Audit Report

OFFICE OF THE INSPECTOR GENERAL

PROCUREMENTS BY THE NON-ACOUSTIC ANTI-SUBMARINE WARFARE PROGRAM THROUGH THE ENVIRONMENTAL TECHNOLOGIES LABORATORY

Report No. 94-135 June 14, 1994

Department of Defense

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Acronyms

ETL	Environmental Technologies Laboratory
MIPR	Military Interdepartmental Purchase Request
NAASW	Non-Acoustic Anti-Submarine Warfare
OASD(C^3I)	Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
TVA	Tennessee Valley Authority
WHS	Washington Headquarters Services

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
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June 14, 1994

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, WASHINGTON HEADQUARTERS SERVICES

SUBJECT: Audit Report on Procurements by the Non-Acoustic Anti-Submarine Warfare Program Through the Environmental Technologies Laboratory (Report No. 94-135)

We are providing this report for your review and comments. The report discusses Economy Act orders placed by the Non-Acoustic Anti-Submarine Warfare Program Office to the National Oceanic and Atmospheric Administration's Environmental Technologies Laboratory of the Department of Commerce. Comments on a draft of this report were considered in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of management comments, we revised one recommendation. Therefore, we request that the Washington Headquarters Services and the Air Force District of Washington 1100th National Capital Region Support Group provide comments on the unresolved and revised recommendations and monetary benefits by August 15, 1994.

The courtesies extended to the audit staff are appreciated. If you have any questions on this audit, please contact Mr. Garold E. Stephenson, Audit Program Director, (703) 692-3179 (DSN 222-3179), or Ms. Kimberley A. Caprio, Audit Project Manager, (703) 692-3024 (DSN 222-3024). Copies of the report will be distributed to the organizations listed in Appendix E. The audit team members are listed inside the back cover.

David K. Steensma

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Deputy Assistant Inspector General
for Auditing

cc: Inspector General, Department of Commerce

Office of the Inspector General, DoD

Report No. 94-135 **June 14, 1994**
(Project No. 2CH-5003.04)

PROCUREMENTS BY THE NON-ACOUSTIC ANTI-SUBMARINE WARFARE PROGRAM THROUGH THE ENVIRONMENTAL TECHNOLOGIES LABORATORY

EXECUTIVE SUMMARY

Introduction. This report is being issued as a follow-on to Inspector General, DoD, Report No. 94-008, "DoD Procurements Through the Tennessee Valley Authority Technology Brokering Program," October 20, 1993, on Economy Act orders placed with the Tennessee Valley Authority. After a hearing by the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, the subcommittee staff requested that we review Economy Act orders placed by the Non-Acoustic Anti-Submarine Warfare Program Office to the National Oceanic and Atmospheric Administration's Environmental Technologies Laboratory of the Department of Commerce. The Non-Acoustic Anti-Submarine Warfare Program Office, which was in the Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), issued Economy Act orders totaling $18.9 million to the Environmental Technologies Laboratory from June through December 1992. In January 1993, the Non-Acoustic Anti-Submarine Warfare Program was renamed the Advanced Sensor Applications Program.

Objectives. The primary audit objective was to determine whether the Economy Act orders issued by the Non-Acoustic Anti-Submarine Warfare Program Office to the Environmental Technologies Laboratory were appropriate, justified, and properly approved. We also reviewed the adequacy of management's implementation of the DoD Internal Management Control Program and applicable internal controls.

Audit Results. Of the $18.9 million of Economy Act orders that the Non-Acoustic Anti-Submarine Warfare Program Office issued to Environmental Technologies Laboratory from June 30, 1992, through December 9, 1992, $18.6 million was not reviewed and approved by a DoD contracting officer. About $15.1 million of the $18.6 million was for work that should not have been procured through the Environmental Technologies Laboratory. By issuing the orders to the Environmental Technologies Laboratory rather than using normal DoD procurement channels, the Non-Acoustic Anti-Submarine Warfare Program incurred about $1.2 million in additional costs. Subsequent to Audit Report No. 94-008, the Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) initiated vigorous action to improve the management and internal controls for contracting and accounting for the Non-Acoustic Anti-Submarine Warfare Program.

Internal Controls. The audit identified material internal control weaknesses. The Washington Headquarters Services did not have adequate internal controls to require a determination and finding when a subsequent amendment substantially increased the amount of funding of an Economy Act order to another government agency. The Air Force did not have adequate internal controls to require that a determination and finding was prepared by a DoD contracting officer for Economy Act orders to other Government agencies. See Part I for a discussion of internal controls reviewed and Part II for details on the internal control weaknesses and implementation of the DoD Internal Management Control Program.

Potential Benefits of Audit. Implementation of the recommendations will improve internal controls over the issuance of Economy Act orders to other Government agencies. Also, DoD can recoup fees of up to $1.2 million. Appendix C summarizes the potential benefits resulting from the audit.

Summary of Recommendations. We recommend that the Washington Headquarters Services require a determination and finding from a DoD contracting officer for each amendment that substantially increases funding on an Economy Act order to another Government agency. We recommend that the Air Force District of Washington 1100th National Capital Region Support Group recover fees totaling $1.2 million that the Department of Commerce, the Environmental Technologies Laboratory, and the Tennessee Valley Authority assessed the Non-Acoustic Anti-Submarine Warfare Program.

Management Comments. The Director, Administration and Management, Office of the Secretary of Defense, responding to the recommendation directed to Washington Headquarters Services, concurred that determinations and findings be approved by a DoD contracting officer for all Economy Act orders and stated that such policy already exists. The Air Force District of Washington 1100th National Capital Region Support Group concurred and has issued a letter to the Environmental Technologies Laboratory requesting the return of $345,000 in fees. See Part II for a full discussion of management's responsiveness and Part IV for the complete text of the comments.

Audit Response. We consider the Director, Administration and Management, comments to be partially responsive, and we consider the Air Force comments to be responsive to the recommendations. We revised one recommendation to increase the amount of fees that the Air Force should recoup from Environmental Technologies Laboratory. We request that the Director, Administration and Management, and the Air Force provide final comments on the report by August 15, 1994.

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This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, Department of Defense.

Part I - Introduction

Background

Non-Acoustic Anti-Submarine Warfare Program. The Non-Acoustic Anti-Submarine Warfare (NAASW) Program is a research, development, test, and evaluation effort managed by the Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (OASD[C^3I]). In FY 1993, the program was renamed the Advanced Sensor Applications Program. For the purposes of this report, we will refer to the program by the former title, the NAASW Program.

The NAASW Program received funding totaling $49.3 million through FY 1992, $30 million for FY 1993, and $38.5 million for FY 1994. The NAASW Program Office issued Economy Act orders to other Government agencies to acquire program management support and to conduct research projects using a DD Form 448, "Military Interdepartmental Purchase Request" (MIPR).

Funding to the Environmental Technologies Laboratory. Environmental Technologies Laboratory (ETL) (formerly Wave Propagation Laboratory), of the National Oceanic and Atmospheric Administration, is a 140-person Department of Commerce research laboratory in Boulder, Colorado. ETL has expertise in oceanography, meteorology, physics, engineering, and computer science. From June through December 1992, the NAASW Program Office issued Economy Act orders totaling $18.9 million to ETL. The Economy Act orders from the NAASW Program Office to the ETL were for research and development on the use of multipurpose sensors for both military applications and environmental purposes in atmospheric and oceanic research.

