Audit Report

OFFICE OF THE INSPECTOR GENERAL

SOLE-SOURCE JUSTIFICATIONS FOR DOD-SPONSORED FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

Report No. 94-012 November 4, 1993

Department of Defense

Additional Copies

Copies of the report can be obtained from the Secondary Reports Distribution Unit, Audit Planning and Technical Support Directorate (703) 614-6303 (DSN 224-6303).

The following acronyms are used in this report.

C^3I.....Command, Control, Communications, and Intelligence
CECOM.....Army Communications-Electronics Command
CICA.....Competition in Contracting Act
CNA.....Center for Naval Analyses
DDR&E.....Director, Defense Research and Engineering
DSS-W.....Defense Supply Service-Washington
FAR.....Federal Acquisition Regulation
FFRDC.....Federally Funded Research and Development Center
IDA.....Institute for Defense Analyses
LMI.....Logistics Management Institute
MIT.....Massachusetts Institute of Technology
NDRI.....National Defense Research Institute
OFPP.....Office of Federal Procurement Policy
OSD.....Office of the Secretary of Defense
SEI.....Software Engineering Institute

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

November 4, 1993

MEMORANDUM FOR DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARY OF DEFENSE (COMMAND, CONTROL, COMMUNICATIONS AND INTELLIGENCE)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, ADVANCED RESEARCH PROJECTS AGENCY
DEPUTY UNDER SECRETARY OF DEFENSE (LOGISTICS)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Sole-Source Justifications for DoD-Sponsored Federally Funded Research and Development Centers (Report No. 94-012)

We are providing this final report for your information and use. The audit was requested by the Administrator, Office of Federal Procurement Policy, and House Report No. 102-95, "Department of Defense Appropriations Bill, 1992." This is the second in a series of reports on DoD-sponsored federally funded research and development centers. Management comments to a draft of this report were considered in preparing the final report.

Based on management comments, we revised, added, and deleted recommendations. DoD Directive 7650.3 requires that all recommendations be resolved promptly. We request the Director, Defense Research and Engineering, to provide comments on Recommendation 1. and the Navy to provide comments on Recommendation 3. and the monetary benefits by January 4, 1994.

We appreciate the courtesies extended to the audit staff. If you have any questions on this final report, please contact Mr. Garold E. Stephenson, Program Director, at (703) 692-3179 (DSN 222-3179) or Mr. John M. Gregor, Project Manager, at (703) 692-3205 (DSN 222-3205). The distribution of the report is listed in Appendix T.

Robert J. Lieberman

Robert J. Lieberman
Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 94-012 **November 4, 1993**
(Project No. 1CH-5012.02)

SOLE-SOURCE JUSTIFICATIONS FOR DOD-SPONSORED FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

EXECUTIVE SUMMARY

Introduction. On March 12, 1991, the Administrator, Office of Federal Procurement Policy (OFPP), requested that selected Inspectors General determine whether sponsoring agencies were complying with OFPP Letter 84-1, "Federally Funded Research and Development Centers (FFRDCs)." On September 16, 1992, the Administrator, OFPP, further requested that the Inspectors General assess the adequacy of the sole-source renegotiation justifications for sponsored FFRDCs. House Report No. 102-95, "Department of Defense Appropriations Bill, 1992," likewise requested the Inspector General, DoD, to review the use of FFRDCs.

OFPP Letter 84-1, as implemented by Federal Acquisition Regulation 35.017, "Federally Funded Research and Development Centers," provides Government-wide policy for the establishment, use, periodic review, and termination of FFRDCs. The policy requires agencies to rely on existing Government research activities and private industry when practicable to satisfy special research or development requirements. DoD sponsors a total of 11 FFRDCs costing about $1.5 billion annually.

Objectives. The objectives of the audit that relate to the OFPP requests were to determine whether DoD sponsors were performing adequate reviews of the need for their FFRDCs, to determine the adequacy of the sole-source renegotiation justifications for the FFRDC contracts, and to evaluate applicable internal controls. A future report will address the remainder of the requested work from the OFPP and the House Committee on Appropriations request.

Audit Results. DoD sponsors did not perform adequate reviews and did not document the special technical needs and mission requirements for the 10 FFRDCs. As a result, the bases for the most recent sole-source contracts to the FFRDCs were not adequate. In addition, the Navy was using field analysts from the Center for Naval Analyses without determining whether that was the most efficient and effective use of resources.

Internal Controls. DoD sponsors did not follow established policies and procedures for performing comprehensive reviews of FFRDCs and justifying renewal of their sole-source contracts. We

consider the weakness to be material. See Part I for a summary of internal controls reviewed and Part II for details of the weakness.

Potential Benefits of Audit. Benefits should result from better reviews of the need for FFRDCs. However, we could not quantify those monetary benefits. About $6.2 million of costs could be eliminated if the Navy replaced the 41 Center for Naval Analyses field analysts with in-house personnel. The potential benefits of the audit are described in Appendix R.

Summary of Recommendations. We recommended that DoD perform new comprehensive reviews, establish procedures and criteria for the reviews, curtail renewal of contracts pending new reviews, and perform cost and effectiveness analyses on the use of Center for Naval Analyses field analysts.

Management Comments. The Deputy Director, Defense Research and Engineering; the Deputy Assistant Secretary of Defense (Strategic and Tactical Command, Control, and Communications); the Office of the Assistant Secretary of Defense (Production and Logistics) (now Office of the Deputy Under Secretary of Defense (Logistics); the Army; the Navy; the Air Force; and the Director, Advanced Research Projects Agency, did not agree that prior comprehensive reviews and justifications for the sole-source FFRDC contracts were inadequate. They agreed that a need existed to improve the process for comprehensive reviews and to either perform or plan new reviews. The Navy disagreed that Center for Naval Analyses field analysts' effort could be converted to in-house work. The Director of Defense Procurement disagreed with a recommendation to require synopsizing FFRDC requirements.

A discussion of the responsiveness of management comments on the recommendations is in Part II of the report. A discussion of comments on the finding and evaluations of comprehensive reviews is in Part III of the report. The complete text of management comments is in Part IV of the report.

Audit Response. Based on management comments, we revised four report recommendations. Further, we deleted the recommendation on synopsizing requirements and added a recommendation on clarifying the role of the Director, Defense Research and Engineering, in sponsor comprehensive reviews. Comments are requested from the Director, Defense Research and Engineering, and the Assistant Secretary of the Navy (Research, Development, and Acquisition) by January 4, 1994.

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	i
PART I - INTRODUCTION	
Background	1
Objectives	2
Scope	3
Internal Controls	4
Prior Audits and Other Reviews	4
PART II - FINDING AND RECOMMENDATIONS	
Basis for Sole-Source Contract Renewals	5
PART III - ADDITIONAL INFORMATION	
APPENDIX A - Federally Funded Research and Development Center Primary Sponsors and Funding Ceilings	25
APPENDIX B - Office of Federal Procurement Policy Letter 84-1, "Federally Funded Research and Development Centers"	27
APPENDIX C - Federal Acquisition Regulation 35.017, "Federally Funded Research and Development Centers"	35
APPENDIX D - Office of Federal Procurement Policy Requests for Audit	39
APPENDIX E - Summary of Prior Audits and Other Reviews	43
APPENDIX F - Sole-Source Renegotiation Justifications	49
APPENDIX G - Summary of Reviews and Justifications	51
APPENDIX H - Details on Contracts with RAND Corporation for Project AIR FORCE, National Defense Research Institute, and Arroyo Center	53
APPENDIX I - Details on Contract with Institute for Defense Analyses	67
APPENDIX J - Details on Contract with Center for Naval Analyses	73
APPENDIX K - Details on Contract with Logistics Management Institute	81

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD. Copies of the report can be obtained from the Secondary Reports Distribution Unit, Audit Planning and Technical Support Directorate (703) 614-6303 (DSN 224-6303).

TABLE OF CONTENTS (cont'd)

	Page
PART III - ADDITIONAL INFORMATION (cont'd)	
APPENDIX L - Details on Contract with Aerospace Corporation	85
APPENDIX M - Details on Contracts with MITRE Corporation C^3I Division	89
APPENDIX N - Details on Contract with Lincoln Laboratory	103
APPENDIX O - Details on Contract with Software Engineering Institute	111
APPENDIX P - DoD Officials and Offices Responsible for Sole-Source Justifications	115
APPENDIX Q - Summary of Management Comments on the Finding and Audit Response	117
APPENDIX R - Summary of Potential Benefits Resulting from Audit	127
APPENDIX S - Activities Visited or Contacted	129
APPENDIX T - Report Distribution	131
PART IV - MANAGEMENT COMMENTS	
Director of Defense Procurement	135
Deputy Director, Defense Research and Engineering	137
Deputy Assistant Secretary of Defense (Strategic and Tactical C^3)	145
Office of the Assistant Secretary of Defense (Production and Logistics)	161
Department of the Army	163
Department of the Navy	167
Department of the Air Force	189
Director, Advanced Research Projects Agency	193

PART I - INTRODUCTION

Background

Federally funded research and development centers (FFRDCs) were first established during World War II for the expeditious accomplishment of some research and development objectives that required assembling scientific talents with supporting technical skills to work closely under single management. The initial contracts were awarded for development of nuclear energy (Manhattan Project), for development of effective proximity fuses for anti-aircraft ammunition (John Hopkins University Applied Physics Laboratory), and for research in rockets (Jet Propulsion Laboratory of the California Institute of Technology). The contributions of university-associated scientists and engineers to military technology encouraged postwar interest in maintaining research centers managed by universities and business firms under contract to the Government.

Since World War II, DoD has sponsored as many as 18 FFRDCs and as few as 6 FFRDCs. Currently, DoD sponsors 11 FFRDCs costing about $1.5 billion annually. FFRDCs perform three categories of work: studies and analyses, systems engineering and integration, and laboratory research and development. Appendix A lists the 10 FFRDCs we audited, their primary DoD sponsors, and their authorized funding.

All of the DoD-sponsored FFRDCs share the following characteristics.

- o Each is managed by a private, non-profit organization under a long-term contract, which is generally for 5 years and which is awarded and reawarded without competitive procurement procedures.

- o Each is closely identified with a sponsor, either a Military Department or the Office of the Secretary of Defense (OSD).

- o Each has contractual responsibilities for furthering the interests of its sponsor in mission or program terms.

- o The personnel policies of each are not controlled by Federal civil service regulations, salaries, and procedures. Personnel restraints exist, but they are contractual.

- o The DoD sponsor has determined that Government requirements cannot be effectively accomplished by conventional contractual arrangements or by Government personnel.

FFRDCs are granted access, beyond that which is common in a normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to DoD and Defense contractor employees and facilities. This unique relationship requires FFRDCs to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to fully disclose their affairs to the DoD sponsor.

Office of Federal Procurement Policy (OFPP) Letter 84-1, "Federally Funded Research and Development Centers" (Appendix B), as implemented by Federal Acquisition Regulations (FAR) 35.017, "Federally Funded Research and Development Centers" (Appendix C), provides policy guidance for the establishment, use, periodic review, and termination of FFRDCs. The OFPP policy provides that:

> Agencies will rely, to the extent practicable, on existing in-house and contractor sources for satisfying their special research or development needs consistent with established procedures under The Economy Act of 1932 (31 U.S.C. 1535), other statutory authority or procurement/assistance regulations. A thorough assessment of existing alternative sources for meeting these needs is especially important prior to establishing an FFRDC.

The Competition in Contracting Act of 1984, which was enacted to enhance competition and restrict unnecessary sole-source contracting, requires that all Federal contracts be competed, with certain exceptions. One exception, United States Code, title 10, section 2304(c)(3), authorizes the use of other than full and open competition when maintaining an essential FFRDC research capability is necessary. This exception is implemented by FAR 6.302-3, "Industrial Mobilization; or Engineering, Developmental, or Research Capability," and must be supported by written justifications prepared in accordance with FAR 6.303, "Justifications," and FAR 6.304, "Approval of the Justification," and by comprehensive reviews performed in accordance with FAR 35.017-4, "Reviewing FFRDCs."

Objectives

The audit was initially requested by the Administrator, OFPP (Appendix D). The objectives of the audit were to:

- determine whether DoD sponsors were performing adequate reviews of the need for their FFRDCs,

- determine the adequacy of the sole-source renegotiation justifications for the FFRDC contracts,

o assess the nature and extent of the use of DoD FFRDCs, and

o evaluate applicable internal controls.

Based on direction by the House Committee on Appropriations in House Report No. 102-95, "Department of Defense Appropriations Bill, 1992," we added audit objectives to:

o determine whether FFRDCs adhered to mission statements and sponsoring agreements,

o determine whether criteria used to develop overhead rates for the FFRDCs were in accordance with Government standards, and

o determine whether any violations of conflict of interest regulations existed either within the FFRDC operation or structure or in the DoD relationship with the FFRDC.

This report addresses the first and second objectives on adequacy of reviews and the sole-source justifications and the internal controls related to both. The other objectives will be addressed in a subsequent report.

Scope

We evaluated the reviews and sole-source justifications prepared by the DoD sponsors for contract actions occurring in FYs 1988, 1989, 1990, and 1991; sponsoring agreements; procurement and contract documents; mission statements; and funding data for 10 FFRDCs that existed more than 5 years. The 10 are Project AIR FORCE; National Defense Research Institute; Arroyo Center; Institute for Defense Analyses; Center for Naval Analyses; Logistics Management Institute; Aerospace Corporation; MITRE Corporation Command, Control, Communications and Intelligence (C^3I) Division; Lincoln Laboratory; and Software Engineering Institute. One FFRDC, the Institute for Advanced Technology, is separately discussed in Inspector General, DoD, Report No. 93-013, "Quick-Reaction Report on the Audit of the Army Contract with the University of Texas at Austin Institute for Advanced Technology," October 27, 1992.

We also considered the results of prior audits, congressional studies and testimony, and a Navy Procurement Management Review. We interviewed program officials in the sponsoring DoD organizations, DoD contracting officers, FFRDC users, and FFRDC management officials. Due to security considerations, our evaluation did not include the reviews or sole-source justifications for the renewal of contracts awarded by the National Security Agency to the Institute for Defense Analyses. This exclusion does not affect the results of our audit.

This program results audit is based on work performed from October 1991 to February 1993. The audit was made in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included such tests of internal controls as were considered necessary. We did not rely on any computerized data to conduct this part of the audit. The activities visited or contacted during the audit are listed in Appendix S.

Internal Controls

We evaluated compliance by OSD and the Military Departments with the criteria in OFPP and OSD guidance. We used the guidance in OFPP Memorandum 89-21, "Improving Management Controls Over Government Procurement," July 17, 1989, and Under Secretary of Defense for Acquisition memorandum, "Certification of Procurement Systems," September 15, 1989, to evaluate the award of sole-source contracts to the 10 FFRDCs that existed more than 5 years.

The audit identified a material internal control weakness as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Policies and procedures require DoD sponsors to comprehensively review and document the use of and need for FFRDCs. Preparation, review, and approval policies and procedures also exist for justifications of sole-source contracts. However, internal administrative controls were not followed to verify that adequate comprehensive reviews of FFRDCs were completed before the justifications to renew sole-source contracts for FFRDCs. Implementation of Recommendation 1. to perform new comprehensive reviews should correct the weakness. We could not determine the monetary benefits to be realized by implementing Recommendation 1. because the benefits will depend on future actions. A copy of the report will be provided to the senior internal control officials in OSD, the Military Departments, and the Advanced Research Projects Agency.

Prior Audits and Other Reviews

During the last 5 years, the Inspector General, DoD; the Air Force Audit Agency; the Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition); the General Accounting Office; the Congressional Research Service, Library of Congress; and the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, issued ten reports addressing requirements and cost-effectiveness issues involving the DoD-sponsored FFRDCs. Appendix E summarizes those reports.

PART II - FINDING AND RECOMMENDATIONS

BASIS FOR SOLE-SOURCE CONTRACT RENEWALS

The DoD sponsors did not adequately document the basis for renewing the 10 FFRDC sole-source contracts we reviewed. The DoD sponsor comprehensive reviews did not meet OFPP Letter 84-1 and FAR 35.017-4 requirements, and the sole-source justifications for renewal of the FFRDC contracts contained unproven statements. Three reviews were not done, six reviews were done after approval of the sole-source justifications and were not adequate, and one review was incomplete. The inadequate reviews and sole-source justifications occurred because senior officials in the OSD, the Military Departments, and the Advanced Research Projects Agency and the responsible contracting officers did not challenge the timeliness, completeness, and accuracy of the comprehensive reviews and sole-source justifications. Thus, the reasons used to justify the sole-source contracts for the 10 FFRDCs were not adequately supported by documentation. The DoD FFRDC Management Plan, which is being implemented and is an improvement, does not go far enough to correct the review and justification documentation problems. Also, the Navy can reduce costs by $6.2 million over 2 years by replacing Center for Naval Analyses field analysts with Navy employees.

DISCUSSION OF DETAILS

Background

OFPP Letter 84-1 contains policy guidance on FFRDCs that is implemented in DoD by the FAR. FAR 35.017-4 requires the DoD sponsor to conduct a comprehensive review of the use of and need for an FFRDC before renewing a contract or agreement for the FFRDC. The head of the sponsoring organization should decide to renew or terminate the FFRDC arrangement based on the results of the comprehensive review. The comprehensive review includes:

- an examination of the sponsor's special technical needs and mission requirements performed by the FFRDC to determine whether, and at what level, they continue to exist;

- consideration of alternative contractor or Government sources to meet the sponsor's needs;

- an assessment of the FFRDC's efficiency and effectiveness in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick-response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor;

- an assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation; and

o a determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement complies with FAR 35.017-1, "Sponsoring Agreements."

FAR 35.017-4 requires the DoD sponsor to coordinate the FFRDC review with other users, and to afford the other users an opportunity to assume sponsorship if the current sponsorship is no longer appropriate. The comprehensive review must be formally documented since the review documentation provides the basis for renewing or terminating a sponsor's contractual relationship with the FFRDC.

Sufficiency of Reviews and Justifications

The reviews and justifications for the 10 FFRDCs did not adequately document the 5 areas required by the FAR and OFPP Letter and did not adequately justify renewal of the sole-source contracts. The reviews and justifications did not sufficiently document the sponsors' mission requirements to be performed by the FFRDCs, the alternatives considered to meet sponsor requirements, the efficiency and effectiveness of the FFRDCs in meeting sponsor needs, the management controls established by the FFRDCs to ensure cost-effective operations, and the determination that criteria for establishing the FFRDCs were still valid and that adequate sponsoring agreements existed.

A comprehensive review document addressing the OFPP and FAR guidance on the continued need for the FFRDC was not prepared by the DoD sponsor for three FFRDCs and was prepared after the sole-source justification for six FFRDCs. Of the six, two comprehensive reviews were not approved until after the contracts were awarded. The DoD sponsor prepared the review for the tenth FFRDC before the sole-source justification but the documentation did not adequately address the OFPP and FAR criteria. Appendix F summarizes the comprehensive review and sole-source justification approval dates, the contract award dates, and the final approval level for the awards to the 10 FFRDCs.

The following paragraphs discuss our evaluation of the reviews and justifications. Appendix G summarizes the deficiencies associated with the reviews and justifications for each of the FFRDCs. Appendixes H through O provide details on our assessment of the reviews and justifications prepared for each of the 10 DoD FFRDCs.

Sponsor Mission Requirements for FFRDCs. The comprehensive review documents did not detail the future requirements for any of the 10 FFRDCs in terms of specifically who needed what services, where, when, and how. The reviews did not detail or assess the types of requirements, such as long-term program-oriented research versus short-term project/task oriented work,

or the extent of such work. They did not identify the special skills or capabilities needed to meet the requirements or the interrelationship of the requirements to one another. The requirements were stated in general terms, such as "a continuing effort for studies exists." Program officials who performed the reviews found that users were uncertain of what studies or support would be needed from the FFRDCs. The program officials accepted the general responses rather than following up and insisting that users identify more specific requirements. The comprehensive reviews' failure to detail the requirements would hinder subsequent efforts by contracting officials to identify and consider alternative sources capable of meeting the requirements, in whole or part, being provided by the FFRDCs. The sole-source justifications described in general terms the services to be procured such as broad categories of support services or studies that would address general issues or areas.

Alternative contractor and Government sources. Statements in the review documents and sole-source justifications that no other sources existed were not adequately documented. Formal market surveys were not performed for any of the 10 FFRDCs to determine whether private-sector firms, in-house Government personnel, or other FFRDCs could perform portions of the work even though users stated that alternatives to the FFRDCs did exist.

Commerce Business Daily synopses. The proposed sole-source contract awards for 4 of the 10 FFRDCs were synopsized in the Commerce Business Daily. The Defense Supply Service-Washington (DSS-W) placed a notice in the Commerce Business Daily August 17, 1988, for sole-source contract award to the Institute for Defense Analyses; June 29, 1989, for the National Defense Research Institute; August 8, 1989, for the Logistics Management Institute; and July 6, 1990, for the Arroyo Center.

DSS-W published the synopses to provide public notice of the pending contract awards. The synopses were neither intended nor worded to solicit competition on the procurements. However, in response to publicizing the contract award to the Institute for Defense Analyses, nine commercial organizations expressed written interest in competing for the contract requirements. On September 9, 1988, and October 6, 1988, the DSS-W contracting officer sent letters to eight of the nine organizations reaffirming DSS-W's intent to award a sole-source contract to the Institute for Defense Analyses. The DSS-W letters requested the organizations to submit a "capability statement" setting forth information that the organizations believed would qualify their organization as an FFRDC. On September 22, 1988, the DSS-W contracting officer sent a letter to the ninth organization, which submitted a capability statement with its inquiry, stating that employing other sources to meet the requirements would not be cost effective. There was no evidence that sponsoring program

officials or the contracting officer ever evaluated the organization's capability. None of the organizations pursued the matter further.

FAR 5.205(b), "Special Situations," provides that advance notices in the Commerce Business Daily and Federal Register are only required before establishing an FFRDC or before changing the FFRDC basic purpose or mission, and that a notice is not required where a procurement action is required by law. Also, FAR 5.202(a)(10), "Exceptions," states that a contracting officer need not submit a notice of proposed contract action to the Commerce Business Daily when the contract action is made under FAR 6.302-3, and advance notice is not appropriate or reasonable. Contracting officers cited FAR 6.302-3 in the sole-source justifications as the authority for awarding sole-source contracts to FFRDCs.

Regarding future acquisitions, FAR 6.303, Justifications," paragraph 6.303-2(a)(11), "Content," states that sole-source justifications are required to include, "A statement of the actions, if any, the agency may take to remove or overcome the barriers to competition before any subsequent acquisition for the supplies or services required." In addressing this requirement, contracting officers again cited FAR 6.302-3 in 7 of the 10 sole-source justifications as authority for not considering alternatives that would mitigate the need for future sole-source reliance on FFRDCs. The remaining three justifications stated that alternatives would be considered during the next comprehensive review.

Congressional hearings. According to testimony on systems development and management within the Federal Government given during hearings before the House Committee on Government Operations in June through August 1962, FFRDCs were originally established because DoD could not attract and retain scientists and engineers. At that time, Government pay was not comparable with the private sector. The President's Scientific Adviser stated during these hearings that:

> ...it is very important that we make a major effort, a conscious effort, to increase our own in-house capability to do these things....if we can do that, then we can slowly get away from the necessity for these ad hoc mechanisms....if you examine the temper of those earlier times, particularly during the early days of the ballistic missile effort, there was a very real crisis....Suddenly there was the danger that another nation would have them and we would not....Most governmental research and development problems are not of that nature.

None of the reviews or sole-source justifications for the 10 FFRDCs cited low Federal salaries for scientific and technical

positions as a reason why the Federal Government could not attract the scientific and technical personnel to perform required tasks in-house today.

Independence. Independence and objectivity were cited as general reasons why private-sector firms could not perform the tasks of the FFRDCs. However, the reviews and justifications did not address why other nonprofit organizations, including some former DoD FFRDCs, would lack independence and objectivity.

Assessment of efficiency and effectiveness. DoD sponsors determined FFRDC efficiency and effectiveness based on questionnaires completed by users, either for individual projects or for all projects worked during a particular period. Overall, the users rated the 10 FFRDCs as responsive to user needs. The users noted problems with financial reporting and completion delays on some taskings, but, overall, users were satisfied with the FFRDC services.

We reviewed the appropriateness of the DoD sponsors' methods for evaluating FFRDC efficiency and effectiveness in meeting user needs. We also reviewed the reliability of the data reported in user assessments and summarized in the comprehensive reviews by the primary DoD sponsors. The user assessments of the FFRDCs included ratings that were generally adjective descriptions rather than quantitative ratings based on objective criteria. The assessment forms requested check-mark answers, narrative comments, or both, but contained little, if any, supporting details. Critical remarks made by users for 6 of 10 FFRDCs were ignored or distorted in the summary comments prepared by the primary DoD sponsors and were not included in the overall comprehensive reviews. We concluded that user responses and primary DoD sponsor assessments of the FFRDCs' efficiency and effectiveness in the comprehensive reviews were often personal opinion. Procedures were needed for the sponsors of FFRDCs to document measurement of the efficiency and effectiveness of FFRDCs in a consistent or a standardized manner. In addition, the procedures should cover followup on the comments critical of FFRDC work.

Assessment of FFRDC management controls. Program officials who prepared the summary comprehensive review documents did not adequately document their assessment of management controls for any of the DoD FFRDCs. The review documents generally stated that DoD administrative contracting officers, the Defense Contract Audit Agency, and DoD policy and advisory groups that provided oversight to each FFRDC verify that FFRDC operations were cost-effective. None of the reviews documented the internal steps FFRDCs took to verify that accurate accounting records were maintained, that sound procurement practices were followed, that overhead costs were reasonable, or that management fees were appropriate and necessary to the FFRDC.

Compliance with FFRDC criteria. The review documents stated that criteria for establishing the FFRDCs were satisfied because sponsor mission requirements continued and because senior DoD officials agreed that contracts should be renewed. The review documents did not specifically address the sponsoring agreements.

Establishment criteria. As required by FAR 35.017-2, "Establishing or Changing an FFRDC," none of the review documents for the 10 FFRDCs adequately established that:

- the mission of the FFRDC was stated clearly enough to differentiate between work that should be performed by the FFRDC and work that should be performed by non-FFRDCs,

- conventional contracting methods and existing in-house facilities could not effectively satisfy the sponsor's special research and development requirements, and

- controls were in place to ensure the cost of FFRDC services were reasonable.

Sponsoring agreements. The comprehensive reviews for the 10 FFRDCs did not specifically address whether a sponsoring agreement was maintained in accordance with FAR 35.017-1. However, we determined that the FAR 35.017-1 requirements for the 10 FFRDCs were included in the sponsoring agreements, the contracts, or both. FAR 35.017-1 states that a sponsoring agreement or other legal instrument must include a mission statement, provisions for the orderly termination of the FFRDC, provisions for the identification and use of retained earnings, a prohibition against the FFRDC competing with non-FFRDCs, and a statement on whether the FFRDC may accept work from non-sponsors.

Responsibility for Complete and Accurate Justifications

FAR 6.303 states that technical and requirements personnel are responsible for providing and certifying as accurate and complete the necessary data to support their recommendation for other than full and open competition. FAR 6.303 further states that contracting officers shall not commence negotiations for sole-source contracts until the contracting officers justify the use of a sole-source contract in writing and certify to the accuracy and completeness of the justification. FAR 1.602, "Contracting Officers," paragraph 1.602-1(b), "Authority," states that contracting officers shall enter into no contracts unless all requirements of law, executive orders, regulations, and other applicable procedures, including clearances and approvals, have been met. FAR 6.304 requires the head of the procuring activity to approve the justification if the proposed contract is between $1 million and $10 million. The senior procurement executive of the procuring activity must approve a proposed contract of more than $10 million.

Support for justifications. The written reviews did not support the 10 sole-source justifications. Technical personnel, contracting officers, and senior acquisition officials certified to the accuracy and completeness of each sole-source justification although comprehensive reviews for 9 of the 10 FFRDCs were not completed at the time the sole-source justifications were prepared. The tenth review was complete but was inadequate. None of the seven reviews that were done addressed all five criteria from the OFPP and FAR guidance for retaining an FFRDC. The Under Secretary of Defense for Acquisition, the Service Acquisition Executives, the Director, Defense Research and Engineering (DDR&E), and the contracting officers should have challenged the accuracy and completeness of the determinations in the sole-source justifications and should have determined whether the assertions in each justification were supported by a comprehensive review document. The justifications did not contain sufficient facts and rationale to justify the use of FAR 6.302-3 for sole-source awards to the 10 FFRDCs. FAR 6.302-3 should be cited only when awarding a contract to a particular source is necessary to establish or maintain an essential engineering, research, or development capability provided by an educational or other non-profit institution or an FFRDC.

There was no evidence that the contracting officers or senior acquisition officials ever requested additional documentation or rationale for the sole-source contracts before approving the sole-source justifications. Statutory and regulatory provisions require adequate assertions to justify noncompetitive procurements. Comprehensive reviews that were not completed or were not adequately documented would not be a basis for the required assertions. Contracting officers and senior acquisition officials are responsible for maximizing competition and should not decide that the sole-source organization was the only one available without complete and adequately documented comprehensive reviews. Appendix P identifies the officials and offices responsible for preparing and approving the sole-source justifications.

Future awards. The Military Departments or DSS-W should not award a new 5-year sole-source contract to any FFRDC until an adequate comprehensive review and a sole-source justification are completed. FFRDC services that can not be properly justified in whole or in part should be discontinued consistent with an orderly transitioning from reliance on the FFRDC. DoD sponsors should compete, or perform in-house, any future mission requirements or technical needs that can be more effectively accomplished by not using the FFRDC.

Effect of Sole-Source Contracts

The awarding of sole-source contracts to operate FFRDCs eliminated competition from other organizations to operate the

FFRDCs, and permits sponsors to exempt subsequent research and development tasks to the FFRDCs from competition. As a general rule, requirements should be competed unless the requiring Government activity can demonstrate that the Government would be injured by a critical delay or would incur substantial additional costs or that competition is not feasible. Some users of the FFRDCs, in providing input to the comprehensive reviews, stated that alternative contract sources could have performed tasks assigned to the FFRDCs. Recent Congressional testimony related to DoD authorizations and appropriations for FYs 1991, 1992, 1993, and 1994 noted the existence of capable private-sector firms that are interested in competing for portions of the work tasked to FFRDCs. The Senate Subcommittee on Oversight of Government Management Report, "Inadequate Federal Oversight of Federally Funded Research and Development Centers," July 8, 1992, concluded that FFRDC operating contracts could and should be competed more frequently than they are.

Evidence also exists that awarding sole-source contracts resulted in additional costs to perform the work. As noted in Inspector General, DoD, Report No. 91-115, "Consulting Services Contracts for Operational Test and Evaluation," August 22, 1991, auditors estimated the cost for Institute for Defense Analyses operational test and evaluation support was about 31 percent greater than if Government employees were used. Air Force Audit Agency Report No. 0056410, "Review of Air Force Managed Federally Funded Research and Development Centers," August 6, 1991, stated that the average cost of a member of the technical staff on the FY 1990 Aerospace Corporation contract was about $184,000, compared to about $114,000 annually for a non-FFRDC technical support contractor employee in the Los Angeles area. The average FY 1990 cost for a member of the technical staff at MITRE was about $151,000, whereas the comparative cost for a non-FFRDC contractor in the Boston area was about $135,000. In collecting information on Center for Naval Analyses field analysts, we estimated that during FYs 1994 and 1995, the Navy could eliminate about $6.2 million of costs by converting the 41 Center for Naval Analyses field analysts to Government GM-15 analysts (Appendix J).

DoD Directive 4205.2, "Contracted Advisory and Assistance Services," states that, when an in-house capability is not available, the organization should establish the needed capability as soon as practicable to avoid a long-term dependency on contracting support, unless establishing this capability would not be cost effective. The Air Force recently initiated a test program, CORAL CONVERT, to reduce reliance on FFRDC services. The program calls for conversion of 100 engineering positions at the Aerospace Corporation and 50 engineering positions at the MITRE Corporation C^3I Division to in-house positions at Air Force Materiel Command's Space and Missile Systems Center and Electronic Systems Center, respectively. Currently, the Air Force

estimates savings of about $31,000 for each converted Aerospace Corporation employee and about $25,700 for each converted MITRE Corporation C^3I Division employee. The test program was started during FY 1993 after the Air Force Materiel Command obtained waivers from civilian hiring freezes and authority to reimburse civilian pay with research, development, test, and evaluation funds. Initial test results at the Electronic Systems Center indicate that capable engineers were being hired in-house in place of MITRE Corporation C^3I Division engineers. In May 1993, the Air Force Materiel Command extended the test program through December 1994 due to delays in implementing the test program at the Space and Missile Systems Center. On September 10, 1993, the Air Force Deputy Assistant Secretary (Acquisition) suspended the test program pending an evaluation of the impact of the Vice President's Report of the National Performance Review on staffing levels within the acquisition community.

DoD FFRDC Management Plan

On August 14, 1992, the DDR&E issued a memorandum, "Implementation of the Federally Funded Research and Development Center Management Plan" (the Management Plan). The memorandum stated that the primary sponsor should develop a program for the work of the FFRDC during the next fiscal year within the established funding ceiling; should recommend changes to established funding ceilings; should review the cost and value of goods and services provided by the FFRDC; and, before renewal of the sponsorship agreement, should conduct a comprehensive review of the use of and need for the FFRDC.

DDR&E requested each DoD Component sponsoring an FFRDC to provide by October 15, 1992, a copy of the DoD Component's directives issued to ensure compliance with the management plan, as well as a copy of any comprehensive review of the FFRDC performed since January 1, 1990. He also requested DoD sponsors to complete new comprehensive reviews by October 15, 1992, if the last comprehensive review was performed before January 1, 1990. The offices of the Assistant Secretary of Defense (C^3I), and the Deputy Chief of Naval Operations (Navy Program Planning) conducted comprehensive reviews after January 1, 1990, for the MITRE Corporation C^3I Division and the Center for Naval Analyses, respectively. New comprehensive reviews were required for Project AIR FORCE, National Defense Research Institute, Arroyo Center, Institute for Defense Analyses, Logistics Management Institute, Aerospace Corporation, Lincoln Laboratory, and the Software Engineering Institute. As of September 10, 1993, the Deputy DDR&E approved new comprehensive reviews only for the MITRE Corporation C^3I Division and the Institute for Defense Analyses. We did not review the adequacy of the new comprehensive reviews for the MITRE Corporation C^3I Division or the Institute for Defense Analyses.

Management Plan guidance. The DDR&E developed the Management Plan in response to Congressional concern that OSD should exercise more control over the growth and use of FFRDCs. Congress noted that sponsors tasked FFRDCs to perform work that had no impact on national security or on the ability of a particular Service to accomplish its mission. A principal control mechanism for verifying that an FFRDC relationship is properly continued and that an FFRDC is only used when appropriate is a formally documented comprehensive review prepared under the guidelines of OFPP Letter 84-1 and FAR 35.017-4.

The Management Plan re-emphasized that DoD sponsors should perform comprehensive reviews in accordance with OFPP Letter 84-1. The Management Plan stated that primary sponsors will conduct the comprehensive reviews with DDR&E participation and that sponsoring agencies should not decide to continue or terminate an FFRDC relationship without DDR&E concurrence. The Management Plan stated no additional guidance on how DoD sponsors should perform the comprehensive reviews. The plan also did not detail the purpose or extent of DDR&E participation in the conduct of comprehensive reviews or provide criteria for DDR&E concurrence with sponsor determinations on the continued need for FFRDC relationships. The Management Plan stated that DoD would manage FFRDCs through ceilings on the funds available to pay FFRDC costs and the work years for FFRDC technical staff. In recent years, the funding ceilings were established by the annual Defense Authorization and Appropriation Acts. The Management Plan also required the sponsors of the FFRDCs to report annually to the DDR&E on the costs and value to DoD of goods and services provided by each FFRDC and the reasonableness of the costs. We concluded that the Management Plan improved oversight of the FFRDCs, but provided little assurance that the quality of the comprehensive reviews of FFRDCs would be improved. Also, the Management Plan will not ensure that FFRDC relationships will only be continued for special technical needs that can not be met elsewhere.

RECOMMENDATIONS, MANAGEMENT COMMENTS, AND AUDIT RESPONSE

Summaries of management comments. Management comments on the recommendations are summarized below. Appendix Q summarizes management comments on the finding. Appendixes H through O summarize management comments on the audit evaluation of the comprehensive reviews and FFRDC contracts. The Assistant Secretary of Defense (Production and Logistics) comments stated that he agreed with the DDR&E comments in total.

Changes to recommendations. We revised four recommendations based on management comments and discussions with DDR&E officials. Recommendation 1.b. was revised to clarify our intent to improve the documentation of and provide consistency to the comprehensive reviews conducted by the FFRDC sponsors.

Recommendation 1.c. was revised to clarify the options available to FFRDC sponsors when FFRDC relationships are no longer justified. Recommendation 2. was revised to ensure that ongoing work continues while comprehensive reviews are conducted. Recommendation 3. was revised to recommend that the Navy consider all factors, including costs, when analyzing use of field analysts.

Based on management comments, we deleted draft Recommendations 1.c. and 4. to publish advance notices in the Commerce Business Daily before awarding renewal contracts to FFRDCs. We renumbered draft Recommendation 1.d. to 1.c., and we added a new Recommendation 1.d. to clarify the DDR&E role in FFRDC sponsor comprehensive reviews.

1. We recommend that the Director, Defense Research and Engineering:

a. Direct DoD sponsors for all FFRDCs to prepare new comprehensive reviews.

Management comments. The Deputy DDR&E partially concurred with the recommendation and stated that new comprehensive reviews would be conducted in accordance with the Management Plan. New comprehensive reviews would not be requested for the MITRE Corporation C^3I Division and Center for Naval Analyses because the FFRDC sponsors had completed reviews since January 1, 1990.

The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) concurred and stated a new comprehensive review for MITRE Corporation C^3I Division was to be completed by June 15, 1993.

