procurement offices. *

DLA COMMENTS: Partially concur. DFARS 4.6 pertains only to the reporting of contractual actions by DoD contracting offices. New FAR coverage will be required to capture actions performed by non DoD offices. Further, any requirement for use of specific contracting offices should be placed as coverage in DFARS, Part 8, "Required Sources of Supplies and Services," vice Subpart 4.6. We believe that a restriction on the agency head's authority to utilize the contracting office that in his/her judgement can best meet the needs of the Government is an unwarranted infringement of the rights granted by the Economy Act. Accordingly, we recommend that the focus of any needed improvements be placed on compliance with FAR Subpart 17.5 criteria.

DISPOSITION:
( ) Action is ongoing; Final Estimated Completion Date:
(X) Action is considered complete.

MONETARY BENEFITS: None.
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Frank Bokowski, DLA-LR, 46295, 23 Oct 89

DLA APPROVAL: William J. Cassell

* Recommendation deleted.

Final
Report
Referenc

AMCPP-PP (SFRD-RP/20 Sep 89) (715) 1st Ind Ms. D. Pomerich/kd/274-8697
SUBJECT: IG Draft Report 9CA-5009: Federal Library and Information Network (FEDLINK) Contracts

Commander, U.S. Army Materiel Command, ATTN: AMCPP-PP, 5001 Eisenhower Ave., Alexandria, VA 22333-0001 18 OCT 1989

FOR HQDA (SFRD-RP), WASH DC 20310-0103

1. The U.S. Army Materiel Command has taken specific actions with regard to the use of the FEDLINK contracting mechanism which we believe to have been effective. However, the larger issue of the consistent assignment of an Army contracting office for each Army requisition remains unresolved. The following observations are offered to help with your formulation of Army policy on this policy question.

a. DOD Procurement Channels Bypassed. While we agree that the delegations in DFARS 217.502 were not observed by the audited requiring activities, some of the fault must lie with a poorly written regulation. The very fact that an interagency transfer has taken place presupposes that no DOD contracting officer has been assigned cognizance over the action. Delegating approval authority to this nonexistent contracting officer does not appear to be well thought out. This points out the more significant failing of our current system - i.e., that there is no clear assignment of cognizance between requiring activities and contracting offices. Other than DFARS 217.502 there is no Army or DOD guidance which limits requiring activities in their selection of a contracting office. This is an issue which cannot be addressed by Procurement alone. While we can restrict the nature of the work our subordinate offices can accept, there is no corresponding mechanism requiring work to be sent to them. *

b. Contract Administration. While the fault here appears to be more with the Library of Congress than with DOD, we nonetheless have a duty to ensure DOD funds are expended prudently. Consideration should be given to publishing sample interagency agreements which adequately address the issue of assignment of responsibilities. *

c. Contract Reporting Requirements. We are concerned that the DOD IG's interpretation of DFARS 204.6 with regard to DD Form 350 reporting is incorrect. DFARS 204.671-3(b) states that a "DD Form 350 shall be prepared for each contracting action obligating or deobligating more than $25,000 which is executed by a Component of the Department of Defense ...." An interagency transfer is not, strictly speaking, a contracting action (defined at DFARS 204.670-2). Funds are not obligated or deobligated by a component of the DOD, but rather by the recipient of the transfer. If the reporting were accomplished as proposed by the DOD IG (i.e., counting a transfer as an **

* Findings consolidated into one Finding.
** Finding deleted.

AMCPP-PP
SUBJECT: IG Draft Report 9CA-3009: Federal Library and Information Network (FEDLINK) Contracts

obligations) then it is foreseeable that both DOD and the transfer recipient would report the same funds as obligations, resulting in double counting to Congress.