Congressional Interest in the NAASW Program. On July 30, 1993, the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, conducted a hearing on "Contract Offloading: The Multi-Million Dollar Loophole in Government Contracting." At the hearing, the Deputy Inspector General, DoD, testified on contract offloading by DoD activities, including the NAASW Program Office, to the Department of Energy, the National Aeronautics and Space Administration, and the Tennessee Valley Authority (TVA). The Deputy Inspector General, DoD, testimony was in regard to seven reports issued since 1989 by the Office of the Inspector General, DoD, on contract offloading, including Report No. 93-068, "Procurement of Services for the Non-Acoustic Anti-Submarine Warfare Program Through the Tennessee Valley Authority," March 18, 1993. The Deputy Inspector General, DoD, testified on the report conclusions that much of the offloading was unauthorized, inappropriate, and not cost-effective.

Before the Senate hearing, the Office of the Inspector General, DoD, learned from the staff of the Senate Subcommittee on Oversight of Government Management that TVA had received funding for a cooperative agreement with ESG, Incorporated, for support to the NAASW Program from the National Oceanic and Atmospheric Administration. The Chairman of the Senate Subcommittee on Oversight of Government Management requested the Office of

the Inspector General, DoD, to determine whether DoD funds were involved and, if so, to determine the circumstances under which the funding was transferred.

On September 9, 1993, an amendment to address offloading abuses by DoD officials was offered on the Senate floor. The amendment became law on November 30, 1993, under section 844 of the National Defense Authorization Act for FY 1994. On February 8, 1994, the Secretary of Defense issued a memorandum on use of orders under the Economy Act to implement section 844 of the National Defense Authorization Act for FY 1994.

Objectives

The primary audit objective was to determine whether the Economy Act orders issued by the NAASW Program Office to ETL were appropriate, justified, and properly approved. We also reviewed the adequacy of management's implementation of the DoD Internal Management Control Program and applicable internal controls.

Scope and Methodology

Audit Scope and Methodology. From June through December 1992, the NAASW Program Office issued to ETL two Economy Act orders that, as amended, totaled $18.9 million, as shown in Table 1.

Table 1. NAASW Economy Act Orders and Amendments Issued to ETL

Order	Date	Amount
DWAM20101	June 30, 1992	$ 230,000
Amendment 1	July 24, 1992	2,364,000
Amendment 2	Sept. 2, 1992	1,561,000
N93051	Dec. 9, 1992	14,700,000
Total		$18,855,000

We examined the justifications for the Economy Act orders and correspondence between the NAASW Program Office and ETL from June 1992 through December 1993. We examined documentation for costs incurred by and work performed at ETL from June 1992 through December 1993 and interviewed

officials at the Department of Commerce and ETL. We also reviewed documentation and interviewed officials at the Washington Headquarters Services (WHS) and at the Air Force District of Washington 1100th National Capital Region Support Group (Air Force Support Group) concerning the issuance of the Economy Act orders to ETL.

Audit Period, Standards, and Locations. We performed this economy and efficiency audit from August 1993 through December 1993. We did not rely on computer-processed data or statistical sampling procedures to conduct the audit. The audit was performed 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 considered necessary. The organizations visited or contacted are listed in Appendix D.

Internal Controls

Internal Controls Reviewed. We reviewed implementation of the DoD Internal Management Control Program at the WHS Directorate for Budget and Finance and at the Air Force Support Group. Our review included an evaluation of internal controls at both locations over the placement of Economy Act orders and amendments.

Internal Control Weaknesses Identified. We determined that the WHS Directorate of Budget and Finance and the Air Force Support Group did not evaluate Economy Act orders as part of their annual vulnerability assessments. The budget officer for the Air Force Support Group stated that Economy Act orders will be evaluated in the next annual assessment of the Air Force Support Group.

The audit identified internal control weaknesses as defined by DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, at both WHS and the Air Force Support Group.

o WHS procedures required that a determination and finding be prepared by a DoD contracting officer before WHS issued an Economy Act order to another Government agency. However, WHS procedures did not require the revalidation of the determination and findings when subsequent amendments substantially increased the amount of funding on the order. WHS received a determination and finding from a contracting officer for an Economy Act order for $230,000 that stated that the work would be performed in-house by ETL. A WHS official assumed that the two subsequent amendments increasing the funding on the order by about $3.9 million were also for work to be performed in-house by ETL. However, the subsequent work was not performed in-house by ETL.

o The Air Force Support Group did not have procedures to require a determination and finding from a DoD contracting officer before issuing

Economy Act orders to other Government agencies. The Air Force Support Group issued an Economy Act order for $14.7 million to ETL for the NAASW Program without a determination and finding from a contracting officer that processing procurements through ETL was in the best interest of the Government. The Air Force Support Group has implemented controls to improve accountability of DoD funds.

Cause of the Internal Control Weaknesses. We attribute the weaknesses at WHS and the Air Force Support Group to insufficient guidance from higher management levels.

Potential Benefits. Implementation of Recommendation 1. in this report will correct the internal control weaknesses at WHS. The Air Force took prompt corrective action during the audit to require a determination and finding for all Economy Act orders to other Government agencies. Although benefits could be achieved by implementing Recommendation 1., the benefits are not monetary. See Appendix C for a summary of all potential benefits resulting from the audit. A copy of the report will be provided to the senior officials responsible for internal controls in the Department of the Air Force and the Office of the Director, Administration and Management, Office of the Secretary of Defense.

Prior Audits and Other Reviews

From FYs 1990 through 1993, the Office of the Inspector General, DoD, issued seven audit reports on the use of Economy Act orders for procurements through the Library of Congress, the Department of Energy, the National Aeronautics and Space Administration, and TVA. Inspector General, DoD, Report No. 93-068, specifically addresses interagency acquisitions by the NAASW Program. In addition, the Office of the Inspector General, TVA, issued two reports on Economy Act orders placed with the TVA Technology Brokering Program, and the Army Audit Agency issued two reports on contract offloading. See Appendix A for a summary of each report.

Part II - Finding and Recommendations

Acquisitions Through the Environmental Technologies Laboratory

Of the total $18.9 million that the NAASW Program Office issued to ETL in Economy Act orders, $18.6 million was not reviewed and approved by a DoD contracting officer. About $15.1 million of the $18.6 million was an inappropriate use of Economy Act orders because ETL further transferred the funds to other agencies, and the work was not performed by ETL. Of the $15.1 million, ETL transferred $9.3 million to the TVA Technology Brokering Program and other organizations to make procurements that should have been processed by a DoD contracting activity, transferred $1.2 million to the University of Colorado, and allocated $4.6 million for contracts to be awarded under a broad agency announcement. ETL used the remaining balance of the $18.6 million in-house and for fees. The Economy Act orders were not properly reviewed and approved because:

o OASD(C^3I) officials provided incomplete information to WHS and

o higher management levels provided insufficient guidance on approval requirements for Economy Act orders and amendments.

By issuing the Economy Act orders to ETL, the NAASW Program incurred about $1.2 million in additional costs that the Government could put to better use, including $970,270 for the ETL administrative fee, $94,275 for the Department of Commerce fee, and $168,050 for the TVA fee.

Background

Guidance on Economy Act Orders. Federal Acquisition Regulation 17.502, "Interagency Acquisitions Under the Economy Act," requires that the head of the requesting agency, or designee, make a determination that orders placed under the Economy Act with another agency are in the best interest of the Government before placing Economy Act orders. The Economy Act of 1932 (title 31, United States Code, section 1535) authorizes the head of an agency or major organizational unit within an agency to acquire goods or services from another agency if:

o the other agency is in a position to provide or obtain by contract the services or goods ordered,

o the head of the agency or unit determines that it is in the best interest of the Government, or

o the head of the agency determines that the goods or services cannot be obtained as conveniently or cheaply from a commercial enterprise.