The Army nonconcurred and stated that the comprehensive review for the Arroyo Center was performed in accordance with the guidance existing before contract award and that the FAR comprehensive review requirements were not effective until March 1990. The Army also stated that performance of a new review at this time would delay future work, would be unfair to FFRDC planning, and could adversely affect efforts to deal with significant defense issues in a timely manner. The Army added that no legitimate legal basis for conducting comprehensive reviews exists at this time.

The Navy nonconcurred and stated the comprehensive review supporting the current Center for Naval Analyses contract was in accordance with existing guidance. The Navy further stated that the next comprehensive review for the Center for Naval Analyses was scheduled to start in the last quarter of FY 1994, and that conducting a review sooner would be an imprudent use of limited resources. The Navy estimated that about 1 year would be needed to perform a new comprehensive review.

The Air Force concurred and stated that new comprehensive reviews would be conducted at all Air Force-sponsored FFRDCs.

The Director, Advanced Research Projects Agency, nonconcurred and stated that a comprehensive review for the Software Engineering Institute would be conducted during the summer of 1993 as a part of the normal 5-year contract review process and is expected to be completed by June 30, 1994.

Audit Response. Although the Deputy DDR&E did not direct initiation of new comprehensive reviews at the MITRE Corporation C^3I Division and the Center for Naval Analyses, the comments from the sponsors of those two FFRDCs stated a comprehensive review was either already started or was planned to start in FY 1994. The cumulative management actions satisfy the intent of the recommendation. We ask the Deputy DDR&E to provide the expected completion dates for all FFRDC comprehensive reviews in response to the final report.

We disagree with Army and Navy statements that existing comprehensive reviews met the requirements of OFPP Letter 84-1 and FAR 35.017. Although FAR 35.017 was not implemented when the Army comprehensive review of the Arroyo Center occurred, the requirements of OFPP Letter 84-1 had been in effect since 1984. The OFPP Letter 84-1 requirements for a comprehensive review are similar to the requirements cited in the March 1990 FAR requirements. Further, Army and Navy comments did not cite additional information to change our conclusion that the comprehensive reviews previously performed were not adequately documented and were not complete for the five areas subject to review.

b. Establish procedures for sponsors to adequately document conduct of the comprehensive reviews. If needed, a working group of the sponsors of FFRDCs should draft the procedures. The procedures should include criteria for measuring whether a comprehensive review meets the intent of the Office of Federal Procurement Policy Letter and the Federal Acquisition Regulation. The criteria should include evaluations of:

(1) The special research and development needs, the special skills and/or capabilities involved in meeting the needs, and the estimated extent of the needs.

(2) The alternatives for accomplishing the requirements, to include additional in-house staffing, conventional contracts, and other DoD and non-DoD FFRDCs. The review should compare the cost to obtain all or portions of the support from the FFRDC versus the cost to perform the work with additional Government personnel.

(3) The objective assessment of FFRDC efficiency and effectiveness in meeting DoD sponsor needs, to include the number and dollar value of projects and programs assessed and follow-up and resolution by higher-level management of all project and program assessments that were critical of the FFRDC.

(4) The controls established by the FFRDC to verify cost-effective operation. Reviews should address the maintenance of accurate accounting records, the following of sound procurement practices, the reasonableness of overhead costs, a summary of any Defense Contract Audit Agency and administrative contracting officer reviews and any related corrective actions, and the need for management fees.

(5) The assurances that criteria for establishing an FFRDC continue to be satisfied and that an adequate sponsoring agreement exists.

Management comments. The Deputy DDR&E, the Deputy Assistant Secretary of Defense (Strategic and Tactical C^3), the Navy, the Air Force, and the Director, Advanced Research Projects Agency, partially concurred. They all stated that comprehensive reviews should follow the existing guidelines in OFPP Letter 84-1 and FAR 35.017-4. They disagreed with the additional review requirements proposed by the recommendation.

The Army stated that considering additional in-house staffing versus contracting with an FFRDC or other business concern might not be viable in light of current military and civilian drawdowns. Further, the use of additional in-house staffing to perform the kind of studies that FFRDCs perform appears far from promising.

The Navy stated that the primary sponsor and not the DDR&E should determine the methodology and documentation of the review. The Navy agreed to consider the recommendations during the next comprehensive review of the Center for Naval Analyses.

The Air Force stated that the reviews must be conducted with the understanding that FFRDCs are a unique national resource deliberately protected from normal competition and that FFRDCs support the military in complex problems related to critical aspects of national security. Further, the guidelines for a review in the recommendation were not the same as those in the FAR, and the FAR guidelines represent a better balance of the necessity to protect the Government's interests while recognizing the unique nature of FFRDCs.

The Director, Advanced Research Projects Agency, stated his organization would work with the DDR&E to establish evaluation criteria consistent with the FAR and will document the comprehensive review according to that criteria.

Audit response. Based on management comments, we revised the recommendation to more clearly show our intent to improve the documentation and consistency of sponsor comprehensive reviews. The requirements of OFPP Letter 84-1 and FAR 35.017-4 provide only general guidelines, not definitive criteria, on the content of a comprehensive review. We believe that the reasonable implementation of the OFPP and FAR guidelines should address the issues listed in the recommendation. The quality and consistency of documentation in the comprehensive reviews for the FFRDCs varied greatly. Guidance is needed to improve the thoroughness and consistency of reviews. We agree that FFRDCs are unique and have supported the military well in resolving complex problems. However, past practices and circumstances are not necessarily a roadmap for the future. The Army should note that the Air Force recently gained additional in-house staffing to replace FFRDC resources. Replacing FFRDC resources with in-house staffing should occur when using in-house staff is a more efficient and effective way to provide the support and arbitrary limitations on in-house staffing should be rejected.

We ask that the Deputy DDR&E consider the need for more thorough and consistent documentation by the different sponsors performing comprehensive reviews, and provide comments on the revised recommendation.

c. Establish procedures for sponsors of FFRDCs to determine during comprehensive reviews whether the FFRDC should be discontinued completely or whether just parts of the FFRDC relationship are no longer justified.

Management comments. The Deputy DDR&E, the Deputy Assistant Secretary of Defense (Strategic and Tactical C^3), the Navy, the Air Force, and the Director, Advanced Research Projects Agency, concurred with the need to discontinue FFRDCs that were not justified. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) and the Navy stated that the primary sponsor, as opposed to the DDR&E, should be responsible for discontinuing FFRDCs that are not adequately justified.

Audit response. Based on managements comments, we revised our recommendation to clarify that an FFRDC relationship can be restructured in part or discontinued or transferred in its entirety.

We ask that the Deputy DDR&E provide comments in response to the revised recommendation and provide details on procedures that will verify that sponsors determine during comprehensive reviews whether FFRDC relationships should be discontinued, in whole or part, when no longer justified.

d. Revise the guidance in the "Implementation of the Federally Funded Research and Development Center Management Plan" to describe the purpose and extent of the Director, Defense Research and Engineering, participation in the conduct of sponsors' comprehensive reviews.

Added Recommendation. Based on oral and written management comments, we added the above recommendation to clarify the role of the DDR&E in sponsor's comprehensive reviews. Accordingly, we request the DDR&E to provide comments on the added recommendation when responding to the report.

2. We recommend that the Director, Defense Research and Engineering; the Deputy Under Secretary of Defense for Logistics; the Assistant Secretary of the Navy (Research, Development, and Acquisition); the Assistant Secretary of the Air Force (Acquisition); and the Director, Defense Supply Service-Washington not award any new contracts pending the completion of an acceptable comprehensive review and adequate sole-source justification for the applicable FFRDC.

Management comments. The Deputy DDR&E partially concurred with the recommendation. He agreed that comprehensive reviews should be performed before contract awards but not before exercising annual options under existing contracts.

The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) concurred with the intent of the recommendation to improve comprehensive reviews and sole-source justifications but believed that the recommendation could deny DoD a source of support that sponsors find invaluable.

The Army nonconcurred and stated the comprehensive review for the Arroyo Center was adequate and that requiring another review during the middle of the contract was not acceptable business practice.

The Navy nonconcurred with the intent of the recommendation to halt contract modifications and thereby cause cessation of FFRDC operation and deprive the Navy of a source of analytical research. The Navy stated it agreed with the underlying motivation of the recommendation to improve the process for conducting comprehensive reviews and improve the basis for award of sole-source contracts.

The Air Force concurred with the need to perform comprehensive reviews before award of new contracts. The Air Force also stated that it would be disruptive and delay ongoing programs to not exercise options and modify the contract pending completion of ongoing comprehensive reviews.

The Director, Advanced Research Projects Agency, nonconcurred and stated the basic issue of whether the relationship between the

FFRDC and the Government requires recompetition every 5 years must be resolved before the drastic action of not exercising options to current contracts cited in the recommendation occurs.

Audit response. We revised our recommendation and deleted that portion related to not exercising options and modifications to the contracts before completing new comprehensive reviews. The intent of the recommendation was to encourage the conduct of new comprehensive reviews to adequately support the need for the sole-source contracts. We have no desire to stop ongoing work. The responses to Recommendation 1.a. indicate that new comprehensive reviews were completed, ongoing, or planned for the FFRDCs. Accordingly, additional comments on this recommendation are not required.

3. We recommend that the Assistant Secretary of the Navy (Research, Development, and Acquisition) perform cost and other analyses to determine whether replacing all or a portion of the Center for Naval Analyses field analysts with less costly in-house personnel is feasible.

Management comments. The Navy nonconcurred with the recommendation and stated that the auditors' sole criterion was cost of the analysts. The Navy stated that the field program was one of the primary reasons CNA existed as an FFRDC and that the field program constituted a long-term special competency and capability that can not be met as effectively by existing in-house or other contractor resources. The Navy further stated that the field program benefited the Navy by providing on-site analytical support and that this field experience provides the headquarters-based research program a degree of operational realism that is unique among FFRDCs. The Navy stated that the cost of duplicating the infrastructure the CNA headquarters provides in support of the field program was not considered in the audit. Also, personnel with the needed educational background and expertise are not available or likely to be recruited by the Navy. The Navy concluded that significant economies would not be achieved by replacing CNA with Navy resources and, in today's era of downsizing, the Navy does not have the billets or infrastructure to do so.

Audit response. We revised the recommendation to request the Navy to look at both cost and any other factors to determine whether replacing all or portions of the field analysts was practical. We agree that the Navy has had a long-term relationship with CNA, and the use of field analysts does benefit the Navy. We believe the Navy should objectively analyze the costs and benefits of continuing the current level of CNA field analysts. The Army and the Air Force do not use field analysts from their FFRDCs. The field analysts cost the Navy about $8.3 annually (FY 1991 costs) and the planned FY 1994 budget for CNA is to decrease

by about 10 percent to $45 million. Accordingly, the continued use of CNA field analysts at their present level will decrease the ability of CNA to perform other critical studies for the Navy. The Navy comments indicate the Navy is determined to maintain the CNA field analysts without considering cost or efficiency. The intent to continue this unique Navy arrangement without analyzing alternatives is not justifiable. Also, neither the existence of nor the need for extensive headquarters infrastructure support to the field program analysts, which purportedly would have to be duplicated, was evident during the audit.

We request that the Navy provide additional comments on the revised recommendation in responding to the final report.

RESPONSE REQUIREMENTS PER RECOMMENDATION

			Response should cover		
Number	Addressee	Concur/ Nonconcur	Proposed Action	Completion Date	Related Issues*
1.a.	DDR&E			X	
1.b.	DDR&E	X	X	X	IC
1.c.	DDR&E	X	X	X	IC
1.d.	DDR&E	X	X	X	
3.	ASN(RD&A)	X	X	X	M

* IC = material internal control weakness; M = monetary benefits

PART III - ADDITIONAL INFORMATION

APPENDIX A - Federally Funded Research and Development Center Primary Sponsors and Funding Ceilings

APPENDIX B - Office of Federal Procurement Policy Letter 84-1, "Federally Funded Research and Development Centers"

APPENDIX C - Federal Acquisition Regulation 35.017, "Federally Funded Research and Development Centers"

APPENDIX D - Office of Federal Procurement Policy Requests for Audit

APPENDIX E - Summary of Prior Audits and Other Reviews

APPENDIX F - Sole-Source Renegotiation Justifications

APPENDIX G - Summary of Reviews and Justifications

APPENDIX H - Details on Contracts with RAND Corporation for Project AIR FORCE, National Defense Research Institute, and Arroyo Center

APPENDIX I - Details on Contract with Institute for Defense Analyses

APPENDIX J - Details on Contract with Center for Naval Analyses

APPENDIX K - Details on Contract with Logistics Management Institute

APPENDIX L - Details on Contract with Aerospace Corporation

APPENDIX M - Details on Contracts with MITRE Corporation C^3I Division

APPENDIX N - Details on Contract with Lincoln Laboratory

PART III - ADDITIONAL INFORMATION (cont'd)

APPENDIX O - Details on Contract with Software Engineering Institute

APPENDIX P - DoD Officials and Offices Responsible for Sole-Source Justifications

APPENDIX Q - Summary of Management Comments on the Finding and Audit Response

APPENDIX R - Summary of Potential Benefits Resulting from Audit

APPENDIX S - Activities Visited or Contacted

APPENDIX T - Report Distribution

APPENDIX A - FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER PRIMARY SPONSORS AND FUNDING CEILINGS[1/]

FFRDC	Sponsor	Type	FY 1991	FY 1992	FY 1993
				(millions)	
Project AIR FORCE	Air Force	Studies and Analyses	$ 24.6	$ 24.4	$ 24.1
National Defense Research Institute	OSD[2/]	Studies and Analyses	25.4	25.2	24.9
Arroyo Center	Army	Studies and Analyses	25.7	25.5	25.2
Institute for Defense Analyses	OSD[2/]	Studies and Analyses	58.8	58.2	57.7
	OSD	Systems Engineering	14.6	14.5	14.3
	NSA[3/]	Laboratory and Test	32.6	35.0	36.1
Center for Naval Analyses	Navy	Studies and Analyses	49.2	48.7	48.2
Logistics Management Institute	OSD[4/]	Studies and Analyses	27.1	26.8	26.6
Aerospace Corporation	Air Force	Systems Engineering	391.0	387.2	383.4
MITRE Corporation C^3I Division	OSD[5/ 6/]	Systems Engineering	438.0	433.8	429.5
Lincoln Laboratory	Air Force	Laboratory and Test	421.9	435.2	449.6
Software Engineering Institute	ARPA	Laboratory and Test	26.0	35.1	36.2
		Total	$1,534.9	$1,549.6	$1,555.8

See footnotes at end of appendix.

APPENDIX A - FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER PRIMARY SPONSORS AND FUNDING CEILINGS[1/] (cont'd)

[1/]DDR&E established funding ceilings in the August 14, 1992, DoD FFRDC Management Plan.

[2/]The Under Secretary of Defense for Acquisition and the DDR&E are the primary sponsors.

[3/]The National Security Agency is the primary sponsor of this work under separate contracts.

[4/]The Deputy Under Secretary of Defense (Logistics) is the primary sponsor.

[5/]The Assistant Secretary of Defense (C^3I) is the primary sponsor.

[6/]The Army and the Air Force have separate primary contracts.

APPENDIX B - OFFICE OF FEDERAL PROCUREMENT POLICY LETTER 84-1, "FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS"

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY

APR 4 1984

OFPP POLICY LETTER 84-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Federally Funded Research and Development Centers

1. Purpose. This policy letter establishes Government-wide policies for the establishment, use, periodic review, and termination of the sponsorship of Federally Funded Research and Development Centers (FFRDCs).

2. Supersession. Memorandum from the Chairman to the Members of the Federal Council for Science and Technology, dated November 1, 1967, which set forth criteria for identification of FFRDCs and the requirement for a master Government listing of these centers, is superseded by this policy letter.

3. Authority. This policy letter is being issued pursuant to Sections 6(a), 6(d)(1) and 6(d)(8) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405 (a), (d)(1) and (d)(8), which empower the Administrator of OFPP to prescribe Government-wide procurement policies and to complete action on the recommendations of the Commission on Government Procurement.

4. Background. The Departments of Energy, Defense, Health and Human Services, the National Aeronautics and Space Administration and the National Science Foundation currently sponsor a total of 34 FFRDCs. Non-sponsoring departments and agencies also utilize these FFRDCs. Federal funding of FFRDC's currently exceeds 4 billion dollars per year.

In 1967, a Government-wide policy for the identification and maintenance of a master listing of these FFRDCs was issued (reference paragraph 2 - Supersession). In 1972, the Commission on Government Procurement recommended that the Federal Government keep open the option to organize and use FFRDCs to satisfy needs that cannot be satisfied effectively by other organizational resources. The Commission also recommended that agency heads periodically review the continuing need for existing FFRDCs and approve any proposal for new FFRDCs, with specific attention paid to the method of ultimate termination of sponsorship. This policy letter is based on the executive branch consideration of the Commission's recommendations.

5. Definitions

a. Primary Sponsor -- The executive agency which manages, administers or monitors overall use of the FFRDC.

b. Sponsor means an executive agency which funds and monitors specific work of a continuing nature with an FFRDC and is party to a sponsoring agreement. Multiple sponsorship of an FFRDC is possible so long as one agency agrees to act as the primary sponsor for administrative purposes.

c. Federally Funded Research and Development Center (FFRDC).

(1) FFRDCs do not have a prescribed organizational structure. They can range from the traditional contractor-owned/contractor-operated or Government-owned/contractor-operated (GOCO) organizational structures to various degrees of contractor/Government control and ownership. In general, however, all of the following criteria should be met before an activity is identified as an FFRDC:

(a) Performs, analyzes, integrates, supports (non-financial) and/or manages basic research, applied research, and/or development. (Activities primarily engaged in routine quality control and testing, routine service activities, production, mapping and surveys, and information dissemination, even though otherwise meeting the requirements of paragraph 5.c., are specifically excluded from FFRDC designation).

(b) Performance of the functions in 5.c.(1)(a) is either upon the direct request of the Government or under a broad charter from the Government, but in either case the results are directly monitored by the Government. However, the monitoring shall not be such as to create a personal services relationship, or to cause disruptions that are detrimental to the productivity and/or quality of the FFRDC's work.

(c) The majority of the activity's financial support (70% or more) is received from the Government with a single agency usually predominating in that financial support.

(d) In general, most or all of the facilities are owned by the Government or funded, under contract, by the Government.

(e) The activity is operated, managed and/or administered by either a university or consortium of universities, other non-profit organization or industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization.

(f) A long term relationship evidenced by specific agreement exists or is expected to exist between the operator, manager, or administrator of the activity and its primary sponsor.

(2) In addition to the above criteria, the relationship between the activity and the Government should exhibit the following characteristics in order to qualify for FFRDC identification:

(a) The activity (organization and/or facilities) is brought into existence at the initiative of a Government agency or bureau to meet some special research or development need which, at the time, cannot be met as effectively by existing in-house or contractor resources.

(b) Work from other than a sponsoring agency is undertaken only to the extent permitted by the sponsoring agency and in accordance with the procedures of the sponsoring agency.

c) The activity, whether the operator of its own or a Government-owned facility, has access, beyond that which is common to the normal contractual relationship, to Government and/or supplier data, employees, and facilities needed to discharge its responsibilities efficiently and effectively, whether the data is sensitive/proprietary or not.

d) The primary sponsor undertakes the responsibility to assure a reasonable continuity in the level of support to the activity consistent with the agency's need for the activity and the terms of the sponsoring agreement.

e) The activity is required to conduct its business in a responsible manner befitting its special relationship with the Government, to operate in the public interest free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

6. Policy.

a. General. Agencies will rely, to the extent practicable, on existing in-house and contractor sources for satisfying their special research or development needs consistent with established procedures under The Economy Act of 1932 (31 USC 1535), other statutory authority or procurement/assistance regulations. A thorough assessment of existing alternative sources for meeting these needs is especially important prior to establishing an FFRDC. This Policy Letter does not apply to the performance of commercial activities. Performance of commercial activities is governed by OMB Circular No. A-76.

b. Establishment of an FFRDC. In establishing an FFRDC, the sponsoring agency shall ensure that:

(1) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs (6.a).

(2) At least three notices are placed over a 90-day period in the Commerce Business Daily and The Federal Register indicating the agency's intention to sponsor an FFRDC and the scope and nature of the effort to be performed by the FFRDC.

(3) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(4) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(5) The responsibility for capitalization of the FFRDC has been defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC relationship with its sponsor(s).

(6) The purpose, mission and general scope of effort of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by a non-FFRDC.

c. Sponsoring Agreements. When FFRDCs are established, long-term Government relationships are encouraged in order to provide the continuity that will attract high quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability. A contract is the generally preferred instrument under which an FFRDC accomplishes effort for its sponsor(s). However, there may be instances where other legal instruments may be appropriate. A written agreement of sponsorship between the FFRDC and its sponsor or primary sponsor where more than one sponsor is involved may be used in addition to the contract or other legal instrument under which an FFRDC accomplishes effort. The specific content of a sponsoring agreement will vary depending on the situation. However, there are certain areas common to all situations that must be addressed. The following requirements must be addressed in either a contract, a sponsoring agreement or sponsoring agency's policies and procedures.

(1) Mandatory Requirements 5

(a) A delineation of the purpose for which the FFRDC is being brought into being along with a description of its mission, general scope of effort envisioned to be performed, and the role the FFRDC is to have in accomplishment of the sponsoring agency's mission. This delineation must be consistent with the definition of an FFRDC set forth in paragraph 5.c(1)(a) and will be sufficiently descriptive so that work to be performed by the FFRDC can be determined to be within the purpose, mission and general scope of effort for which the FFRDC was established and differentiated from work which should be performed by a non-FFRDC. This delineation shall constitute the base against which changes in an existing FFRDC's purpose, mission or general scope of effort will be measured.

(b) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets and settlement of liabilities. The term of the sponsorsing agreement will not exceed five years but can be renewed, as a result of periodic review, in not to exceed five year increments.

(c) A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency formal Request For Proposal for other than the operation of an FFRDC. This prohibition is not required to be applied to any parent organization or other subsidiary of the parent organization in its non-FFRDC operations. However, sponsoring agencies may expand this prohibition as they determine necessary and appropriate.

(d) A delineation of whether or not the FFRDC may accept work from other than the sponsor(s). If non-sponsor work can be accepted, a delineation of the procedures to be followed along with any limitations as to the clients (other Federal agencies, State or local governments, non-profit or profit organizations, etc.) from which work may be accepted. Limitations and procedures with respect to responding to requests for information as to an FFRDC's capabilities or qualifications are inherently a part of the "work for others" question and will be addressed by the sponsoring agency.

(2) Other Requirements As Appropriate

(a) When cost type contracts are used, the sponsor(s) should identify any cost elements which will require advance agreement. Such items may be, but are not necessarily limited to, salary structure, depreciation, various indirect costs such as independent research and development or others as determined appropriate by the sponsor(s).

(b) Where fees are determined by the sponsor(s) to be appropriate, considerations which will affect their negotiation should be identified. Such considerations may be, but are not necessarily limited to, weighted guidelines, risks, use of Government furnished property and facilities, needs or others as determined appropriate by the sponsor(s).

Policy Letter 84-1 133

(c) Other provisions as determined appropriate by the sponsor(s).

d. Changing the Basic Scope of an Existing FFRDC's Sponsoring Agreement. In changing the purpose, mission and general scope of effort to be performed or role of an existing FFRDC as set forth in its sponsoring agreement (see 6.c.(1)(a)), the sponsoring agency shall make such changes consistent with its statutory authority and the requirements for establishing a new FFRDC as set forth in paragraph 6.b.

e. Use of the FFRDC by the Sponsor or Primary Sponsor in the Case of Multiple Agency Sponsorship. The sponsor, or primary sponsor in the case of multiple sponsorship, will ensure that all work it places with its FFRDC(s) is within the purpose, mission, and general scope of effort of the FFRDC (paragraph 6.c.) and in accordance with this Policy Letter. This includes work a sponsoring agency agrees to accept from a non-sponsoring Federal agency under the provisions of The Economy Act of 1932 (31 USC 1535) or other statutory authority. Sponsoring agencies must comply with applicable procurement or assistance statutes, policies and regulations for non-competitive actions before placing work which is outside the scope of the sponsor's contractual or sponsoring agreement with an FFRDC.

f. Use of an Existing FFRDC by a Non-Sponsoring Federal Agency. Non-sponsoring Federal agencies may use an FFRDC only if the terms of the FFRDC's sponsoring agreement or contract permit work from other than a sponsoring agency. Where use by a non-sponsor is permitted by the Sponsoring Agreement, the work must require the special relationship of an FFRDC as defined in paragraph 5.c. and either be treated as a direct procurement (action) or processed under The Economy Act of 1932 (31 USC 1535) or other statutory authority. Work processed under The Economy Act of 1932 (31 USC 1535) or other statutory authority must clearly fall within the purpose, mission and general scope of effort established by the sponsoring agency for the FFRDC (paragraph 6.c.). Processing under the Economy Act or other statutory authority is subject to agreement by the receiving agency. Non-sponsoring agencies must fully comply with procurement or assistance statutes, policies and regulations for non-competitive actions prior to placing work directly with a specific FFRDC. The FFRDC must comply with the procedures established by the sponsoring agency (paragraph 6.c.(1)(d)) before accepting work from a non-sponsoring Federal agency.

g. Use of an Existing FFRDC by Other Than a Federal Agency. Work from other than a Federal agency may be accepted only to the extent permitted by the sponsoring agency. The FFRDC must comply with the procedures established by the sponsoring agency (paragraph 6.c.(1)(d)) before accepting work from other than a Federal agency.

h. Consulting Services. Agencies sponsoring FFRDC work which constitutes consulting services, as defined by OMB Circular No. A-120, will comply with the provisions of that Circular.

i. Production/Manufacturing. FFRDCs will not be asked to perform quantity production and manufacturing work unless authorized by legislation. Such activities as breadboarding, modeling or other tasks inherent to R&D are permissible.

j. Periodic Review. Prior to renewal of a sponsoring agreement, agencies shall conduct a comprehensive review of their use and need for each FFRDC that they sponsor. Where multiple agency sponsorship exists this review will be a coordinated interagency effort. When the funding for an FFRDC is a specific line item within the sponsoring agency's budget, the comprehensive review may be done in conjunction with the budget process or the review may be done separately. The sponsoring agency(s) shall apprise other agencies who use the FFRDC of the scheduled review and afford them an opportunity to assume sponsorship in the event the current sponsorship is determined no longer appropriate. Final approval to continue or terminate an agency's sponsorship arrangement with a given FFRDC as a result of this review shall rest with the head of that sponsoring agency. The results of this review will be formally documented. The periodic review should include:

(1) An examination of the agency's special technical needs and mission requirements to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the agency's needs. Such consideration will include compliance with the Notice and Publication requirements of P.L. 98-72 (15 USC 637(e)) prior to renewal of the contract or Sponsoring Agreement unless otherwise exempted.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the agency's needs.

(4) An assessment of the adequacy of the FFRDC management in assuring a cost effective operation.

(5) A determination that the guidelines of section 6 are being satisfied.

k. Termination or nonrenewal of an FFRDC Relationship. When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. Otherwise it shall be phased out, the assets disposed of and all liabilities settled as provided by the terms and conditions of the sponsoring agreement.

7. Action Requirements.

a. Not later than September 30, 1984, each agency currently sponsoring an FFRDC will review the terms of its existing agreements with the FFRDCs for compliance with this policy letter. Where existing agreements do not comply with this policy letter the primary sponsor will develop a schedule to bring the agreements into compliance not later than the next contract renewal or five years from the effective date of this policy letter, whichever comes first.

b. Where the review required by 7.a. reveals that a clear statement of the purpose, mission and general scope of effort, as described in paragraph 6.b.(6) and 6.c.(1)(a), does not exist, the sponsoring agency shall ensure such a statement is developed not later than September 30, 1984.

c. The primary sponsor will notify the Office of Science and Technology Policy prior to designating any new organization as an FFRDC (paragraph 6.b.), changing the basic scope of effort of an existing FFRDC (paragraph 6.d.) or changing the status of an existing FFRDC (paragraph 6.k.).

d. The National Science Foundation will maintain a master Government list of FFRDCs based upon the definition in this Policy Letter.

e. FFRDCs will be identified by their primary sponsors who will provide information, including funding data, on the type of R&D being performed by the FFRDCs to the National Science Foundation upon their request for such information.

f. Each agency head is responsible for ensuring that the provisions of this policy are followed.

8. Effective Date. The Policy Letter is effective (60 days after publication in the Federal Register).

9. Implementation. Aspects of this policy letter requiring implementation will be covered by the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration in the Federal Acquisition Regulation not later than 180 days from the date of this policy letter. Implementation will be written so as to be compatible with the requirements, as of the date of this policy letter, of FAR 17.6 "Management and Operating Contracts" when the arrangement with an FFRDC constitutes a management and operating contract.

10. Information Contact. All questions or inquiries about this policy letter should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, telephone (202) 395-6810.

11. Sunset Review Date. This policy letter will be reviewed no later than six years after its effective date for extension, modification, or rescission.

Donald E. Sowle
Administrator

APPENDIX C - FEDERAL ACQUISITION REGULATION 35.017, "FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS"

35.017 Federally Funded Research and Development Centers.

(a) *Policy.*

(1) This section sets forth Federal policy regarding the establishment, use, review, and termination of Federally Funded Research and Development Centers (FFRDC's) and related sponsoring agreements.

(2) An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDC's enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector.

(3) FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

(4) Long-term relationships between the Government and FFRDC's are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

(b) *Definitions.*

"Nonsponsor," as used in this section, means any other organization, in or outside of the Federal Government, which funds specific work to be performed by the FFRDC and is not a party to the sponsoring agreement.

"Primary sponsor," as used in this section, means the lead agency responsible for managing, administering, or monitoring overall use of the FFRDC under a multiple sponsorship agreement.

"Special competency," as used in this section, means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the FFRDC to meet some special need.

"Sponsor" means the executive agency which manages, administers, monitors, funds, and is responsible for the overall use of an FFRDC. Multiple agency sponsorship is possible as long as one agency agrees to act as the "primary sponsor." In the event of multiple sponsors, "sponsor" refers to the primary sponsor.

APPENDIX C - FEDERAL ACQUISITION REGULATION 35.017, "FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS" (cont'd)

35.017-1 Sponsoring agreements.

(a) In order to facilitate a long-term relationship between the Government and an FFRDC, establish the FFRDC's mission, and ensure a periodic reevaluation of the FFRDC, a written agreement of sponsorship between the Government and the FFRDC shall be prepared when the FFRDC is established. The sponsoring agreement may take various forms; it may be included in a contract between the Government and the FFRDC, or in another legal instrument under which an FFRDC accomplishes effort, or it may be in a separate written agreement. Notwithstanding its form, the sponsoring agreement shall be clearly designated as such by the sponsor.

(b) While the specific content of any sponsoring agreement will vary depending on the situation, the agreement shall contain, as a minimum, the requirements of paragraph (c) of this subsection. The requirements for, and the contents of, sponsoring agreements may be as further specified in sponsoring agencies' policies and procedures.

(c) As a minimum, the following requirements must be addressed in either a sponsoring agreement or sponsoring agencies' policies and procedures:

(1) A statement of the purpose and mission of the FFRDC.

(2) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets, and settlement of liabilities. The responsibility for capitalization of an FFRDC must be defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC's relationship with its sponsor(s).

(3) A provision for the identification of retained earnings (reserves) and the development of a plan for their use and disposition.

(4) A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency request for proposal for other than the operation of an FFRDC. This prohibition is not required to be applied to any parent organization or other subsidiary of the parent organization in its non-FFRDC operations. Requests for information, qualifications or capabilities can be answered unless otherwise restricted by the sponsor.

(5) A delineation of whether or not the FFRDC may accept work from other than the sponsor(s). If nonsponsor work can be accepted, a delineation of the procedures to be followed, along with any limitations as to the nonsponsors from which work can be accepted (other Federal agencies, State or local governments, nonprofit or profit organizations, etc.).

(d) The sponsoring agreement or sponsoring agencies' policies and procedures may also contain, as appropriate, other provisions, such as identification of—

(1) Any cost elements which will require advance agreement if cost-type contracts are used; and

(2) Considerations which will affect negotiation of fees where payment of fees is determined by the sponsor(s) to be appropriate.

(e) The term of the agreement will not exceed 5 years, but can be renewed, as a result of periodic review, in increments not to exceed 5 years.

35.017-2 Establishing or changing an FFRDC.

To establish an FFRDC, or change its basic purpose and mission, the sponsor shall ensure the following:

(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see 5.205(b)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDC's.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

(i) OMB Circular A-120 is complied with when applicable, and quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

35.017-3 Using an FFRDC.

(a) All work placed with the FFRDC must be within the purpose, mission, general scope of effort, or special competency of the FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection. The nonsponsoring agency is responsible for making the determination required by 17.502 and providing the documentation required by 17.504(e). When permitted by the sponsor, a Federal agency may contract directly with the FFRDC in which case that Federal agency is responsible for compliance with Part 6.

35.017-4 Reviewing FFRDC's.

(a) The sponsor, prior to extending the contract or agreement with an FFRDC, shall conduct a comprehensive review of the use and need for the FFRDC. The review will be coordinated with any co-sponsors and may be performed in conjunction with the budget process. If the sponsor determines that its sponsorship is no longer appropriate, it shall apprise other agencies which use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship shall rest with the head of the sponsoring agency. This determination shall be based upon the results of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review should include the following:

(1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the sponsor's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with 35.017-1.

35.017-5 Terminating an FFRDC.

When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it shall be phased out.

35.017-6 Master list of FFRDC's.

The National Science Foundation (NSF) maintains a master Government list of FFRDC's. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

35.017-7 Limitation on the creation of new FFRDC's.

Pursuant to 10 U.S.C. 2367, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until (a) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and (b) a period of 60 days, beginning on the date such report is received by Congress, has elapsed.

APPENDIX D - OFFICE OF FEDERAL PROCUREMENT POLICY REQUESTS FOR AUDIT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY

MAR 12 1991

MEMORANDUM FOR THE INSPECTORS GENERAL

FROM: Allan V. Burman
Administrator

SUBJECT: Federally Funded Research and Development Centers (FFRDCs)

OFPP Policy Letter 84-1, "Federally Funded Research and Development Centers (FFRDCs)", as implemented by Part 35.017 of the Federal Acquisition Regulation (FAR), provides Government-wide policy for the establishment, use, periodic review and termination of these activities by Federal agencies. This memorandum is to apprise you of the FAR coverage, which was issued on February 5, 1990, and to ask your help in seeing that those policies are observed.

We particularly want to make sure that sponsoring agencies are carrying out their responsibility to review the need for these centers every five years. Attached is a list of current contracts and a copy of FAR Subpart 35.017-4.

Thank you for your assistance. Please contact Mr. Robert Cooper of my staff at 202/395-3300 with any questions.

Attachment

We would be pleased to meet with you or your staff to discuss this matter, if you so desire. If you have any questions regarding this request, please contact me at 202-395-5802 or Stanley Kaufman of my staff at 202-396-6810. Your cooperation and assistance are greatly appreciated.

Attachments

cc: Senator Cohen
Senator Levin

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY

SEP 16 1992

MEMORANDUM FOR THE INSPECTORS GENERAL OF:
DEPARTMENT OF DEFENSE
DEPARTMENT OF ENERGY
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
NATIONAL SCIENCE FOUNDATION
NUCLEAR REGULATORY COMMISSION

FROM: Allan V. Burman
Administrator

SUBJECT: Federally Funded Research and Development Centers (FFRDCs)

By the attached memorandum dated March 12, 1991, I apprised you of the Office of Federal Procurement Policy (OFPP) Policy Letter 84-1, "FFRDCs" and its implementing regulatory coverage. The memorandum requested your assistance in seeing that the requirements of the Policy Letter were being observed.

Recently, the Senate Subcommittee on Oversight of Government Management published a report entitled "Inadequate Federal Oversight of Federally Funded Research and Development Centers". The report detailed the need for strengthened Federal controls over FFRDCs. Among other things, the report recommended that sponsoring agencies not only compete contracts to establish FFRDCs, but also to continue operation of existing FFRDCs. It also recommended that OFPP revise the appropriate acquisition regulations to enhance competition.

We believe that FFRDC contracts are intended to be long-term in nature. However, the policy requires that agencies conduct analyses prior to renewing FFRDCs to determine whether the unique FFRDC relationship is still needed. The analyses should address whether the marketplace has changed to the point where competition should be sought. They should also evaluate past performance and any future changes to the FFRDC's mission. A copy of the Senate report is attached for your information.

In order to respond fully to the Senate, I am requesting that you conduct a special audit of your agency's FFRDC sole source renegotiation justifications developed since 1985. Specifically, the audit should address the nature and adequacy of those justifications. I would appreciate being advised of the results of your audit by February 1, 1993.

APPENDIX E - SUMMARY OF PRIOR AUDITS AND OTHER REVIEWS

General Accounting Office

Report No. GAO/NSIAD-88-22 (OSD Case No. 7551), "Competition: Issues on Establishing and Using Federally Funded Research and Development Centers," March 7, 1988. The report stated that the special relationship FFRDCs had with their sponsors restricted competition. Due to the lack of competition, the government was limited in its ability to know whether non-FFRDCs could do work better or at less cost. The report recommended the use of broad agency announcements on a test basis for assessing the potential availability of non-FFRDCs to accomplish DoD research and for improving DoD assurance that FFRDC work was the most effective. DoD disagreed with the recommendation on grounds that the needs for and uses of the FFRDCs were thoroughly assessed under existing procedures.

Inspector General, DoD

Report No. 93-113, "DoD Contractor Insurance Programs," June 18, 1993. The report stated that Defense Logistics Agency contractor insurance/pension reviews resulted in about $1.2 billion of savings from FY 1990 through the 3rd quarter of FY 1992. However, contractor insurance/pension reviews for an estimated 89 contractors and 4 FFRDCs that qualified for reviews were not accomplished as required. The report estimated that $1.6 to $4.4 million in monetary benefits could be realized by performing the contractor insurance/pension reviews at the Lincoln Laboratory, the Center for Naval Analyses, the Software Engineering Institute, and the Logistics Management Institute. The Director, Defense Logistics Agency, agreed to evaluate the 4 FFRDCs to determine the need for contractor insurance/pension reviews.