2. Point of contact is Ms. D. Emmerich, AMCPP-PP, 274-8697.

FOR THE COMMANDER:

SIGNED

Encl
as

NICHOLAS R. MURST
Brigadier General, USA
Deputy Chief of Staff
for Procurement

a:fedlink.doc

D. Emmerich/48304/kd/AMCPP-PP_____

AMCPP-P _____

DJ_____

AMCPP _____

PP-2418

HSAA-PA (SFRD-KP/20 Sep 89) (715) 1st End Mrs. McMahon/lrh/ Final
AV 471-2075 Report
SUBJECT: IG Draft Report 9CA-5009; Federal Library and Information Network (FEDLINK) Contracts Referer

HQ, U.S. Army Health Services Command, Fort Sam Houston, TX 78234-6000 18 [illegible]

FOR HQDA (SFRD-KP), WASH DC 20310-0103

1. Our 1 June 1989 correspondence only described internal management approval procedures for using FEDLINK contracts and did not address the magnitude of concerns identified in subject report. The responsibility for contract administration of the U.S. Army Health Care Systems Support Activity (HCSSA) contract discussed in the report was transferred to the Directorate of Contracting, Fort Sam Houston.

2. We do not concur with the recommendation for disciplinary action against HCSSA program officials. Information available indicates that these officials acted in good faith and there is no evidence in the report that there was intentional wrongdoing. 2.

3. The U.S. Army Health Care Systems Support Activity requested services which were within the scope of existing contracts through the Library of Congress (LOC). The U.S. Army Health Care Systems Support Activity program officials relied in good faith on the LOC contracting office to ensure compliance with all laws and regulations in obtaining services through their own contracts. This is consistent with Federal Acquisition Regulation (FAR) 17.504 which places this responsibility on the servicing agency. The FAR does not clearly set forth requesting agency responsibilities. Even if Department of Defense (DOD) contracting officials were consulted, as recommended in the report, information would not be available to determine the adequacy of contract arrangements made by another Federal agency, such as the propriety of sole source justifications, the extent of competition obtained, or the adequacy of cost and pricing data.

4. We do not agree that interagency transfers of funds should be included in the DOD contract reporting system. The Federal Procurement Data System (FPDS) applies to Federal agencies; and pursuant to FAR 4.602, the contract transactions between the LOC and private contractors should have been reported on SF 279, FPDS, Individual Contracting Action Report. The interagency transfers of funds were not considered "contracting actions" or "orders under another agency's contract" as stated in the draft report. The program officials were transferring funds to another Federal agency for establishing contract arrangements. They were not placing orders directly with the private contractors. The reporting categories provided in *

* Recommendation deleted.

18 OCT 89

HSAA-PA
SUBJECT: IG Draft Report 9CA-5009; Federal Library and Information Network (FEDLINK) Contracts

DOD FAR Supplement (DFARS) 204.671-5, Item, B-13, do not include a code for this situation since Code 7 is for orders against another Federal agency's contract, and Code 8 is an action with another Federal agency where the Federal agency is acting as the contractor. Neither of those situations existed; therefore, reporting these transactions on the DD Form 350, Individual Contracting Action Report, as if they were DOD contracting actions, would duplicate reports which were (or should have been) prepared by the LOC contracting office.

5. The HCSSA transactions addressed in subject report were accomplished through interagency agreements and interagency transfers of funds to the LOC. The relationship between contracting and finance regulations concerning interagency agreements is not clear. Federal Acquisition Regulation 17.502 requires the agency head or a designee to determine that proposed actions under the Economy Act are in the government's interest. Department of Defense FAR Supplement 217.502 states that the agency head designee "within DOD is the contracting officer unless otherwise directed by departmental regulations." Army finance regulations, such as AR 37-1, AR 37-12, and AR 37-27, allow financial management personnel to transfer funds to other Federal agencies without requiring a contracting officer's determination that proposed action is in the government's interest. "Departmental regulations" could be interpreted as being financial regulations; therefore, revisions to finance regulations are needed to clearly require contracting officer determinations before funds are transferred.

6. We will continue to look closely at requests for services from or through the LOC. Also, this draft report will be used as a "lesson learned" for program officials involved in contracting matters.

FOR THE COMMANDER:

Encl
wd

GEORGE H. WAHL
Colonel, MS
Chief of Staff

AUDIT TEAM MEMBERS

Lawrence H. Weintrob, Director, Contract Management Directorate
Richard B. Jolliffe, Program Director
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