The Defense Federal Acquisition Regulation Supplement 217.502, "General," states that a DoD contracting officer is the designee to make the determination required by Federal Acquisition Regulation 17.502. The purpose of the requirement is to ensure that the expert knowledge of DoD contracting officers is fully utilized to determine whether or not it is in DoD's best interest to obtain required goods or services through an interagency acquisition rather than through direct contracting by DoD. Further, Federal Acquisition Regulation 6.002, "Competition Requirements," states that "No agency shall contract for supplies and services from another agency for the purpose of avoiding the requirements [of competitive contracting]."

Acquisition of Services by the NAASW Program From TVA. From November 1991 through April 1993, the NAASW Program transferred funds totaling $22 million to TVA. ESG, Incorporated, of Laurel, Maryland, was the primary recipient of the funds sent to TVA. TVA retained a $1.2 million brokering fee and transferred $20.5 million under a cooperative agreement to ESG, Incorporated. ESG, Incorporated, issued 16 subcontracts, which accounted for 94 percent of the costs billed to TVA under the cooperative agreement as of October 1993. Appendix B is a flow chart showing the transfers of NAASW Program funds to the other agencies.

Economy Act Orders Issued to ETL

The Principal Deputy for Intelligence, OASD(C^3I), established an agreement with ETL in October 1992 for a "cooperative program of research and development intended to bring about major improvements in non-acoustic technology." Under the agreement, the OASD(C^3I) transferred a total of $18.9 million in FYs 1992 and 1993 DoD research, development, test, and evaluation funds to ETL. Of the total of $18.9 million, $4.2 million was issued through WHS, and $14.7 million was issued by the Air Force Support Group.

Order Issued by WHS. WHS issued a total of $4.2 million, consisting of one MIPR for $230,000 and two amendments totaling $4 million, to ETL during FY 1992. The funds were transferred to ETL to provide the NAASW Program with research and development, data analysis, and instrumentation evaluation associated with a joint FY 1992 exercise in ocean remote sensing. The Defense Supply Service-Washington contracting officer who reviewed the original MIPR to ETL through WHS stated that a determination and finding was not necessary because, according to OASD(C^3I) officials, the work was to be performed in-house, and because offloading requests pertain only to work performed by contractors.

The Defense Supply Service-Washington contracting officer could not recall reviewing the two amendments to the original MIPR. In addition, OASD(C^3I) officials did not inform WHS that the two subsequent amendments to the original MIPR were for work to be performed outside of ETL. WHS personnel assumed that the amendments were also for work that would be performed in-house by ETL, and therefore did not require a determination and finding. WHS did, however, include a statement in the basic MIPR and two amendments that stated, "Funds MAY NOT be redirected. Acceptor must be performer." WHS added the statement to the MIPR and to the amendments because the work under the basic MIPR for $230,000 would be performed in-house by ETL. However, ETL subsequently transferred about $3.4 million of the total $4.2 million to TVA. We believe WHS needs internal controls to require a determination and finding from a DoD contracting officer for each amendment that substantially increases funding on an Economy Act order to another Government agency.

Order Issued by the Air Force Support Group. On October 14, 1992, the Principal Deputy for Intelligence, OASD(C^3I), requested that all funding for the NAASW Program be suballocated from WHS to the Air Force Support Group. On December 9, 1992, in response to direction from the Principal Deputy for Intelligence, OASD(C^3I), the Air Force Support Group issued a MIPR for $14.7 million to ETL for support of the NAASW Program research and development, data analysis, and instrumentation evaluation associated with joint international FY 1993 exercises in ocean remote sensing. The Air Force Support Group did not require a DoD contracting officer to review and approve the MIPR because the Air Force Support Group Comptroller was not aware of the Defense Federal Acquisition Regulation Supplement 217.502 requirement for contracting officer review and approval of Economy Act orders. After receiving the $14.7 million, ETL transferred about $3 million to Department of Energy, $2.9 million to the Norwegian Defense Research Establishment under a cooperative research agreement between the DoD and the Royal Norwegian Ministry of Defense, and $1.2 million to the University of Colorado at Boulder, Colorado, and allocated $4.6 million for contracts to be awarded under a broad agency announcement. ETL used the remaining balance of the $14.7 million in-house and for fees.

Funds Transfers for NAASW Program

ETL received a total of $18.9 million for the NAASW Program. ETL retained a portion of the funds for work to be performed in-house and for fees for transferring funds to other organizations. Of the $18.9 million, $15.1 million was for work to be performed outside of ETL. ETL transferred $9.3 million to the TVA, the Department of Energy, and other organizations and $1.2 million to the University of Colorado; $4.6 million was allocated for contracts to be awarded under a broad agency announcement. Table 2 shows how ETL distributed $18.9 million of NAASW Program funds.

Table 2. Most of ETL NAASW Program Funds Were Transferred Outside ETL

Recipient of Funds	Amount Received	Amount Spent	Amount Returned to DoD
Tennessee Valley Authority	$ 3,361,000	$ 3,361,000	
Department of Energy	3,000,000	3,000,000	
Norwegian Defense Research Establishment	2,900,000	2,900,000	
University of Colorado	1,229,455	1,229,455	
San Clemente Experiment (ETL in-house project)	2,700,000	2,700,000	
Broad Agency Announcement	4,600,000		$4,600,000
ETL fee	970,270	970,270	
Department of Commerce fee	94,275	94,275	
Total	$18,855,000	$14,255,000	$4,600,000

ETL and Department of Commerce Fees. The ETL charged DoD a 7-percent fee to process funds received on the Economy Act orders for the NAASW Program that were transferred to TVA, the Department of Energy, and the Norwegian Defense Research Establishment and that were identified for contracts to be awarded as a result of the broad agency announcement. The fee was negotiated between the Director, ETL, and the NAASW Project Director. Also, the Department of Commerce assessed a one-half of 1 percent fee on all funds received from the NAASW Program for Department of Commerce administrative expenses. In total, about $1.1 million was retained for the two fees, $970,270 for the ETL administrative fee and $94,275 for the Department of Commerce fee. The ETL used the $970,270 administrative fee to augment its appropriated funds and to pay for costs that were not directly for the NAASW Program such as air transportation, computer equipment, chairs, a portable videotape camera, and air conditioners. The Department of Commerce fee was used for Department of Commerce departmental overhead, such as Headquarters secretary salaries. Had the NAASW Program gone directly through a DoD contracting office, DoD could have avoided $1.1 million retained for the two fees.

ETL Fund Transfers to TVA. ETL transferred about $3.4 million to the TVA Technology Brokering Program to fund the continuation of support services by ESG, Incorporated, and research and analysis work by ESG, Incorporated, subcontractors and consultants. ETL ignored the statement on the MIPR and amendments issued by WHS that "Funds MAY NOT be redirected. Acceptor must be performer." According to the Director, ETL, he and the NAASW Project Director jointly decided that funds should be transferred to TVA to continue the performance of work by ESG, Incorporated. TVA deducted a 5-percent fee of $168,050, and placed the remaining $3.2 million on the cooperative agreement with ESG, Incorporated. Neither the NAASW Project Director nor ETL informed WHS that the funds were being redirected to TVA or requested that the MIPR be amended to delete the restriction, "Funds MAY NOT be redirected. Acceptor must be performer."