Report No. 92-013, "Quick Reaction Report on the Audit of the Army Contract with the University of Texas at Austin Institute for Advanced Technology," October 27, 1992. The report stated that the establishment of the Institute for Advanced Technology and its planned expansion were contrary to the OFPP policy of relying on available resources for meeting research needs. The Army did not adequately analyze requirements or properly consider alternatives to meet those requirements. The Assistant Secretary of the Army (Research, Development, and Acquisition) partially concurred with the recommendations to reassess the need for the Institute for Advanced Technology as an FFRDC and plans to terminate the FFRDC contract in FY 1994.

Report No. 91-115, "Consulting Services Contracts for Operational Test and Evaluation," August 22, 1991. The report stated that the service contracts used to support operational tests were not as cost-effective as developing an in-house capability to perform

the work. Services provided by the Institute for Defense Analyses were shown to cost 31 percent more than the same services provided by comparable in-house personnel. Recommendations were made to determine the number of in-house personnel needed to accomplish requirements, to make funding adjustments in the budget in order to hire additional civilian personnel, and to reduce the use of advisory and assistance services by 60 percent over the next 5 years. On April 23, 1992, the Deputy Secretary of Defense decided not to implement the recommendations to transfer contract work to in-house civilian personnel and to decrease the budget. The Deputy Secretary of Defense requested that the Assistant Secretary of Defense (Force Management and Personnel), in coordination with the Secretaries of the Military Departments, the Director of Operational Test and Evaluation, and the Comptroller of the Department of Defense, study the use of in-house and contracting personnel in operational test and evaluation activities and recommend to the Deputy Secretary of Defense by July 1, 1992, any policy or practice changes. In October 1992, the Deputy Secretary of Defense concluded that no additional action would be taken pending the collection and review by the Comptroller of the Department of Defense of supplementary manpower requirements data for the FY 1995 budget.

Report No. 90-041, "Contracting Practices of the Institute for Defense Analyses," March 1, 1990. The audit stated that the Institute for Defense Analyses (IDA) mission statement did not clearly differentiate between work suitable for IDA and work that a non-FFRDC should perform. Also, program officials were not ensuring that work assigned to IDA on a sole-source basis could not be done by non-FFRDC sources. The report recommended that DDR&E establish a mission statement for IDA in accordance with OFPP Letter 84-1 and that DDR&E establish procedures to adequately justify the sole-source assignment of work to IDA. DDR&E concurred with the recommendations.

Air Force Audit Agency

Report No. 0056410, "Review of Air Force-Managed Federally Funded Research and Development Centers," August 6, 1991. The report stated that non-FFRDC contract support was less costly than support provided by the Aerospace and MITRE corporations. Based on FY 1990 data, the average annual cost for an Aerospace Corporation FFRDC technical staff member was $184,000, compared to $114,000 for a non-FFRDC technical support contract employee. Likewise, the average technical staff member cost at the MITRE Corporation C^3I Division FFRDC was $151,000, compared to a non-FFRDC contractor cost of $135,000. The report stated that Air Force Systems Command (now Air Force Materiel Command) program managers approved sole-source taskings for the use of FFRDCs without determining whether in-house or non-FFRDC contractors

could accomplish the work; did not independently develop an estimate of their FFRDC support requirements; and did not adequately and objectively evaluate the FFRDCs' technical performance for any of the performance evaluations reviewed. Air Force management officials agreed with the report conclusions and recommendations.

Report No. 93064014, Followup Audit--Review of Air Force-Managed Federally Funded Research and Development Centers," August 18, 1993. The audit evaluated the effectiveness of management actions implemented in response to selected recommendations in Report No. 0056410, "Review of Air Force-Managed Federally Funded Research and Development Centers," August 6, 1991. The report stated that Air Force Materiel Command Space and Missile Systems Center and Electronic Systems Center were effectively defining FFRDC taskings, or using alternative methods, to prepare independent estimates of support requirements; and using the independent estimates to help negotiate fair and reasonable prices. However, the Space and Missile Systems Center had not fully implemented procedures to review and validate FFRDC billing accuracy, and the Electronic Systems Center had not effectively implemented procedures to evaluate FFRDC performance. The report contained no new findings requiring corrective actions.

Department of the Navy

Assistant Secretary of the Navy (Research, Development, and Acquisition) Special Procurement Management Review, "Contracting Through Navy Laboratories and Use of Federally Funded Research and Development Centers," July 1989. The report stated that Navy activities were unaware of the requirements governing the proper use of FFRDCs. As a result, the Navy inappropriately used Center for Naval Analyses and Department of Energy FFRDCs for support services and general information gathering. In response to the inappropriate use of FFRDCs, the Assistant Secretary issued a May 25, 1990, memorandum to remind FFRDC users of Economy Act, Competition in Contracting Act, Brooks Act, and FAR 35.017 requirements.

Congressional Research Service

Report No. 91-378 SPR, "DoD's Federally Funded Research and Development Centers (FFRDCs)," April 29, 1991. The report summarizes congressional concerns related to DoD-sponsored FFRDCs. These concerns included the increased funding and growth of the FFRDCs at the same time that research, development, test, and evaluation funding was decreasing; contentions that contracting officials increasingly placed sole-source contracts with FFRDCs to bypass requirements of the Competition in Contracting Act and other procurement regulations; the extent to

which FFRDCs are required because of their ability to maintain objectivity and avoid conflicts of interest; the inadequate oversight of the FFRDCs; and the diversification of FFRDCs into areas beyond their originally defined missions. Related to diversification, the report stated that members of Congress were considering allowing some FFRDCs to broaden their science and technology activities together with requiring them to compete with non-FFRDCs.

U.S. Senate

Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs Report, "Inadequate Federal Oversight of Federally Funded Research and Development Centers," July 8, 1992. The subcommittee reported that cost, accounting, and auditing controls were inadequate and inconsistent and had contributed to wasteful and inappropriate use of Federal funds by FFRDCs. The report stated that Congress has repeatedly expressed concerns about DoD excessive funding and inadequate management of FFRDCs and noted House and Senate Appropriations Committee actions in the FYs 1991 and 1992 appropriations bills to reduce funding and improve the management of DoD-sponsored FFRDCs.

The subcommittee report highlighted problems identified by the Air Force Audit Agency and the Defense Contract Audit Agency at Air Force-sponsored FFRDCs involving lack of independent cost estimates; failure to ensure the validity and reasonableness of costs; inadequate review of management fee requests and travel costs; inadequate review and monitoring of projects assigned to the FFRDCs; and the charging of excessive indirect costs by the Massachusetts Institute of Technology against the Lincoln Laboratory contract.

The report addressed subcommittee concerns regarding contract provisions that allow the payment of a management fee to the Center for Naval Analyses for charges that were otherwise unallowable, including the funding of a tuition program for the children of Center for Naval Analyses employees. The report questioned why a fixed fee was paid to a non-profit corporation whose sole purpose was to run an FFRDC. The report also noted that most Defense Contract Audit Agency audits were not timely and several contained audit exceptions that were unresolved as of the subcommittee survey.

The report stated that FFRDC operating contracts were generally not competitively awarded. The report also stated that the Competition in Contracting Act was enacted to hold down contract costs through the use of competitive procedures and that exempting FFRDCs from competition under 10 U.S.C. 2304(c)(3) was not intended to eliminate competition from contracts to operate FFRDCs.

The report addressed concerns about combined FFRDC operations, stating that RAND Corporation operates three separate FFRDCs for DoD and that MITRE Corporation operates two FFRDCs, one for DoD and one for the Federal Aviation Administration. The report stated that both FFRDCs issue combined financial statements and provide combined indirect cost data for audit.

The report listed concerns regarding the operation of "shell corporations," such as the Center for Naval Analyses, the Institute for Defense Analyses, the Aerospace Corporation, and the Logistics Management Institute. The report stated that the sole purpose of the corporations was to operate an FFRDC and that a shell corporation with no other assets or functions has less independence and was more difficult to dislodge in the event of poor performance.

The report recommended reforms for the Office of Federal Procurement Policy and the sponsors of all FFRDCs to improve oversight over FFRDC spending. The recommendations included improving cost, accounting, and auditing controls; re-assessing the need for management fees; and increasing competition for FFRDC contracts. The report also recommended that sponsors assess the independence of FFRDCs and the cost and benefits of operating multiple FFRDCs from a single site.

APPENDIX F - SOLE-SOURCE RENEGOTIATION JUSTIFICATIONS

FFRDC	Date Review Approved	Date Sole-Source Justification Approved	Approval Level	Contract Award Date
Project AIR FORCE	Review Not Done	Jul. 5, 1990	Assistant Secretary of the Air Force (Acquisition)	Nov. 19, 1990
National Defense Research Institute	Nov. 8, 1989	Aug. 14, 1989	Director, Defense Research and Engineering	Nov. 20, 1989
Arroyo Center	Review Not Done	Aug. 9, 1990	Assistant Secretary of the Army (Research, Development, and Acquisition)	Jan. 18, 1991
Institute for Defense Analyses	Dec. 26, 1989	Jun. 9, 1988	Director, Defense Research and Engineering	Dec. 22, 1988
Center for Naval Analyses	Nov. 30, 1990	Jul. 17, 1990	Assistant Secretary of the Navy (Research, Development, and Acquisition)	Sept. 28, 1990
Logistics Management Institute	Jul. 19, 1989	Nov. 16, 1989	Under Secretary of Defense for Acquisition	Nov. 20, 1989
Aerospace Corporation	Review Not Done	Apr. 12, 1988	Assistant Secretary of the Air Force (Acquisition)	Sept. 22, 1988
MITRE Corporation C^3I Division	*	Jun. 23, 1988	Assistant Secretary of the Air Force (Acquisition)	Oct. 21, 1988
Lincoln Laboratory	*	Jan. 25, 1989	Assistant Secretary of the Air Force (Acquisition)	Sept. 28, 1989
Software Engineering Institute	*	Mar. 22, 1989	Assistant Secretary of the Air Force (Acquisition)	Dec. 13, 1989

*Review was undated but was prepared after justification was approved.

APPENDIX G - SUMMARY OF REVIEWS AND JUSTIFICATIONS

FFRDC	Mission Requirement Defined Clearly[1]	Alternatives Considered[2]	Efficiency and Effectiveness[3]	FFRDC Management Controls[4]	Compliance With FAR Criteria[5]
Project AIR FORCE	No	No	No	No	No
National Defense Research Institute	No	No	No	No	No
Arroyo Center	No	No	No	No	No
Institute for Defense Analyses	No	No	No	No	No
Center for Naval Analyses	No	No	No	No	No
Logistics Management Institute	No	No	No	No	No
Aerospace Corporation	No	No	No	No	No
MITRE Corporation C^3I Division	No	No	No	No	No
Lincoln Laboratory	No	No	No	No	No
Software Engineering Institute	No	No	No	No	No

See footnotes at end of appendix.

APPENDIX G - SUMMARY OF REVIEWS AND JUSTIFICATIONS (cont'd)

[1]/Shows whether the comprehensive review or sole-source justification identified what services were needed, who needed the services, what special skills were involved in providing the services, and the extent of services or requirements needed (time frames and dollars).

[2]/Shows whether the comprehensive review or sole-source justification convincingly argued why using in-house or non-FFRDC contractor capabilities to meet requirements was not feasible.

[3]/Shows whether the efficiency and effectiveness of the FFRDC in meeting needs was based on objective criteria and accurately reported in the comprehensive review.

[4]/Identifies whether the comprehensive review identified and evaluated the adequacy of management controls in place at the FFRDC to ensure cost-effective operations.

[5]/Shows whether the comprehensive review adequately established that the criteria for establishing the FFRDC continued to be satisfied.

APPENDIX H - DETAILS ON CONTRACTS WITH RAND CORPORATION FOR PROJECT AIR FORCE, NATIONAL DEFENSE RESEARCH INSTITUTE, AND ARROYO CENTER

Background. The RAND Corporation operates three DoD-sponsored FFRDCs: Project AIR FORCE (formerly Project RAND), the National Defense Research Institute, and the Arroyo Center. The most recent 5-year contracts for these FFRDCs were awarded on November 19, 1990, for a total value of $148.6 million; on November 20, 1990, for a total value of $125 million; and on January 18, 1991, for a total value of $110 million, respectively. RAND also conducts non-DoD sponsored research through its Domestic Research Division.

Project RAND, sponsored by the Air Force, was initiated through a special contract with the Douglas Aircraft Company in 1946. A March 9, 1946, statement of work described the objectives of Project RAND as:

> A program of study and research on the broad subject of intercontinental warfare other than surface, with the objective of recommending to the Army Air Forces preferred technique and instrumentalities for this purpose.

The concept of Project RAND was based on the desire to retain the services of civilian scientists for Government and military activities after World War II to assist in military planning and especially to coordinate such planning with research and development decisions. The broad nature and influence of the mission of Project RAND led to concerns about conflicts of interest. This concern led to incorporation of Project RAND as a non-profit corporation in May 1948, and in November 1948, the Project RAND contract was transitioned to the RAND Corporation. In 1976, Project RAND was renamed Project AIR FORCE. All Air Force contracts for Project RAND/Project AIR FORCE were awarded sole-source to the RAND Corporation.

The National Defense Research Institute (NDRI) was established at the request of the RAND Corporation in 1984. NDRI was established to consolidate on-going research and development work conducted by RAND's Defense Manpower Research Center and Strategy Assessment Center for various OSD elements.

The Arroyo Center, an Army-sponsored FFRDC, was transferred in 1984 to the RAND Corporation at the request of the Secretary of the Army and Chief of Staff of the Army. The Arroyo Center was originally established in 1982 at the Jet Propulsion Laboratory, an FFRDC sponsored by the National Aeronautics and Space Administration and operated by the California Institute of Technology. The 1984 contract and the 1989 contract were sole-source awards to the RAND Corporation.

APPENDIX H - DETAILS ON CONTRACTS WITH RAND CORPORATION FOR PROJECT AIR FORCE, NATIONAL DEFENSE RESEARCH INSTITUTE, AND ARROYO CENTER (cont'd)

In addition to DoD-sponsored work conducted through FFRDCs, RAND also conducts research and studies for more than 70 non-DoD sponsors, including other Federal Government agencies, state and local governments, private corporations, universities, and foundations. The non-DoD research amounts to 20 to 25 percent of RAND annual workload.

Basis for Project AIR FORCE contract renewal. The 1990 contract was awarded sole-source to RAND Corporation by the Air Force Office of Scientific Research. A comprehensive review document addressing the OFPP and FAR criteria on continued need was not prepared for Project AIR FORCE. The noncompetitive 5-year contract was based on an acquisition plan and a sole-source justification prepared by the Office of Scientific Research. The 10-page acquisition plan addressed the acquisition history and objective of Project AIR FORCE, the basis for selection, the contracting considerations, and the milestones for the procurement cycle. The plan stated:

> The initial reasons for establishing the RAND Corporation are still valid. The problems of national security continue to grow in complexity, and the years since the founding of RAND have been witness to a technological explosion....RAND is recognized as having made unique contributions to national security...
>
> . . . . . .
>
> The services to be provided by Project AIR FORCE (PAF) consist of a program of study and research on the broad subject of aerospace power with the object of recommending to the United States Air Force preferred methods, techniques, and instrumentality for the development and employment of aerospace power. The Air Force requirement for the type of policy and systems analysis support currently provided by PAF is expected to continue for an indefinite period of time. Executive level officials have continually expressed support for this type of service. The services to be provided by PAF can be described as timely and objective research on methods, techniques, and instrumentalities for the development and employment of aerospace power for the Air Force.
>
> . . . . . .
>
> The delivery of required reports, analyses, etc. will be governed by individual tasking arrangements.

The acquisition plan stated the authority for the sole-source contract was FAR 6.302-3 and that the acquisition would not be synopsized in the Commerce Business Daily because FAR 5.202(a)(10) permitted the contracting officer to waive the requirement. The plan advocated a 5-year, cost-plus fixed-fee contract because:

> ...the mix of various labor categories required for each individual program cannot be forecast since only general areas to be studied are known in advance. Specific topics to be studied under each program are determined as the requirements evolve during the period of performance. Under these circumstances, it is not possible to reasonably predict these requirements at the time of negotiations so that realistic individual project levels-of-effort can be estimated.

In regard to management control, the acquisition plan stated:

> The Air Force Advisory Group (AFAG) for Project AIR FORCE is composed of fourteen Air Staff general officers and senior civilian officials....The AFAG conducts substantive reviews of selected research projects during periodic meetings with RAND management....Each project initiated under Project AIR FORCE is sponsored by a HQ USAF or MAJCOM [Major Command] general or Senior Executive Service (SES) officer....The sponsor provides guidance on Air Force needs and priorities, periodically reviews the status of the research effort and assumes the lead for implementing those findings and recommendations accepted by the Air Force.

The two-page sole-source justification document described the services to be procured as follows.

> The requirement is for 150 work years of professional effort each year. The statement of work for services is to perform a program of study and research on the broad subject of Aerospace power with the objective of recommending to the United States Air Force preferred methods, techniques, and instrumentalities for the development and employment of Aerospace Power.

The July 5, 1990, justification document cited FAR 6.302-3 as the authority for the sole-source procurement and stated this authority was applied because:

> Contracting with The RAND Corporation is consistent with Air Force Policy...and OSD's decision to retain Project AIR FORCE as a FFRDC. The RAND Corporation is recognized as having made unique contributions to National Security, assisting the Air Force in its role of leadership in applying modern analytic techniques.

The justification also stated that, based on FAR 5.202(a)(10), no synopsis would be published in the Commerce Business Daily and no further steps would be taken to obtain competition. The justification further stated that an informal market survey had determined that no other acceptable qualified sources could satisfy the requirements and that no other contracting sources had expressed written interest in this acquisition.

Basis for NDRI contract renewal. On November 30, 1989 (effective October 1, 1989), DSS-W noncompetitively awarded the contract for NDRI to the RAND Corporation. A periodic review document and sole-source justification were the basis for the award to RAND. The Director, DoD FFRDC Programs, DDR&E, prepared both documents. On August 14, 1989, DDR&E approved the sole-source justification. On November 8, 1989, the Deputy DDR&E (Research and Advanced Technology) approved the review document. The 10-page periodic review document described the background of NDRI, the RAND environment, research themes and directions, and FFRDC organization. The review document stated that NDRI's research agenda was generally oriented towards resolving three key defense policy questions.

o How is the global evolution of military power, political influence, and economic strength affecting the challenges faced by the United States?

o How can force employment strategy, weapon system acquisition, logistics support, and personnel force evolution be better planned and managed?

o How should U.S. forces be modernized to assure continual deterrence, particularly with respect to conventional balance of forces in Europe?

The Director, DoD FFRDC Programs, requested 16 current senior-level DoD officials who sponsored studies and 10 former DoD senior-level officials who had sponsored studies when they

were in Government service for assessments of the use and need for NDRI. The May 12, 1989, memorandum to the current officials stated:

> As reference, copies are attached of NDRI's 1985, 1986, and 1987 annual reports (the 1988 edition will be mailed to you soon), as well as a list of NDRI's projects during the last five years. Instead of a project-by-project evaluation, it would be helpful if your input is more of an overall assessment of the continuing need for the FFRDC, the effectiveness of NDRI in meeting its sponsors' needs for objective research and analysis, and the adequacy of the FFRDC management.

The May 12, 1989, letter to former officials stated:

> Your judgment is solicited on the continuing need for this FFRDC as well as on the extent to which the NDRI has met its objectives. References to notable capabilities and/or products would be appreciated. A copy of the latest NDRI Annual Report is enclosed; earlier ones are available on request.

All 26 responders supported renewal of the NDRI contract. However, all of the current officials were nonspecific regarding their future requirements. Regarding alternative sources, 2 of the 16 sponsors stated that the FFRDCs performed only appropriate tasks since each project was reviewed to determine whether the project should be performed by the FFRDC or some other organization. The other sponsors either did not address this area or discussed the close relationship between the FFRDC and their organization. The responses from current senior-level OSD officials were mixed on the effectiveness and efficiency of the FFRDC in meeting sponsor needs. Several commented negatively on NDRI's lack of responsiveness, particularly on delivery of reports. One official stated that, "NDRI's work is not appreciably better as far as quality of research than many non-FFRDCs." Other officials believed that the FFRDC was effective and responsive to performing their work. Most of the former and current officials stated that NDRI management was supportive of the sponsor's requirements. The officials generally believed that the NDRI adhered to the criteria for an FFRDC and the sponsoring agreement, as required by FAR 35.017-1.

The two-page sole-source justification for the NDRI contract described the services to be provided as follows.

> ...the broad objectives of the work to be performed under this contract are to (1) provide expert and independent interdisciplinary research capabilities covering a broad range of relevant specialties; (2) enhance mechanisms for the technology transfer among Office of the Secretary of Defense components; and (3) further institutionalize capabilities for analysis and integration of defense issues that cut across the responsibilities of individual DoD components. A wide range of research, studies and analyses are expected to be conducted in eight areas: (1) applied science and technology; (2) defense manpower research; (3) information processing systems; (4) international economic policy as it relates to defense policy; (5) international security and defense policy; (6) acquisition and support policies; (7) force employment; and (8) strategy planning and assessment.

The sole-source justification cited FAR 6.302-3 as the authority for the sole-source procurement, stating that NDRI had developed a unique capability to support the OSD, the Joint Staff, and the Defense Agencies in areas that could not be performed by a non-FFRDC. The justification stated that a market survey was not conducted or necessary because NDRI was, "a unique organization that cannot be duplicated." It further stated, "A listing of the sources, if any, that expressed, in writing, an interest in the organization is not applicable to FFRDC." The sole-source justification was approved by the Director of Contracting, DSS-W, and the DDR&E.

Synopsis of NDRI contract in Commerce Business Daily. On June 29, 1989, DSS-W published a notice of the proposed sole-source award to NDRI in the Commerce Business Daily. The synopsis stated:

> **CONTINUING RESEARCH IN SUPPORT OF OSD AND OJCS....**The Dept. of Defense plans to award a sole-source contract to the Rand Corporation...for work to be performed by the National Defense Research Institute (NDRI), a Federally Funded Research and Development Center (FFRDC). This contract is for continuation of multiple-year research currently sponsored by various elements of the Office of the Secretary of Defense (OSD), Office of the Joint Chiefs of Staff (OJCS), The Defense Advanced Research Projects Agency, and other Defense Agencies. The broad objectives of the NDRI program are to provide expert and independent inter-disciplinary research capabilities covering a broad range of relevant specialties and further develop and

> institutionalize capabilities for analysis and integration of defense issues that cut across the responsibilities of individual DoD components. A wide range of research is expected to be conducted in the following areas: defense research management, technology and information processing, international security and policy, strategy and force employment.

The contracting office received no inquiries regarding this synopsis.

Basis for Arroyo Center contract renewal. DSS-W awarded the January 8, 1991, sole-source contract for the Arroyo Center. The effective date of the contract was October 1, 1990. The Army could not provide a comprehensive review that addressed OFPP Letter 84-1 and FAR 35.017-4 criteria. To support the noncompetitive procurement, the Director of Management, Office of the Chief of Staff of the Army, polled Army Major Commands and the Army Staff on their use of, and need for, the Arroyo Center, and prepared a sole-source justification dated August 9, 1990. Users responding to the request for comments included the Commanding General, Forces Command; the Commanding General, Training and Doctrine Command; the Commanding General, Army Materiel Command; the Deputy Chief of Staff for Operations and Plans, Department of the Army; and three Directors within the Office of the Deputy Chief of Staff for Operations and Plans, Department of the Army. The three Commanding Generals and the Deputy Chief of Staff for Operations and Plans were members of the Arroyo Center Policy Committee, which met periodically to review and approve the Arroyo Center program.

All inputs from the users and members of the Arroyo Center Policy Committee rated Arroyo Center services favorably and supported renewal of the contract. The memorandum from the Commanding General, Forces Command, stated:

> While I cannot predict definitive Army requirements and internal assets in the future, it stands to reason that the Army will have a continuing need for thorough and sound analysis on topics which will require technical expertise and/or objective perspectives. There are, of course, a number of alternative sources for this kind of research; however, the Arroyo Center's links to the RAND Corporation and its track record of outstanding service to the Army should argue in favor of renewing the Center's contract.

The memorandum from the Commanding General, Training and Doctrine Command, stated:

> Assessments of...Arroyo Center's work...vary between individual sponsors....from unqualified "thumbs-up" to qualified "thumbs-down"....TRADOC has a continuing requirement for analytical support, particularly in the functional areas of training and combat developments....TRADOC does not depend solely on the Arroyo Center for research-related support. Organic assets...and various contractors are employed to support TRADOC's research needs....TRADOC has a continuing need for Arroyo Center support, and therefore I recommend the Army's contract with the Arroyo Center be renewed.

The memorandum from the Commanding General, Army Materiel Command, stated:

> The RAND support in the development of logistics concepts and supporting management systems and ammunition programming and budgeting has been exceptional....However, they have been less successful in providing assistance in the Army technology base.
>
> . . . . . .
>
> Because of the declining resources and changing force levels in the Army and AMC, the need for innovative thinking and creative solutions that are available through Arroyo Center is greater today than when they were formed.

The memorandum from the Deputy Chief of Staff for Operations and Plans stated:

> The Army needs the Arroyo Center. Arroyo Center provides senior Army leadership with research and analysis that has proven to be useful, relevant and credible. Arroyo Center's objective and independent research on national defense policy issues is unique, cannot be obtained in-house, and is best provided by a Federally Funded Research and Development Center (FFRDC) operation.

With regard to the Army's special technical needs and mission requirements, the Deputy Assistant Deputy Chief of Staff for Operations and Plans, Force Development, made the following comments:

> RAND Arroyo maintains a full range of capabilities that can support Army requirements e.g., theater level warfight analysis to system specific COEA's [cost and operational effectiveness analysis]. They have provided such support when organic Army analysis agencies (CAA and TRAC) [Concepts Analysis Agency and TRADOC Analysis Command] are fully committed.

In addressing the issue of alternative sources to meet the Army's needs, the Deputy Assistant Deputy Chief of Staff for Operations and Plans, Force Development, further stated:

> Using internal Army analysis organizations is normally attempted, however, the required workload usually far exceeds the ability of current internal agencies to provide the necessary support. RAND in many cases has been very responsive and adaptive to special unprogrammed study projects.

The sole-source justification document provided the following description for the services to be procured from the Arroyo Center:

> ...(1) provide expert and independent interdisciplinary analytical research capabilities covering a broad range of relevant specialties; (2) further institutionalize capabilities for analyses and integration of Army issues that cut across the responsibilities of individual Army components; and (3) enhance mechanisms for the transfer of information across service components. A wide range of research, studies and analyses are expected to be conducted in the following areas: (1) strategy planning and assessment; (2) force design and structure; (3) force operations; (4) readiness and support infrastructure; (5) acquisition and support policies; (6) applied science and technology applications; (7) methodological development; (8) manpower, training, and performance; (9) threat assessment; and (10) Army policies and doctrine.

The authority cited for the sole-source procurement was FAR 6.302-3. The justification stated "...a market survey was

not necessary since the Arroyo Center is a unique organization that cannot be duplicated." The justification further stated "...replacement of the unique capability provided by the Arroyo Center would be very costly to the Government in terms of dollars and delay in meeting DA [Department of the Army] requirements."

Synopsis of Arroyo Center contract in Commerce Business Daily. DSS-W published a notice of proposed sole-source award to the Arroyo Center in the Commerce Business Daily on July 6, 1990. The synopsis stated:

> **CONTINUING RESEARCH IN SUPPORT OF THE U.S. ARMY**....DSS-W intends to award a sole source contract to Rand Corporation...for the continuation of multiple-year research, studies, and analyses currently sponsored by various elements of the Dept. of the Army. See Note 22. [Note 22 stated:] The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested parties may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals....A determination by the Government not to compete this proposed contract based upon responses to this notice is solely within the discretion of the government. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

We did not identify any inquiries from other organizations in response to the synopsis.

Evaluation of the reviews, sole-source justifications, and synopses. We concluded that the renewal of contracts for the three FFRDCs operated by RAND were not adequately justified. Comprehensive review documents meeting the OFPP and FAR criteria on continuing need for FFRDCs were not prepared for Project AIR FORCE and the Arroyo Center. The review for NDRI was prepared and approved after the sole-source justification and the effective date (October 1, 1989) of the contract. The requirements for Project AIR FORCE, NDRI, and Arroyo Center were stated in broad, general terms. Based on the descriptions in the review documents, acquisition plans, and sole-source justifications of the work to be performed, each FFRDC could be tasked to perform a study on almost any subject of interest to the FFRDC's sponsor. None of the review documents, acquisition

plans, or justifications articulated the missions of Project AIR FORCE, NDRI, and the Arroyo Center clearly enough to differentiate their work from studies performed under contracts for advisory and assistances services, or by DoD personnel, or by another FFRDC. Market surveys were not formally conducted to identify potential alternatives to Project AIR FORCE, NDRI, or the Arroyo Center. The proposed sole-source awards were synopsized in the Commerce Business Daily for NDRI and the Arroyo Center.

The Air Force and the Army did not address the efficiency and effectiveness of Project AIR FORCE and the Arroyo Center in the acquisition plans or the sole-source justifications. However, annual reviews of the performance of Project AIR FORCE and the Arroyo Center were performed. Users of Project AIR FORCE completed a 1-page questionnaire that asked 12 questions related to the quality, utility, value, and timeliness of work done by Project AIR FORCE. Each question provided for a check-mark rating of "Exceeds," "Meets," or "Fully Short of Expectations." The Air Force Director of Plans summarized the FY 1990 review results in a October 22, 1990, letter to the Vice President, Project AIR FORCE. The Director of Plans stated "...RAND met or exceeded expectations on 98 percent of the assessments...." Users of approved Arroyo Center projects were asked to complete a three-page evaluation guideline to assess the work done by the Arroyo Center before award of the January 19, 1991, contract. The users were asked to provide multiple-choice responses to 30 statements related to the usefulness, credibility, and presentation of Arroyo Center work. The possible responses were, "Unable to evaluate," "Strongly Disagree...," "Disagree...," "Agree...," and "Strongly Agree with statement." The Army was not able to provide the final user results of the survey. However, in a May 16, 1990, memorandum to the Assistant Secretary of the Army (Research, Development, and Acquisition), the Army Director of Management stated that "...responses [to the survey]...were favorable." The survey of current and past senior-level users of NDRI covered multiple projects over several years. The reviews of the use of Project AIR FORCE, the Arroyo Center, and NDRI were not adequate assessments of the efficiency and effectiveness of the FFRDCs because user ratings were based on subjective criteria.

The review documents also did not discuss what controls had been established by RAND to ensure a cost-effective operation. The review documents, acquisition plans, and justifications also did

not establish, for any of the three FFRDCs, that the FAR criteria for establishing FFRDCs continued to be satisfied and that the sponsoring agreements complied with the FAR.

Several DoD activities provided comments that were not addressed in the review documents and justifications, but appear to be relevant. For example, a memorandum prepared by an official in the Office of the Under Secretary of Defense for Policy, one of the primary users of NDRI, raises questions about the basis for establishing the NDRI and its efficiency and effectiveness and cost controls. The memorandum stated that:

> ...the initiative for establishing the NDRI [in 1984] came from RAND, not the Government, and the logic for doing so was not administrative....RAND's main argument for the facility was that stabilized FFRDC funding is essential if one intends RAND to maintain staff expertise and data bases in certain specialized fields for which the DoD's requirements are occasional or intermittent. Additionally, RAND argued that the NDRI would facilitate a more coherent research agenda, conscious of its various aspects and lending itself to integration of or cross-fertilization between similarly focused projects for different sponsors. OSD accepted those arguments, but...neither [argument] is compelling based on actual experience.
>
> . . . . . .
>
> At the same time, Rand research under the NDRI arrangement is more costly than was the case prior to establishment of the FFRDC, whether measured in cost rates or expressed as the percentage of each contract dollar actually made available to approved projects. Additional cost factors derive from set-aside of funds for "project development," management layering (i.e., the creation of an NDRI oversight and administrative bureaucracy that plays no role in substantive research), and correspondingly higher overhead costs.
>
> . . . . . .
>
> ...the NDRI FFRDC and its dedicated funding arrangement have produced a costly and essentially anti-competitive procurement convenience, which has largely failed to arrest or repair the decline in the quality of Rand's research in certain high visibility fields of interest...and has produced little of value

> in the area of research integration through so-called "cross-functional studies." The fact that performance has not deteriorated in some other fields is insufficient reason to fund the NDRI.

The comments received from several users of the Arroyo Center indicated that the Arroyo Center performed studies and analyses that the Army in-house organizations were unable to perform because of staffing limitations. The person preparing the sole-source justification for the Arroyo Center did not document why, if additional staffing was authorized, the work performed by the Arroyo Center could not be performed by in-house organizations such as the Army Concepts Analysis Agency or the Army Training and Doctrine Command's Analysis Center. The justification also did not document why the work could not be contracted to private-sector firms or other FFRDCs. We concluded that the justifications for the three FFRDCs at the RAND Corporation were not adequate for the award of the three 5-year sole-source contracts with a total estimated cost of $383.6 million.

Management Comments and Audit Response

Management comments. The Deputy DDR&E recommended deletion of the statement "The reviews of the use of...NDRI were not adequate assessments of the efficiency and effectiveness of the FFRDC because user ratings were based on subjective criteria." The Deputy DDR&E stated that many studies performed by the FFRDCs are inherently subjective and designing quantitative criteria would often simply quantify subjective arguments without adding to their validity.

Audit response. We did not delete the statement. The DoD Management Plan for FFRDCs requires the primary sponsor for each FFRDC to review and report on the costs and value to DoD of goods and services provided by the FFRDCs. Sponsoring agencies should have sufficient in-house expertise to objectively evaluate the work performed by the FFRDCs, and performance measures to assess inputs, outputs, efficiency, and effectiveness for the FFRDCs. The performance measures must be verifiable and results oriented and should include qualitative as well as quantitative measures. Subjective assessments can present distorted pictures. Also, the answer keys used on the assessments were different. If DoD is going to use subjective questionnaires as a portion of the reviews of FFRDCs, the DoD should at least standardize the answer keys used.

APPENDIX I - DETAILS ON CONTRACT WITH INSTITUTE FOR DEFENSE ANALYSES

Background. The Institute for Defense Analysis (IDA) was incorporated as a non-profit organization in April 1956. IDA's establishment resulted from a 1955 request by the Secretary of Defense and the Joint Chiefs of Staff for an organized university effort as a public service to support and strengthen the Weapons Systems Evaluation Group. The Weapons Systems Evaluation Group was established in 1949 as a staff division to the Joint Chiefs of Staff to provide information on the operational significance of new weaponry. The second Hoover Commission reviewing the operations of the Organization of the Joint Chiefs of Staff approved the concept of the Weapons Systems Evaluation Group but noted that the staff was too small and that efforts to expand the staff had been unsuccessful because of restrictions on civil service pay and on the size of the Joint Chiefs of Staff. The Hoover Commission recommended that a more adequate staff be developed through a private organization. The IDA Board of Trustees was originally made up of administrators from five educational institutions: California Institute of Technology, Case Institute of Technology, Massachusetts Institute of Technology (MIT), Stanford University, and Tulane University of Louisiana. It was anticipated that the university association as established would lead to close relations between IDA and the university faculties.

Since IDA's inception in 1956, contracts awarded to IDA have never been competed. IDA currently provides studies and analyses, systems engineering, and laboratory and test support to more than 25 DoD organizations, including the Office of the Secretary of Defense, the Joint Chiefs of Staff, the European Command, the Transportation Command, the Special Operations Command, the Advanced Research Projects Agency, the Defense Information Systems Agency, the Defense Nuclear Agency, the Ballistic Missile Defense Organization, and the National Security Agency. IDA also provides support to such non-Defense activities as the Federal Bureau of Investigation, the Arms Control and Disarmament Agency, and the Congressional Budget Office.

Basis for 1988 sole-source contract. The Director, DoD FFRDC Programs, DDR&E, prepared a review document dated December 26, 1989. The sole-source justification to support the renewal of the FFRDC contract with IDA was dated June 9, 1988. DSS-W awarded the contract on December 22, 1988, with an effective date of October 1, 1988.

A July 25, 1988, DDR&E memorandum requested officials in 24 offices within the OSD, the Organization of the Joint Chiefs of Staff, and the Defense Agencies to provide comments to support renewal of the contract. Each of the offices had tasked IDA to

perform studies or provide support during the previous 5 years. Twenty offices provided responses, which were the basis for the review document.

The review document stated that all responders to the survey except one indicated a continuing requirement for the services provided by IDA. The office that no longer required IDA services based its decision on IDA's poor performance on a particular study. The review document cited IDA's capability to maintain a qualified staff in certain areas who were "attuned" to OSD needs as the primary reason for renewing the contract. Two other attributes cited were IDA's objectivity and independence (IDA performed no work for private-sector firms or the Military Departments). The review document also included complimentary comments on the quality and expertise of the IDA staff, the close relationship of IDA with its sponsors, and IDA's trustworthiness with sensitive information.

The review document stated that comments on the adequacy of IDA's management were mixed and that IDA's management was the only significant performance criticism on certain projects. One sponsor said that IDA incurred costs that were not authorized on the project. Another mentioned that IDA incurred costs of $900,000 on a particular project without any useful results. The office that terminated any further use of IDA stated that IDA had several opportunities during the 5 years to improve its performance, but its performance had not improved. For the most significant project, "IDA subcontracted the work and lost total control of the project." The majority of the respondents, however, provided positive comments.

The sole-source justification described the services to be provided by IDA as follows:

> ...task order projects directed to individual issues of urgent, near-term and long-term interests in the planning and management of defense and national security-related programs in the following areas: application of science and technology in national security matters; exploration of issues in defense systems research and development; computer and software engineering; evaluation of military systems in development or proposed, and of military forces using those systems; analysis of manpower, readiness and support issues; research into the costs of military systems, personnel and activities; research in strategy, military planning, international security, and related defense policy and management;

> assessment of worldwide, regional and local balances of power and stability and the factors affecting them including their technical, economic, and military aspects; operational evaluation and analyses of systems, forces, and military organizations in tests, wargames, field operations, and actual combat.