TVA Fund Transfers to ESG, Incorporated. The TVA Technology Brokering Program had an established cooperative agreement with ESG, Incorporated, for work on the NAASW Program. From September 1992 through April 1993, the NAASW Program transferred funds totaling $3.4 million through WHS to TVA. ESG, Incorporated, was tasked to develop a master plan for current and ongoing research efforts to support the NAASW Program and to assist the NAASW Program Office by identifying subcontractors, evaluating subcontractor proposals, preparing subcontract documents, developing budgets, obtaining technical consultants to assist the NAASW Program Office in evaluating and testing technologies developed under the research projects, and advising the NAASW Program Office of potential problems.

ETL Fund Transfer to Department of Energy. ETL transferred $3 million of the $14.7 million received on the Air Force Support Group MIPR to Lawrence Livermore National Laboratory, a Department of Energy federally funded research and development center. The $3 million was for continuation of an ongoing study of radar ocean imaging concepts in support of a joint United Kingdom and United States radar program. The Director, ETL, stated that he did not know how the Lawrence Livermore National Laboratory used the $3 million because he did not receive cost or progress reports. We did not identify any fee charged to DoD by Lawrence Livermore National Laboratory.

ETL Fund Transfers to the Norwegian Defense Research Establishment. ETL transferred $2.9 million of NAASW Program funds to the Norwegian Defense Research Establishment for the United States and Norway Ocean Radar Program (Ocean Radar Program), a joint research program between DoD and the Royal Norwegian Ministry of Defense. The objective of the Ocean Radar Program was to investigate the utility of advanced sensor systems to detect and identify both natural and man-made targets in the marine environment. The Ocean Radar Program existed since 1986. From April 1992 through June 1993, Norwegian Defense Research Establishment had received about $3 million as a subcontractor to ESG, Incorporated, under the TVA cooperative agreement. On June 14, 1993, ETL was added as a party under the cooperative research agreement for the Ocean Radar Program. ETL was designated as the scientific overseer for OASD(C^3I) for the Ocean Radar Program. The Norwegian Defense Research Establishment used the funds to contract with Susar, a Norwegian company. Susar participated with other firms, PFM and TRIAD a.s., in providing theory, test instrumentation, test execution, conclusions, and recommendations on a "multifrequency radar technique to create an airborne instrument for finding submarines by detecting and characterizing submarine generated internal waves."

ETL Fund Transfers to University of Colorado. ETL transferred approximately $1.2 million to the Cooperative Institute for Research in Environmental Sciences at the University of Colorado. The University of Colorado spent the funds as part of a cooperative agreement between ETL and the Cooperative Institute for Research in Environmental Sciences for research in environmental chemistry, climate and atmospheric dynamics, and solid earth geophysics performed by a group of about 10 Russian scientists at the Cooperative Institute for Research in Environmental Sciences. We requested

the Office of the Inspector General, Department of Commerce, to examine the use of the funds by the Cooperative Institute for Research in Environmental Sciences. According to the Office of the Inspector General, Department of Commerce, NAASW Program funds were commingled with Department of Commerce funds, and therefore specific details on the costs expended by the Cooperative Institute for Research in Environmental Sciences on behalf of the NAASW Program are impossible to identify. According to the Director, ETL, no fee was charged to the NAASW Program for funds transferred to the University of Colorado.

Use of NAASW Funds Within ETL

San Clemente Experiment. ETL and the NAASW Project Director established the San Clemente Ocean Probe Experiment in August 1993 to perform experiments, to test the validity of claims made by Russian scientists regarding submarine detectability, and to investigate and develop other methods for submarine detection. ETL spent $2.7 million of the NAASW Program funds for the project.

Draft Justifications and Unsolicited Proposal From ETL. In October 1992, ETL requested the Department of Commerce Mountain Administrative Support Center (the Center) to award sole-source contracts for the NAASW Program. ETL submitted a draft justification to the Center for a sole-source contract. During the same time, ETL also submitted to the Center an unsolicited proposal from a company called the Research Technology Group to provide research support to the NAASW Program. The Research Technology Group had the same address in Laurel, Maryland, as ESG, Incorporated, and one of the major participants of the Research Technology Group was also employed by ESG, Incorporated.

On November 16, 1992, the Center advised ETL that the draft justification was unacceptable. On December 1, 1992, the Center returned the unsolicited proposal from the Resources Technology Group to ETL because the Center considered the unsolicited proposal to be advertising material. As provided in Federal Acquisition Regulation 15.503(b), advertising material does not qualify as an unsolicited proposal.

Department of Commerce Issue of a Broad Agency Announcement. After the Center rejected the ETL draft justification for sole-source contracting and the unsolicited proposal from the Research Technology Group, the NAASW Project Director suggested that Department of Commerce issue a broad agency announcement to solicit research proposals in support of the NAASW Program. The idea of a broad agency announcement resulted in Department of Commerce examining the relationship of ETL with the NAASW Program and raising the following issues to ETL. ETL responded to the Department of Commerce issues.

o Why was ETL selected to support the NAASW Program, especially because ETL would have to contract out for a significant portion of the effort?

o Was ETL being used by DoD to avoid competition, given the recent controversy over DoD use of Economy Act orders to improperly transfer funds to other agencies?

o Why did ETL conduct no advance procurement planning for the NAASW projects, given the fact that the Center was made aware of the project early in FY 1993?

o What controls will ETL impose to assure that the broad agency announcement will not be used to contract with a firm preselected by DoD?

After examining the ETL relationship with the NAASW Program, the Department of Commerce approved issuance of the broad agency announcement and on August 12, 1993, the broad agency announcement was published in the *Commerce Business Daily*. The broad agency announcement solicited technical and cost proposals on the application of multipurpose sensors that could be utilized for military applications and environmental purposes. ETL received about 89 responses to the announcement through August 1993. ETL returned $4.6 million in November 1993 to the NAASW Program that were for the award of contracts resulting from the broad agency announcement. OASD(C^3I) anticipates directly initiating the award of contracts under the broad agency announcement through a DoD contracting officer in FY 1995.

Recent Efforts to Improve NAASW Internal Controls

From August through November 1993, OASD(C^3I) and the Air Force implemented controls to improve accountability of DoD funds.

OASD(C^3I) Corrective Actions. In November 1993, we met with senior OASD(C^3I) officials to discuss corrective actions to avoid future circumvention of procurement laws and the payment of additional costs, and to discuss how OASD(C^3I) was going to provide adequate internal controls over NAASW funds transferred and work performed by other agencies.

Effective November 9, 1993, the Deputy Assistant Secretary of Defense (Intelligence), OASD(C^3I), transferred oversight, management, and supervision of the NAASW Program from the Special Technology Directorate to the Intelligence Systems Directorate. As a result of the transfer of the program, the NAASW Project Director now reports to the Director, Intelligence Systems, for supervision and technical oversight. Financial management and contracting support for the NAASW Program is now provided by the Director, Intelligence Systems Support Office. A contracting officer from Defense Mapping Agency was assigned to the Intelligence Systems Support Office to provide contracting

support to the NAASW Program. The contracting officer is developing an implementation plan to provide the contracting support previously provided by other agencies for the NAASW Program.

Air Force Corrective Actions. In August 1993, we requested the Air Force to review its policies for issuing Economy Act orders to other Government agencies and to withdraw any unobligated funds from ETL. The Air Force initiated the following actions in response to our request.