The justification stated that such work could only be performed by IDA because of:

> ...its unquestioned objectivity, free from conflicts of interests caused by the Services, commercial or other involvement; its confidentiality to protect very sensitive military and intelligence information as well as proprietary information from commercial contractors; its stable, interdisciplinary staff structures to meet the requirements of its sponsors; its familiarity with the needs of its sponsors; its establishment of a continuing research agenda for its sponsors; and its continuing high quality research products and advice provided to its sponsors.

The justification further stated that no market survey was performed because of the unique status and capability of the FFRDC at IDA. The authority cited for the sole-source contract was FAR 6.302-3. The justification did not mention that the award was publicized in the Commerce Business Daily and that a number of organizations had expressed interest in competing for the contract.

Synopsis of contract in Commerce Business Daily. On August 17, 1988, DSS-W published a notice of the proposed sole-source award to IDA in the Commerce Business Daily. The synopsis stated:

> **STUDIES AND ANALYSES** in support of the Office of the Secretary of Defense Federally Funded Research and Development Center Program Office....The supplies or services required to meet the agency's needs are: task order projects directed to individual issues of urgent, near-term and long-term interests in the planning and management of defense and national security-related programs in the following areas: Application of science and technology in national security matters; exploration of issues in defense systems research and development; computer and software engineering; evaluation of military systems

> in development or proposed, and of military forces using those systems; analysis of manpower, readiness and support issues; research into the cost of military systems, personnel and activities; research in strategy, military planning, international security, and related defense policy and management; assessment of world-wide, regional, and local balances of power and stability and the factors affecting them including their technical, economic and military aspects; operational evaluation and analyses of systems, forces, and military organizations in tests, wargames, field operations, and actual combat. This synopsis is for informational purposes only. A sol [solicitation] is not available.

In response to this announcement, the following nine commercial organizations expressed written interest in competing for the contract: BMY Division of Harsco Corporation; Price Waterhouse; Acquisition Dynamics, Incorporated; SRS Technologies; University of Maryland; Global Associates, Limited; Epoch Engineering, Incorporated; COMARCO International Business Services; and KDT Industries. In letters dated September 9, 1988, or October 6, 1988, the DSS-W contracting officer informed each of the first eight organizations listed above that:

> The announcement's reference to studies and analyses for the Office of the Secretary of Defense may have been misleading. The announcement really had to do with the renewal of a Federally Funded Research and Development Center....If you think your company is qualified to perform as a Federally Funded Research and Development Center, you must submit a capability statement setting forth information that would qualify you for such effort.

In responding to the synopsis, KDT Industries, submitted a four-page letter dated August 23, 1988, that described its capabilities, specific research efforts, affiliations, and staff capabilities.

In a September 22, 1988, letter to KDT Industries, the Deputy Director for Acquisition, DSS-W, stated:

> The Director...OSD...FFRDC Programs Office acts as my representative for two DoD contracts with FFRDC's....In this capacity he does not establish the research requirements to be performed under these contracts. The requirements for research to be performed by the FFRDC's are determined by individual

> offices within OSD....Since FFRDC's do not normally perform work outside of the FFRDC contract, their research staff must be developed and maintained based on the specific needs of the sponsoring offices....Because of the Government's "investment" in establishing the capability within these FFRDC's and the continuing requirement for their services, it would not be cost-effective to employ other sources to meet these requirements.

Evaluation of the review and justification. The review document and sole-source justification were inadequate. The survey in support of the comprehensive review was not started until July 25, 1988. Thus, the review document was not started until after the sole-source justification that was dated June 9, 1988. The review was approved by the Deputy DDR&E (Research and Advanced Technology) on December 26, 1989, more than a year after the contract award. The requirements for the FFRDC were not clearly defined, and the review document did not adequately differentiate between work that could be performed as effectively by additional in-house staff or by contracts for advisory and assistance services. The assessment of efficiency and effectiveness in meeting sponsor needs covered a 5-year timeframe and was not based on any objective criteria or measurement standards. The review document did not discuss management control procedures implemented by IDA management to control costs, although comments were received regarding unauthorized and excessive costs. Also, the review document did not establish that the FAR criteria for establishing an FFRDC continued to be satisfied or that an acceptable sponsoring agreement was maintained.

In summary, we concluded that the review document and justification did not support the award of a 5-year sole-source contract with an estimated value of $250 million.

Management Comments and Audit Response

Management comments. The Deputy DDR&E recommended the discussion of the Commerce Business Daily synopsis and responses to the synopsis be deleted. He stated that DSS-W responded properly to the contractors that expressed written interest in competing for the contract and none of the organizations submitted a formal protest.

Audit response. We did not delete the discussion regarding the Commerce Business Daily synopsis because the responses indicate competitive private-sector firms were willing to

perform studies and analyses in the areas identified in the synopsis. The synopsis did not identify the essential core capabilities that would make the FFRDC a unique resource for satisfying special research and development needs. The DSS-W responses dated September 9, 1988, and October 6, 1988, did not justify the noncompetitive renewal of the FFRDC contract although the sole-source justification was approved in June 1988. Also, the DSS-W response to KDT Industries contained a statement that using other sources was not cost-effective and the basis for this statement was not supported by documentation.

APPENDIX J - DETAILS ON CONTRACT WITH CENTER FOR NAVAL ANALYSES

Background. In April 1942, the Navy organized the Antisubmarine Warfare Operations Research Group to analyze and improve U.S. defenses against German submarine warfare. The Antisubmarine Warfare Operations Research Group, along with the Navy's Operations Research and Operations Evaluation Groups, were predecessors to the Center for Naval Analyses. Between 1944 and 1962, the mission of those organizations changed from antisubmarine warfare research to new equipment, tactical doctrine, and strategic warfare analysis and evaluation for the Navy fleets. MIT, which managed an Operations Evaluation Group, and IDA, which operated an Institute for Naval Analyses, provided contract support to the two groups.

In 1962, the Navy combined the Operations Evaluation Group and the Institute for Naval Analyses and created the Center for Naval Analyses (CNA). CNA was designated a non-profit FFRDC to be managed by the Franklin Institute of Pennsylvania. Arrangements with MIT and IDA were terminated. Between 1962 and 1983, CNA's mission was to conduct studies and analyses that would assist the Navy in Naval application and development decisionmaking.

In 1983, because of differences over the proper management of CNA, the Navy decided to open the CNA contract to competition. Several universities and non-profit research organizations responded to the solicitation. In August 1983, the Navy selected the Hudson Institute of New York to manage CNA, effective October 1, 1983. Under this contract, CNA's mission continued to be assisting the Navy with studies and analyses.

In May 1990, the Hudson Institute notified the Navy of its intention to terminate the contract. The Navy decided to award a noncompetitive contract to CNA, Incorporated, a new nonprofit "shell" corporation formed specifically to operate CNA. Contract N00014-91-C-0002 with CNA, Incorporated, was effective October 1, 1990, for 5 years at a total estimated cost of $240 million.

Basis for sole-source contract. The Deputy Chief of Naval Operations (Navy Program Planning) prepared a 10-page review document dated November 30, 1990, and a sole-source justification dated July 17, 1990, for the September 28, 1990, award of the sole-source contract to CNA. The review document was the same format used by the DDR&E for the IDA review document, and included much of the same wording. The first four pages discussed the background of CNA, its organization, and sponsorship. The remaining six pages discussed the results of the sponsor's review.

APPENDIX J - DETAILS ON CONTRACT WITH CENTER FOR NAVAL ANALYSES (cont'd)

In a May 29, 1990, memorandum the Deputy Chief of Naval Operations (Navy Program Planning) asked 39 CNA users from the past several years to assess CNA based on the five criteria in FAR 35.017-4. A 2-page, 12-item questionnaire sent to each user assisted in the assessment. The users were asked for check-mark rating of "Strongly agree," "Agree," "Disagree," "Strongly disagree," and "No opinion." Questions related to the depth and breadth of technical expertise and the operational expertise of the CNA staff and asked for comparisons to alternate analytic sources. The questionnaire asked whether CNA work benefited significantly from analyst continuity, provided timely assistance, demonstrated efficient and effective procedures and a cost-effective operation in meeting needs, and whether CNA adhered to policy guidance in OFPP Letter 84-1. Also, users were asked for the percent of work performed by CNA that could be done by other organizations. Finally, users were asked, "If resources were available, how would you change how your organization's analytic requirements are met?" The check-mark responses to this question were "Increase..." "Decrease..." or "Make no change..." in the number of CNA analysts.

The review document was based on 33 responses to the survey and included the following statements:

Continuing Requirement For the Services Provided by CNA

> All responders indicated a continuing requirement....They would either make no change or increase the number of CNA analysts in order to satisfy their analytic requirements....All responders agreed that CNA possesses the depth and breadth of technical expertise to meet their analytic needs....The special relationship which has developed between sponsors and the CNA staff, particularly the field representatives, has allowed CNA to be more responsive to the sponsors' individual needs and has provided the mechanism for timely products with much less risk than one would expect from a private contractor.

Alternative Sources

> Most responders (90%) indicated that CNA work is more useful in framing problems, in answering key questions, and in explaining results and interpreting output and that CNA work is broader in scope and more

> in depth. Most responders (84%) indicated that CNA work is more analytically rigorous, more operationally realistic, more objective, and more credible; that CNA work is more timely; and that CNA work is higher in overall quality....Most responders (89%) indicated that the majority of work now being done by CNA could not be accomplished by contractor analysts.

Efficiency and Effectiveness of CNA

> ...almost all (94%) of the sponsors agreed...CNA demonstrates efficient and effective procedures in meeting the organization's analytic needs....CNA provides timely assistance in meeting the organizations analytic needs.

Adequacy of CNA Management

> Most of the sponsors of CNA work stated that CNA management was supportive to the sponsor's particular requirements....CNA was well-managed, cooperative, and responsive. Responses from a majority of sponsors (75%) indicated that CNA management demonstrates a cost effective operation. The remainder had no opinion. These responses are not surprising: for commands outside Washington, the primary means of visibility to CNA management is through the field program.

Compliance With Criteria For Establishing the FFRDC

> Responses from sponsors were limited...since most sponsors would not be aware of the directive [OFPP Letter 84-1], except for this review of CNA....a majority (81%) agreed that, to the best of their knowledge, CNA adheres to OFPP guidance....A majority (72%) agreed that CNA...[identifies] work which is inappropriate for a FFRDC to perform.

The sole-source justification described the services to be procured from CNA as follows:

> The CNA provides the Navy and the Marine Corps with an independent source of analysis and evaluation based on its unique access to sensitive data and the hands-on exposure to fleet operations through its world-wide field program. The CNA conducts a wide range of

> research that provides two fundamental services to the Navy and Marine Corps: (1) on-site analyses for the fleet commanders to improve tactics and readiness of existing forces and (2) analyses for Navy and Marine Corps headquarters decision makers with responsibility in areas such as weapon systems, tactics, concepts of operations and doctrines, future naval policy, new strategic and operational concepts, major force levels, warfare capability assessment and Navy program planning. This type of work can only be performed by the CNA because of: its unquestioned objectivity, free from conflicts of interest caused by the Navy, commercial or other involvement; its confidentiality to protect very sensitive military and intelligence information as well as proprietary information from commercial contractors; its stable, interdisciplinary staff structure to meet requirements of the Navy and Marine Corps; its familiarity with the needs of the Navy and Marine Corps; its establishment of a continuing research agenda for the Navy and Marine Corps; and its continuing high quality research products and advice provided to the Navy and Marine Corps.

The sole-source justification included the following statement regarding the reasonableness of the operating costs of CNA:

> Although the Center for Naval Analyses will incorporate as a separate self managing entity, the Contracting Officer does not envision any radical change in the CNA's accounting system. The new entity will maintain the same management and staff without the outside layer of Hudson Institute's management. The offerer has submitted a cost proposal which provides for direct labor years which are within the Congressionally approved ceiling.

The sole-source justification stated that a market survey was not performed and that no other sources had expressed, in writing, an interest in the acquisition. The sole-source justification was approved by the Assistant Secretary of the Navy (Research, Development, and Acquisition) and the contract was awarded by the Office of Naval Research.

Evaluation of the review and justification. The review document was not prepared and approved until November 30, 1990, after the sole-source justification approval and contract award on September 28, 1990. The review document did not adequately

define future requirements and did not address the cost-effectiveness of CNA services or why the services could not be provided by a combination of additional Navy personnel and private contractors.

The review document did not provide an adequate rationale for transferring the operation of CNA from the Hudson Institute to CNA, Incorporated, a new non-profit corporation. Neither document contains an explanation of why the Navy did not competitively solicit proposals for a new operator. CNA's operational efficiency and effectiveness was assessed on the basis of subjective ratings of whether CNA met the analytic needs of the customer and was timely, and did not discuss the reliability of its data collection and analysis, reporting, computer operations, and organizational structure. The assessment of efficiency and effectiveness covered work accomplished by CNA when it was operated by the Hudson Institute. Responses did not specify the extent of work considered in making the assessment. The review document also did not document the management controls implemented by CNA to assure a cost-effective operation and did not define the mission of CNA clearly enough to differentiate CNA work from work appropriate for in-house or non-FFRDC contractors. The review document also did not adequately address compliance with the FAR criteria for establishing an FFRDC or for maintaining a sponsoring agreement.

We also determined that the statistics in the review document regarding user consensus about CNA management demonstrating a cost-effective operation were misleading. Navy and Marine Corps activities responding to the survey were not in a position to comment on the cost-effectiveness of CNA's operations because the Navy centrally funded CNA studies, and individual users were not provided an accounting of costs for their projects. We concluded that the justification did not adequately support the award of a 5-year sole-source contract with an estimated cost of $240 million.

Cost-effectiveness of CNA field analysts. CNA was the only FFRDC that had field analysts assigned full-time to Navy Commands around the world. The review and justification did not distinguish how the CNA field analysts services differed from personal services since the CNA field analysts were supervised by Navy personnel. CNA used their field program as a training ground for junior analysts. The field analysts performed duties that included observing fleet exercises, reconstructing fleet operations exercises and generating after action reports, evaluating fleet information acquisition systems and preparing quick analyses, developing training requirements, teaching, and

attending training. We concluded that these duties could be performed by civilian personnel and junior Naval officers. During FY 1991, the CNA field program included 41 analysts assigned to 34 Navy and Marine Corps field commands and cost about $8.3 million. If GS/GM-15/5 analysts had been employed by the Navy and Marines instead of the CNA analysts, we estimate that $3.1 million of costs would have been eliminated during FY 1991. Over the 2 remaining years of the CNA contract (FYs 1994 and 1995), about $6.2 million of costs (2 years at $3.1 million per year) can be eliminated by using in-house civilian personnel instead of CNA field analysts.

The following table shows the basis for our estimate.

Cost Comparison of CNA Field Analysts
Versus In-house Civilian Personnel
FY 1991

	CNA Actual Costs[1]	In-house Estimated Costs	Annual Costs Eliminated
		(thousands)	
Salaries	$2,266	$2,864[2]	($598)
Allowances	504[3]	504	0
Overtime/At-sea Pay	265[3]	265	0
Benefits	1,170	849[4]	321
Other Overhead, General & Administrative Costs	3,391[5]	0	3,391
Other Direct Charges	698	698[6]	0
Total	$8,294	$5,180	$3,114

[1]Based on data provided by CNA.
[2]Salary of 41 GS/GM-15/5s at $69,863 per year (1991) was used for comparison. A manpower review may determine that the equivalent grade level of the work done by the field analysts is lower than GS/GM-15/5.
[3]Includes incentive, site, and transportation allowances at certain locations ($504,000) and extended duty/sea-pay ($265,000); CNA actual and in-house estimated costs assumed equal.
[4]Fringe benefits estimated at 29.65 percent based on Office of Management and Budget Circular A-76.
[5]Includes facility, utility, equipment, etc., costs of CNA headquarters. Field representatives are supported by local commands and no additional in-house costs are assumed in supporting civilian employees.
[6]Includes $509,000 relocation and $156,000 travel; CNA actual and in-house estimated costs assumed equal.

Management Comments and Audit Response

Management comments. The Navy nonconcurred with the statement, "The review document also did not provide an adequate rationale for transferring the operation of CNA from the Hudson Institute to CNA, Incorporated....[or] contain a formal explanation of why the Navy did not competitively solicit proposals for a new operator." The Navy stated that FAR 35.017-2(h) provides for autonomous organizational structures such as the structure at CNA. The Navy added that once the Navy determined that CNA could effectively manage itself, imposing another parent organization to manage CNA was not necessary and would only impose an unnecessary layer of management and cost.

Audit response. The comprehensive review for CNA did not adequately explain why the Navy helped establish a corporation for the sole purpose of operating a Navy FFRDC. The Senate Subcommittee on Oversight of Government Management report, "Inadequate Federal Oversight of Federally Funded Research and Development Centers," July 8, 1992, also considered the Navy's rationale to be insufficient because the rationale raises questions about FFRDC independence and accountability. The subcommittee recommended that OFPP study the costs and benefits of permitting "shell corporations" such as CNA to operate FFRDCs. OFPP agreed to perform a study.

Management comments. The Navy stated that there is "ABSOLUTELY NO REQUIREMENT" that the basic purpose and mission of the FFRDC must be contained in the comprehensive review documents.

Audit response. We disagree. FAR 35.017-2(f), "Establishing or Changing an FFRDC," requires the sponsor to ensure that the basic purpose and mission of an FFRDC is stated clearly enough to enable differentiation between work that should be performed by the FFRDC and work that should be performed by non-FFRDCs. In addition, FAR 35.017-4(c)(5) requires that comprehensive review documents include a determination that the criteria for establishing the FFRDC continue to be satisfied. To fully satisfy these requirements, the comprehensive review document must identify the principal purpose and mission of the FFRDC.

Management comments. The Navy partially concurred that Navy and Marine Corps activities did not have individual project cost data when the comprehensive review survey was conducted. The

Navy stated that the CNA Policy Council is periodically briefed regarding funds for the CNA research program. The CNA Policy Council is satisfied that CNA provides valuable services at reasonable costs. The Navy added that users will have individual project cost data during future comprehensive reviews.

Audit response. The Navy's plans to provide users project cost reports during future comprehensive reviews is an improvement. Prior to the audit, the prevailing attitude of the CNA Policy Council regarding the cost reasonableness of CNA services was based on intuition rather than performance measures that documented the cost relationships between outputs produced and resources used to produce them.

APPENDIX K - DETAILS ON CONTRACT WITH LOGISTICS MANAGEMENT INSTITUTE

Background. The Logistics Management Institute (LMI) was incorporated in Delaware as a non-profit organization in October 1961. The certificate of incorporation stated the objectives and purposes of LMI were:

> ...to foster and encourage the advancement of knowledge concerning logistics in all of its aspects and to perform, engage in, and procure research, development, engineering and advisory services exclusively to or for the U.S. Government or any department or agency thereof or any other government or governmental unit or any nonprofit corporation or other organization organized and operated exclusively for scientific, educational, or charitable purposes.

Shortly after its incorporation, the Secretary of Defense awarded LMI its first 5-year contract for studies directed at improving the business management of DoD.

LMI was designated an FFRDC in 1984 when its contract for studies and analyses was renewed because all of the requirements of OFPP Letter 84-1 were satisfied. From its inception, LMI has performed studies of interest to OSD and other DoD Components. LMI has also performed studies requested by the Agency for International Development, the Department of Health and Human Services, the Department of State, the National Aeronautics and Space Administration, the National Institute of Health, the National Park Service, the Public Health Service, and the Coast Guard.

Basis for 1990 sole-source contract. The Office of the Assistant Secretary of Defense (Production and Logistics) prepared a review document dated July 19, 1989, and sole-source justification dated November 16, 1989, for the November 20, 1989, contract awarded by DSS-W. The effective date of the contract was October 1, 1989. The two-page review document stated:

> ...the review...included the separate Military Services, the Joint Staff, other Federal Agencies and the Staff of the OASD (P&L). Without exception the responses are overwhelmingly supportive of the continued need for and use of LMI as a primary

> research center for the Department of Defense. The evaluation format covered the following areas of performance:
>
> - o LMI Participation & Assignments
> - o Program Objectives
> - o Working Relationships
> - o Project Productivity
> - o Quality of Products
> - o Project Staffing
> - o Summary Appraisal
>
> Ninety-nine percent of the responses rated LMI as ALWAYS performing at the highest level in the categories listed above. It is requested that a new five-year contract be prepared and negotiated with the Logistics Management Institute through Fiscal Year 1994.

The two-page sole-source renegotiation justification stated the services to be procured were:

> ...task order directed research and analyses in the areas of logistics and weapon systems acquisition to: (1) reduce costs and increase the effectiveness of military procurement, materiel management, logistics and manpower support activities; (2) formulate and recommend changes in DoD policy relating to acquisition and support of weapons systems and other defense resources requirements; (3) develop mathematical models and other management tools for the evaluation of logistics and manpower plans and materiel requirements; and (4) appraise the materiel readiness of the Armed Forces.

The justification cited FAR 6.302-3 as the authority for the sole-source procurement. No market survey was performed.

Synopsis of contract in Commerce Business Daily. DSS-W published a notice of the proposed sole-source award to LMI in the Commerce Business Daily on August 8, 1989. The synopsis stated:

> **CONTINUING RESEARCH IN SUPPORT OF OSD**...The Dept of Defense plans to award a sole-source follow-on contract to the Federally Funded Research and Development Center at the Logistics Management Institute, Bethesda, MD for continuation of research currently sponsored under Contr [Contract] No. MDA903-85-C-0139 by various elements of the Office of the

> Secretary of Defense, other Defense Agencies, and the Military Depts [Departments]. The research addresses a broad range of policy formulation, assessment and implementation issues in acquisition, logistics, manpower, force readiness, reserve affairs, and related areas. See Note 22. [Note 22 stated:] The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals....A determination by the Government not to compete this proposed contract based upon responses to this notice is solely within the discretion of the government. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

DSS-W received no responses to this notice in the Commerce Business Daily.

Evaluation of review and justification. The review document and the sole-source justification did not demonstrate that LMI conformed to the requirements for an FFRDC. The periodic review document was based on 10 responses to a survey questionnaire that contained 33 questions with ratings of "always or exceptional," "usually or acceptable," and "rarely or unsatisfactory." The questions did not provide for an adequate assessment of any of the five criteria in FAR 35.017-4 for the comprehensive review. None of the questions addressed whether and at what levels the activities continued to have special studies requirements to be performed by LMI or the feasibility of alternative contractor or Government sources to perform these requirements. The survey questions addressed LMI's performance in conducting studies but were based on subjective criteria. The responses did not identify the periods of time or the projects that were the basis for the ratings. Accordingly, we believe that the surveys were not an adequate assessment of LMI's efficiency and effectiveness. The survey questions did not address the existence or adequacy of LMI management controls to ensure a cost-effective operation, the overall compliance of LMI with the criteria for its establishment as an FFRDC, or the adequacy of the sponsoring agreement. The review document did not clearly differentiate between work appropriate for LMI and work that could be performed in-house or through advisory and assistance contracts.

APPENDIX K - DETAILS ON CONTRACT WITH LOGISTICS MANAGEMENT INSTITUTE (cont'd)

The sole-source justification was based on an inadequate review by the primary sponsor and provided no details on the level of effort required. The justification was inadequate for the award of a 5-year sole-source contract estimated to cost $80 million.

APPENDIX L - DETAILS ON CONTRACT WITH AEROSPACE CORPORATION

Background. The Aerospace Corporation (Aerospace) was incorporated in the State of California as a nonprofit organization in June 1960. Aerospace was established specifically to provide systems engineering and integration support for the development of the ballistic missile and space programs. Before Aerospace's establishment, the Air Force had contracted with Space Technology Laboratories, a wholly owned subsidiary of Thompson Ramo Wooldridge, Incorporated, for systems engineering and technical support on its intercontinental ballistic missile and space programs since the early 1950s. This arrangement led to conflicts of interest, and a 1959 report by the House Subcommittee on Military Operations, Committee on Government Operations, noted that:

> ...the Air Force must retain or acquire...the vital technical and managerial resources [Space Technology Laboratories provides]....Complete objectivity on the part of the contracting organization is, as it should be, the first and foremost concern of the Air Force. The value of such an organization rests on its disinterested position; the advice it gives should be based exclusively on the best interests of the Government.

The report called for recasting the existing arrangement:

> ...into a nonprofit institution akin to the RAND Corp. and other private and university-sponsored organizations which serve the military departments and other agencies of the Federal Government on a stable and continuing basis. Government relationships with nonprofit organizations also pose problems, but they are less important than the benefits received and certainly less crucial than those posed by [the then-existing arrangement].

Aerospace was originally staffed with people who transferred from Space Technology Laboratories. The original Aerospace contract and all successor contracts were sole-source awards. In addition to the Air Force taskings, Aerospace has worked on taskings from the Strategic Defense Initiative Organization (now Ballistic Missile Defense Organization), the Army, the Navy, the National Aeronautics and Space Administration, the Department of Commerce, the Department of Energy, and the Environmental Protection Agency.

Basis for 1988 contract. The Space Systems Division (now Space and Missile Systems Center), Air Force Systems Command (now Air Force Materiel Command) prepared an acquisition plan dated March 10, 1988, and a sole-source justification dated April 12, 1988, to justify the September 22, 1988, renewal of the contract with Aerospace. The Space Systems Division did not prepare a

comprehensive review that addressed the periodic review criteria of OFPP Letter 84-1 or FAR 35.017-4. The Acquisition Strategy Plan (the Plan) was a 12-page document that discussed the services to be provided, the applicable conditions, the cost, the capability, the delivery requirements, the trade-offs, the risks, and the acquisition plan. The Plan identified the following categories of effort to be provided by Aerospace: plans and systems architecture; general systems engineering and integration; technical review; selected research, development, test, and evaluation; acquisition support; engineering methods; mission-oriented investigation and experimentation; and foreign technology support. The categories were not described in detail, such as specific programs skills to be provided or levels of effort.

The Plan provided a funding profile for the 5 years covered by the follow-on contract. In regard to capability, the Plan stated that Aerospace could obtain technology from Government laboratories and universities as an FFRDC, and discussed Aerospace's background in Air Force space programs and the security clearance for its facility. The Plan stated that Aerospace's risk of not meeting the planned schedule was considered low because Aerospace had no major subcontractors, was not a manufacturer, and produced data reports as its only deliverable item.

The sole-source justification was a nine-page "class justification and approval" document and was signed by seven officials at the Space Systems Division: the contracting officer, a legal counsel, the program manager, a small and disadvantaged business utilization specialist, the competition advocate, the Director of Competition Management, and the Executive for Small Business. The justification was also approved by the Assistant Secretary of the Air Force (Acquisition). The justification discussed the authority for recommending a noncompetitive contract, the qualifications of Aerospace, a general description of the services to be procured, and the efforts to obtain competition. The justification stated that the Air Force had not published a sources-sought synopsis in the Commerce Business Daily or performed a market survey to ensure that no other private-sector firms could perform the required services. The justification stated that FAR 5.202(a)(10) allowed the contracting officer to waive these requirements when the contract action is authorized by FAR 6.302-3. The justification further stated:

> ...It is difficult to estimate how long it would take for another contractor to develop the necessary capabilities to assume the Aerospace role....For

> example, the single greatest responsibility of Aerospace is the independent certification of readiness for launch of spacecraft and their launch vehicles. Executing this responsibility requires continuing and intensive work from program initiation through termination of space operations. It would be highly unlikely that a contractor without the corporate memory and talent of Aerospace could step in and perform this function.

The justification and approval document stated that the anticipated cost of the follow-on contract would be fair and reasonable based on an analysis of the actual cost of the current contract effort versus the proposed cost, and cost and price analysis performed by the Defense Contract Audit Agency, administrative contracting officer, price analyst, and other in-house personnel.

Evaluation of the acquisition plan and justification. The acquisition plan did not meet the criteria for the required comprehensive review. The acquisition plan and justification documents did not adequately define specific programs to be supported and the work requirements to be tasked to Aerospace. Neither the plan nor the justification contained convincing evidence that private-sector firms or additional Government personnel could not perform part or all of the proposed requirements at less cost and more effectively.

The documents also did not discuss the operational efficiency and effectiveness of the FFRDC in meeting needs, including such areas as the FFRDC's organizational structure, computer operations, reliability of data production methods, and employee productivity. The justification and the acquisition plan did not discuss the controls established by the FFRDC to ensure a cost-effective operation. Audits of contractor proposals and incurred costs by the Defense Contract Audit Agency examine the reasonableness of costs, but do not ensure the cost effectiveness of work performed by FFRDCs. Further, the documents did not discuss whether the FAR criteria for establishing the FFRDC continued to be satisfied or whether the sponsoring agreement complied with FAR 35.017-1. The justification did not adequately support the sole-source award of a 5-year contract with estimated total costs of more than $2.2 billion.

APPENDIX M - DETAILS ON CONTRACTS WITH MITRE CORPORATION C^3I DIVISION

Background. MITRE Corporation (MITRE) is a nonprofit corporation that was incorporated in Delaware in July 1958 to:

> ...engage in, assist and contribute to the support of scientific activities and projects for, and to perform, engage in and procure research, development, engineering and advisory services to or for, the United States Government or any department or agency thereof.

MITRE was established to provide systems engineering support to the Air Force on the Semiautomatic Ground Environment Air Defense System, the first large computer-based command and control system. Lincoln Laboratory, which was operated by MIT, had worked on design of the Semiautomatic Ground Environment Air Defense System from inception of the program in 1951, but MIT officials believed that a long-term systems engineering effort as envisioned by Air Force was not appropriate for a university laboratory. However, to assist the Air Force, officials of MIT proposed that Lincoln Laboratory provide interim support and offered to support the formation of a nonprofit corporation to take over the work on a permanent basis. MIT would transfer the work to the new company on subcontract, and encourage the transfer of Lincoln people engaged in the effort. After the initial period, the new company would become prime contractor for the work. The Air Force accepted the proposal, and MITRE was established. Most of the people involved were transferred to MITRE on January 1, 1959.

Today the MITRE C^3I Division provides general systems engineering, engineering support, and systems integration support to the Air Force, the Army, the Navy, the Marine Corps, the Joint Chiefs of Staff, the Unified and Specified Commands, the OSD, and the Defense Agencies. MITRE also provides support to other Federal agencies and foreign governments through its Center for Civil Systems and its Center for Advanced Aviation System Development, a separate FFRDC sponsored by the Federal Aviation Administration. A 1968 amendment to the Articles of Incorporation deleted the restriction that all of MITRE's work had to be for a department or agency of the Federal Government. The amendment permits MITRE to enter into contracts with any individual, firm, association, corporation, or entity. Throughout MITRE's history, none of the contracts for support of DoD were ever awarded competitively.

Basis for 1988 contract. The Electronic Systems Division (now Electronics Systems Center), Air Force Systems Command (now Air Force Materiel Command), prepared an undated review document and a sole-source justification document dated June 23, 1988, for the October 21, 1988, award of the contract for the FFRDC for an

additional 5 years. The review document was prepared specifically to satisfy the requirement of FAR 35.017-4. For the examination of technical needs and mission requirements, the review document stated that a May 1988 review by the Assistant Secretary of the Air Force (Acquisition) (SAF/AQ Federal Contract Research Center Review) includes a statement of needs and current and outyear efforts. Regarding the consideration of alternative sources to meet sponsor needs, the review document stated:

> The SAF/AQ FCRC Review, May 1988...includes an evaluation of in-house organic capabilities and support contractor capabilities for meeting needs.
>
> This office [Directorate of Engineering and Program Management, Contract and Support Management] screens each TO&P [Technical Objectives and Plans] to assure work is appropriate for MITRE, that it can not be accomplished by in-house or support contractors, and that MITRE is the sole-source for the support proposed.
>
> All new work proposed for MITRE requires a Sole Source Certificate, signed by a General Officer or equivalent (SES) certifying that only MITRE can satisfy the Government's requirement...
>
> Program Start Reviews chaired by ESD [Electronic Systems Division] Commander or Vice Commander reviews all new programs over $5 million, and reviews the proposed mix of support to accomplish the program, including MITRE, in-house, and support contractors.
>
> The Justification Review Document (JRD), approved by SAF/AQ, includes justification for exception to the Competition in Contracting Act and concludes that only MITRE can meet our needs for the work contemplated.

Concerning efficiency and effectiveness, the review document stated each MITRE project is reviewed annually. The review document stated that continuing reviews by a resident administrative contracting officer and by the Defense Contract Audit Agency ensured a cost-effective FFRDC operation. The review also stated that the contract constituted the sponsoring agreement and that the Secretary of the Air Force (Acquisition) review and approval of the sole-source justification constituted the required determinations that the criteria for establishing the FFRDC continued to be satisfied.

APPENDIX M - DETAILS ON CONTRACTS WITH MITRE CORPORATION C^3I DIVISION (cont'd)

Eight Electronic Systems Division officials signed the 10-page sole-source justification: the contracting officer, the legal counsel, the program manager, the small and disadvantaged business utilization specialist, the Director of Contracting, the Executive for Small Business, the competition advocate, and the person who prepared the statement of work. The justification document stated the services to be obtained from MITRE were:

> ...general systems engineering, systems research and planning, research and experimentation, and task engineering in the field of command, control, communications and intelligence (C^3I) systems, and research in the field of physics and related sciences, and excess computer time, for the Department of Defense, and other Government agencies as approved. The support falls into the following research and development categories: research, exploratory development, advanced development, engineering development, and operational systems development, depending on the program. The majority of the work falls in the operational systems development category.

The services were further described in a statement of work included as an attachment to the justification. The statement of work said:

> The preferred role for MITRE in systems acquisition will be that of general systems engineering and integration. As the general systems engineer for a specific ESD or other DoD agency system acquisition program, the MITRE Corporation is responsible for taking initiative in providing direct technical support to the Systems Program Office....MITRE's responsibilities deal with overall systems and program definition; specification of technical performance requirements; integration within the system and with associated systems; analysis and verification of systems and subsystem design; design compromises and trade-offs; definition of interfaces; review of hardware and software; specification and review of tests and evaluation of test data; appraisal of contractors' technical performance; and development of solutions to problems and technical alternatives for reduced program risk.

The justification also stated:

> ...there is very little technical or schedule risk associated with their role. Risks associated with the

> programs supported by MITRE rest with the prime contractors who actually build and test the hardware.
>
> . . . . . .
>
> The MITRE Corporation has provided this support since 1958 when it was formed as a not-for-profit corporation to fill the needs for system engineering support to the Air Force and other DoD agencies in the field of command, control, and communications, and intelligence systems....The proposed contract is for continuation of this support...

The justification cited FAR 6.302-3 as the authority for the sole-source contract and stated that a synopsis was not published in the Commerce Business Daily because FAR 5.202(a)(1) permits the contracting officer to waive the requirement. The justification further stated that a market survey was "Not Applicable" and:

> Further efforts were not pursued because only sole source work can be assigned to MITRE Corporation C^3I Federal Contract Research Center.

The justification also stated that the anticipated cost of the work would be fair and reasonable because:

> Resident DCAA [Defense Contract Audit Agency] auditors and a resident Administrative Contracting Officer provide, on a full-time basis, the surveillance required to monitor a cost-plus-fixed-fee contract.

Evaluation of the review document and justification for the 1988 contract. The two-page, undated periodic review document, which should have been the basis for the sole-source justification, was prepared after the sole-source justification document. We determined that the periodic review document was prepared at some indeterminable time after the sole-source justification document because the periodic review referred to the May 23, 1988, sole-source justification. The periodic review document did not adequately address any of the FAR criteria for the comprehensive review. The periodic review document quantified staffing and budgetary requirements for FYs 1989 through 1990, but did not address the special skills or capabilities necessary to accomplish the requirements. The periodic review document did not provide sufficient justification that private-sector firms could not provide part or all of the

requirements or that part or all of the work could not be performed at less cost and more effectively with additional Government personnel.

Criteria for determining appropriate circumstances for assigning work to MITRE were included in Electronic Systems Division Regulation 80-1, "Utilization of MITRE Support," April 21, 1989. However, the regulation does not specify how to apply the criteria; as the criteria are written, any work could conceivably be found appropriate for MITRE. Some of the criteria are:

- o need for extensive background information,
- o access to Air Force planning data,
- o need for outstanding specialists in specific fields,
- o need for diversified skills,
- o continuity of effort, and
- o need for fast response.

Although the periodic review assessed operational efficiency and effectiveness, the review was not based on objective criteria. The review asked for ratings of "ALWAYS", "USUALLY", or "RARELY" to 32 questions that addressed MITRE C^3I Division participation and assignments, program objectives, working relationships, project productivity, quality of products, and project staffing. The review also asked for ratings of "Exceptional," "Acceptable," or "Unsatisfactory" to three summary appraisal questions. The annual review stated the MITRE C^3I Division performance on 65.4 percent of the programs evaluated was exceptional, 33.5 percent was acceptable, and 1.1 percent was less than acceptable. However, the ratings were not based on any objective criteria. The review also did not address controls established by the FFRDC to ensure a cost-effective operation. The review did not adequately address the continued satisfaction or compliance with the OFPP or FAR criteria for establishing the FFRDC or maintaining a sponsoring agreement. Overall, the justification did not adequately support the award of a 5-year sole-source contract estimated to cost more than $2.2 billion.

1990 realignment. The Air Force was the primary sponsor of MITRE from its inception in 1958 until 1990. On February 21, 1990, the Under Secretary of Defense for Acquisition (the Under Secretary) approved the realignment of the MITRE FFRDC into two divisions because of increasing amounts of non-Air-Force-sponsored support being requested from and provided by MITRE.

APPENDIX M - DETAILS ON CONTRACTS WITH MITRE CORPORATION C^3I DIVISION (cont'd)

The Assistant Secretary of Defense (C^3I) became the primary sponsor of the MITRE FFRDC. The Air Force, under the existing contract, became the sponsor of the MITRE Bedford (Massachusetts) C^3I Division and the Army became the sponsor of the MITRE Washington C^3I Division in McLean, Virginia. The Under Secretary directed the formation of a Users Committee for the MITRE Washington C^3I Division to be jointly chaired by the Assistant Secretary of the Army (Research, Development, and Technology) and the Assistant Secretary of Defense (C^3I). The February 21, 1990, direction by the Under Secretary was implemented through a May 9, 1990, memorandum of agreement and a February 11, 1991, sponsoring agreement.