Determinations and Findings. On August 4, 1993, the Assistant Secretary of the Air Force (Financial Management and Comptroller) issued a memorandum advising Air Force major commands and field operating agencies not to certify funds on MIPRs going to other agencies unless a determination and finding was prepared by a contracting officer certifying that the procurement is in the best interest of the Government.

Deobligation of Funds to ETL. On September 10, 1993, the Air Force Support Group requested that ETL identify any unobligated funds on the $14.7 million MIPR from OASD(C^3I) and provide accounting of unliquidated obligations and disbursements. ETL identified $4.6 million, the funds for the broad agency announcement contracts, that could be returned to DoD.

Recoupment of Funds. We believe that the Air Force Support Group should request ETL to return $1.2 million in fees paid to ETL, the Department of Commerce, and the Tennessee Valley Authority. ETL accepted the work under the Economy Act of 1932 (title 31, U.S.C., section 1535). The Economy Act authorizes the head of an agency to acquire goods and services from another agency if that agency is in a position to provide or obtain, by contract, the goods or services ordered, if the procurement through interagency agreement is in the best interest of the Government and if the goods or services cannot be obtained as conveniently or cheaply from a commercial enterprise. The Economy Act further states that payments to the receiving agency shall be for the actual cost of the goods or services provided. After receiving the draft of this report, the Air Force Support Group issued a request letter to ETL on May 17, 1994, to request the return to DoD of the $345,000 that accounted for the 7.5-percent fee associated with the $4.6 million to be used for the broad agency announcement.

ETL Fee. The 7-percent administrative fee ($970,270) charged by ETL should be returned to the Air Force. The ETL used the $970,270 to augment its appropriated funds and to pay for costs that were not directly for the NAASW Program.

Department of Commerce Fee. The one-half of 1 percent ($94,275) charged by the Department of Commerce should also be returned to the Air Force by ETL. The Economy Act states that the receiving agency shall be paid for actual costs. However, the Department of Commerce incurred no actual costs for to the NAASW Program. Therefore, we believe that the fee should be returned to DoD.

Tennessee Valley Authority Fee. ETL transferred $3.4 million to TVA to support the NAASW Program. ETL transferred the funds to TVA to complete work already being performed for the NAASW Program through TVA. TVA further transferred the funds received from ETL to TVA cooperators and subcontractors to accomplish the required work. Because TVA provided no added value, and merely transferred the funds to other sources, we believe that the fees paid to TVA totaling $168,050 should also be returned to the Air Force.

Recommendations, Management Comments, and Audit Response

Revised Recommendation. We revised draft report Recommendation 2. to increase the amount of fees to be recouped by the Air Force Support Group.

1. We recommend that the Director, Washington Headquarters Services, require a determination and finding from a DoD contracting officer for each amendment that substantially increases funding on an Economy Act order to another Government agency.

Management Comments. The Director, Administration and Management, Office of the Secretary of Defense, concurred with the recommendation, but stated that the recommendation had been overtaken by events. The WHS Budget and Finance Directorate implemented internal controls in 1992, including policy memorandums dated August 7, 1992, and September 25, 1992, that require a DoD contracting officer to approve a determination and finding for all Economy Act orders issued to other Government agencies. According to the Director, the policies apply to the basic order and any amendment that substantially increases funding on an Economy Act order. (Substantially is defined as an amount greater than 20 percent of the original order.) The Director also stated that the WHS official did not "assume" that the two amendments to the original MIPR for the NAASW Program were to be performed in-house. Instead, the official relied on information on the SD Form 419, "Request for Contract Services," and on information provided by the NAASW Program Office.

Audit Response. We consider the Director, Administration and Management, comments to be partially responsive. The policies cited by the Director state that a determination and finding must accompany each obligating document covered by the Economy Act provided to a DoD contracting officer for signature. The policy memorandums, however, do not state that the policy applies to the basic order or amendments that substantially increase funding. The SD Forms 419 did not state that the work would be performed in-house. According to the NAASW Project Director, she did not know to inform WHS, and WHS did not ask whether the amendments would be performed in-house, consistent with the determination and finding provided with the original Economy Act order. WHS should issue clarifying guidance to implement the

recommendation. We request that the Director, Administration and Management, Office of the Secretary of Defense, provide additional comments in response to the final report.

2. We recommend that the Commander, Air Force District of Washington 1100th National Capital Region Support Group, request the National Oceanic and Atmospheric Administration Environmental Technologies Laboratory to return $1.2 million in fees, including $970,270 for the Environmental Technologies Laboratory fee, $94,275 for the Department of Commerce fee, and $168,050 for the fee charged by the Tennessee Valley Authority.

Management Comments. The Air Force concurred with the recommendation and has already requested that ETL return $345,000 in fees paid to ETL.

Audit Response. We consider the Air Force comments to be responsive. We revised draft Recommendation 2. to increase the amount of funds to be recouped from ETL from $345,000 to $1.2 million. The increase of $887,000 includes fees charged by the ETL, the Department of Commerce, and TVA because neither the ETL, the Department of Commerce, nor TVA provided goods or services to incur actual costs on behalf of the NAASW Program. According to the Economy Act, only actual costs incurred in support of goods or services provided to another agency are billable to the requesting agency. We request that the Air Force Support Group provide comments on the revised recommendation in response to the final report.

Part III - Additional Information

Appendix A. Prior Audits and Other Reviews

Office of the Inspector General, DoD

Report No. 94-008, "DoD Procurements Through the Tennessee Valley Authority Technology Brokering Program," October 20, 1993. This report states that DoD activities issued Economy Act orders to the TVA Technology Brokering Program that circumvented the Federal procurement process, that DoD activities did not provide for adequate contract administration and contract audits to verify that work was performed in accordance with the TVA cooperative agreements, and that TVA earned about $139.4 million in interest on DoD funds by requiring DoD to make payments before receiving the goods and services. The report recommended that DoD establish procedures to prevent further circumvention of the Federal procurement process, define requirements for Federal information processing resources, and establish controls over classified information. The report recommended that the Air Mobility Command assign program management functions to Government employees to prevent the procurement of personal services; the Military Departments strengthen the administration of Economy Act orders; the Deputy Under Secretary of Defense (Environmental Security) issue guidance addressing the payment on Economy Act orders to agencies with commercial bank accounts; and DoD recoup the interest earned by TVA on DoD funds. The Army, the Navy, and the Air Force generally agreed with the recommendations. The Deputy Under Secretary of Defense (Environmental Security) did not provide comments. However, the Deputy Under Secretary of Defense (Environmental Security) is revising DoD Instruction 4000.19 to include a model interagency agreement that will cover responsibilities of parties and requirements for contract administration in response to Audit Report No. 93-042.

Report No. 93-068, "Procurement of Services for the Non-Acoustic Anti-Submarine Warfare Program Through the Tennessee Valley Authority," March 18, 1993. This report states that the NAASW program office lacked adequate controls over work performed and costs incurred for $18.6 million of Economy Act orders issued to the TVA Technology Brokering Program. The lack of controls resulted in approximately $1.5 million in additional program costs and $2.8 million of unsupported contractor billings. In addition, a NAASW program official performed travel not properly authorized and $6,648 in costs was not supported. The report recommended that adequate contract administration be performed, an audit of incurred costs be performed, questioned costs be recouped, controls be established over classified data to ensure separation of duties, and unsupported travel costs be recouped. Management did not agree with all of the issues in the report, but concurred with all recommendations.

Report No. 93-059, "Army Acquisition of Services Through the Jet Propulsion Laboratory," February 25, 1993. The report states that Army program officials circumvented established policy and exceeded their authority by not obtaining required contracting officer approvals in placing $10.5 million on interagency acquisitions through the Jet Propulsion Laboratory. As a result, the Army paid $1.5 million for add-on costs for services chiefly performed by the Jet Propulsion Laboratory subcontractors. The report recommended that the Army commands prohibit the placement of supplemental work under the interagency agreements unless approved by a DoD contracting officer, initiate disciplinary actions against those officials who knowingly exceeded their authority by placing work with the Jet Propulsion Laboratory, and establish procedures for the use of interagency acquisitions. Management concurred with the recommendations.

Report No. 93-042, "Allegations of Improprieties Involving DoD Acquisitions of Services Through the Department of Energy," January 21, 1993. The report states that the Military Departments did not adequately strengthen controls over the use of interagency agreements after Inspector General, DoD, Report No. 90-085 (see next summary). DoD activities did not obtain prior approval from a DoD contracting official before placing Economy Act orders with the Department of Energy, Oak Ridge Field Office. For the sample of 196 Economy Act orders reviewed, DoD paid about $11.6 million in additional costs. Internal controls were not incorporated into interagency agreements and orders to validate that deliverables met requirements and vouchers totaling $78.4 million were accurate or that the best interests of DoD were protected. The report also states that DoD management information systems could not identify the number, value, issuing activity, or recipient of Economy Act orders.

The report recommended that DoD establish criteria and specify details to include in interagency agreements, discipline DoD officials who knowingly exceeded their authority by placing Economy Act orders with Department of Energy, establish internal controls to ensure adequate administration of DoD Economy Act orders, and establish a system for tracking DoD procurements that use Economy Act orders. The report also recommended the establishment of a central point within DoD to oversee policy and administration of interagency acquisitions. The Director of Defense Procurement nonconcurred with the need for an information system to track interagency acquisitions but will address the need for a contracting officer approval of orders through the Defense Acquisition Regulations Council.

The Military Departments and the Defense Logistics Agency generally agreed that interagency agreements and related orders should be reviewed, then ratified or terminated, but disagreed as to whether the review was the responsibility of DoD contracting officers. The Comptroller of the Department of Defense agreed to establish a requirement that finance and accounting officers would not authorize funds for interagency orders unless a contracting officer had certified that the orders were proper. The Deputy Under Secretary of Defense (Environmental Security) is revising DoD Instruction 4000.19 to include a model interagency agreement that will cover responsibilities of parties and

requirements for contract administration. The Secretary of Defense issued a memorandum on February 8, 1994, that clarified responsibilities for review and approval of funds for interagency orders.

Report No. 92-069, "Quick-Reaction Report on DoD Procurements Through the Tennessee Valley Authority," April 3, 1992. This report states that DoD officials, who lacked authority under the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement to approve interagency acquisitions, improperly authorized interagency orders to transfer $84.8 million of expiring funds during August and September 1991 to TVA to achieve technical obligation of those funds. The report recommended that the Director, Defense Research and Engineering; the Service Acquisition Executives; and the Director, Defense Logistics Agency, cancel those interagency orders issued to TVA that have not been placed on contract; prohibit placement of supplemental work under existing interagency agreements if not properly approved by a contracting officer; discontinue the use of MIPRs and similar ordering forms to acquire goods and services from other Government agencies; and develop a form that includes sections to be completed by a contracting officer. The Army, Navy, Air Force, and Defense Logistics Agency generally concurred with the finding and recommendations. The Director, Defense Research and Engineering, did not concur with the recommendation to discipline program managers because, the Director stated, the managers had not exceeded their authority. The Director, Defense Research and Engineering, comments were considered to be generally responsive.

Report No. 90-085, "DoD Hotline Allegation of Irregularities in DoD Contractual Arrangements With the Department of Energy," June 19, 1990. This audit determined that program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials when placing orders for interagency acquisitions. Also, DoD internal controls were not adequate to ensure compliance with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement when program officials placed orders with Department of Energy. The report recommended that the Under Secretary of Defense for Acquisition improve DoD internal control procedures to minimize the risk of placing orders for interagency acquisitions, that appropriate training be provided to DoD program officials, and that disciplinary actions be considered against those DoD program officials who exceeded their authority. Management concurred with the findings and recommendations, and the Principal Deputy Assistant Secretary of Defense (Production and Logistics) issued a memorandum to the Military Departments and the Defense Logistics Agency on May 10, 1990. The memorandum solicited support in training program officials and in establishing internal control procedures to prevent placement of interagency orders by unauthorized DoD program officials.

Report No. 90-034, "Contracting Through Interagency Agreements With the Library of Congress," February 9, 1990. This audit determined that DoD program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials when placing orders for interagency acquisitions. Also, DoD internal controls were not adequate to ensure

compliance with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement when program officials placed orders with the Library of Congress. The report concludes that these weaknesses increased the risks of overpricing and susceptibility of interagency procurements to mismanagement, abuse, and fraud. The report recommended that the Under Secretary of Defense for Acquisition improve DoD internal control procedures to minimize the risk of placing orders for interagency acquisitions by unauthorized DoD program officials, that appropriate training be provided to DoD program officials, and that disciplinary actions be considered against those DoD program officials who exceeded their authority. Management generally concurred with the findings and recommendations.

Office of the Inspector General, TVA

Report No. 92-0250, "Tennessee Center for Research and Development (Tennessee Center)," December 8, 1992. The report identifies three findings concerning work performed by the Tennessee Center for TVA. First, the Tennessee Center functioned in a dual role by assisting TVA in managing and administrating the TVA Technology Brokering Program and by participating in the program as a cooperator. The dual role created an unfair advantage over other companies in receiving work. This conflict of interest resulted in 35 percent of total TVA Technology Brokering Program dollars being awarded to the Tennessee Center in FY 1991. Second, oversight and administration of the Tennessee Center was not adequate to preclude the payment of unsupported Tennessee Center bills and improper use of funds. Third, TVA funds were inappropriately used to procure furniture and equipment for the Technology Resources Development division of the Tennessee Center. The Office of the Inspector General, TVA, recommended resolving the conflict of interest by eliminating the dual roles of the Tennessee Center, by improving oversight of cooperative agreements with the Tennessee Center, and by inventorying and tagging all TVA equipment in the possession of the Tennessee Center. TVA management concurred with the findings and recommendations.