Before implementing the sponsoring agreement, a staff assistant in the Office of the Assistant Secretary of Defense (C^3I), prepared a February 7, 1991, memorandum, "Review of DoD's Continued Need for MITRE's C^3I FFRDC", to satisfy the FAR 35.017-4 requirement for the comprehensive review. The memorandum stated:

> The basic nature of MITRE's C^3I FFRDC support to DoD users has not changed....The complexity and importance of today's C^3I systems reaffirms DoD's special needs and requirements that are being performed and satisfied by MITRE's C^3I FFRDC.
>
> . . . . . .
>
> At the first Joint User's Committee meeting held on July 19, 1990...the continued need to DoD of having MITRE's C^3I FFRDC was reviewed in detail.
>
> . . . . . .
>
> MITRE's C^3I FFRDC is still considered to be a pioneering technical center in...(C^3I) systems engineering technical and analytical support.

The memorandum made the following statement regarding consideration of alternative sources.

> Tasks to be accomplished by MITRE's C^3I FFRDC are assigned only when the role is appropriate, as certified by a senior DoD official (i.e. flag rank or SES level official must sign the Sole Source Certification....Prior to the allocation of manpower resources...another independent determination is made by the Primary Sponsor and appropriate Sponsor for

> each task to ensure that the work is appropriate...(i.e., work is within the purpose, mission, and general scope of effort of the FFRDC) and that industrial contractors can not perform the required effort.

The memorandum addressed the efficiency and effectiveness of MITRE in meeting DoD needs by stating:

> ...work performed by MITRE's C^3I FFRDC was determined to be very effective, partially due to the special relationship DoD has with MITRE's C^3I FFRDC. This special relationship is related to the flexibility and familiarity that MITRE's C^3I FFRDC has with DoD needs. This makes it easier for MITRE's C^3I FFRDC to do its job, thus increasing the probability that the goals of the specific project will be met. OSD considers this to be further justification for the continued use of MITRE's C^3I FFRDC, partially because of the government's obligation to support their FFRDC over time at a level of activity sufficient to acquire and retain technical expertise that in turn reduces uncertainty and risk. Industry, in contrast, operates in a less certain, and therefore, higher risk environment.

The memorandum addressed the assessment of adequacy of MITRE's management in ensuring a cost-effective operation by stating:

> Management of MITRE's C^3I FFRDC efforts provides program guidance to assure that the products delivered adhere to the services requested. In addition, management control of the activity has resulted in consistent high quality cost effective product. We consider MITRE's management to be highly effective and very professional. No problems in this area have been observed by the Primary Sponsor during the period under review. The quality control over MITRE's C^3I FFRDC work that is being performed by the MITRE Board of Trustees and MITRE management should be continued.

The memorandum included the following statement regarding the determination that criteria for establishing the FFRDC were being satisfied and that the sponsoring agreement complied with Office of Management and Budget and FAR requirements.

> After detailed examination and review, the OASD(C^3I) has concluded that all of the requirements for using MITRE's C^3I FFRDC...are being met....a special effort

> was made to ensure that all of the mandatory requirements...were incorporated within the February 11, 1991 Sponsoring Agreement. Compliance with all government-wide policies for placing work at MITRE's C^3I FFRDC is of utmost importance to the ASD(C^3I).

The February 11, 1991, Sponsoring Agreement contains the following statements regarding the purpose and mission of the MITRE C^3I Division FFRDC.

> The primary objective and mission of MITRE's C^3I FFRDC...remain unchanged. They are to provide C^3I general systems engineering, engineering support and system integration support to the DoD users...and to assist them in applying the whole spectrum of science and technology to the continuing advancement of military electronic systems. In performing this function, MITRE is a vital link between the Government and the scientific and engineering community, with the objective of providing the soundness technical basis for the conception, analysis, selection, design and evaluation of Information and Communications Systems. This role may include responsibilities in related functional areas such as navigation, detection, surveillance, identification, threat evaluations, and warning, as well as weather and intelligence.

On October 31, 1990, the Army Communications-Electronics Command (CECOM) awarded a 3-year sole-source contract, effective October 1, 1990, for work to be performed by the MITRE Washington C^3I Division. CECOM used the sole-source justification and statement of work prepared by the Air Force Electronics Systems Division as the basis for its sole-source contract to MITRE. The CECOM competition advocate advised the contracting officer to use the Air Force sole-source justification because a new justification and statement of work would be "redundant" and would serve "no useful purpose." The CECOM contracting officer prepared a memorandum for file dated April 27, 1990, that stated in accordance with FAR 5.202(a)(10), a synopsis was not required to be published in the Commerce Business Daily. A CECOM attorney adviser issued an undated opinion that stated that the Army was not a new sponsor of an FFRDC in the sense that it must comply with the requirements of OFPP Letter 84-1, as incorporated by FAR 35.017, for establishing or changing of an FFRDC. The attorney adviser stated that:

> While the Army will be referred to as a sponsor of the MITRE FFRDC, it is part of a multiple sponsorship agreement and as such only the primary sponsor

> (ASD(C^3I)) is the "sponsor" for purposes of the Policy Letter and Regulation....Additionally, since this FFRDC has been previously established, clearly the Army is not "establishing an FFRDC" within the meaning of FAR 35.017-2. Likewise, since the realignment of the MITRE FFRDC into two divisions will not change the basic purpose and mission of the FFRDC...the procedures under FAR 35.017-2 are inapplicable.

The 3-year cost-plus-fixed fee contract that CECOM awarded was estimated to cost $480 million.

Analysis of the 1990 realignment and contract. We concluded that the review conducted by the Office of the Assistant Secretary of Defense (C^3I) also did not establish that MITRE support was the only or the most cost-effective source for the support services. The review did not clearly differentiate between work appropriate for MITRE and work appropriate for a non-FFRDC. The review did not provide sufficient justification that private-sector firms or added in-house personnel could not perform all or part of the work. Also, the cost-effectiveness of MITRE performance versus non-MITRE sources was not formally documented. The assessments of operational efficiency and effectiveness were not based on objective performance measures. No minutes were prepared to document the reviews and decisions of the Joint Users Committee at its July 19, 1990, meeting as to the need for and effectiveness of the MITRE C^3I FFRDC. The review did not discuss the controls established by MITRE to ensure cost-effective operations. Moreover, the review did not adequately address whether the FAR criteria for establishing the FFRDC continued to be met.

Management Comments and Audit Response

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) disagreed with the audit conclusion that the comprehensive review conducted by his office did not establish that MITRE was the only and the most cost-effective source for the support services. He stated that the conclusion was not supported by facts presented in the comprehensive review. He further stated that MITRE is not used if Government capability exists or industry can do the job as effectively.

Audit response. The comprehensive review document did not address the feasibility and cost-effectiveness of bringing in-house any of the long-term support provided by MITRE.

The Air Force Audit Agency determined in a 1991 audit report that non-FFRDC contract support was less costly than support provided by MITRE (See Appendix E for details). Also, an Air Force Materiel Command study, "A Determination of Military and Civilian Personnel Costs as Related to a Member of Technical Staff," June 1992, reported that comparable in-house support was about $35,000 to $55,000 less costly than MITRE support. During FY 1993, the Air Force initiated a test program, CORAL CONVERT, to convert 50 engineering staff years of support provided by the MITRE C^3I Division FFRDC to in-house positions at the Air Force Electronics Systems Center.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) disagreed with the audit conclusion that the review did not clearly differentiate between work appropriate for MITRE and work appropriate for a non-FFRDC. He stated that an unsigned sponsoring agreement attached to the comprehensive review did include a well-defined statement on the purpose and mission of the MITRE C^3I FFRDC to differentiate between work appropriate for assignment to MITRE versus a non-FFRDC. Also, Electronic Systems Division Regulation 80-1 and CECOM Regulation 70-64, "Utilization of MITRE Support," October 11, 1990, include criteria on the appropriate use of MITRE. Further, a July 19, 1990, Joint Users Committee reviewed manpower requests in detail, and only 50 of 140 new manpower positions requested were approved. These cuts were evidence that a clearly defined statement of work for MITRE existed.

Audit response. The mission statement did not clearly differentiate work appropriate for the MITRE C^3I Division FFRDC versus work appropriate for non-FFRDCs. Electronic Systems Division Regulation 80-1 and CECOM Regulation 70-64 contain the same criteria, which can be broadly interpreted to cover many work requirements. An August 6, 1990, Assistant Secretary of Defense (C^3I) memorandum addressed decisions made during the July 19, 1990, Joint Users' Committee meeting, states "Because of ceiling growth constraints, it was not possible to accommodate all of the requested increases for FY 1991 MITRE support." The memorandum did not refer to work that was not appropriate for MITRE, only that adequate amounts of MITRE resources were not available.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) stated that OFPP Letter 84-1, the FAR, and facts in the comprehensive review document did not require a market survey to be performed or the requirements to be synopsized in the Commerce Business Daily. He also stated that

an informal market survey was done for each project and a positive determination was made that no other source could perform the requirement.

Audit response. We revised the details in the final report on alternative sources and deleted the statement on the synopsis of requirements in the Commerce Business Daily. The comprehensive review document must include an analysis of whether the unique FFRDC relationship is still required and whether the marketplace has changed to the point where competition should be sought for all or part of the requirements. The comprehensive review document did not document any findings of informal market surveys regarding the limitations of private-sector firms to perform the proposed tasks.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) disagreed with the report conclusion that the cost-effectiveness of MITRE performance versus non-MITRE sources was not formally documented. He stated that numerous documents, meetings, and program reviews supported that the MITRE services were cost-effective. He also cited the results of a November 19, 1992, Joint Users' Committee as support that the MITRE services were cost-effective.

Audit response. The comprehensive review did not adequately document the cost-effectiveness of MITRE support. We requested documentation to support statements concerning the cost-effectiveness of MITRE-provided services versus alternative capabilities and were not provided any documentation that clearly and convincingly demonstrated the cost-effectiveness of MITRE's services. The Air Force Audit Agency report stated that the average FY 1990 cost for a member of technical staff at MITRE was $151,000 versus a comparative cost for a non-FFRDC contractor in the Boston area of $135,000. Also, an on-going Air Force program, CORAL CONVERT, shows that an in-house engineer costs about $25,700 less than a comparable MITRE engineer. The basis for the November 19, 1992, Joint Users' Committee conclusion that MITRE services were cost-effective are addressed in a November 23, 1992, memorandum prepared by an official from the DoD MITRE Program Office and approved by the ASD(C^3I). The memorandum stated:

> The Joint Users Committee discussion turned to the reasonableness of MITRE's costs of goods and services. The Army pointed out that the new FFRDC performance appraisal will require each

> customer to assess MITRE's cost effectiveness. The ASD(C^3I) asked whether it was possible to get a cost per skill level comparison. Such a comparison would clearly show MITRE to be cost effective. The Air Force stated that a comparison of skill levels between MITRE and industry is difficult because "you can't get that caliber of people from industry." MITRE stated that they are working to revamp their cost accounting system into something more conventional which would enable an easier comparison of their cost. The Joint User Committee members concluded that MITRE's services were cost effective.

These comments were 21 months after the February 7, 1991, OASD(C^3I) comprehensive review and, in our opinion, do not support conclusions that MITRE services were cost-effective.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) disagreed with the conclusion in the draft report that the comments regarding operational efficiency and effectiveness were mostly restatements of the FFRDC's special relationship and were not based on the evaluation of specific taskings accomplished by the MITRE C^3I Division FFRDC. He stated that the comprehensive review concluded that analyses received under prior contracts with MITRE have been timely, concise, and clear and that this was the consensus of attendees at the July 19, 1990, Joint Users' Committee meeting.

Audit response. We revised our conclusion to say that the assessments of efficiency and effectiveness were not based on objective performance measures. Performance measures for efficiency and effectiveness should relate outputs produced to the resources used to produce them and the extent to which results have been achieved or objectives met. These measures are given meaning by comparing them against targets or standards. The comprehensive review lacked comparisons of actual results versus standards to support the assessment of efficiency and effectiveness.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) stated that, although no minutes were prepared to document the reviews and decisions of the Joint Users' Committee at its July 19, 1990, meeting as to the need for and effectiveness of the MITRE C^3I Division FFRDC, the Assistant Secretary of Defense (C^3I) signed an August 6, 1990, memorandum that summarized the decisions made during the meeting.

Audit response. The August 6, 1990, Assistant Secretary of Defense (C^3I) memorandum, "FY 1991 Ceilings for the MITRE Corporation," did not contain any comments to indicate that the need for or effectiveness of MITRE support was discussed during the meeting. The memorandum only discussed resource allocation and funding matters.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) commented on the report statement, "The review did not discuss the controls established by MITRE to assure cost effective operations." He stated this was a misleading statement and cited the comprehensive review paragraph "Assessment of the Adequacy of the MITRE C^3I FFRDC Management in Ensuring a Cost Effective Operation." Numerous items relative to all FY 1990 contract deliverables were assessed by the primary sponsor with a goal of measuring their value and use. The assessment was briefed to the Joint Users Committee and provided an ample basis for Joint Users' Committee conclusions that MITRE services were cost-effective.

Audit response. The comprehensive review and the Deputy Assistant Secretary's comments do not adequately document the controls in place at MITRE to ensure cost-effective operations. We considered the comprehensive review paragraph, "Assessment of the Adequacy of the MITRE C^3I FFRDC Management in Ensuring a Cost Effective Operation," in reaching the conclusion.

Management comments. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) stated that the proposed sponsoring agreement attached to the comprehensive review responded to all requirements of OFPP Letter 84-1 and FAR 35.017-4. He also stated that the comprehensive review determined that the criteria used to establish the FFRDC continued to exist.

Audit response. Attaching a proposed sponsoring agreement to the comprehensive review does not meet the requirements of the OFPP policy letter and the FAR. The comprehensive review did not present a clear and convincing assessment that the criteria for establishing an FFRDC were met. The comprehensive review did not establish that conventional contracting methods or existing in-house capabilities could not effectively satisfy the sponsor's special research and development requirements (FAR 35.017-2(a)), that adequate controls existed to ensure the cost of services provided to the Government were reasonable (FAR 35.017-2(e)), or that the basic purpose and mission of the FFRDC was stated

clearly enough to enable differentiation between work that should be performed by the FFRDC and work that should be performed by non-FFRDCs (FAR 35.107-2(f)).

MITRE is a specifically created non-Government organization, private in form, direction, and operation, yet public in function. MITRE's creation resulted from recognition that in-house laboratories could not attract personnel with the skills needed for very advanced work. The comprehensive review did not show that the circumstances imposed on the United States in 1958 have remained unchanged. The comprehensive review did not explain why DoD could not look more to its in-house organizations and non-FFRDC private organizations to perform required tasks.

APPENDIX N - DETAILS ON CONTRACT WITH LINCOLN LABORATORY

Background. Lincoln Laboratory (the Laboratory) was established in 1951 as a Government-financed, university-operated research center. The Laboratory was operated by MIT and originally designated Project LINCOLN. Project LINCOLN was initiated in response to the unexpected explosion of the atomic bomb by the Soviet Union in 1949. Military officials believed that the threat of nuclear attack against the continental United States by high-speed aircraft in large numbers required a drastic new approach to air defense. Based on work at several MIT laboratories, new ideas about air defense theorized that high-speed computers connected to radars could issue command instructions to interceptors and missiles with a minimum of human supervision.

The charter for Project LINCOLN provided that MIT would establish a program of research and development directed toward air defense. The prime contract for Project LINCOLN was awarded by the Air Force, but it was to serve all three Military Departments and all three would contribute funds. In 1958, the Defense Advanced Research Projects Agency became a sponsor, and about 550 employees (about 25 percent of the Laboratory's staff) were transferred to the MITRE Corporation, a nonprofit corporation separate from MIT and the Laboratory. Since 1971, the Federal Aviation Administration has also sponsored work at the Laboratory related to the development of new technology for air traffic control.

Since 1951, the Laboratory's work has broadened in scope and diversity. The July 26, 1951, charter for Project LINCOLN stated:

> The primary mission of the Project will be Air Defense....the most effective way of pursuing this mission is to encompass where possible any problems pertinent to Air Defense. Continental Air Defense is considered to be a specific part of this mission....to conserve manpower and resources...this Project may include projects now covered by...contract DA 36-039 sc-5450. As a further mission, the subject of strategic reconnaissance and intelligence may also be incorporated.

This early mission led to the design and initial development of the Semiautomatic Ground Environment Air Defense System and expansion into ballistics missile research.

The mission and general scope of the program as described in the current contract states:

> The mission of the Laboratory is to carry out a program of research and development pertinent to

> national defense with particular emphasis on advanced electronics. In the pursuit of this mission, the contractor shall have the following objectives:
>
> To exert maximum effort toward the evolution and demonstration of the feasibility of advanced system concepts and technology in selected national defense areas.
>
> To conduct specific programs of research and development in these areas, including the building of necessary components, together with a vigorous continuing program of research and development in the fields appropriate to its mission.
>
> To produce, or have produced, initial models of Laboratory-developed equipment suitable for field demonstration and test by appropriate military services or agencies, and furnish necessary procurement information and advice regarding such equipment.
>
> To provide technical advice in areas of its demonstrated competence to the military services and other defense and government agencies.
>
> To annually formulate and present to the Joint Advisory Committee the proposed program and associated budgets for the five ensuing years.
>
> The contractor programs will extend from fundamental investigations in science through the development of new, advanced technologies to the integration of these technologies into new or existing systems. Technology areas include solid state electronics; radar optical sensors; signal processing; surveillance; military satellite communications; spacecraft; analog and digital integrated circuit technology; air traffic control; signal intercept technology; high energy laser beam-control; laser devices; optics; antennas; electromagnetic propagation; and, strategic and tactical systems and countermeasures.

Since 1951, all Air Force contracts for the Laboratory were sole-source with MIT.

Most recent review and justification. The last contract, awarded September 28, 1989, cited 10 U.S.C. 2304(c)(3), maintaining an essential engineering, research, or development capability to be provided by an FFRDC, as the basis for the

sole-source contract. The total estimated value of this 5-year contract was $2.9 billion. The Electronics Systems Division prepared an undated periodic review document and a sole-source justification dated January 25, 1989, for the award of this contract. The justification stated that the services to be procured from the Laboratory were:

> ...for research and development in support of Department of Defense and other Government agency programs, with particular emphasis on advanced electronics. The requirement includes fundamental investigations in science, from the development of new electronic components to the design, development, and field demonstration of systems embodying the new technology. The support falls into the following categories: solid state electronics, radar and optical sensors, surveillance, air traffic control, signal processing, military satellite communications, spacecraft, electromechanical control systems, lasers, high energy laser-beam control, optics, antennas, electromagnetic propagation, and construction/ modernization of research facilities.

The sole-source justification also stated that all programs undertaken by the Laboratory were reviewed and approved by the Joint Air Force/Defense Advanced Research Projects Agency/Army/ Navy Advisory Committee, which was chaired by the Commander, Air Force Systems Command. It stated that the work to be performed required freedom from bias for a particular design, hardware, or approach, which the Laboratory could provide due to its dedication to Government work and its prohibition from being a hardware and software producer.

The justification stated that a market survey was not applicable and a notice of contract action was not published in the Commerce Business Daily because the contract requirements were within the exception described in FAR 6.302-3; that FAR 5.202(a)(10) authorized the contracting officer to waive the synopsis requirement; and that only sole-source work may be assigned to the Laboratory, consistent with its FFRDC designation. The justification further stated that contract costs were reasonable because:

> Resident DCAA auditors and a resident Administrative Contracting Officer provide, on a full-time basis, the surveillance required to monitor a cost-reimbursement (no-fee) contract.

A two-page undated review document that referred to five tabs of attachments was prepared after the January 25, 1989, sole-source justification to meet the requirements of FAR 35.017-4 for a comprehensive review. For the sponsor's special technical mission requirements, the review stated:

> The proximate and outyear proposed program is reviewed by the Joint Advisory Committee (JAC) each year....Minutes of the most current review prior to award of [the] contract is attached.

Regarding the consideration of alternative sources, the review stated:

> The JAC [Joint Advisory Committee] review process assures the unique resources of Lincoln Laboratory are applied to the highest priority needs. Work that can be done by alternative sources are winnowed out during this process....A Justification Review Document...stating "there is no other known source with the experienced personnel, unique knowledge and background necessary to accomplish these (Lincoln Laboratory) efforts..." was approved by the Assistant Secretary of the Air Force (Acquisition)"...(See Tab 2) [Tab 2 was the sole-source justification document.]

Regarding efficiency and effectiveness, the review document stated that an annual review of the Laboratory's efficiency and effectiveness was performed. The review document stated that continuing reviews by the administrative contracting officer and Defense Contract Audit Agency satisfied the requirement for an assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation, and that the Joint Advisory Committee review, the approval of the sole-source justification by the Assistant Secretary of the Air Force (Acquisition), and the approval of the contract constituted the required determinations that the criteria for establishing the FFRDC continued to be satisfied and that the sponsoring agreement complied with the FAR.

Evaluation of the review document and justification. The review and justification documents did not provide adequate support for the award of a 5-year sole-source contract. The minutes for the August 31, 1989, Joint Advisory Committee meeting, which were attached to the review document, provided no details on the specific programs being worked at the Laboratory. The minutes stated that, before adjournment, the administrative agent from the Electronic Systems Division requested the Joint Advisory Committee to approve the research program proposed by

the Laboratory for FY 1990, and that the Committee members approved the program. The meeting involved no questioning of the program by the Committee members. We determined that, about 3 months earlier, a Joint Advisory Committee Executive Group chaired by the Vice Commander, Electronics Systems Division, had also reviewed and approved the proposed FY 1990 technical and financial plans for the Laboratory. The minutes of the earlier meeting identified eight projects but did not discuss why the Laboratory was uniquely qualified to perform the research or what level of effort was planned for each. The minutes of this meeting stated that the group was briefed by the Director of the Laboratory, an MIT official, on an ad hoc committee formed at the request of the MIT Provost in response to faculty concerns with the relationship of the Laboratory and MIT. The Director said that the committee was considering three alternatives: continue the relationship as is, enter a more distant relationship, or sever the relationship. The Director requested and the Commander, Air Force Systems Command, agreed to meet with the MIT Committee to stress the importance of continuing the relationship. At the meeting, the Joint Advisory Committee Executive Group tasked the Laboratory to prepare a document that described new technologies that the Laboratory transitioned to industry or to other DoD programs. The minutes of both the August 31, 1991, and the earlier meetings indicate that MIT is setting the research agenda for the Laboratory rather than DoD. Also, specific mission requirements for the next 5 years were not identified in either the review or justification document.

We examined the annual project review of the Laboratory's efficiency and effectiveness that was mentioned in the review document completed in November 1988. The annual review requested 89 sponsors of work conducted at the Laboratory during FY 1987 to complete a three-page questionnaire. The review asked for an overall (checkmark) performance rating of "unsatisfactory," "poor," "acceptable/expected," "good," "very good," or "exceptional." The review also asked for comments on the following areas, as applicable: quality of performance, acceptability of cost and schedule performance, innovativeness and forward-looking nature of support, quality and timeliness of technical reports, timeliness and usefulness of status and/or financial management reports, receipt of required reporting, and other comment or improvements. Responders were requested to provide narrative explanation for any "unsatisfactory" rating and were encouraged to discuss the evaluation with the Laboratory staff. The Chief, Electronic Systems Division Lincoln Laboratory Project Office, summarized the results of the annual review in a September 19, 1988, memorandum to the Electronic Systems Division contracting officer. The summary showed that 71 of 89 sponsors responded to the review and that no "unsatisfactory" or "poor" overall ratings were given. However, deficiencies were listed.

Regarding the timeliness of technical reports, the summary stated:

> High quality reports, but considerable concern from sponsors about getting them in a timely manner. This is the only category in which negative comments really outweighed the positive comments. This was due to the large number of Sponsors having expressed dissatisfaction with the timeliness of LL [Lincoln Laboratory] technical reporting.

The summary also addressed status and financial reporting by the Laboratory by stating:

> Overall, very good. Wide variation among programs with some programs not receiving formal reports.

Other comments made by sponsors and quoted as suggested improvements in the summary were:

> "LL should develop clear technical milestones supported by work breakdown structure"; "Improve schedule forecasting";..."Periodic management/ technical meetings would provide a more complete understanding of program status, schedule and milestones"; "Provide progress/status/financial reports";...Need a better scheme for financial projections and reporting".

Evidence does not show that the Electronic Systems Division Lincoln Laboratory Project Office or the contracting officer followed up the concerns before the contract was awarded.

The review document referred to the sole-source justification dated January 25, 1989. Thus, the review document was prepared after the justification. We could not determine how long afterward. Neither the sole-source justification nor the review adequately documented that the Laboratory was the only or most cost-effective source for accomplishing the taskings assigned. The justification and the review did not differentiate between work appropriate for the Laboratory and research that could be performed by other universities or private organizations. The assessment of the Laboratory's efficiency and effectiveness was not based on any objective or measurable criteria. The review document also did not document whether MIT had established adequate management controls to ensure a cost-effective operation. Reviews by the Defense Contract Audit Agency and the administering contracting officer did not ensure the cost effectiveness of work performed by FFRDCs. The reviews provided

for the verification of costs paid versus approved rates but did not include the performance of effectiveness reviews. Also, the review did not establish that the FAR criteria for establishing an FFRDC continued to be satisfied and that the sponsoring agreement complied with the FAR. We concluded that the justification did not adequately support the award of a 5-year sole-source contract with estimated costs of $2.9 billion.

APPENDIX O - DETAILS ON CONTRACT WITH SOFTWARE ENGINEERING INSTITUTE

Background. The Software Engineering Institute (SEI), Carnegie-Mellon University, Pittsburgh, Pennsylvania, was established as an FFRDC in 1984. The need for SEI was based on a 1983 report prepared by IDA, another FFRDC. The report was based on a study conducted by 3 IDA and 13 industry and academia participants, who were assisted by 6 DoD representatives in an advisory role. The report recommended the creation of a new non-profit FFRDC to improve DoD software development and support by inserting modern technology into the life-cycle process. The report recommended locating the FFRDC near a major university, so that the FFRDC could draw on professional resources as necessary. The report recommended that the new FFRDC accomplish its mission by seeking out appropriate technology to adapt and engineer to mission-critical computer resource production quality and scale; providing funds, talent, and support to selected mission-critical computer resource projects to permit them to use the best available technology in developing their software systems; establishing a standard of excellence in software engineering practice; and becoming a source of top quality assistance and support for the entire mission-critical computer resource development and support community. The Advanced Research Projects Agency became the DoD sponsor for SEI in 1989.

The 1984 contract was competed by the Electronics Systems Division among seven potential sources: Software Engineering Development Corporation; Software Engineering Institute at Dayton, Ohio; Texas Engineering Experiment Station; Georgia Tech Research Corporation; Northeastern University; IIT Research Institute; and SEI of Carnegie-Mellon University. SEI was selected on the basis of its technical ability to integrate new software technologies and capabilities into existing DoD systems.

The most current contract was awarded on December 13, 1989, with an effective date of December 18, 1989. The contract was a cost plus-fixed fee contract awarded on a sole-source basis for a 5-year period.

Basis for 1989 contract. The Electronics Systems Division prepared an undated review document and a sole-source justification dated March 22, 1989, for the award of the contract. The sole-source justification stated that the services to be procured were:

> ...general software engineering, software engineering research, planning, and experimentation, and task engineering related to mission-critical defense systems.

The justification stated that SEI's goal was to:

> ...advance the practice of software engineering by: (1) bringing the ablest professional minds and the most effective technology to bear on rapid improvement of the quality of operational software in mission-critical computer systems; (2) accelerating the reduction to practice of modern software engineering techniques and methods; (3) promulgating the use of modern techniques and methods throughout the mission-critical defense systems community; and (4) establishing standards of excellence for software engineering practice. In pursuit of this mission, the Institute shall direct its efforts in the areas of software technology transition, research, planning and education, and conduct specific programs with respect to DoD software projects.

The justification stated that no known source had the experienced personnel, unique knowledge, and background necessary to accomplish the proposed work and, therefore, efforts to obtain competition for the contract action were unnecessary. The justification further stated that a market survey did not apply and that a notice of contract action was not required to be published in the Commerce Business Daily because FAR 5.202(a)(10) allowed the contracting officer to waive the requirements. FAR 6.302-3 was cited as the authority for the sole-source procurement. The contracting officer also made a determination that 10 U.S.C. 2361, which prohibits construction and research and development awards to colleges and universities unless awarded using competitive procedures, did not apply to the renewal contract for SEI, the FFRDC at Carnegie-Mellon University.

The undated periodic review stated that the Joint Advisory Committee chaired by the Director of the Advanced Research Projects Agency and representatives of the supported Military Departments performed a semi-annual review of the current and proposed programs and that the projects assigned to SEI could not be accomplished in-house or by support contractors. The review also stated that the sole-source justification approved by the Assistant Secretary of the Air Force (Acquisition) concluded no other known source had the experienced personnel, unique knowledge, and background to accomplish the work. The review stated that an annual review was performed to address SEI's efficiency and effectiveness, and that reviews by a Joint Program Office, the Defense Contract Management Command, and the Office of Naval Research ensured that SEI was a cost-effective operation. The review document further stated that the contract constituted the sponsoring agreement contemplated by

FAR 35.017-1, and the Joint Advisory Committee review, the approval of the sole-source justification by the Assistant Secretary of the Air Force (Acquisition), and the contracting officer's award of the contract constituted the determination that the FAR criteria for establishing the FFRDC continued to be satisfied.

Evaluation of review document and justification. The periodic review and sole-source justification documents did not support the award of a sole-source contract valued at $220.4 million for 5 years. Neither document identified specific requirements to be performed by SEI. The periodic review was prepared to satisfy the requirement in FAR 35.017-4 and referred to the March 22, 1989, sole-source justification. Thus, the review document was prepared after the sole-source justification. We could not determine how long afterward. Furthermore, we question the validity of the statements in both documents that no other sources can perform the tasks. In addition to Carnegie-Mellon University, other universities and organizations have expertise in software engineering and artificial intelligence applications. We also determined that the Joint Advisory Committee technical reviews focused on general strategy, actions accomplished, and relationships between the FFRDC and industry and DoD organizations but did not have good criteria for defining which research tasks should be performed by SEI. The mission of the FFRDC was not stated clearly in briefing charts and minutes of Committee meetings to differentiate between work that should be performed by the FFRDC and work that should be performed by non-FFRDC sources.

The first annual survey to assess the performance of SEI in meeting sponsor needs was not completed until after the December 13, 1989, contract award. The survey asked 40 users of SEI to assess SEI's performance by completing a questionnaire that asked for multiple-choice or narrative responses or both to an overall rating and to 10 questions or statements. Of the 32 users that responded to the survey, 30 users rated SEI's overall performance as exceptional, good, or acceptable and 2 users rated SEI's performance as unsatisfactory. We do not believe that the survey results can always be relied on to provide an adequate assessment of SEI's efficiency and effectiveness in meeting sponsor needs because the ratings are based on subjective criteria.

The review document also did not discuss the management controls SEI established to ensure a cost-effective operation. Also, the

review document did not address continued compliance with the FAR criteria for establishing an FFRDC or for maintaining a sponsoring agreement.

The review document did not discuss SEI's accomplishments towards achieving any of the goals identified in the 1983 IDA report. The report stated that during the first 1 to 2 years of SEI operation, maximum priority should be given to establishing an effective strategy for inserting technology into private mission-critical computer resource software contracting enterprises, and that such a strategy would be critical to SEI success. The report further stated that about 60 percent of SEI resources should be devoted to identifying, assessing, and disseminating software engineering technologies to meet DoD requirements; 20 percent of resources should be devoted to software engineering support of the Military Departments and Defense Agencies; 10 percent should be dedicated to developing and conducting training courses on the state of the art in software engineering; and the remaining 10 percent should be devoted to goal-directed research in areas of software engineering judged to have high potential payoff. We do not believe that the contract should have been renewed without an evaluation of SEI's performance towards achieving those goals.

APPENDIX P - DOD OFFICIALS AND OFFICES RESPONSIBLE FOR SOLE-SOURCE JUSTIFICATIONS

FFRDC	Senior DoD Acquisition Official	Contracting Office	Program Office
Project AIR FORCE	Assistant Secretary of the Air Force (Acquisition)	Air Force Office of Scientific Research	Directorate of Plans, Deputy Chief of Staff for Plans and Operations
National Defense Research Institute	Director, Defense Research and Engineering	Defense Supply Service - Washington	Director, Federally Funded Research and Development Center Programs, Director, Defense Research and Engineering
Arroyo Center	Assistant Secretary of the Army (Research, Development, and Acquisition)	Defense Supply Service - Washington	Management Directorate, Director of the Army Staff
Institute for Defense Analyses	Director, Defense Research and Engineering	Defense Supply Service - Washington	Director, Federally Funded Research and Development Center Programs, Director, Defense Research and Engineering
Center for Naval Analyses	Assistant Secretary of the Navy (Research, Development, and Acquisition)	Office of Naval Research	Program Resource and Appraisal Division, Deputy Chief of Naval Operations
Logistics Management Institute	Under Secretary of Defense for Acquisition	Defense Supply Service - Washington	Management Support Center, Deputy Under Secretary of Defense (Logistics)
Aerospace Corporation	Assistant Secretary of the Air Force (Acquisition)	Space and Missile Systems Center, Air Force Materiel Command	Space and Missile Systems Center, Air Force Materiel Command

APPENDIX P - DOD AND OFFICIAL OFFICES RESPONSIBLE FOR SOLE-SOURCE JUSTIFICATIONS (cont'd)

FFRDC	Senior DoD Acquisition Official	Contracting Office	Program Office
MITRE Corporation C³I Division[1/]	Assistant Secretary of the Air Force (Acquisition)	Directorate of Contracted Support Management, Electronics Systems Center, Air Force Materiel Command	Electronics Systems Center, Air Force Materiel Command
MITRE Corporation C³I Division[2/]	Assistant Secretary of the Army (Research, Development, and Acquisition)	Directorate of Procurement, Army Communications-Electronics Command, Army Materiel Command	Directorate of Program Analyses and Evaluation, Army Communications-Electronics Command, Army Materiel Command
Lincoln Laboratory	Assistant Secretary of the Air Force (Acquisition)	Directorate of Contracted Support Management, Electronics Systems Center, Air Force Materiel Command	Electronics Systems Center, Air Force Materiel Command Lincoln Laboratory Project Office, Electronics Systems Center, Air Force Materiel Command
Software Engineering Institute	Assistant Secretary of the Air Force (Acquisition)	Directorate of Contracted Support Management, Electronics Systems Center, Air Force Materiel Command	Systems and Software Design Center, Electronics Systems Center, Air Force Materiel Command Information Systems Technology Office, Advanced Research Projects Agency

[1/]Contract was awarded in 1988 to provide for all DoD C³I requirements. The Air Force was primary sponsor.
[2/]Contract was awarded in 1990 to provide for non-Air Force C³I requirements. Assistant Secretary of Defense (C³I) was designated primary sponsor of the MITRE C³I Division, the Air Force was designated as sponsor of the MITRE Bedford C³I Group for Air Force systems, and the Army was designated as sponsor of the MITRE Washington C³I Division.

APPENDIX Q - SUMMARY OF MANAGEMENT COMMENTS ON THE FINDING AND AUDIT RESPONSE

This section summarizes comments by the Deputy DDR&E, the Deputy Assistant Secretary of Defense (Strategic and Tactical C^3), the Navy, and the Air Force on the finding and our responses to those comments.

Management comments on basis for sole-source contract renewal. The Deputy DDR&E, the Deputy Assistant Secretary of Defense (Strategic and Tactical C^3), the Navy, and the Air Force stated they disagreed with the finding. They stated that documentation of the review process could be improved but the existing comprehensive reviews complied with OFPP Letter 84-1 and FAR 35.017-4. They believed that the reasons for continuing the FFRDCs were valid and the sole-source justifications did not contain unproven statements.

The Deputy DDR&E said that report statements that reviews were done late or not at all did not consider Steering Group meetings, acquisition plans, and senior official oversight of FFRDCs. The Deputy DDR&E also stated that restriction of competition should not be an issue regarding continuation of an FFRDC capability and that the FAR and the Competition in Contracting Act exempt FFRDCs from competition. The Deputy Assistant Secretary disagreed that the sole-source justifications restricted competition and resulted in higher costs. The Navy stated that sponsoring program officials, contract officials, and Navy staff officials, who periodically provided verbal briefings to senior Navy acquisition officials, were in close contact throughout the review process and acted responsibly in renewing the CNA contract. The Air Force stated it disagreed that program, contract, and senior acquisition officials failed to properly exercise their supervisory and review duties.

Audit response. Sponsors of the DoD FFRDCs are required to conduct analyses before each FFRDC renewal to determine whether the unique FFRDC relationship is still required and, if so, to justify the use of noncompetitive procurement procedures. The comprehensive review must document the FFRDC's unique research mission, its past performance in providing a cost-effective operation, and the capability of alternative sources to provide the special technical needs. We believe that the comprehensive review should provide a convincing argument that:

- the FFRDCs have special skills and facilities not otherwise existing in the Government or in the private sector, or likely to be used elsewhere by the Government or the private sector, or by nature not appropriate to be performed by the private sector; and

o the Government cannot attract personnel with the technical skills and talents needed to specify the derived characteristics and capabilities of its weapons systems and to supervise the creation, test, installation, and evaluation of possible systems, components, or materials.

Changes in science and technological capabilities have occurred since the inception of the FFRDCs, and prior studies, such as those performed during the 1970s by the Defense Science Board, have documented that the missions of the FFRDCs could be performed by alternative methods. The comprehensive reviews must carefully describe the requirements to be satisfied by the FFRDCs during the term of the follow-on contract and provide rationale why alternative methods cannot work as effectively.

The finding and audit conclusions were based on analyses of all information made available to us during the audit. Senior officials may have been briefed on the ongoing comprehensive reviews. However, we were not provided documentation of the briefings and, in violation of FAR requirements, 9 of 10 sole-source justifications were signed by senior officials before the comprehensive reviews were completed. We revised the section of the report related to competition because the FFRDCs are exempted from competition by the Competition in Contracting Act.