Report No. 91-076G, "Technology Brokering Program," March 31, 1992. This report states that TVA relied on DoD activities to certify that proper procedures and regulations were followed by DoD activities when placing Economy Act orders with the TVA, that TVA relied on cooperators to market the TVA Technology Brokering Program to funding agencies, and that TVA accepted interagency orders that did not meet the objectives of the TVA Technology Brokering Program. The passive role that TVA played in marketing and explaining the TVA Technology Brokering Program may have resulted in misunderstandings regarding the legal responsibilities of the funding agencies and TVA. The report recommended that the President, Resources Group, TVA, have TVA explain the TVA role as contract administrator to funding agencies, ensure that DoD interagency agreements are signed by a DoD contracting officer, develop criteria for research and development work, develop a database or inventory of TVA capabilities, enter agreements only with

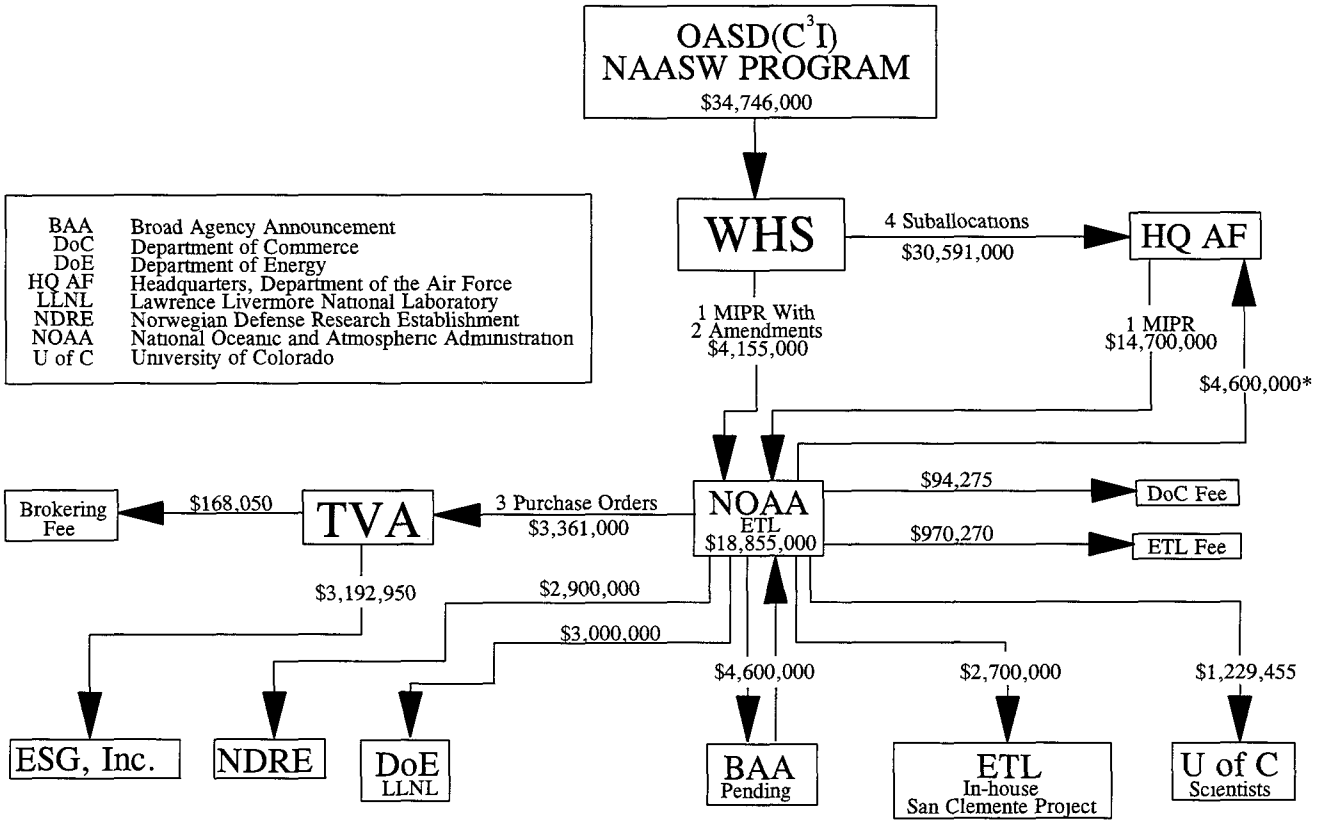
firms that are established in the Tennessee Valley area, and monitor contractor billings in cooperation with a DoD contracting officer. Management generally agreed with the report recommendations.

Army Audit Agency

Report No. WE 91-A1, "Advisory Report Contract Offloading," September 11, 1991. This report is derived from several audits that determined that Army activities and installations did not have policies and procedures in place to control contract offloading. The contract offloading problems resulted from ineffective managerial controls and contracting practices, improper use of service contracts and contractor payments, lack of property accountability, and inappropriate use of MIPRS. The report contains checklists developed by the Army Audit Agency to help commanders and managers in evaluating contract offloading at their commands and activities. The report is advisory in nature and summarizes common problems in contract offloading. The report contains no recommendations.

Report No. SW 91-200, "Contract Offloading," January 22, 1991. This report states that contracts were offloaded to expedite the acquisition of goods and services. Offloading contracts frequently violated acquisition and funding regulations and statutes. The violations were not detected because the flow of acquisition and funding documents bypassed knowledgeable installation contracting, resource management, and legal personnel. The report recommended that policy and procedures be reinforced to require contracting, legal, and resource management personnel review purchase requests with other Government agencies. The report also recommended the establishment of a reporting system for interagency acquisitions for automatic data processing purchases. Management concurred with the findings and recommendations.

Appendix B. Flow of Non-Acoustic Anti-Submarine Warfare Program Funds



Note: The flow chart reflects funds transferred by the NAASW Program through WHS and HQ AF to ETL. The NAASW Program transferred additional funds not shown here. See IG, DoD, Report No. 93-068.

*ETL returned $4.6 million in November 1993 to the NAASW Program that were for the award of contracts resulting from the broad agency announcement.

Appendix C. Summary of Potential Benefits Resulting From Audit

Recommendation Reference	Description of Benefit	Amount and/or Type of Benefit
1.	Internal Controls. Prevents improper use of Economy Act orders by requiring a determination and finding for each amendment that substantially increases the amount of an Economy Act order to another Government agency.	Nonmonetary.
2.	Economy and Efficiency. Recovers fee charged by ETL, Department of Commerce, and TVA.	NAASW Program FY 1993 Research, Development, Test, and Evaluation funds put to better use of $1.2 million.

Appendix D. Organizations Visited or Contacted

Office of the Secretary of Defense

Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), Washington, DC
Deputy Assistant Secretary of Defense (Intelligence), Washington, DC
Deputy Assistant Secretary of Defense (Plans and Resources), Washington, DC
Washington Headquarters Services, Washington, DC

Department of the Army

Defense Supply Service-Washington, Washington, DC

Department of the Air Force

Office of the Secretary of the Air Force, Washington, DC
Air Force District of Washington 1100th National Capital Region Support Group, Washington, DC
Air Force Audit Agency, Washington, DC

Other Defense Organizations

Defense Mapping Agency, Washington, DC

Non-Defense Federal Organizations

Environmental Technologies Laboratory, National Oceanic and Atmospheric Administration, Department of Commerce, Boulder, CO
Office of the Inspector General, Department of Commerce, Washington, DC
Technology Brokering Program, Tennessee Valley Authority, Knoxville, TN
Office of the Inspector General, Tennessee Valley Authority, Knoxville, TN

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
Comptroller of the Department of Defense
Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
Assistant to the Secretary of Defense (Public Affairs)
Director, Administration and Management

Department of the Army

Secretary of the Army
Director, Defense Supply Service-Washington
Auditor General, Department of the Army

Department of the Navy

Auditor General, Naval Audit Service

Department of the Air Force

Secretary of the Air Force
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Commander, 1100th National Capital Region Support Group, Air Force District of Washington
Auditor General, Air Force Audit Agency

Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
Inspector General, Central Imagery Office
Inspector General, Defense Intelligence Agency
Inspector General, National Security Agency
Director, Defense Logistics Studies Information Exchange

Non-Defense Federal Organizations

Office of the Inspector General, Department of Commerce
Office of the Inspector General, Tennessee Valley Authority
Office of Management and Budget
Technical Information Center, National Security and International Affairs Division, 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

Senator Carl M. Levin, U.S. Senate

Part IV - Management Comments

Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) Comments

COMMAND CONTROL
COMMUNICATIONS
AND INTELLIGENCE

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301 3040

May 12, 1994

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE, INSPECTOR GENERAL

SUBJECT: Audit Report on Procurements by the Non-Acoustic Anti-Submarine Warfare Program Through the Environmental Technologies Laboratory (Project No. 2CH-5003.04)

We appreciate the opportunity provided to comment on the subject report. We concur with the findings and have no objections to the recommendations.