Management comments on sufficiency of reviews and justifications. The Deputy DDR&E stated he did not agree with the section "Sufficiency of Reviews and Justifications" and the entire section should be rewritten to state that the major weakness with the reviews was that they did not address internal controls or compliance with the sponsoring agreement. The Deputy DDR&E stated that review of the sponsoring agreement was a new requirement under FAR 35.017. The Deputy DDR&E also recommended deletion of Appendix G, Summary of Reviews and Justifications, stating that the appendix indicates a fundamental misunderstanding of FFRDCs on the part of the auditors and presents a distorted picture of the adequacy of the comprehensive reviews and justifications. The Navy stated that the comprehensive reviews were adequate and provide a basis for renewal of the FFRDC contracts. The Navy also stated it was interested in improving the review process, including documentation. The Air Force stated that Appendix G was not based on fact.

Audit response. We identified weaknesses in the five areas of the comprehensive reviews, not just internal controls and sponsoring agreements. Before the 1990 FAR change, review of sponsoring agreements was required under the periodic review requirements of OFPP Letter 84-1. We revised Appendix G to delete references to the synopsis of requirements in the Commerce Business Daily. Appendix G accurately summarizes the deficiencies identified with the comprehensive reviews and sole-source justifications prepared for the 10 FFRDCs reviewed.

Management comments on requirements for FFRDCs. The Deputy DDR&E recommended the paragraph "Requirements for FFRDCs" be deleted. The Deputy DDR&E, the Deputy Assistant Secretary of Defense (Strategic and Tactical C^3), and the Navy stated that FFRDC sponsors could not and should not over-specify research requirements years in advance due to changing international policy and technology. The Deputy Assistant Secretary stated that future requirements for the MITRE C^3I Division FFRDC are documented in yearly sponsor requests, to include the current and 4 outyears, and are contained in Phase I and Phase II requests. The Deputy Assistant Secretary did agree that future requirements should be addressed in a substantive way in future comprehensive reviews. The Navy stated that CNA is often used to examine issues that cannot be specifically defined and for issues requiring a quick response. The Navy also stated that renewal of an FFRDC contract is based on a continuing research and development need of the sponsoring agency and not specific requirements.

Audit Response. We understand that specifying studies or research efforts aimed at specific projects or tasks years in advance may not be useful or possible. This was not our intent. Specific research tasks should be identified to the extent possible. However, we believe documenting the special or unique talents, skills, and capabilities expected to be necessary to accomplish the future technical needs and special research requirements of the sponsors is more important. The sponsors should also document how much of the effort involves privileged access work and why this work cannot be accomplished with in-house DoD personnel. Such detail would also provide a measurable basis for assessing the potential availability of alternative sources of capability during a comprehensive review. The Phase I and Phase II documents referred to are planning and budgeting documents used to assign annual individual projects/programs to the MITRE C^3I Division FFRDC. The Navy did not provide any information on the nature or extent of work that could not be specifically defined or that required a quick

response capability. The continuing research and development needs of the Navy should be detailed sufficiently to provide for objective considerations of alternative sources. General statements that requirements are continuing do not adequately document the need to continue contracts requiring the special nature of the FFRDCs or the expenditure of funds totaling about $1.5 billion annually. We revised the report to clarify the importance and necessity for specifically identifying the nature and extent of future special requirements.

Management comments on alternative contractor and Government sources. The Deputy DDR&E stated that the current FFRDC contractor is not required to be the only source for the FFRDC capability. He also added that alternative sources should be considered for individual tasks.

Audit response. We agree that alternate sources can be available. However, OFPP Letter 84-1 presumes in favor of existing in-house or contractor resources for satisfying special research and development needs. Specifically, the activities of FFRDCs should be limited to those for which the private sector has no competence or existing capability. Where no private sector capability exists and the Government needs the services performed, the services may be done in-house or through an FFRDC. A feature of primary importance in selecting a source of capability is the effectiveness with which the work is performed. The FFRDCs should have capabilities, which are defined during the comprehensive review process, that make the FFRDCs the proper choice to perform the requirement.

Management comments on Commerce Business Daily synopsis. The Deputy DDR&E stated the section "Commerce Business Daily synopses" should be deleted. The Deputy DDR&E also stated that synopses are published at the discretion of the sponsor and contracting officer when publication may benefit the Government. The Deputy DDR&E stated that the exemptions granted FFRDCs are appropriate as long as FFRDCs are justifiable.

Audit response. We revised the section of the report on synopsizing requirements in the Commerce Business Daily. We agree the FAR exemption granted from synopsizing requirements is appropriate when it is necessary to maintain an essential engineering, research, or development capability to be provided by an FFRDC.

Management comments. The Navy stated that although not mentioned in the comprehensive reviews, Government pay levels lag considerably behind the private sector, and Government officials are well aware of the difficulties the Government has in recruiting and retaining substantial numbers of individuals with post-masters technical degrees. The Navy stated that independence and objectivity are salient factors in comparisons of FFRDCs to private-sector firms and in-house resources. The Navy also stated the special competencies and capabilities were the important factors. In the case of CNA, these included 50 years experience in Naval matters, familiarity with fleet operations, access to sensitive data, and quick response capability.

Audit response. If salary levels of Government personnel and the need for post-masters technical degrees are reasons for continuing the FFRDC, then those factors should be documented in the comprehensive review. We have seen no evidence that validates the assertion that an FFRDC is more objective than an in-house source. CNA depends on the Navy as its primary source of funding, and such dependence will always affect objectivity to some degree. Further, the relative significance of the need for independence and objectivity applies equally to all potential sources. In 1976, the Defense Science Board studied the issue of whether FFRDCs bring to the Government's service a quality impossible to obtain within the Government. The Defense Science Board concluded that the study and analysis FFRDCs, which included CNA, had no distinct differences in personnel characteristics and professional qualifications. The most recent comprehensive review for CNA did not document such a distinction for CNA, or why the Navy could not establish the capability in-house and recruit qualified personnel to fill the billets. In the comprehensive review for CNA, the Navy should have documented that 50 years experience in Naval matters, familiarity with fleet operations, access to sensitive data, and quick-response capability are factors that affect the analysis of non-FFRDC alternatives.

Management comments on assessment of efficiency and effectiveness. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) stated that the primary sponsor requires each project officer to complete a three-page evaluation form covering numerous evaluation factors, and the primary sponsor believes the criteria for rating is focused and objective. The Navy stated that obtaining feedback from CNA customers was an appropriate and widely accepted method of determining the quality and utility of products produced. Also,

the Navy stated that the FAR was silent on a specific method for conducting the comprehensive review, thus determination of a method rests with the sponsor.

Audit response. The performance evaluations did address numerous performance factors. However, the respondents did not use standards to assign ratings to the performance factors during the comprehensive review. After the comprehensive review, standards for assigning ratings to each performance factor were added to Electronic Systems Division Regulation 80-1, December 2, 1991. The use of these rating standards by the Office of the Deputy Assistant Secretary will better ensure the objectivity of future assigned ratings.

We agree that the customer is the most appropriate individual to assess the efficiency and effectiveness of the FFRDC. However, the assessment conducted by the Navy did not identify basic information such as the time frames, the number or type of projects, or the costs of projects that were covered by the customer assessments. Also, the Navy did not provide any basis for the assignment of the check-mark ratings that were made by the customers. This was the only assessment made during the 5-year period. Assessment of the efficiency and effectiveness of the FFRDC in meeting sponsor needs should be an on-going function conducted on a project or program basis. The performance measures should relate to goals and should be verifiable and results oriented.

Management comments on assessment of FFRDC management controls. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) stated that subsequent comprehensive reviews would document controls internal to the Government and to the MITRE C^3I Division for ensuring a cost-effective operation. The Navy stated that relying on the work of administrative contracting officers or of the Defense Contract Audit Agency in conducting comprehensive reviews was not prohibited. The Navy also stated that requiring the primary sponsor to conduct and document the reviews and audits done by the administrative contracting officers and the Defense Contract Audit Agency would be redundant and excessive. The Navy stated, "Though the FAR requires that an FFRDC submit to the sponsoring agency a plan for the use of its retained earnings, the FAR does not require that management fees be used for essential operating requirements."

Audit response. The FFRDC sponsor, when performing comprehensive reviews, should rely on external reviews, such as those done by the administrative contracting officers and the Defense Contract Audit Agency, to the extent possible. The Navy's most recent comprehensive review for CNA did not address the results of any external reviews. The results of all external reviews relied on should be summarized and documented in the comprehensive review, including the nature, extent, and timeliness of the reviews, reported results, and the status of corrective and resolution actions. Defense Federal Acquisition Regulation Supplement 215.972, "Modified Weighted Guidelines Method for Nonprofit Organizations," requires contracting officers to consider whether fees are appropriate and necessary to the FFRDC. Based on Navy comments, we deleted the phrase "essential operating requirements" and included "appropriate and necessary to the FFRDC" in the report. Contracting officers should negotiate fees that take into account the non-profit tax status of the FFRDC and how the management fees are used. Also, the Senate Subcommittee on Oversight of Government Management report, "Inadequate Federal Oversight of Federally Funded Research and Development Centers," July 8, 1992, recommended that OFPP establish Government-wide guidelines and criteria on reasonable and appropriate management fees, and that agencies require their FFRDCs to justify their management fees in writing and reduce any excessive fees. OFPP agreed with the recommendation.

Management comments on support for justifications. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) disagreed with the report statement, "The justifications did not contain sufficient facts and rationale to justify the use of FAR 6.302-3 for sole-source awards to the 10 FFRDCs." The Deputy Assistant Secretary stated that competing successive FFRDC contracts is not necessary as long as the requirements of the comprehensive review are met.

Audit response. We agree that competing successive FFRDC contracts is not necessary. However, to use a sole-source justification to avoid competing a contract, contracting officers must sufficiently document the rationale for making the sole-source award decision.

Management comments on future awards. The Deputy DDR&E suggested the paragraph "Future awards," be deleted, and stated the cost in terms of dollars and disruption of doing an

unscheduled comprehensive review before assigning any future tasks would be unjustifiable. The Navy stated that FFRDCs are exempt from competition once the Government establishes a continuing need for the services of the FFRDC. The Navy stated that the Government is well served by its use of FFRDCs and that the current austere budget climate necessitates greater reliance on FFRDCs.

Audit response. We revised the report and related recommendation because DoD sponsors either started new comprehensive reviews in FY 1993 or planned to start the reviews in FY 1994 for the 10 DoD-sponsored FFRDCs.

Management comments on effect of sole-source contracts. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) stated that sole-source contracts do not deny establishment of in-house capability provided that establishment of a fully equivalent capability is a viable option. The Deputy Assistant Secretary further stated that FFRDCs complement in-house capability, and that the FFRDC program would adapt to changes in the in-house capability.

The Navy stated it did not prepare a cost comparison on field analysts for CNA because the Navy opposes the premise that retaining the CNA field program was solely a matter of cost and because the report does not address the assumptions used to derive the dollar amounts reported.

Audit response. Comprehensive reviews should identify specific long-term requirements that FFRDCs will perform and should assess the feasibility of meeting these requirements with in-house personnel or with contractor support. The comprehensive reviews did not adequately define the work requirements or the relative merits of the non-FFRDC alternatives.

The Navy comprehensive review of CNA should have described the requirement for the field analysts and should have assessed the cost of in-house performance. We believe in-house performance is a viable alternative for performing the field program requirement. Further, the Navy comments indicate the field program is a critical factor in the successful accomplishment of CNA's overall study and analysis mission, but there was no documentation of this statement in the comprehensive review. We further clarified the basis for the cost comparison of CNA field analysts versus in-house personnel and reduced our estimated reduction of costs from $7.8 million ($3.9 million per year) to $6.2 million ($3.1 million per year).

Management comments on internal controls. The Deputy Assistant Secretary of Defense (Strategic and Tactical C^3) disagreed with the audit determination of an internal control weakness. The Deputy Assistant Secretary stated that all regulatory requirements were complied with in renewing contracts or sponsoring agreements with the FFRDCs. The Deputy Assistant Secretary also stated a comprehensive review was completed before signing a sponsoring agreement in January 1991 for the MITRE C^3I Division FFRDC. Further, a Joint Users' Committee was formed to recommend ceiling allocations, to provide policy oversight as to the appropriateness of work assigned to the MITRE C^3I Division, to assess program priorities, and to assess cost reasonableness and value of services provided by the MITRE C^3I Division.

The Navy stated no problem existed with internal controls and that program, contract, and staff officials worked closely throughout the contract renewal process. Further, the Navy stated that the Principal Deputy Assistant Secretary of the Navy (Research, Development, and Acquisition) and the Assistant Secretary of the Navy (Research, Development, and Acquisition) were kept apprised, through verbal briefings, of the progress of the contract renewal.

Audit response. The audit report and management comments state that documenting comprehensive reviews needed improvement. However, sole-source justifications were certified as accurate by contracting officials and approved by senior acquisition officials, and contracts were awarded before the comprehensive reviews were completed to support the decisions on the continued need for FFRDC relationships and to support the use of statutory exemptions from competition.

Adequate internal controls existed. However, the controls were not followed before award of the contracts. We identified and reported what met the regulatory criteria for a material internal control weakness. The DoD activities have the responsible officials for determining whether and how to report the identified weakness in controls.

APPENDIX R - SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT

Recommendation Reference	Description of Benefits	Amount and/or Type of Benefit
1.	Program Results. Improves compliance with OFPP policy by performing comprehensive reviews required by OFPP and the FAR. Also improves internal controls.	Nonmonetary.
2.	Program Results. Precludes award or extension of contract until adequate justifications are prepared.	Nonmonetary.
3.	Economy and Efficiency. Uses less costly in-house personnel instead of FFRDC contract personnel.	Funds put to better use of $6.2 million.*

*Consists of Navy research, development, test, and evaluation funding of $3.1 million during FY 1994 and $3.1 million during FY 1995.

APPENDIX S - ACTIVITIES VISITED OR CONTACTED

Office of the Secretary of Defense

Director of Defense Procurement, Washington, DC
Director, Defense Research and Engineering, Washington, DC
Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), Washington, DC
Assistant Secretary of Defense (Production and Logistics), Washington, DC
Assistant Secretary of Defense (Programs, Analysis, and Evaluation), Washington, DC
Director, Acquisition Policy and Program Integration, Under Secretary of Defense for Acquisition, Washington, DC
Director of Net Assessment, Under Secretary of Defense for Policy, Washington, DC
Director, Defense Acquisition Regulations Council, Arlington, VA

Department of the Army

Director of the Army Staff, Washington, DC
Army Materiel Command, Alexandria, VA
  Army Communications-Electronics Command, Ft Monmouth, NJ
Army Concepts Analysis Agency, Bethesda, MD
Defense Supply Service-Washington, Washington, DC

Department of the Navy

Assistant Secretary of the Navy (Research, Development, and Acquisition), Washington, DC
Chief of Naval Operations, Washington, DC
Chief of Naval Research, Arlington, VA

Department of the Air Force

Deputy Chief of Staff for Plans and Operations, Washington, DC
Air Force Materiel Command, Wright-Patterson Air Force Base, OH
  Electronics Systems Center, Hanscom Air Force Base, MA
  Space and Missile Systems Center, Los Angeles Air Force Base, CA
Air Force Office of Scientific Research, Bolling Air Force Base, Washington, DC

Defense Agencies

Advanced Research Projects Agency, Arlington, VA

Non-Defense Federal Organizations

Office of Management and Budget, Washington, DC

APPENDIX S - ACTIVITIES VISITED OR CONTACTED (cont'd)

Non-Government Activities

Aerospace Corporation, Los Angeles, CA
Arroyo Center, RAND Corporation, Santa Monica, CA
Center for Naval Analyses, Alexandria, VA
Institute for Advanced Technology, Austin, TX
Institute for Defense Analyses, Alexandria, VA
Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, MA
Logistics Management Institute, Bethesda, MD
MITRE Corporation, Bedford, MA
National Defense Research Institute, RAND Corporation, Santa Monica, CA
Project AIR FORCE, RAND Corporation, Santa Monica, CA
Professional Services Council, Washington, DC
Software Engineering Institute, Carnegie-Mellon University, Pittsburgh, PA

APPENDIX T - REPORT DISTRIBUTION

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
Director of Defense Procurement
Director, Defense Research and Engineering
Comptroller of the Department of Defense
Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
Assistant Secretary of Defense (Program Analysis and Evaluation)
Deputy Under Secretary of Defense for Logistics

Department of the Army

Secretary of the Army
Assistant Secretary of the Army (Research, Development, and Acquisition)
Assistant Secretary of the Army (Financial Management)
Commander, Army Materiel Command
Commander, Communications-Electronics Command
Director, Defense Supply Service-Washington
Auditor General, Department of the Army

Department of the Navy

Secretary of the Navy
Assistant Secretary of the Navy (Research, Development, and Acquisition)
Assistant Secretary of the Navy (Financial Management)
Chief of Naval Research
Auditor General, Naval Audit Service

Department of the Air Force

Secretary of the Air Force
Assistant Secretary of the Air Force (Acquisition)
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Commander, Air Force Materiel Command
Commander, Electronics Systems Center
Commander, Space and Missile Systems Center
Auditor General, Air Force Audit Agency

Defense Agencies

Director, Advanced Research Projects Agency
Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency

APPENDIX T - REPORT DISTRIBUTION (cont'd)

Non-Defense Federal Organizations

Office of Management and Budget
National Security and International Affairs Division, Technical Information Center, General Accounting Office

Chairman and Ranking Minority Member of Each of the Following Congressional Committees and Subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Operations
House Subcommittee on Legislation and National Security, Committee on Government Operations

PART IV - MANAGEMENT COMMENTS

Director of Defense Procurement

Deputy Director, Defense Research and Engineering

Deputy Assistant Secretary of Defense (Strategic and Tactical C^3)

Office of the Assistant Secretary of Defense (Production and Logistics)

Department of the Army

Department of the Navy

Department of the Air Force

Director, Advanced Research Projects Agency

Final Report

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

MAY 26 1993

DP (DAR)

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

THROUGH: CHIEF, CONGRESSIONAL ACTIONS AND INTERNAL REPORTS

SUBJECT: Draft Audit Report - Sole-Source Justifications for DoD-Sponsored Federally Funded Research and Development Centers (Project No. 1CH-5012.02)

Deleted

This responds to your request for comments on recommendation 4 of the draft audit report. You recommend that the Defense Federal Acquisition Regulation Supplement (DFARS) be revised to require the renewal of contracts with DoD Federally Funded Research and Development Centers (FFRDCs) to be publicized in advance. You included proposed DFARS language in Appendix Q of the report.

We do not agree that this revision is appropriate. We are permitted by 10 U.S.C.2304(c)(3) to use other than competitive procedures in contracting with a particular FFRDC to establish or maintain an essential engineering, research, or development capability. Further, 41 U.S.C. 416(c)(2) exempts these type contracts from the requirement for publication in the Commerce Business Daily.

OFPP Policy Letter 84-1 encourages the concept of establishing and maintaining long-term FFRDCs to provide the continuity necessary to attract high-quality FFRDC personnel. By memorandum dated September 16, 1992, OFPP reaffirmed its position that FFRDC contracts are intended to be long-term, but emphasized the importance of conducting adequate market analyses prior to renewing FFRDCs. Market analysis is essential to determine whether the unique FFRDC relationship is still needed, or whether the marketplace has changed to the extent that competition should be sought.

Thank you for the opportunity to comment on the draft report.

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

OFFICE OF THE DIRECTOR OF
DEFENSE RESEARCH AND ENGINEERING
WASHINGTON, DC 20301-3030

01 JUL 1993

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Review of the Draft Audit Report on Sole-Source Justifications for DoD-Sponsored Federally Funded Research and Development Centers (FFRDCs) (Project No. 1CH-5012.02)

I have reviewed the subject report, and I agree with the need for strengthened FFRDC management and better documentation to support decisions relating to FFRDCs. It is for this reason that we issued and are implementing the DoD FFRDC Management Plan. I am concerned, however, with your interpretation of the Office of Federal Procurement Policy (OFPP) letter 84-1 and the Federal Acquisition Regulation (FAR), and I cannot concur with your proposed changes to the FAR.

I believe that the DoD is in compliance with OFPP Policy letter 84-1 and the FAR, and that the FAR is in compliance with the Competition in Contracting Act. I agree, however, that there may be instances in which DoD did not adequately document actions to support decisions regarding continuation of FFRDCs. This is an area that is emphasized in the DoD FFRDC Management Plan and is receiving increased attention.

Our specific comments are attached. The DDR&E point of contact for this effort is Mr. Robert Havey, who can be contacted at (703) 756-8969.

John M. Bachkosky
Deputy Director
Defense Research & Engineering

Attachments

Final Report

COMMENTS ON
THE INSPECTOR GENERAL'S DRAFT AUDIT REPORT
ON SOLE-SOURCE JUSTIFICATIONS
FOR DoD-SPONSORED
FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS
(PROJECT NO. 1CH-5012.02)

COMMENTS ON IG RECOMMENDATIONS

Page 15, Recommendation 1.a: Partially Concur. In accordance with the DoD FFRDC Management Plan, comprehensive reviews addressing the criteria contained in Office of Federal Procurement Policy (OFPP) Policy Letter 84-1 and FAR 35.017 are being accomplished for all DoD FFRDCs, unless a review was completed since January 1, 1990 (Mitre and CNA come under this exception).

Revised PP. 16 and 17

Page 15, Recommendation 1.b: Partially Concur. The new comprehensive reviews will address the guidelines specified in OFPP Policy Letter 84-1 and FAR 35.017-4. We nonconcur with the part of this recommendation that proposes additional review requirements not included in the Policy Letter or the FAR.

Deleted

Page 16, Recommendation 1.c: Nonconcur. There is no support for this recommendation in law or regulation. The Competition in Contracting Act clearly exempts noncompetitive FFRDC acquisition from the requirement for pre-award synopsis in the Commerce Business Daily (CBD) (Section 41 U.S.C. 416(c)(2)). This statutory exemption is implemented by FAR 5.202(a)(10).

Revised Recommendation 1.c. P. 18

Page 16, Recommendation 1.d: Concur. The FFRDC Management Plan requires comprehensive reviews of the need for an FFRDC before its contract is renewed.

Revised P. 19

Page 16, Recommendation 2: Partially Concur. We agree with the need to perform comprehensive reviews prior to the award of a new contract. However, to delay the exercise of options or modifications to ongoing FFRDC contracts would be disruptive to the ongoing work of FFRDCs and their sponsors. Such disruptions could only be justified if there were reason to believe that a review would not justify continued sponsorship of the FFRDC.

Revised P. 20

Page 16, Recommendation 3: Nonconcur. We support the Navy's position that it would not be cost effective for the Navy to replace CNA's infrastructure with its own.

Final Report

Page 16, Recommendation 4: Nonconcur. We support the response provided by the Director, Defense Procurement. "We do not agree that this revision is appropriate. We are permitted by 10 U.S.C. 2304(c)(3) to use other than competitive procedures in contracting with a particular FFRDC to establish or maintain an essential engineering, research, or development capability. Further, 41 U.S.C. 416(c)(2) exempts these type contracts from the requirement for publication in the Commerce Business Daily."

Deleted

GENERAL COMMENTS

We believe that we are in compliance with OFPP Policy Letter 84-1 and the FAR with respect to full and open competition for FFRDCs. The applicable sections are quoted below:

(1) FAR 6.302-3 states "Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i)..., or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center."

(2) OFPP Policy Letter 84-1 Paragraph 6.c states "When FFRDCs are established, long-term Government relationships are encouraged in order to provide the continuity that will attract high quality personnel to the FFRDC."

(3) FAR 35.017(4) states "Long term relationships between the Government and FFRDCs are encouraged in order to provide the continuity that will attract high quality personnel to the FFRDC."

FAR 35.017-4 which is the basis for many of the objections raised by draft report was not in effect in time to affect the current contracts.

SPECIFIC COMMENTS

Page ii, "Audit Results": Delete all but first sentence.

Revised p. i

Reason: This paragraph makes three assumptions: (1) the comprehensive review must be documented in a single report and this report is the only documentation of the need and effectiveness of the FFRDC, (2) justifications for other than full and open competition are based on the current contractor being the only responsible source, and (3) the origination of the contract is the only time at which a sole source justification is required. None of these assumptions is true: (1) the program

Final Report

documentation for most FFRDCs includes an acquisition plan and other descriptive documentation which must be approved by senior management, and senior management participates in the steering groups for all FFRDCs; (2) justification for a sole source award of a contract to continue an FFRDC is based on the need for the FFRDC and the performance of the current FFRDC contractor; and (3) all tasks assigned to an FFRDC must be justified as being appropriate for performance by that FFRDC.

Revised

Page ii, "Summary of Recommendations": Rewrite this paragraph to state the need for more thorough documentation and delete all other comments in this paragraph.

Reason: Validation of the competitive environment is not required for the contracts that establish FFRDC capabilities; the comprehensive reviews in question were done; if the intent is to reduce the cost of services to the government, the curtailment of contract actions will be counterproductive; replacement of CNA analysts with in house personnel is not cost effective; and the proposed change to the FAR is not appropriate.

Page 7, 1st Paragraph: Delete all but 1st sentence.

Reason: Although we agree that documentation to support decisions regarding FFRDCs should be improved, the existing documentation complies with the OFPP Policy Letter 84-1 or FAR 35.017 depending on when the review was done (FAR 35.017 is slightly more stringent and did not take effect until March 1991). Statements regarding reviews "done late or not at all" neglect the Steering Group meetings and documents such as acquisition plans that were prepared to support approval of contract award. The statement regarding senior officials not exercising supervisory authority does not take into account the involvement of these senior officials in the oversight of the FFRDCs. The statement regarding validity of the reasons used to justify the sole-source contracts does not follow from what was presented before. Restriction of competition from private sector firms should not be an issue regarding continuation of an FFRDC capability; FAR and CICA specifically exempt FFRDCs from competition. The criteria for continuation of an FFRDC are the need for the FFRDC and the efficiency and effectiveness of the existing FFRDC contractor. The statement regarding replacement of CNA analysts with Navy employees should be deleted or included as a separate finding.

Revised
P. 5

	Final Report
Page 8, "Sufficiency of Reviews and Justifications": Rewrite this paragraph to show that the major weakness in the reviews was that they did not address internal controls and compliance of the sponsoring agreement with FAR 35.017-1. **Reason: The reviews were written as program evaluations, not as evaluations of the contractor's operation. Review of the sponsoring agreement is a new requirement. Future reviews, including those in process will address internal controls and the sponsoring agreement.**	P. 6
Page 9, "Requirements for FFRDCs": Delete this paragraph. **Reason: FFRDC sponsors cannot and should not attempt to overspecify research, particularly years in advance in areas of fast changing international policy or rapidly advancing technology. OFPP Policy Letter 84-1 specifically includes quick response to user requirements as a characteristic of FFRDCs.**	Revised P. 6
Page 9, "Alternative Contractor and Government sources": Delete this paragraph. **Reason: There is no requirement that the current FFRDC contractor be the only source for the FFRDC capability. Alternative sources should be considered for individual tasks.**	P. 7
Page 9, Commerce Business Daily Synopses: Delete all paragraphs relating to CBD synopses. Synopses are published at the discretion of the Primary Sponsor and the contracting officer in circumstances when the publication of a synopsis may benefit the government. **Reason: FAR 5.202(a)(10) exempts renewal of FFRDC contracts from the requirement for a CBD synopsis.**	Revised PP. 7 and 8
Page 10, Paragraph beginning "None of the reviews...": Delete this paragraph. **Reason: The justification that only one source can accomplish the sponsor's individual task requirements is different from that used to justify entire FFRDCs. FFRDCs are justified on the basis of maintaining a capability. The proposed change to the FAR or Defense FAR Supplement (DFARS) is not appropriate. The exemptions granted FFRDCs are appropriate as long as the FFRDCs are justifiable. The proposed changes would undermine the ability of the DoD to keep needed capabilities in place.**	Deleted

Final Report

Revised
P. 11

Page 13, "Future Awards": Delete this paragraph.

Reason: FFRDC contracts are in accordance with the FAR, and comprehensive reviews are accomplished prior to their renewal. Each task added to an FFRDC contract must be justified as appropriate to performance by an FFRDC. The cost in terms of dollars and disruption of doing an unscheduled comprehensive review prior to assigning any future tasks would be unjustifiable.

Final Report

COMMENTS ON APPENDIX G, SUMMARY OF REVIEWS AND JUSTIFICATIONS

Page 45, Appendix G: Delete this table.

Synopsis deleted PP. 51 and 52

Reason: This table indicates a fundamental misunderstanding of FFRDCs on the part of the auditors and presents a distorted picture of the adequacy of the comprehensive reviews and justifications. Mission requirements are addressed in the FFRDC charter or sponsoring agreement. Alternative sources were considered either in the comprehensive reviews or other documentation in the procurement package. There is no requirement for a synopsis. Efficiency and effectiveness was addressed in all of the reviews. Compliance with FAR criteria was not required to be addressed when the reports were written. The only major deficiency was that none of the reviews directly addressed internal controls.

COMMENTS ON APPENDIX H REGARDING RAND NDRI

Page 57, paragraph beginning "The Air Force and the Army...": Delete the last sentence.

P. 63

Reason: That the criteria are subjective does not mean that they are incorrect. Many of the studies that are performed by FFRDCs are inherently subjective. Designing quantitative criteria would often simply quantify subjective arguments without adding to their validity.

COMMENTS ON APPENDIX I REGARDING IDA

Pages 61 through 66: Delete the entire discussion regarding the CBD synopsis and the responses to the synopsis.

PP. 69-72

Reason: The synopsis CBD is not required, and the responses to the synopses were handled as any similar responses on a non-FFRDC contract would have been handled. DSS-W responded properly to the contractors that expressed interest in the solicitation. It should also be noted that none of the nine commercial organizations submitted a formal protest.

Page 66, last paragraph: Delete this paragraph.

Deleted

Reason: The multiple functions being performed by the Director, DoD FFRDC Programs does nothing but show the workload for this position. The Government paid rent for the office space at IDA, and the Director, DoD FFRDC Programs is no longer located at IDA. The accusation that the data call memorandum was structured to obtain only positive comments is not supported anywhere.

DEPUTY ASSISTANT SECRETARY OF DEFENSE (STRATEGIC AND TACTICAL C3) COMMENTS

COMMAND CONTROL COMMUNICATIONS AND INTELLIGENCE

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3040

19 May 1993

MEMORANDUM FOR THE DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, OFFICE OF THE DOD INSPECTOR GENERAL

SUBJECT: Draft Audit Report on Sole-Source Justifications for DoD-Sponsored Federally Funded Research and Development Centers (Project number 1CH-5012.02)

As requested in your memorandum of March 23, 1993, we have reviewed the subject DoD Inspector General draft audit report. Our comments that address each recommendation are provided in TAB A, attached. TAB B provides general comments on the findings included in Part II. TAB C provides specific comments pertaining to the 1990 MITRE C3I FFRDC realignment included in Appendix M.

The audit report's narrative used in Appendix M describing the February 7, 1991, Comprehensive Review for MITRE's C3I FFRDC does not accurately portray the scope or extent of the review the Primary Sponsor conducted. As discussed in TAB C, the "Analysis of the 1990 realignment and contract" on page 88 contains information which may not be fully supported by the facts. It is suggested that you re-evaluate that portion of the report and make necessary changes as appropriate in Appendix M and the corresponding paragraphs in PART II of the report.

In summary, I believe that the 1990 MITRE realignment strengthened the internal control procedures relating to senior DoD management oversight of the MITRE C3I FFRDC. The procedures initiated by the Primary Sponsor and the Sponsors (Air Force and Army) after the 1990 MITRE realignment are much more restrictive than the management and oversight requirements included in the August 14, 1992, DoD FFRDC Management Plan.

Thomas P. Quinn
Deputy Assistant Secretary of Defense
(Strategic and Tactical C3)

Attachments

Final Report

TAB A

OASD(C³I) COMMENTS ON THE RECOMMENDATIONS CONTAINED WITHIN THE DRAFT AUDIT REPORT ON SOLE-SOURCE JUSTIFICATION FOR DOD-SPONSORED FFRDCs

RECOMMENDATION #1A: We recommend that DDR&E direct DoD sponsors for all FFRDCs to prepare new comprehensive reviews.

OASD(C³I) Response: Concur

The Primary Sponsor of the MITRE C³I FFRDC [OASD(C³I)] has already initiated an effort to prepare a new Comprehensive Review. The estimated completion date is June 15, 1993.

However, it should be noted that prior to signature of the MITRE C³I FFRDC Sponsoring Agreement dated February 11, 1991, the Primary Sponsor completed a Comprehensive Review in accordance with the provisions contained within OFPP Letter 84-1 and Section 35.017-4 of the Federal Acquisition Regulation (FAR). As a result of this Review, a positive determination was made on the continuing need for the MITRE C³I FFRDC. This determination was approved by the ASD(C³I) when he signed the Sponsoring Agreement. Results of the Comprehensive Review were adequately documented in a February 7, 1991 Memorandum for the Record. Exception is taken to the wording in Appendix M (page 86-2nd paragraph) that implies a staff assistant in the OASD(C³I) prepared the Comprehensive Review without any higher level review or approval.

Revised PP. 16 and 17

RECOMMENDATION #1B: We recommend that DDR&E require the DoD sponsors for all FFRDC to document in the reviews 5 specified items (see page 15 and 16 of the draft audit report).

OASD(C³I) Response: Partially Concur

The new MITRE C³I FFRDC Comprehensive Review will address all of the items specified in OFPP Policy Letter 84-1 and Section 35.017-4 of the FAR. We nonconcur with this recommendation to the extent you are proposing additional requirements not currently included within the Policy Letter or the FAR. In addition, we take exception to your finding (page 7-1st paragraph) that states "DoD sponsor comprehensive reviews did not meet OFPP Policy Letter 84-1 and FAR 35.017-4 requirements" for any of the 10 DoD sponsored FFRDCs. This is not an accurate statement in the case of the MITRE C³I FFRDC. Your staff was provided with ample documentation for both the 1988 Air Force and 1991 OASD(C³I) Comprehensive Reviews for the MITRE C³I FFRDC that met the full spirit and intent of the FAR and OFPP Policy Letter. Further, a requirement does not currently exist that an all-inclusive single document entitled "Comprehensive Review" be prepared.

1

TAB A

Final Report

RECOMMENDATION #1C: We recommend that DDR&E require the sponsors to publish advance notices of intent in the Commerce Business Daily and to perform market surveys to validate that a sole-source award is warranted because competition is infeasible.

Deleted

OASD(C3I) Response: Nonconcur

We believe that the unique status of FFRDCs makes this recommendation totally illogical. There is no support for this recommendation in law or regulation. The Competition in Contracting Act (CICA) clearly exempts noncompetitive FFRDC acquisition from the requirement for Commerce Business Daily (CBD) synopsis [see 41 U.S.C. 416(c)(2)]. In addition, Section 5.202(a)(10) of the FAR provides specific regulatory exemption for this requirement. Section 5.205(b) requires placing advance notices in the CBD only when establishing a new FFRDC or when changing the basic purpose and mission of an existing FFRDC. No such notice is required for "other than commercial or commercial-type products." Although the draft audit report acknowledges the existence of these and other FAR cites, their intent is ignored.

The stated objectives of this audit were: (1) to determine whether DoD sponsors were performing adequate reviews of the need for their FFRDCs; and (2) to determine the adequacy of the sole-source renegotiation justifications for the FFRDC contracts. These objectives are, in reality, complex policy questions that can only be answered after addressing a basic assumption about the nature of FFRDCs. That assumption is that FFRDCs are a wholly unique type of national resource that are deliberately protected from normal competitive pressures. This assumption is not addressed in the audit report, yet this assumption is well established by law, regulation, and decades of government practice. Accordingly, we believe that this is a serious flaw that diminished the usefulness of the audit report. Accordingly, it is recommended that the audit report be revised to address the following three items: (1) the unique nature of the type of support that FFRDCs provide, (2) that FFRDCs are intended, by policy and law, to be organizations with a unique relationship to the government; and (3) that a sole-source contracting decision is an inherently logical result of the decision to maintain sponsorship of these unique organizations. The emphasis on competition inherent in this recommendation supports the OASD(C3I) position that a decision to continue sponsorship of an FFRDC is not severable from the decision to sole-source an existing FFRDC.

The MITRE C3I FFRDC was created to support the DoD in dealing with complex C3I technological systems engineering problems as they relate to the most critical aspects of national security policy. The draft audit report does not recognize that providing on-going support to the government on the most complex C3I issues relating to national security is fundamentally different from the type of support provided by typical service contractors.

2

Final Report

TAB A

The FAR clearly spell out the unique relationship that should exist between an FFRDC and the sponsoring agency. The following is a quote from Section 35.107(a)(4) of the FAR:

> "Long-term relationships between the Government and FFRDCs are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability."

Section 6.302-3 of the FAR recognizes the unique status of FFRDCs and allows an exception for other than full and open competition. Section 5.202(a)(9) of the FAR permits an award without synopsizing when the contracting action is made under the conditions described in Section 6.302 of the FAR. The recommendation to require sponsors to publish sources-sought synopsis and to perform market surveys to validate that competition is infeasible. It also appears to be in direct contradiction to the FAR. Section 6.302-3 of the FAR [10 U.S.C. 2304(c)(3)] states:

> "Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order to...establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center."

The lack of a requirement to synopsize in the Competition in Contracting Act is indicative of the legislative intent when dealing with FFRDCs. The intent for the use of Section 6.302-3 of the FAR was included in Senate Report #98-297, which states:

> "... Therefore, the Committee felt it was imperative to provide agency heads with a degree of flexibility to establish or maintain an essential research capability, without using competitive procedures, to be provided by specific types of institutions or organizations."

Revised Recommendation 1.c. P. 18

RECOMMENDATION #1D: We recommend that DDR&E discontinue FFRDCs that cannot be adequately justified.

OASD(C³I) Response: Concur (with word change)

We concur with this recommendation, subject to substituting the word "Primary Sponsor" instead of "DDR&E." The Primary Sponsor of the FFRDC has this responsibility per Sections 35.017-2 and 35.017-4 of the FAR.

3

Final Report

TAB A

RECOMMENDATION #2: We recommend that DDR&E, ASD(P&L), ASN(RDA), ASAF(A), and the Director DSS-Washington not award any contracts or exercise any options or modifications to existing contracts pending the completion of an acceptable comprehensive review and a sole-source justification for the applicable FFRDC.

Revised P. 19

OASD(C3I) Response: Nonconcur

We concur with the intent of this recommendation if it is to improve the Comprehensive Reviews to provide a better basis for the sole-source justifications. While the restriction on awarding new contracts or exercising any options or contract modification may be an effective motivator to complete these actions, we consider the restriction if applied to all modifications to existing contracts to be punitive. The fact that Comprehensive Reviews were not considered adequate by the audit report does not constitute a willful action that requires punitive action.

In addition, even if new contracts or options are not exercised until new Comprehensive Reviews are completed, "contingent planning" for these contracts should be carried on. Not to do so would be placing an unreasonable burden on the entire FFRDC community, a burden which is not justifiable in light of the fact that the purpose of the whole DoD Inspector General's audit report is to improve a process - not to punish an entire community or deny DoD a source of support that its sponsors strongly endorse and find invaluable.

The Primary Sponsor of the MITRE C3I FFRDC maintains a firm position that the 1991 OASD(C3I) Comprehensive Review was adequate and addressed all of the mandatory requirements contained within both the OFPP Policy Letter 84-1 and Section 35.017 of the FAR. The OASD(C3I) also support the Air Force's position that their Comprehensive Review and sole source justification for awarding the 1988 contract with the MITRE Corporation to operate the C3I FFRDC was adequate and fully complied with the requirements of the OFPP Policy Letter 84-1, Section 35.017 of the FAR, and the CICA.

The decision process for determining the continued requirement for an FFRDC is contained in the comprehensive review procedure found in Section 35.017-4 of the FAR. It is important to note that the purpose of these reviews is to review the use of and continuing need for the FFRDC prior to extending the contract or Sponsoring Agreement with an FFRDC. The only alternative to continued sponsorship is to transfer sponsorship to another agency or to terminate the FFRDC. Recompetition of the contract is not provided as an option. Once the determination as to the use and continuing need for the FFRDC has been made, then a sole-source contract negotiated with the FFRDC is appropriate. The direct relationship to a sole-source contract with a FFRDC once sponsorship has been determined is supported by the unambiguous language in Sections 6.302-3(a)(2)(ii) and (b)(2) of the FAR.

Final Report

TAB A

RECOMMENDATION #3: We recommend that ASN(RDA) perform the required cost analyses and prepare the budget documents to replace the Center for Naval Analysis field analysts with less costly in-house personnel.

OASD(C3I) Response: No comment

This recommendation does does not pertain to the OASD(C3I).

Deleted

RECOMMENDATION #4: We recommend that the Director of Defense Procurement direct the Defense Acquisition Council to add provisions to the Defense FAR Supplement to require the renewal of contracts with DoD FFRDCs to be publicized in advance.

OASD(C3I) Response: Nonconcur

The rationale for our nonconcurrence is included in the OASD(C3I) response to Recommendation 1.C, above. The OASD(C3I) objects to setting standards to DoD different from those in the FAR. Further, we question whether it is appropriate for the audit report to establish procurement policy, as this recommendation is intending to do. The recommended solution to inadequate management attention to OFPP or FAR requirements is to strengthen management actions, not to create additional requirements and constraints.

RECOMMENDATION ON MATERIAL FFRDC INTERNAL CONTROL WEAKNESS:

OASD(C3I) Response: Nonconcur

Audit response P. 125

With regards to the MITRE C3I FFRDC, we strongly nonconcur that there is a current weakness in internal control. The procedures initiated by the new Primary Sponsor of the MITRE C3I FFRDC after the 1990 MITRE realignment are much more restrictive than the management and oversight requirements included in the August 14, 1992 DoD FFRDC Management Plan. As the Primary Sponsor of MITRE's C3I FFRDC, the OASD(C3I) reviews every project to ensure that the requirements of our Sponsoring Agreement, OMB's OFPP Policy Letter 84-1, and Section 35.017-4 of the FAR are complied with. A written Comprehensive Review was prepared prior to approval of the February 11, 1991 MITRE Sponsoring Agreement that was fully responsive to all of the requirements contained within the OFPP Policy Letter 84-1 and Section 35.017-4 of the FAR. In addition, a Joint Users Committee was formed that has the following responsibilities: (1) recommend ceiling allocations to the Primary Sponsor; (2) provide policy oversight to ensure that all MITRE C3I FFRDC work is appropriate; (3) provide an assessment on the MITRE C3I FFRDC program priorities; and (4) assess the cost reasonableness and value of the C3I systems engineering services provided by the MITRE C3I FFRDC.

5

Final Report

TAB B

OASD(C3I) GENERAL COMMENTS ON THE FINDINGS CONTAINED WITHIN THE DRAFT AUDIT REPORT ON SOLE-SOURCE JUSTIFICATION FOR DOD-SPONSORED FFRDCs

ISSUE: Findings. Page 7 of the IG report. Sponsors did not adequately document the basis for renewing the 10 FFRDC Sole Source contracts. P. 5

Response: This is a criticism of the documentation; it is not a statement that there was no basis for renewing the sole source contracts. OASD(C3I) acknowledges that the AF In 1988 could have documented the basis for renewal of the contract in more depth. However, even without more extensive documentation, the sponsor did establish the basis for maintaining the continuing need for the MITRE C3I FFRDC. As elaborated below, OASD(C3I) is in the process of generating an updated, more thoroughly documented comprehensive review (even though one was generated 2 years ago) The Air Force and Army sole source contract justifications will derive substantially from this effort. Therefore, OASD(C3I) is positively responding to the indicated need for more thorough careful documentation.

ISSUE: Findings. Page 7 of IG report. Comprehensive reviews did not meet OFPP Policy Letter 84-1 and FAR 35.017-4. P. 5

Response: Both OFPP 84-1 and FAR 35.017-4 list the five areas of review that should be included in the Government's comprehensive review of their FFRDC. In summary paraphrasing, these five review requirements are:

1. Special technical needs and mission requirements performed by FFRDC to determine if and at what level they continue to exist.

2. Consideration of alternative sources to meet sponsor needs.

3. Assessment of efficiency and effectiveness in meeting sponsor needs.

4. Assessment of adequacy of the FFRDC management in ensuring a cost effective operation.

5. Criteria for establishing FFRDC continues to be satisfied and Sponsoring Agreement meets 35.017-1.

On 7 February 1991 OASD(C3I) in a memorandum entitled, "Review of DOD'S Continued Need for MITRE'S C3I FFRDC." OASD (C3I) (TAB A) reported on the results of the comprehensive review of the MITRE C3I FFRDC conducted by OASD(C3I) prior to the signing of the DoD/MITRE sponsoring agreement dated 11 February 1991. The 1991 comprehensive review addressed each of the 5 areas of review cited above from OFPP letter 84-1 and FAR 35.017-4. In addition to the

1

Final Report

ASD(C3I), a copy of that review was distributed to DASD(P&L), Air Force/ESC, Army/CECOM, DDR&E, and the DoD IG.

All of the requirements identified for the continued need and use of the MITRE C3I FFRDC were met and it was so stated in the comprehensive review. It was also pointed out that since the Primary Sponsor of the MITRE C3I FFRDC does not and will not have a direct contract with MITRE, special efforts were made to assure that the Sponsoring Agreement between MITRE and ASD(C3I), dated 11 February 1991 (TAB B), embodied all of the mandatory requirements relative to the need and use of the FFRDC contained in OFPP 84-1 and the FAR.

Since the issuance of the DoD IG Audit Report draft, OASD(C3I), in a spirit of cooperation with DDR&E and the DoD IG, has agreed to perform a new comprehensive review of MITRE even though the 91 review satisfied 84-1 and FAR requirements. The new review is ongoing and is expected to be completed and approved in the spring of 93. It addresses each of the criteria identified above and will document the satisfaction of the mandatory requirements identified in 84-1 and the FAR.

Revised P. 5

ISSUE: Findings. Page 7 Audit Report. Sole source justifications contained unproven statements. Reasons used to justify sole source for the 10 FFRDCs were not valid. Therefore, competition was restricted from private sector and probably resulted in higher costs.

Response: OASD(C3I) believes that the reasons used to justify sole source for the 10 FFRDCs were valid. The fact that they were not well documented does not mean that the rationale was "not valid."

OASD(C3I) does not concur with the statement that competition was restricted from private sector and probably resulted in higher costs. The IG did not do an independent review of costs; it appears that they may have accepted 1 or 2 data points provided by external sources. Professional analysis would require dealing with job comparability and value received as well as dollar costs.

Revised PP. 6 and 7

ISSUE: Page 9 of Audit Report. Did not detail future requirements.

Response: The future requirements for the MITRE FFRDC are documented yearly in the sponsors' requests for MITRE support and are contained in what is referred to as the Phase I and Phase II requests for MITRE support in both the ESC Regulation 80-1 and CECOM Regulation 70-64.

For each project requested by the sponsor, his Phase I/II request states the requirements not only for the current year but for the following 4 years. This has been a long standing requirement for the Government users of MITRE and continues to be a regulatory CECOM Regulation 70-64 and ESC Regulation 80-1) requirement.

Final Report

TAB B

Furthermore, the existing and growing need for C3I as a "force multiplier when faced with force reductions, for current systems modernization, dual use technology applications, and broad based interoperability integration efforts in support of joint operations make the future needs for the MITRE FFRDC more compelling that ever.

The OASD(C3I) agrees that future requirements should be addressed in a substantive way. The updated comprehensive review currently being prepared will do so and will include a discussion and projection of future needs. It must be realized that detailed needs cannot be predicted 5 years hence with precision particularly in these rapidly changing times. Basic needs are derived from increased emphasis and reliance upon C3I and on the key role the MITRE C3I FFRDC plays in the C3I arena.

ISSUE: Page 11 and Appendix M, page 85, Audit Report. Although the periodic review assessed operational efficiency and effectiveness, the review was not based on objective criteria.

PP. 9 and 93

Response: The primary sponsor requires that each government project officer annually completes a three page evaluation form that ranks MITRE on numerous factors, such as: (1) the quality, value and timeliness of deliverables; (2) an assessment of MITRE'S efficiency and effectiveness in meeting DOD needs; and (3) an assessment of MITRE management in ensuring a cost effective operation.

These assessments encompass the MITRE C3I FFRDC support of program objectives, working relationships, project productivity, quality of projects, project staffing, and a summary appraisal. Using this approach (overall performance based on the total number of questions answered) resulted in 98.9% of questions rated as "Exceptional/Always" or "Acceptable/Usually". Only 1.1% were rated as "Unsatisfactory/Rarely." Critical remarks by the sponsors have been taken seriously by the Army, the Air Force, the Primary Sponsor and MITRE and have resulted in remedial action in all cases where appropriate, and sponsor/MITRE dialogue to achieve a common understanding in those cases where remedial action was not appropriate (e.g., miscommunication).

OASD(C3I) believes the criteria for rating to be both focused and objective. The current ongoing comprehensive review contains appended material that describes the actions taken by the MITRE (C3I) FFRDC as reported to OASD(C3I), in response to the 1.1% unsatisfactory ratings for FY 91. Evaluations for FY 92 are currently ongoing and will be completed in early summer 93. As importantly, the FFRDC relationship assures that there is continuous dialogue between sponsors and MITRE's C3I FFRDC concerning performance and that any issues are addressed without waiting for formal report card submissions.

3

Final Report

PP. 9 and 93

TAB B

ISSUE: Pages 11, 12, and 85 of Audit Report. The comprehensive review did not address controls established by the FFRDC to ensure a cost-effective operation.

Response: This is also a criticism of process and documentation and does not establish that adequate controls are not in place in the Office of the Primary Sponsor, in the Air Force, in the Army, or at MITRE.

As a general comment, both the primary sponsor and the respective Air Force or Army sponsor monitor the C3I FFRDC program execution during the year to assure that the DoD is receiving acceptable products at reasonable costs. MITRE submits detailed financial and manpower reports to every project on a routine monthly basis and costs are reviewed by both the appropriate sponsor and the DCAA prior to payment to the MITRE C3I FFRDC.

The currently ongoing comprehensive review of MITRE's C3I FFRDC will document the controls both internal to the Government and to MITRE for assuring cost effective operation. A document from MITRE describing the controls in place to assure accurate accounting records; sound procurement practices; reasonable overhead costs; that management fees are for essential operating requirements; and other related issues, will be appended to the comprehensive review.

Revised
P. 11

ISSUE: Page 13 of Audit Report. DoD sponsors should compete to the maximum extent possible mission requirements or technical needs requiring FFRDC performance.

Justifications did not contain sufficient facts and rationale to justify the use of FAR 6.302.3 for sole source awards to the 10 FFRDCs.

Response: After an FFRDC has been competed and established, the FAR is very clear that it is not necessary to compete successive contracts in order to maintain the FFRDC as long as there is no change in the basic purpose, mission, and scope of that FFRDC and as long as the requirements of the comprehensive review are met (e.g., assurance of cost effective operations). That is precisely the latter and intent of FAR 6.302.3.

OASD(C3I) agrees that DOD sponsors should compete to the maximum extent possible if it is determined by DoD that a new FFRDC needs to be established to meet mission requirement or technical needs. But the FAR specifies that competition is not required in cases of existing FFRDCs whose mission and scope remain unchanged.

Furthermore, with respect to maximum competition, the FAR Competition in Contracting Act, and DoD policy is to recognize that special situations do exist where the Government is better served and it is in the public interest if formal competition is not required. In the case of FFRDCs, a long-term, stable relationship is a fundamental policy objective. FFRDCs have long

Final Report

TAB B

been uniformly recognized as national assets providing a national capability and recognized as being of high value, providing high quality work, with positive evidence of the need to retain them even during periods of austerity. Regarding this evidence, it should be noted that the MITRE C3I FFRDC work is industrially funded and, that program managers throughout the DoD continue to choose to use their increasingly scarcer funds to obtain MITRE support. The result--continuing strong demand.

ISSUE: Page 14 of Audit Report. DoD 4502.2 CAAS states Government should establish in-house capability ASAP unless it would not be cost effective.

PP. 12 and 13

Response: Sole source contracts do not deny establishment of in-house capability; the real issue is whether or not establishment of a fully-equivalent capability is a viable option; FFRDCs work on the government side of the table complementing the in-house capability. If that capability were to change/increase, the FFRDC program would adapt.

Final Report

TAB C

OASD(C3I) SPECIFIC COMMENTS ON APPENDIX M CONTAINED WITHIN OF THE DRAFT AUDIT REPORT ON SOLE-SOURCE JUSTIFICATION FOR DOD-SPONSORED FFRDCs

P. 97

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT
The first sentence reads: "We concluded that the review conducted by the OASD(C3I) also did not adequately establish that MITRE support was the only or the most cost-effective source for the support services."

OASD(C3I) Response: This statement is inaccurate. It is not supported by the facts included in the Comprehensive review.

As stated on page 4 of the 1991 Comprehensive Review, a Sole Source Certification Form for each project must be signed by a senior DoD official (i.e., flag rank or SES level) before it can be placed on contract. The following statements are included within this signed certification: "Only MITRE can satisfy the government's requirement for this particular effort" and "There are no other known contractors with the experienced personnel, technical objectivity, and necessary capabilities to perform this effort."

In addition, Page 4 of the Comprehensive review describes an independent assessment performed by the Primary Sponsor to ensure that all work is appropriate (within the FFRDC's purpose, mission and general scope of effort, cost effectiveness, etc.). Six specific factors were listed, all of which required a favorable determination. As stated on page 4:

"If a favorable determination is not made, then DoD policy is to do the work either in-house or initiate efforts to award a competitive contract with for-profit contractors. In addition, MITRE's C3I FFRDC is not used if a government capability exists or if industry can do the job as effectively and without conflict of interest."

The above plus other safeguards described in the Comprehensive Review and the documents it references more than adequately establishes the fact that MITRE was the only effective source to accomplish the work. In fact, the OASD(C3I) challenges the DoD IG to find another FFRDC sponsor (government-wide) that does more to ensure that only appropriate work is assigned to their FFRDC.

P. 97

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT
The second sentence reads: "The review did not clearly differentiate between work appropriate for MITRE and work appropriate for a non-FFRDC."

OASD(C3I) Response: This statement is not supported by the facts included in the Comprehensive Review.

1

Final Report

TAB C

As stated on page 1 of the Comprehensive review, the DoD Sponsoring Agreement for the MITRE C3I FFRDC was attached. Accordingly, the Sponsoring Agreement (even though not yet signed) was an integral part of the Comprehensive Review. The Sponsoring Agreement includes a well defined statement on the purpose and mission of the MITRE C3I FFRDC that more than adequately allows program managers and senior management reviewers to differentiate between work appropriate for MITRE and work appropriate for a non-FFRDC. In addition, detailed criteria for appropriate use of the MITRE C3I FFRDC is also contained within the two Sponsors operating procedures (ESD Regulation 80-1 and CECOM Regulation 70-64), both of which were referenced in the Comprehensive review.

In addition, page 3 of the comprehensive review states that "At the first Joint User's Committee meeting held on July 19, 1990, the continued need to DoD of having MITRE's C3I FFRDC was reviewed in detail. The requirements for each DoD user were briefed, but less than half of the additional manpower requests were recommended for approval (i.e., only 50 of the 140 new requests were approved)." From this fact alone, how could the Joint Users Committee reject so many programs unless they had a statement that clearly differentiate between work appropriate for MITRE?

ISSUE ON Page 88: ANALYSIS OF THE 1990 REALIGNMENT

The third sentence reads: "No market survey was performed to establish that alternate sources, including in-house personnel, could not perform the procurement requirement."

Revised P. 97

OASD(C3I) Response: This statement is not supported by requirements contained within the OFPP Policy Letter 84-1 or the FAR or facts included within the Comprehensive Review.

As already stated in our earlier comments on this report and in the Comprehensive Review, an informal market survey was performed on each project and a positive determination was made that no other source could adequately perform the procurement requirement.

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT

The fourth sentence reads: "Requirements were not synopsized in the Commerce Business Daily."

Deleted

OASD(C3I) Response: This statement is not supported by requirements contained within the OFPP Policy Letter 84-1 or the FAR or facts included within the Comprehensive Review.

2

Final Report

TAB C

P. 97

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT

The fifth sentence reads: "Also, the cost effectiveness of MITRE performance versus non-MITRE sources was not formally documented."

OASD(C³I) Response: This statement is not supported by the facts included within the Comprehensive Review.

The Comprehensive Review and the documents/meetings/program reviews it referenced adequately established that the MITRE C³I FFRDC was the only source DoD had to receive the required services and that these services were cost effective. In addition to the conclusions made by the Primary Sponsor and Sponsors based on monthly program reviews, the members of the Joint User's Committee also concluded in each of their three meetings that DoD continued to have a need for this FFRDC and that the services they provided were cost effective, as documented in the Minutes of the November 19, 1992 Joint User's committee meeting (a copy of these Minutes was provided to your staff).

Revised P. 97

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT

The sixth sentence reads: "The comments regarding operational efficiency and effectiveness were mostly restatements of the FFRDC's special relationship and were not based on the evaluation of specific taskings accomplished by the MITRE C³I FFRDC."

OASD(C³I) Response: This statement is not accurate and simply not supported by the facts included within the Comprehensive Review.

We strongly disagree with your position that the efficiency and effectiveness words used within the Comprehensive review were mostly restatements of the FFRDC's special relationship and were not based on the evaluation of specific taskings accomplished by the MITRE C³I FFRDC. Just the opposite is true. Page 4 and 5 of the Comprehensive Review included an "Assessment of the Efficiency and Effectiveness of MITRE's C³I FFRDC in Meeting DoD's Needs." As stated, the evaluation addressed technical performance and quality of all contract deliverables, and included other factors such as their application and use, and responsiveness and cost control management initiatives of the FFRDC. The Comprehensive Review concluded that the analyses DoD received "under the prior contracts with MITRE's C³I FFRDC have been timely, concise and clear. This was the general consensus of the attendees at the July 19, 1990 Joint Users Committee meeting."

In addition, the Comprehensive review stated that: "Each project manager for each MITRE task is required to complete an annual MITRE Performance Evaluation report on AFSC 1416." Results of the FY 1990 completed evaluation forms were assessed by the

Final Report

TAB C

OASD(C³I) and used as one of the factors in preparing this section of the Comprehensive Review.

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT P. 97

The seventh sentence reads: "No minutes were prepared to document the reviews and decisions of the Joint Users Committee at its July 19, 1990 meeting as to the need for and effectiveness of the MITRE C³I FFRDC."

OASD(C³I) Response: This is a misleading statement.

Even though no formal document called "MINUTES" was prepared for the July 19, 1990, meeting, the ASD(C³I) signed a memorandum on August 6, 1990, that summarized the decisions made during the Joint Users Committee (JUC) meeting. This memorandum and copies of the viewgraphs used during the meeting documented the reviews and decisions of the JUC members as to the need for and effectiveness of the FFRDC. In addition, the ASD(C³I) memorandum dated August 6, 1990 stated: "Because of ceiling growth constraints, it was not possible to accommodate all of the requested increases for FY 1991 MITRE Support." As already stated, 90 MTS requests were not recommended by the JUC members nor approved by the Primary Sponsor [ASD(C³I)].

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT P. 97

The eighth sentence reads: "The review did not discuss the controls established by MITRE to assure cost effective operations."

OASD(C³I) Response: This is a misleading statement.

Page 5 of the Comprehensive review included a review on the "Assessment of the Adequacy of the MITRE C³I FFRDC Management in Ensuring a Cost Effective Operation." The Primary Sponsor's review in these areas examined numerous items, including an independent assessment on the quality and use of all FY 1990 contract deliverables. The goal was to measure their value and use, and thus be in a position to evaluate their cost effectiveness. This assessment was briefed to the Joint Users Committee. This briefing and other items they considered, provided more than an ample basis that allowed them to make the conclusion that MITRE services were cost-effective.

ISSUE ON PAGE 88: ANALYSIS OF THE 1990 REALIGNMENT Deleted reference to sponsoring agreement P. 97

The ninth (and last) sentence reads: Moreover, the review did not adequately address whether the FAR criteria for establishing the FFRDC continue to be met or that the sponsoring agreement complied with the FAR."

OASD(C³I) Response: This statement is simply not correct.

TAB C

As stated on page one of the Comprehensive Review, the Under Secretary of Defense for Acquisition by memorandum dated February 21, 1990, designated the OASD(C³I) as the new Primary Sponsor of MITRE's C³I FFRDC. There was no Sponsoring Agreement that covered the new Primary Sponsor prior to this change in sponsorship. Accordingly, it was impossible to certify that an existing Sponsoring Agreement complied with the FAR.

Page one further states that OFPP Policy Letter 84-1 and the FAR require the Primary Sponsor to conduct a comprehensive review before a contract or Sponsoring Agreement is renewed. Even though the Primary Sponsor would never have a contract with the FFRDC (the Army contract was nothing more than a division of an existing DoD/Air Force contract), the OFPP Policy Letter 84-1 and the FAR still require the Primary Sponsor to have a Sponsoring Agreement. Accordingly, both a Comprehensive Review and a new Sponsoring Agreement were prepared. As stated on page one, the new Sponsoring Agreement was attached to the Comprehensive Review and specifically stated ... "It is now ready for signature by the ASD(C³I) and the President of MITRE." When the ASD(C³I) signed the Sponsoring Agreement, he simultaneously approved the new Comprehensive Review.

Pages 5 and 6 of the Comprehensive Review further states that the new MITRE C³I FFRDC Sponsoring Agreement was fully responsive to all of the requirements contained within both the OFPP Policy Letter 84-1 and Section 35.017-4 of the FAR. Therefore, to imply that the Comprehensive Review did not address whether or not the Sponsoring Agreement complied with the FAR is incorrect.

With regard to addressing the criteria for establishing that the FFRDC continues to exist, your attention is directed to page 2 of the Comprehensive Review which states:

> "The basic nature of MITRE's C³I FFRDC support to DoD users has not changed since the last reviews - October 1, 1985, and October 1, 1988. The February 21, 1990, change in sponsorship did not change the FFRDC's purpose, mission, and general scope of effort, which continues to be to perform DoD-wide C³I systems engineering..."

This is the same criteria used to establish the FFRDC in 1958, and the Comprehensive Review determined that this criteria continues to be satisfied. Specifically, page 5 of the Comprehensive review states: "After detailed examination and review, the OASD(C³I) has concluded that all of the requirements for using MITRE's C³I FFRDC as listed in the OFPP Policy Letter 84-1 and the FAR are being met."

5

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (PRODUCTION AND LOGISTICS) COMMENTS

THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
THREE SKYLINE PLACE, SUITE 1500
5201 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041-3203

PRODUCTION AND LOGISTICS

July 26, 1993

MSC

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT, OFFICE OF THE DOD INSPECTOR GENERAL

SUBJECT: Draft Audit Report on Sole-Source Justification for DoD-Sponsored Federally Funded Research and Development Centers (FFRDCs); Project No. 1CH-5012.02

We have reviewed the draft audit report transmitted by your memorandum of March 23, 1993. Our understanding was that the ODDR&E reply would represent the OSD response, since they manage FFRDC Programs, and certainly would represent the OUSD(A) response, of which the ASD(P&L) is a part. Therefore, our response is subsumed within the DDR&E reply. We agree with their comments.

Please call Ms. Kimble Pendley at 756-2200 if you need further assistance.

Richard E. Donnelly
Director
Management Support Center

DEPARTMENT OF THE ARMY COMMENTS

DEPARTMENT OF THE ARMY
ADMINISTRATIVE ASSISTANT TO THE SECRETARY
WASHINGTON, D.C. 20310-0106

17 May 1993

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE (AUDITING)

SUBJECT: Inspector General, Department of Defense, Draft Report on Sole Source Justifications for DoD-Sponsored Federally Funded Research and Development Centers (Project No. 1CH-5012.02)

This office has reviewed the subject draft report and comments are being provided as requested. Recommendation 2 was the only recommendation addressed to us, however, we believe comments are warranted on the remaining recommendations and therefore are being provided.

Milton H. Hamilton

Milton H. Hamilton

Attachment

FINDING

The DoD sponsors did not adequately document the basis for renewing the ten FFRDC sole-source contracts we reviewed. The DoD sponsor comprehensive reviews did not meet OFPP Policy Letter 84-1 and FAR 35.017-4 requirements, and the sole-source justifications for renewal of the FFRDC contracts contained unproven statements. Three reviews were not done, six reviews were done after approval of the sole-source justifications and were not adequate, and one review was incomplete. The inadequate reviews and sole-source justifications occurred because senior officials in the OSD, the Military Departments, and the Defense Advanced Research Projects Agency, and the responsible contracting officers did not challenge the timeliness, completeness, and accuracy of the comprehensive reviews and sole-source justifications. The DoD FFRDC Management Plan, which is being implemented, does not go far enough to correct the review and justification documentation problems. Thus, the reasons used to justify the sole-source contracts for the ten FFRDCs were not valid. As a result, the sole-source justifications restricted competition from private-sector firms and probably resulted in higher costs for performance of some work. Also, the Navy can save $7.8 million over two years by replacing Center for Naval Analyses field analysts with Navy employees.

Additional Facts:

The assumption underlying recommendation 1. a. is that DSS-W did not follow the regulations, thus making award of the contracts invalid. The requirement for conducting a comprehensive review, set forth in FAR 35.017 dated March 1990, post-dated all currently existing contracts our agency has with FFRDCs, with the exception of MDA903-91-C-0006 with the Arroyo Center, awarded in October 1990. A comprehensive review in accordance with FAR 35.017-4 was performed prior to award of that contract and this review is considered acceptable. The reviews performed on the other contracts conformed with OFPP Circular 84-1, the only regulatory guidance then available. We do not believe that any comprehensive reviews on FFRDC contracts should be required until the current contracts expire. All existing regulations were followed at time of award. Thus there is no legitimate legal basis for conduct of such reviews. Clearly, initiating such reviews at this stage in effect stops or significantly delays future work and would be unfair to the FFRDCs whose planning and staffing would be seriously disrupted. Such action also could adversely affect efforts required to deal with significant defense issues on a timely basis.

Final Report

In regards to recommendation 1. b. (2), we caution that considering additional in-house staffing, in lieu of contracting with an FFRDC, or any outside business concern, may not be a viable alternative. With the military and civilian drawdowns continuing and even accelerating, the likelihood of obtaining additional in-house manpower to support the kinds of studies the sponsors need appears far from promising.

DSS-W has serious reservations about recommendation 1. c. for requiring a Commerce Business Daily announcement of intent unless the regulations are revised to specifically provide for it. Although a market survey of this type is one tool which may be used, it is not the only one. While FAR 35.017-4 provides that the requirements for a comprehensive review must include, "consideration of alternative sources to meet the sponsors needs," the section, in not specifying how consideration of alternative sources is to be conducted, provides contracting and program officials considerable latitude on how they will perform this function.

Deleted

DOD IG Recommendation 2

We recommend that the Director, Defense Research and Engineering; the Assistant Secretary of Defense (Production and Logistics); the Assistant Secretary of the Navy (Research, Development, and Acquisition); the Assistant Secretary of the Air Force (Acquisition); and the Director, Defense Supply Service-Washington not award any contracts or exercise any options or modifications to existing contracts pending the completion of an acceptable comprehensive review and a sound sole-source justification for the applicable FFRDC.

Revised P. 19

DSS-W Comments

Nonconcur. As we indicated in response to recommendation 1. a. above, award of all of our FFRDC contracts was in accordance with existing requirements. Requiring a comprehensive review in the middle of a contract, now, when it was not originally required constitutes drastically changing the rules and is not consistent with acceptable standard business practice. As noted previously, the contract for the Arroyo Center was awarded after completion of a comprehensive review on 7 June 1990, and should thus not require an additional review unless a new contract is contemplated.

Final Report

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(Research, Development and Acquisition)
WASHINGTON, D C 20350-1000

09 AUG 1993

MEMORANDUM FOR THE DIRECTOR, DEPARTMENT OF DEFENSE INSPECTOR GENERAL CONTRACT MANAGEMENT DIRECTORATE

Subj: DRAFT AUDIT REPORT ON SOLE-SOURCE JUSTIFICATIONS FOR DOD-SPONSORED FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS (PROJECT NO. 1CH-5012.02) - ACTION MEMORANDUM

I am responding to the draft audit report forwarded by Tab A concerning the justifications for sole-source contract awards to Federally Funded Research and Development Centers (FFRDCs).

Tab B is the Department of the Navy's (DON's) response to the recommendations contained in the report. Comments regarding internal controls raised in the introduction (Part I of the report) are discussed at Tab C and comments regarding the findings raised in Part II are at Tab D. Tab E addresses the specific details of the contract with the Center for Naval Analyses (CNA) contained in Appendix J. The comments contained in Tabs B through E relate only to FFRDCs in general, and CNA in particular. They do not address issues that pertain to FFRDCs that are not sponsored by the DON.

Our response reflects the experience and frustration of Navy managers and "customers" interviewed by the IG auditors during this effort. It remains apparent that your auditors have not only failed to understand the need for our only FFRDC and how we manage it, but also little heeded our attempts to explain.

Edward C. Whitman

Copy to:
NAVINSGEN
NCB-53

Tab A - DODIG Draft Audit Report of 23 Mar 93 Project No. 1CH-5012.02
Tab B - DON Response to DODIG Draft Audit Report (Recommendations)
Tab C - DON Response to DODIG Draft Audit Report (Internal Controls)
Tab D - DON Response to DODIG Draft Audit Report (Findings)
Tab E - DON Response to DODIG Draft Audit Report (Appendix J)

The draft audit report is not include

Final Report

Department of the Navy Response
to
DODIG Draft Audit Report of March 23, 1993
on
Sole-source Justification for DOD-sponsored
Federally Funded Research and Development Centers
Project No. 1CH-5012.02
(Recommendations)

RECOMMENDATION 1a:

We recommend that the Director, Defense Research and Engineering (DDR&E) direct DOD sponsors for all FFRDCs to prepare new comprehensive reviews.

DON Position: Nonconcur. The comprehensive review for renewal of CNA's current contract was prepared in accordance with the guidance in OFPP Policy Letter 84-1 and FAR 35.017-4(c) and addressed the requirements of both. Further, since it can take up to one year to complete a thorough comprehensive review, and since the next comprehensive review of CNA is intended to begin during the last quarter of fiscal year 1994, it would be an imprudent use of limited resources to conduct such a review at this juncture. We are, however, interested in ways to improve the review process and will consider the recommendations of the auditors in conducting the next comprehensive review.

RECOMMENDATION 1b:

Revised
PP. 16 and 17

We recommend that the DDR&E require the DOD sponsors for all FFRDCs to document in the reviews:

- The special research and development needs, the special skills and/or capabilities involved in meeting the needs, and the estimated extent of the needs.
- The alternative for accomplishing the requirements, to include additional in-house staffing, conventional contracts, and other DOD and non-DOD FFRDCs. The review should compare the cost to obtain support from the FFRDC versus the cost to perform the work with additional Government personnel.
- The objective assessment of FFRDC efficiency and effectiveness in meeting DOD sponsor needs, to include the number and dollar value of projects and programs assessed and follow-up and resolution by higher-level management of all project and program assessments that were critical of the FFRDC.
- The controls established by the FFRDC to ensure a cost-effective operation. At a minimum, reviews should address the maintenance of accurate accounting records, the following of sound procurement practices, the reasonableness of overhead costs, and the need for management fees.
- The assurances that criteria for establishing an FFRDC continue to be satisfied and that an adequate sponsoring agreement exists.

DON Position: Partially concur. While we agree with the intent of the auditors to ensure the requirements of OFPP Policy Letter 84-1 and FAR 35.017-4(c) are

TAB B

Final Report

met, we do not agree with the recommendation that DDR&E should impose additional requirements for conducting comprehensive reviews. Additionally, FAR 35.017-4(a) clearly places the responsibility for conducting comprehensive reviews with the primary sponsor. It is the responsibility of the sponsor, not DDR&E, to determine the proper methodology and documentation for the review process. However, as stated above, the DON will consider the recommendations of the auditors in conducting its next comprehensive review of CNA.

RECOMMENDATION 1c:

Deleted

We recommend that the DDR&E require the sponsors to publish advance notices of intent in the Commerce Business Daily and to perform market surveys to validate that a sole-source award is warranted because competition is infeasible.

DON Position: Nonconcur. This recommendation is inconsistent with current law or regulation and is without merit. FAR 6.302-3(a)(2), under the authority of 41 U.S.C. 253(c)(3) and 10 U.S.C. 2304(c)(3), specifically allows FFRDCs to be exempted from full and open competition and thus, under FAR 5.201(a)(10) (by authority of 41 U.S.C. 416(c)(2)), there is no requirement to publish advance notices of proposed contract actions in the Commerce Business Daily (CBD). The deliberate references to FFRDCs in the aforementioned FAR and statute citations unquestionably demonstrate that, as a matter of public policy and in the national interest, FFRDCs are exempted from normal competitive procurement actions (including publication of advance notices). Such intentional protection has been instituted in clear recognition that FFRDCs are valuable and unique national assets that (as stated in FAR 35.017(a)(2)):

> "...[meet] some special long-term research or development need which cannot be met as effectively as by existing in-house or contractor resources. FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency."

and (as stated in FAR 35.017(a)(4)):

> "Long-term relationships between the Government and FFRDCs are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain objectivity and independence, preserve familiarity with the needs of its sponsor(s), and provide a quick response capability."

Final Report

The very fact that this recommendation has been included in the report indicates that the auditors have not fully grasped the concept of the unique status of FFRDCs and their special, long-term relationships with their sponsors. We believe the failure on the part of the auditors to acknowledge and address this concept in the report represents a serious flaw of the report itself and impinges upon its reliability and usefulness. Each FFRDC must be examined in the aggregate and its special competencies must be viewed in the long-term when considering the adequacy of sole-source justifications and the decision not to publish advance notices in the CBD.

RECOMMENDATION 1d:

Revised Recommendation 1.c. P. 18

We recommend that DDR&E discontinue FFRDCs that cannot be adequately justified.

DON Position: Partially concur. We agree that organizations that no longer meet the requirements of FAR 35.017 and thus by definition, ought to no longer be considered FFRDCs, should be subject to termination of their sponsoring agreements. However, in accordance with FAR 35.017-2 and 35.017-4, a determination of this kind is a matter within the purview of the primary sponsor and not DDR&E.

RECOMMENDATION 2:

Revised P. 19

We recommend that the...Assistant Secretary of the Navy (Research, Development and Acquisition)[ASN(RD&A)];...not award any contracts or exercise any options or modifications to existing contracts pending the completion of an acceptable comprehensive review and a sound sole-source justification for the applicable FFRDC.

DON Position: Nonconcur. While we can agree with the underlying motivation for inclusion of this recommendation (if indeed that underlying motivation is to induce primary sponsors to reevaluate and improve upon the processes for conducting comprehensive reviews and thereby the improve the basis for award of sole-source contracts), we cannot concur, however, with the intent of the recommendation to halt contract modifications and thereby cause a complete cessation of FFRDC operations. In the case of CNA, contract modifications provide the means of obligating funds to CNA. To cause the discontinuation of this routine practice would deprive the DON with a source of independent, unbiased, authoritative, and analytically rigorous research. In addition, such an action is completely inappropriate inasmuch as comprehensive reviews were conducted in good faith with the full intention of complying with the requirements of the FAR 35.017-4 and OFPP Policy Letter 84-1. Actions, such as those recommended, are not warranted and are unnecessary.

Final Report

RECOMMENDATION 3:

Revised
P. 20

We recommend that the ASN(RD&A) perform the required cost analyses and prepare the budget documents to replace CNA field analysts with less costly in-house personnel.

DON Position: Nonconcur. It appears that the sole criterion used by the auditors in their examination of the CNA field program is that of cost. We believe that limiting the examination to only the salary and benefits costs of individual field analysts reflects a severe lack of understanding of the role and function of the CNA field program and its benefit to the DON. One of the primary reasons CNA exists as an FFRDC is because its field program constitutes one of its long-term special competencies and capabilities that cannot be met as effectively by in-house or other contractor resources. Along with providing direct analytical support, CNA analysts, through CNA's world-wide field program, obtain and/or refresh their in-depth, hand-on, familiarity with fleet operations of the Navy and Marine Corps. It is singularly relevant that CNA analysts must possess a thorough understanding of this unique nature of the Navy and Marine Corps, the only military services that deploy to sea, in order to provide the high quality research products the DON demands.

The direct benefit to the DON of CNA's field program is two-fold. First, while serving with the fleet, CNA field analysts (the majority of whom possess doctoral degrees) are a source of on-site independent, immediate (or quick response) analytical support of fleet and field exercises; actual operations, such as Desert Shield/Storm and Restore Hope; and evaluation of operational capabilities and tactics. Second, due to the operational experience of CNA Washington analysts who have completed one or more field representative "tours", CNA's headquarters-based research program is imbued with a degree of operational realism that is unique among FFRDCs.

In addition to the qualitative aspects of the field program that have been neglected by the report, the auditors apparently did not give full consideration to the state-of-the-art infrastructure CNA headquarters provides in support of its field program. The report does not address the added cost of replacing or duplicating this necessary infrastructure, nor does it address the added value of current research utilizing the available headquarters infrastructure.

Even a perfunctory examination of replacement staffing for CNA would show that the number of personnel who possesses the requisite educational background and expertise are not available to, nor are apt to be recruited by, the DON. Further, it would not be cost effective for the DON to attempt to replace CNA's infrastructure with its own. It is therefore, extremely unlikely that the DON would achieve significant economies by replacing CNA with DON resources. In

Final Report

fact, it is more likely that negligible economies would be achieved, and a significant degradation of research independence and caliber would result. Replacement of the CNA field program with in-house resources, as is suggested by this recommendation, is moot. In today's era of downsizing, the DON does not have the billets nor the infrastructure to replace CNA.

RECOMMENDATION 4:

Deleted

We recommend that the Director of Defense Procurement direct the Defense Acquisition Regulations Council to add provisions to the Defense Federal Acquisition Regulation Supplement [DFARS] to require renewal of contracts with DOD FFRDCs to be publicized in advance. Appendix Q [of the draft audit report] shows the proposed changes to the DFARS. (If the Director desires to propose a revision to the Federal Acquisition Regulation (FAR) to satisfy the intent of the recommendation, we have included language in Appendix Q to revise FAR 5.202(a)(10) and FAR 5.205(b)).

DON Position: Nonconcur. As stated in our response to Recommendation 1c, there rests within the FAR specific authority to exempt FFRDCs from the requirements of full and open competition. This authority is derived from the statutory authority contained in 41 U.S.C. 253 and 10 U.S.C. 2304, and 41 U.S.C. 416, which in itself demonstrates the intent of the Congress regarding FFRDCs. We believe, therefore, that the report, through this recommendation, goes beyond the scope of the audit and enters into the realm of legislative powers that are Constitutionally reserved for the Congress.

Final Report

Department of the Navy Response
to
DODIG Draft Audit Report of March 23, 1993
on
Sole-source Justification for DOD-sponsored
Federally Funded Research and Development Centers
Project No. 1CH-5012.02
(Internal Controls)

INTERNAL CONTROLS (PG 4 OF THE REPORT):

Revised

The audit identified a material internal control weakness as defined by "Public Law 97-225 [97-255], Office of Management and Budget Circular A-123, and DOD Directive 5010.38." Internal administrative controls were not adequate to verify that comprehensive reviews of FFRDCs met the requirement of the FAR and that justifications for sole-source contracts for FFRDCs were properly supported. Sponsoring program officials and senior acquisition officials failed to exercise their supervisory responsibilities and contracting officers failed to adhere to established policies and procedures when renewing sole-source contracts for FFRDCs.

Audit Response P. 125

DON Position: Nonconcur. In the case of CNA, we most emphatically object to the auditors' contention that sponsoring program officials and senior acquisition officials failed to exercise their supervisory responsibilities and contracting officers failed to adhere to established policies and procedures when renewing the sole-source contract with CNA. The process of renewing the CNA contract took place over a period of more than six months. During that period, program office and contracting office personnel worked extremely closely to ensure all regulatory requirements for contract renewal were met. Staff personnel were in constant contact and were thoroughly familiar with all aspects of the contract renewal process. Additionally, they ensured senior acquisition officials (PDASN(RD&A) and ASN(RD&A)) were kept apprised (through periodic verbal briefings) of the progress of renewal of CNA's contact. Officials were aware of their responsibilities and carried them out to the best of their abilities.

This contention of material internal control weakness appears to rest upon the auditors' opinion that comprehensive reviews were inadequate. As stated in our response to Recommendation 1a, the CNA comprehensive review *was* prepared in compliance with the requirements of FAR 35.017-4 and OFPP Policy Letter 84-1 in good faith. To ensure such compliance, we consulted with the Director of FFRDC Programs at DDR&E prior to commencing the review. He provided a suggested method for conducting the review, which we adopted. Although the memorandum promulgating the results of the review was not actually signed until after the contract was awarded, all interested parties were apprised of its results prior to the award. The contracting officer and the senior acquisition official had,

TAB C

prior to 28 September 1990, satisfied themselves that there existed sound and justifiable grounds for renewing CNA's contract on a sole-source basis. We most strongly object to the use of the term 'material weakness', which is defined in OMB Circular A-123 as:

> "a specific instance of non-compliance with the Integrity Act of sufficient importance to be reported to the President and Congress. Such weakness would significantly impair the fulfillment of an agency component's mission; deprive the public of needed services; violate statutory or regulatory requirements; significantly weaken safeguards against waste, loss, unauthorized use or misappropriation of funds, property, or other assets; or result in a conflict of interest."

Surely, any negative findings of this report are not of such severity as necessitate invoking the term 'material weakness' with all its accompanying implications.

Final Report

Department of the Navy Response
to
DODIG Draft Audit Report of March 23, 1993
on
Sole-source Justification for DOD-sponsored
Federally Funded Research and Development Centers
Project No. 1CH-5012.02
(Findings)

FINDING 1: BASIS FOR SOLE-SOURCE CONTRACT RENEWALS (PG 7 OF THE REPORT, 1ST PARAGRAPH):

Revised P. 5

The DOD sponsors did not adequately document the basis for renewing the 10 FFRDC sole-source contracts we reviewed. The DOD sponsor comprehensive reviews did not meet OFPP Policy Letter 84-1 and FAR 35.017-4 requirements, and the sole-source justifications for renewal of the FFRDC contracts contained unproven statements. Three reviews were not done, six reviews were done after approval of the sole-source justifications and were not adequate, and one review was incomplete. The inadequate reviews and sole-source justifications occurred because senior officials in the OSD, the Military Departments, and the Defense Advanced Research Projects Agency [now known as Advanced Research Projects Agency] and the responsible contracting officers did not challenge the timeliness, completeness, and accuracy of the comprehensive reviews and sole-source justifications. The reasons used to justify the sole-source contracts for the 10 FFRDCs were not valid.

DON Position: Nonconcur. This finding appears to be based upon an editorial opinion of the documentation of the comprehensive review process. As we have previously stated, the DON is interested in improving the review process, including documentation. However, whatever the auditors' opinion of the 'write-up,' the comprehensive review was developed and conducted in compliance with FAR 35.017-4 and OFPP Policy Letter 84-1. We believe the review did provide a valid basis for renewal of CNA's contract and that the sole-source justification did not contain unproven statements. As stated in Tab C, officials acted properly in carrying out their responsibility regarding renewal of CNA's contract and that there were, in fact, valid reasons to justify award of a sole-source contract to CNA.

FINDING 2: BASIS FOR SOLE-SOURCE CONTRACT RENEWALS; REPLACING CNA FIELD ANALYSTS WITH NAVY EMPLOYEES (PG 7 OF THE REPORT, 1ST PARAGRAPH, LAST 3 LINES):

Revised to $6.2 million P. 5

The Navy can save $7.8 million over 2 years by replacing CNA field analysts with Navy employees.

DOD Position: Nonconcur. We reiterate our belief that the CNA field program *must* be examined from a qualitative perspective and not simply a quantitative one, i.e., salary and benefit costs of individual analysts in the field. As we have stated in our response to Recommendation 3, the position the auditors have taken

TAB D

Final Report

regarding CNA's field program illustrates a fundamental lack of understanding of the unique nature of FFRDCs. They have failed to recognize that FFRDCs must be viewed in the aggregate when assessing their long-term special competencies and capabilities. The value of the CNA field program must judged as a whole, not by limiting the examination to the superficial notion of cost of a given individual analyst. See our comments to Recommendation 3 regarding the benefits the DON receives from the CNA field program.

P. 6

FINDING 3: SUFFICIENCY OF REVIEWS AND JUSTIFICATIONS (PG 8 OF THE REPORT, 2ND FULL PARAGRAPH):

The reviews and justifications for the 10 FFRDCs did not adequately document the 5 areas required by the FAR and OFPP Policy Letter and contained unproven statements to justify renewal of the sole-source contracts. The reviews and justifications did not sufficiently document the sponsors' mission requirements to be performed by the FFRDCs, the alternatives considered to meet sponsor requirements, the efficiency and effectiveness of the FFRDC in meeting sponsor needs, the management controls established by the FFRDCs to ensure cost-effective operations, and the determination that criteria for establishing the FFRDC were still valid and that an adequate sponsoring agreement existed.

DON Position: Nonconcur. See response to Recommendation 1a (Tab B) and Findings 1, 5, 6, 11, and 13 (Tab D above and below).

P. 6

FINDING 4: SUFFICIENCY OF REVIEWS AND JUSTIFICATIONS; TIMEFRAME OF PREPARATION OF COMPREHENSIVE REVIEWS (PG 8 OF THE REPORT, 3RD FULL PARAGRAPH):

Two comprehensive reviews were not approved until after the contracts were awarded.

DON Position: Partially concur. We acknowledge that the memorandum promulgating the results of the comprehensive review of CNA was signed after the contract was awarded; however, as we stated in our comments in Tab C, all parties to the contract renewal process were aware of the contents of the review prior to the contract award.

FINDING 5: REQUIREMENTS FOR FFRDCS (PG 9 OF THE REPORT, 1ST PARAGRAPH):

Revised PP. 6 and 7

The documents for comprehensive reviews did not detail future requirements for any of the 10 FFRDCs in terms of specifically who needed what services, where, when and how.

DON Position: Nonconcur. Once again, the auditors have displayed a fundamental lack of understanding of the nature of FFRDCs. FFRDCs exist to provide an available ongoing resource of research and development of the major substantive issues facing the sponsoring agency. CNA is often called upon to

examine issues which cannot be rigidly or explicitly defined (as is the case of work assigned to in-house or other contractor resources). Indeed, an issue may be evolving in scope and CNA is utilized because their analysts are particularly skilled at assisting the DON in determining the breadth of the 'problem.' Additionally, there are issues which may emerge suddenly and require the quick response of the FFRDC. In neither of these instances could the requirement be defined to the extent the auditors appear to require.

The CNA research program is developed one year at a time. To overspecify the research requirements (particularly years in advance, for such areas as global regional instability, advancing technologies, and strategic restructuring) is neither advantageous or desirable. The fact that the FAR and OFPP Policy Letter recognize the need for a long-term relationship between the sponsor and the FFRDC in order to encourage and maintain, among other things, quick response capability, lends credence to the argument that a determination of specific requirements far in advance is not required. Renewal of an FFRDC contract is based upon a continuing research and development need of the sponsoring agency, not upon specific requirements.

FINDING 6: ALTERNATIVE CONTRACTOR AND GOVERNMENT SOURCES (PG 9 OF THE REPORT, 2ND PARAGRAPH): P. 7

Statements in the review documents and sole-source justifications that no other sources existed were arbitrary and unsupported. Formal market surveys were not performed for any of the 10 FFRDCs to determine whether private-sector firms, in-house Government personnel, or other FFRDCs could perform the work even though users stated that alternatives to the FFRDCs did exist.

DON Position: Nonconcur. FAR 35.017-4(c)(1) states that a comprehensive review should include "[c]onsideration of alternative sources to meet the sponsors needs." There is no requirement that market surveys must be conducted. CNA has provided the DON with more than 50 years of independent, unbiased, authoritative, analytically rigorous research. It has done so through its utilization of its unique hands-on familiarity with fleet operations and access to sensitive data. Thus, in considering alternative sources that could possibly provide the same level of research to the DON, the qualitative factors surrounding a continuum of 50 years of analytical support were given substantial weight. A formal market survey would not have been an effective tool in this regard. Additionally, per the FAR, it is the responsibility of the sponsor to determine the means by which reviews (including alternative source consideration) are to be conducted.

Final Report

Deleted

FINDING 7: ALTERNATIVE CONTRACTOR AND GOVERNMENT SOURCES; COMMERCE BUSINESS DAILY SYNOPSES (PG 10 OF THE REPORT, 2ND FULL PARAGRAPH):

None of the reviews or sole-source justifications for the 10 FFRDCs factually established that only one source could effectively accomplish the sponsors' requirements. Accordingly we believe that the DFARS should be expanded to require advance notice before and FFRDC contract is renewed. An alternative is for the Director of Defense Procurement to propose a revision to FAR 5.202(a)(10) and 5.205(b). Appendix Q shows language that can be used to revise the acquisition regulations. During the interim, DDR&E should require DOD sponsors to publish in the CBD advance notices of interest that identify procurement requirements.

DON Position: Nonconcur. See response to Recommendations 1c and 4 (Tab B).

PP. 8 and 9

FINDING 8: SUFFICIENCY OF REVIEWS AND JUSTIFICATIONS; CONGRESSIONAL HEARINGS (PG 11 OF THE REPORT, 1ST FULL PARAGRAPH):

None of the reviews or sole-source justifications for the 10 FFRDCs cited low Federal salaries for scientific and technical positions as a reason why the Federal Government could not attract the scientific and technical personnel to perform required tasks in-house.

DON Position: Nonconcur. While we acknowledge that Federal salary levels were not specifically mentioned in the comprehensive review, the fact that the FAR supports a long-term relationship with the FFRDC in order to attract high-quality personnel to the FFRDC implies that the ability to attract such personnel to the Government with a degree of continuity is unlikely. It has also been widely reported over the last several years that Federal salary levels (particularly military salaries) lag considerably behind the private sector. Experienced Government officials are well aware of the difficulties the Government faces in recruiting and retaining substantial numbers of individuals with post-masters technical degrees.

P. 9

FINDING 9: SUFFICIENCY OF REVIEWS AND JUSTIFICATIONS; CONGRESSIONAL HEARINGS (PG 11 OF THE REPORT, 2ND FULL PARAGRAPH):

Independence and objectivity were cited as general reasons why private-sector firms could not perform the tasks of the FFRDCs. However, the reviews and justifications did not address why other nonprofit organizations, including some former DOD FFRDCs, would lack independence and objectivity.

DON Position: Nonconcur. Once again the auditors appear to have missed the point regarding the independence and objectivity of an FFRDC. Independence and objectivity are salient factors in comparing an FFRDC to private-sector firms and in-house resources as well. When comparing an FFRDC to other nonprofit firms, the overriding area of concern is not independence and objectivity (although they are certainly considered); it is the special competencies and capabilities of the

Final Report

FFRDC which become paramount. In the case of CNA these would include their 50 year continuum of expertise in naval matters; hands-on exposure to, and familiarity with, fleet operations; access to sensitive data; and quick response capability.

FINDING 10: ASSESSMENT OF EFFICIENCY AND EFFECTIVENESS (PG 11 OF THE REPORT, 4TH FULL PARAGRAPH):

Revised P. 9

We reviewed the appropriateness of the DOD sponsors' methods for evaluating FFRDC efficiency and effectiveness in meeting user needs. We also reviewed the reliability of the data reported in user assessments and summarized in the comprehensive reviews by the primary DOD sponsors. We concluded that user responses and primary DOD sponsor assessments of the FFRDCs' efficiency and effectiveness in the comprehensive reviews amounted to little more than unsubstantiated personal opinion.

DON Position: Nonconcur. The method used by the DON for evaluating the efficiency and effectiveness of CNA was to obtain feedback from CNA's 'customers.' To collect data regarding CNA in this manner is entirely appropriate; customer feedback surveys are a widely accepted method of determining the quality and utility of products produced. In our opinion, the concept of employing a sponsor questionnaire reflects the spirit and methodology of Total Quality Leadership. Who, other than the user, is better qualified to comment upon the quality and utility of the research products produced by CNA? Further, the FAR is silent on a specific method for conducting the comprehensive review, and thus, determination of a method rests with the sponsor.

FINDING 11: ASSESSMENT OF FFRDC MANAGEMENT CONTROLS (PG 11 OF THE REPORT, LAST PARAGRAPH):

Revised P. 9

Program officials who prepared the summary comprehensive review documents did not adequately document their assessment of management controls for any of the DOD FFRDCs. The review documents generally stated that DOD administrative contracting officers (ACO), the Defense Contract Audit Agency (DCAA), and DOD policy and advisory groups that provided oversight to each FFRDC ensured operations were cost-effective. None of the reviews documented the internal steps FFRDCs took to ensure that accurate accounting records were maintained, that sound procurement practices were followed, that overhead costs were reasonable, or that management fees were for essential operating requirements.

DON Position: Nonconcur. There is no regulatory provision that prohibits sponsors from relying upon the advice, expertise, and conclusions reached by other Government organizations in conducting comprehensive reviews. It is proper to rely on the assurances of entities such as the ACO and DCAA, because it is within the mission and function of these agencies to provide contract oversight. ACOs are responsible for conducting procurement systems reviews, property management systems reviews, and reviewing and approving proposed subcontracts. The DCAA conducts proposal audits, incurred cost audits, and reviews of accounting systems and procedures. To require primary sponsoring

Final Report

reviews of accounting systems and procedures. To require primary sponsoring offices to conduct and document these reviews and audits separately would be redundant or excessive.

The term "management fee" as it currently applies to CNA is synonymous with fixed fee from which "retained earnings" or "reserves" as used in FAR 35.017-1(c)(3) are derived. Since the FAR requires that FFRDC sponsoring agreements identify retained earnings, and that a plan for their use be developed, it can be concluded that the FAR envisions such retained earnings as reasonable and appropriate. CNA as a not-for-profit organization may receive a fee as long as it does not accrue to the benefit of an individual or stock holders. Though the FAR requires that an FFRDC submit to the sponsoring agency a plan for the use of its retained earnings, the FAR does not require that management fees be used for "essential operating requirements."

P. 10

FINDING 12: COMPLIANCE WITH FFRDC CRITERIA (PG 12 OF THE REPORT, 1ST FULL PARAGRAPH):

The review documents did not specifically address the sponsoring agreements.

DON Position: Concur. A specific statement regarding compliance of the sponsoring agreement with the requirements of FAR 35.017-1 was not included in the review documents. A statement to this effect will be included in future comprehensive reviews.

P. 10

FINDING 13: COMPLIANCE WITH FFRDC CRITERIA: ESTABLISHMENT CRITERIA (PG 12 OF THE REPORT, 2ND FULL PARAGRAPH):

As required by FAR 35.017-2 none of the review documents for the 10 FFRDCs adequately established that:

- the mission of the FFRDC was stated clearly enough to differentiate between work that should be performed by the FFRDC and work that should be performed by non-FFRDCs.
- conventual contracting methods and existing in-house facilities could not effectively satisfy the sponsor's special R&D requirements.
- controls were in place to ensure the cost of FFRDC services were reasonable.

DON Position: Partially concur. We acknowledge that the comprehensive review documents do not include an explicit, specific statement that provides a determination that the criteria for establishing the FFRDC had continued to be satisfied. However, the documents do address close, proactive oversight by Navy officials to ensure compliance with OFPP Policy Letter 84-1. Future comprehensive reviews will include specific statements addressing whether or not the FFRDC continues to comply with FFRDC establishment criteria.

Final Report

[Finding 14: Support for Justifications (Pg. 13 of the Report, 1st Full Paragraph]

P. 11

The written reviews did not support the sole-source justifications. Technical personnel, contracting officers, and senior acquisition officials certified to the accuracy and completeness of each sole-source justification although comprehensive reviews for 9 of the 10 FFRDCS were not done at the time the sole-source justifications were prepared. None of the seven reviews that were done addressed all five criteria from the OFPP and FAR guidance for retaining an FFRDC. The Under Secretary of Defense for Acquisition, the Service Acquisition Executives, the DDR&E, and the contracting officers should have challenged the accuracy and completeness of the determinations in the sole-source justifications and should have determined whether the assertions in each justification were supported by a comprehensive review document. The justifications did not contain sufficient facts and rationale to justify the use of FAR 6.302-3 for sole-source awards to the 10 FFRDCs.

DON Position: Nonconcur. This finding appears to repeat many of the previous findings and statements of the report and is reiterated by Recommendations 1c and 4. Therefore our position regarding this finding can be found in our response to Recommendations 1c and 4 (Tab B), Tab C, and in our comments concerning Findings 1 and 4 (Tab D above).

FINDING 15: SUPPORT FOR JUSTIFICATIONS (PG 13 OF THE REPORT, 2ND FULL PARAGRAPH):

P. 11

We found no evidence that the contracting officers of senior acquisition officials ever requested additional documentation or rationale for the sole-source contracts before approving the sole-source justifications.

DON Position: Nonconcur. See our comments in Tab C and those concerning Finding 4 (Tab D above).

FINDING 16: FUTURE AWARDS (PG 13 OF THE REPORT, LAST PARAGRAPH):

Revised
P. 11

The Military Departments or the Defense Supply Service-Washington (DSS-W) should not award a new 5-year sole-source contract to any FFRDC or exercise any options or modification to an existing contract with an FFRDC until an adequate comprehensive review and sole-source justification is completed. FFRDC services that can not be properly justified should be discontinued. DOD sponsors should compete to the maximum extent possible mission requirements or technical needs requiring FFRDC performance.

DON Position: Nonconcur. See response to Recommendations 1d and 2 (Tab B).

The FAR and Titles 10 and 41 of the U.S. Code very clearly provide authority to exempt FFRDCs from the requirement to compete contract renewals, once it has been determined the Government continues to have need of the services of the FFRDC. Such statutory and regulatory provisions affirm evidence that to establish and maintain a long-term, stable relationship between an FFRDC and the Government is a fundamental policy objective. The finding ignores this and such ignorance is indicative of a failure to acknowledge that the Government is well served in its ongoing use of FFRDCs, and that the current austere budgetary

Final Report

ignorance is indicative of a failure to acknowledge that the Government is well served in its ongoing use of FFRDCs, and that the current austere budgetary climate necessitates an even greater reliance on FFRDC capabilities in helping to shape the future of the nation's armed forces.

FINDING 17: EFFECT OF SOLE-SOURCE CONTRACTS: CNA FIELD PROGRAM (PG 14 OF THE REPORT, 2ND PARAGRAPH):

Revised to $6.2 million P. 12

In collecting information on CNA field analysts, we estimated that during FYs 1994 and 1995, the Navy could eliminate about $7.8 million of costs by converting the 41 CNA field analysts to Government GM-15 analysts.

DON Position: Nonconcur. See our response to Recommendation 3 (Tab B) and our comments on Finding 2 (Tab D above). In addition to our previous comments, it should be noted that an actual cost comparison has not been accomplished for two reasons: primarily, we directly oppose the premise of the auditors that retention of the CNA Field program is solely a matter of cost; secondarily, the report does not provide the basis, i.e., assumptions, used to derive the dollar amounts reported. It is also true for the table displayed in Appendix J.

FINDING 18: EFFECT OF SOLE-SOURCE CONTRACTS: IN-HOUSE VS. CONTRACTOR PERFORMANCE COSTS (PG 14 OF THE REPORT, 3RD PARAGRAPH):

Revised PP. 12 and 13

We are unaware of in-house-versus-contractor performance cost comparisons for any of the contracted advisory and assistance services provided by any of the 10 FFRDCs.

DON Position: Nonconcur. Here again, the auditors appear to proceed from a purely cost related perspective. We maintain that FFRDCs must be judged upon their qualitative capability to meet some special long-term research and development need of the sponsoring agency, not purely quantitatively, i.e., monetarily. The special capabilities and competencies of DOD FFRDCs have, in almost all cases, been acquired and enhanced over a substantial period of time (more then 50 years in the case of CNA). FFRDCs were originally created in order to assemble a pool of highly educated and talented individuals to provide an independent, long-term, and dependable body of scientific knowledge otherwise unavailable within the Government or private sector. It remains true today that the Government has need of a concentrated supply of research and development capabilities. FFRDCs serve this purpose, and should be recognized for the valuable national asset they are.

Final Report

Revised
P. 13

FINDING 19: DOD FFRDC MANAGEMENT PLAN (PG 15 OF THE REPORT, 1ST FULL PARAGRAPH):

As of January 14, 1993, the comprehensive reviews and the sponsor directives required by the management plan were not submitted to DDR&E for review.

DON Position: Nonconcur. In the case of CNA this finding is untrue. CNA's comprehensive review was first provided to DDR&E at the time of its promulgation; another copy was forwarded to DDR&E in January of 1992. Although some sponsor directives relating to CNA were informally provided to DDR&E at various times throughout 1992, all pertinent directives were forwarded by formal memorandum on 8 January 1993.

Final Report

Department of the Navy Response
to
DODIG Draft Audit Report of March 23, 1993
on
Sole-source Justification for DOD-sponsored
Federally Funded Research and Development Centers
Project No. 1CH-5012.02
(Appendix J)

P. 76

ISSUE 1: EVALUATION OF THE REVIEW AND JUSTIFICATION; TIMEFRAME OF REVIEW DOCUMENT PREPARATION (PG 70 OF THE REPORT, LAST PARAGRAPH):

The review document was not prepared and approved until November 30, 1990, after the sole-source justification approval and contract award on September 28, 1990.

DON Position: Nonconcur. See comments in Tab C and those on Finding 4 (Tab D).

PP. 76 and 77

ISSUE 2: EVALUATION OF THE REVIEW AND JUSTIFICATION; FUTURE REQUIREMENTS DEFINED, CNA COST-EFFECTIVENESS, ALTERNATE SOURCES (PG 70 & 71 OF THE REPORT, LAST PARAGRAPH, LAST LINE):

The review document did not adequately define future requirements and did not address the cost-effectiveness of CNA services or why the services could not be provided by a combination of additional Navy personnel and private contractors.

DON Position: Nonconcur. See response to Recommendation 1a (Tab B) and comments on Findings 5, 6, 11, and 18 (Tab D).

Deleted

ISSUE 3: EVALUATION OF THE REVIEW AND JUSTIFICATION; SYNOPSIS IN CBD (PG 71 OF THE REPORT, 1ST FULL PARAGRAPH):

The requirement were not synopsized in the CBD.

DON Position: Nonconcur. See response to Recommendations 1c and 4 (Tab B).

P. 77

ISSUE 4: EVALUATION OF THE REVIEW AND JUSTIFICATION; TRANSFER OF CNA OPERATION FROM HUDSON INSTITUTE TO CNA INC. (PG 71 OF THE REPORT, 1ST FULL PARAGRAPH):

The review document also did not provide an adequate rationale for transferring the operation of CNA from the Hudson Institute to CNA, Incorporated, a new non-profit corporation. Neither document

TAB E

Final Report

contains a formal explanation of why the Navy did not competitively solicit proposals for a new operator.

DON Position: Nonconcur. This is a superfluous issue. FAR 53.017-2(h) states that an FFRDC may be "...operated, managed, or administered, by an autonomous organization..." Thus, the FAR envisions organizational structures such as CNA's. If the sponsoring agency determines that an FFRDC, as an autonomous corporate entity, "meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources" [FAR 35.017(a)(2)], it would be neither reasonable nor necessary to pursue some other outside source of management for that FFRDC. Once the DON agreed with the determination that CNA had reached a point of effective self-management, there was no logical reason for the Navy to deliberately impose another parent corporation to manage CNA. Such an action would have only resulted in inserting an unnecessary layer of management and cost. An FFRDC's status as a private corporation is not, in and of itself, improper or illegal and is, in fact, typical of American business entities.

Audit response P. 79

ISSUE 5: EVALUATION OF THE REVIEW AND JUSTIFICATION: CNA EFFICIENCY AND EFFECTIVENESS (PG 71 OF THE REPORT, 1ST FULL PARAGRAPH):

P. 77

CNA's operational efficiency and effectiveness was assessed on the basis of subjective ratings of whether CNA met the analytic needs of the customer and was timely, and did not discuss the reliability of its data collection and analysis, reporting, computer operations, and organizational structure.

DON Position: Nonconcur. See comments on Findings 10 and 11 (Tab D).

ISSUE 6: EVALUATION OF THE REVIEW AND JUSTIFICATION: CNA MANAGEMENT CONTROLS & MISSION DEFINITION (PG 71 OF THE REPORT, 1ST FULL PARAGRAPH):

P.77

The review document also did not document the management controls implemented by CNA to assure cost-effective operation and did not define the mission of CNA clearly enough to differentiate CNA work from work appropriate for in-house or non-FFRDC contractors.

DON Position: Nonconcur. See comments on Findings 10 and 11 (Tab D). It is true that one of the criteria for establishing an FFRDC is that the sponsor shall ensure "The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDCs." However, there is ABSOLUTELY NO REQUIREMENT that this definition must be contained in the comprehensive review documents. To fault the sponsor for not including such a definition is entirely unsupported.

Audit response P. 79

2

Final Report

P. 77

ISSUE 7: EVALUATION OF THE REVIEW AND JUSTIFICATION: FAR CRITERIA FOR ESTABLISHING AN FFRDC AND MAINTAINING A SPONSORING AGREEMENT (PG 71 OF THE REPORT, 1ST FULL PARAGRAPH):

The review document also did not adequately address compliance with the FAR criteria for establishing an FFRDC or for maintaining a sponsoring agreement.

DON Position: Partially concur. See comments on Findings 12 and 13 (Tab D).

P. 77

ISSUE 8: EVALUATION OF THE REVIEW AND JUSTIFICATION: REVIEW DOCUMENT STATISTICS (PG 71 OF THE REPORT, 2ND FULL PARAGRAPH):

We also determined that the statistics in the review document regarding user consensus about CNA management demonstrating a cost-effective operation were misleading. Navy and Marine Corps activities responding to the survey were not in a position to comment on the cost-effectiveness of CNA's operation because the Navy centrally funded CNA studies and individual users were not provided an accounting of costs for their projects.

Audit response P. 80

DON Position: Partially concur. We acknowledge that Navy and Marine Corps activities did not have individual project cost data available to them at the time of the comprehensive review survey. However, the documents do address close, proactive oversight by Navy officials to ensure compliance with OFPP Policy Letter 84-1. The CNA Policy Council (whose members include the most senior of DON civilian and uniformed leadership) were periodically briefed regarding funds for the CNA research program. The Policy Council has, as one of its responsibilities, made decisions regarding funding levels for CNA. Based on their actions, and their opinion of the caliber of research conducted by CNA, they remain satisfied that CNA provides a valuable service to the DON at a reasonable cost.

In addition to the oversight responsibilities of the CNA Policy Council, a newly adopted management process for CNA places greater emphasis on centralized oversight, proactive role of senior DON leadership (3-star/ASN) and CNA leadership, and cradle-to-grave tracking of individual CNA projects (including costs). As a result of this new management process, users will have individual project cost data available to them during future comprehensive reviews.

Final Report

ISSUE 9: COST-EFFECTIVENESS OF CNA FIELD ANALYSTS (PG 71 OF THE REPORT, LAST PARAGRAPH, CONTINUED ON PG 72):

Revised to $6.2 million PP. 77 and 78

Over the 2 remaining years of the CNA contract (FYs 1994 and 1995), about $7.8 million of cost (2 years at $3.9 million per year) can be eliminated by using in-house civilian personnel instead of CNA field analysts.

DON Position: Nonconcur. See response to Recommendation 3 (Tab B) and comments on Findings 2 and 17 (Tab D).

Although they are assigned to various Navy and Marine Corps commands and report directly to their respective commanders, CNA analysts are prohibited from performing routine staff and administrative work by OPNAV Instruction and Marine Corps Order. CNA field representatives are tasked with providing analytical support concerning issues of interest to the commander. The CNA Vice President for Field Operations is responsible for evaluating the quality and effectiveness of the field representatives' performance based not only on input from the commander, but also on a CNA review of the field representatives' analytical products.

The full scope of field analysts' activities encompasses such issues as base consolidation, joint operations adaptation, and fleet concepts of operation. They also provide independent, immediate, and/or quick response analytical support to actual operations, as in Operations Desert Shield/Storm and Restore Hope, as well as post-operational analysis of "lessons learned" for operations, systems, requirements, support activities, and exercises.

Such activities are inconsistent with the report's assertion that "CNA used their field program as a training ground for junior analysts." Some field representatives, inevitably, are serving in their first field assignment, after having worked at CNA for at least two years, but often longer. Many field representatives have served several tours. All CNA analysts assigned as field representatives bring to the commands to which they are assigned a rigorous academic background, training, experience, and the full range of CNA support.

It continues to remain a serious and fundamental flaw of this report that it fails to comprehend the value of the CNA field program.

Final Report

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

OFFICE OF THE ASSISTANT SECRETARY

1 JUN 1993

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDIT
FOLLOW UP, OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

SUBJECT: Air Force Response to DoD IG Draft Audit Report on Sole-Source Justification for DoD-Sponsored Federally Funded Research and Development Centers (Project 1CH-5012.02)
- INFORMATION MEMORANDUM

This memorandum is in reply to your request for comments on subject report. The draft audit does not take into consideration the positions stated in our response of March 23, 1993, to the "working" draft audit. All of our previous comments are still valid and should be considered in the final report in addition to those contained below.

Not included

Recommendation 1 - Partially concur. This recommendation calls for new comprehensive reviews of all DOD-sponsored FFRDCs. We concur that new comprehensive reviews are warranted. These reviews are being conducted, or will soon be conducted, at all Air Force-sponsored FFRDCs. While concurring with the necessity of new reviews, we have concerns about the ground rules associated with the conduct of the reviews. It is essential that comprehensive reviews be conducted with the understanding that FFRDCs are a unique type of national resource that are deliberately protected from normal competitive pressures. FAR 6.302-3 states:

> "Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order to...establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or federally funded research and development center."

The legislative history of CICA makes it clear that Congress recognized the unique and protected nature of FFRDCs as evidenced by the following quote from Senate Report #98-297:

Final Report

"As the committee noted above, these institutions make a vital, continuing contribution to our national defense. They cannot be totally exempt from the rigors of competition. They are not today. Still the Committee feels that among paramount concerns in awarding research contracts should be the qualifications, resources and expertise of the institution or organization. Therefore, the Committee felt it was imperative to provide agency heads with a degree of flexibility to establish or maintain an essential research capability, without using competitive procedures, to be provided by specific types of institutions or organizations."

It is also essential that comprehensive reviews be conducted with the understanding that FFRDCs support the military departments in dealing with the most complex technical problems that relate to the most critical aspects of national security policy. The statements of work associated with this type of support may necessarily be broad in scope. Providing on-going support to the government on the most complex issues relating to national security is fundamentally different from the type of support provided by typical service contractors.

Revised PP. 16 and 17

We believe that comprehensive reviews should be conducted using the guidelines contained in FAR 35.017-4(c) rather than the review guidelines contained in Recommendation 1.b. of the audit report. The guidelines in the audit report are not the same as those in the FAR. The FAR guidelines represent a better balance of the necessity to protect the government's interests while recognizing the unique nature of FFRDCs.

Deleted

Recommendation 1.c. of the audit report asserts that as part of the review process, FFRDC sponsors should publish advance notices of intent in the Commerce Business Daily (CBD) and perform market surveys to validate that competition is infeasible. We do not concur. There is no support for this recommendation in law or regulation. The Competition in Contracting Act clearly exempts noncompetitive FFRDC acquisitions from the requirement for pre-award synopsis in the CBD (See 41 U.S.C. 416(c)(2)). This statutory exemption is implemented in FAR 5.202(a)(10). The statutory and regulatory exemption from the requirement for synopsis reinforces the fact that FFRDCs are unique resources.

Revised Recommendation 1.c. P. 18

Recommendation 1d. is that the Department discontinue sponsoring any FFRDC that cannot be adequately justified. We concur.

Final Report

Recommendation 2 - Partially concur. The recommendation is that FFRDC sponsors not award any contracts or exercise any options or modifications to existing contracts pending completion of comprehensive reviews. We concur with the need to perform comprehensive reviews prior to the award of new contracts. However, this recommendation does not recognize that options are exercised annually and modifications to these contracts, as with any government contracts, are written routinely. Implementation of this recommendation would be very disruptive to the on-going work of FFRDCs and their sponsors. Such disruption could only be justified if there was some reason to believe that a comprehensive review would not justify the continued sponsorship of FFRDCs. There is no reason for such a belief. For options and modifications to existing contracts, business should be conducted as usual pending completion of the on-going comprehensive reviews. Furthermore, if this recommendation were followed we would shut down 11 System Program Offices (SPOs) at Electronic Systems Center and 16 SPOs at Space and Missile Systems Center which would directly delay on-going program actions and contracts collectively valued at $973 million.

Revised P. 19

Recommendation 4. - Nonconcur. The recommendation is that the DFARS be amended to require that renewal of contracts with DOD FFRDCs be publicized in advance. We believe that adopting this recommendation would tend to blur the distinction between FFRDCs and service contractors. Under current regulatory guidance, the decision to renew sponsorship of an FFRDC is not severable from the decision to award a sole-source contract to the existing FFRDC organization. FAR 35.017-4 provides only two options if, as a result of a comprehensive review, a sponsor decides not to continue sponsoring an FFRDC. The sponsor can either find another government agency to sponsor the FFRDC or phase out the FFRDC. Recompeting for the services of the FFRDC is not an option. The FAR coverage is logical given the unique and long term nature of an FFRDC's relationship with the government.

Deleted

This recommendation also is not consistent with OFPP Policy Letter 84-1 which states that "When FFRDCs are established, long-term Government relationships are encouraged in order to provide the continuity that will attract high quality personnel to the FFRDC. This relationship should be of a type to encourage the FRRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability." It also states that the sponsoring agreement shall contain "A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency formal Request For Proposal for other than the operation of an FFRDC."

Finally, no regulatory changes should be made that would diminish the uniqueness of our relationship with FFRDCs. Since this recommendation is not justified, it should not be adopted.

3