Keith R. Hall
Deputy Assistant Secretary
of Defense (Intelligence
& Security)

Director, Administration and Management, Comments

Final Report Reference

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1950

ADMINISTRATION AND MANAGEMENT

12 MAY 1994

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

SUBJECT: Audit Report on Procurements by the Non-Acoustic Anti-Submarine Warfare Program Through the Environmental Technologies Laboratory (Project No. 2CH-5003.04)

This is in reply to your memorandum of April 22, 1994, in which you requested our comments on the subject draft audit report.

We concur with the "Recommendations for Corrective Action," however, we believe that the first recommendation has been overtaken by events. In 1992, the WHS Budget and Finance Directorate implemented internal controls that require a contracting officer to approve a determination and finding for all Economy Act orders issued to other Government Agencies. This policy was implemented on September 25, 1992 and applies to the basic order and any amendment that substantially increases funding on an Economy Act order. (Substantially is defined as an amount greater than 20 percent of the original order.)

The following comments are provided to clarify certain portions of the draft audit report.

- The draft report states (p. 5, para 3) "A WHS official assumed that the two subsequent amendments increasing the funding on the order by about $3.9 million were also for work performed in-house by ETL." The information on both SD Forms 419 which requested that a MIPR amendment be issued, clearly indicated that the work would be performed as an in-house effort. The WHS official did not "assume," but proceeded based on the facts presented in the original and follow-on 419s, and the information provided by the C3I official requesting the amendments. This is supported, as shown in the draft audit, by the restrictive instructions contained in the MIPRs prohibiting redirection.

Page 4

- The report also indicates that there was insufficient guidance from management within WHS which resulted in internal control weaknesses. In fact, this matter was given a high priority by senior management within WHS. The Director of Budget and Finance issued a memorandum dated August 7, 1992, to all serviced DoD Components that provided guidance on the subject of "Off-Loading of Contract Actions." Additionally, he issued an internal memorandum to all key staff members on September 25, 1992 (see attachments).

D. O. Cooke
Director

Attachments

DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
WASHINGTON, DC 20301-1155

(Budget & Finance) 7 August 1992

MEMORANDUM FOR: (SEE DISTRIBUTION)

SUBJECT: Off-Loading of Contract Actions

Recent audits of DOD contractual practices have indicated a need for strengthened controls over the use of non-assigned and non-DOD contracting offices. The practice of obtaining support from other government contracting offices, termed "off-loading", is not specifically prohibited. However, experience shows that it increases the potential for abuse and loss of management control. Inspector General, Army Audit Agency, and procurement management reviews reveal that management control weaknesses occur when contract actions that should have been accomplished in-house, are "off-loaded" for convenience or expediency.

Defense Supply Service - Washington (DSS-W) is the contracting activity assigned to support this organization. DOD Directive 5335.2 prescribes policies and responsibilities for providing a central service to obtain "administrative acquisition, supply, contractual, and related services" for all DoD Components located in the National Capital Region. The scope of this directive specifically includes activities administratively supported by the Washington Headquarters Services.

Effective immediately, all requests for contractual support through sources other than DSS-W processed by this office shall be accompanied by a written statement citing the authority for off-loading the acquisition. If the Economy Act (31 USC 1535) is the authority for the action, and the contractual support is to be obtained from a non-DoD source, then the requesting Agency must provide a Determination and Finding (D&F) statement in accordance with FAR 17.5 DFARS 217.5. Otherwise, the request will be returned without action.

Under the Economy Act (31 U.S.C. 1535), "an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the Government's best interest to do so." For this purpose, the DoD FAR Supplement (Part 217.502) states that the "designee of the head of the requesting agency within DoD is the Contracting Officer."

The required D&F prepared for the Contracting Officer's signature must accompany each Request for Contract Services (SD Form 419), MOU, IAA, or other obligating document as applicable covered by the Economy Act or other authority. The determination must state that the "interagency acquisition" is in the Government's best interest (FAR 17.502) and include findings (FAR 17.503) that:

(1) legal authority for the acquisition otherwise exists; and,

(2) the action does not conflict with any other agency's authority or responsibility.

The cognizant DSS-W Contracting Officer will review the proposed "interagency acquisition" and determine if it is in the Government's best interest to proceed as proposed or acquire through DSS-W.

Any questions pertaining to off-loading should be directed to Mr. Christensen at 614-0987.

It is requested that this new policy receive the widest possible dissemination to affected program managers.

Your cooperation in this matter is appreciated.

Joe Friedl
Director

DISTRIBUTION:

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DOD COORDINATOR FOR DRUG ENFORCEMENT POLICY & SUPPORT
DIRECTOR, ADMINISTRATION AND MANAGEMENT
ASSISTANT TO THE SECRETARY OF DEFENSE (INTELLIGENCE OVERSIGHT)
EXECUTIVE ASSISTANT TO THE SECRETARY OF DEFENSE FOR
INTELLIGENCE POLICY
COMPTROLLER, THE JOINT STAFF
DIRECTOR, RESOURCE MANAGEMENT, WHS/RE&F
DEPUTY DIRECTOR, OFFICE OF ECONOMIC ADJUSTMENT (OEA)
ASSISTANT DIRECTOR, RESOURCE MANAGEMENT OFFICE, AFIS/AFRTS
DIRECTOR, RESOURCE MANAGEMENT, DTSA
DIRECTOR, INTEGRATION & RESOURCE MANAGEMENT, DMSA
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DIRECTOR, DEFENSE LEGAL SERVICES AGENCY (DLSA)

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MS. TERA FOSTER
MR. AL NEWMAN
MS. SUE ECKLES
MS. LESLIE MATTHEWS

ASSISTANT SECRETARY OF DEFENSE (FM&P)
ATTENTION: MR. LEE WEXEL

NAVAL AIR SYSTEMS COMMAND
ATTENTION: LCDR PEGGY ROY

DEFENSE INFORMATION SERVICES AGENCY
ATTENTION: MS. ELIZABETH WARNE

DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
WASHINGTON, DC 20301-1155

September 25, 1992

MEMORANDUM FOR DEPUTY DIRECTOR
CHIEF, INSTALLATION ACCOUNTING DIVISION
CHIEF, PROGRAM/BUDGET DIVISION

SUBJECT: Transfer of Funds to Non-DoD Organizations

The recent attention directed toward the audit of services procured under the authority of the Economy Act from the Tennessee Valley Authority has pointed out the need to clarify policy on and tighten our internal procedures.

A.I. No. 54 exempts SD 419s that generate MIPRs from legal counsel review and coordination in certain cases. The rationale is that legal counsel on the receiving end will review the MIPR and supporting documentation for propriety and conformance with regulations and applicable laws. It also assumes that all MIPRs flow from one Defense activity to another, which is not always the case.

A MIPR may be issued as a project order under the authority of 41 U.S.C. 23, governed by DODI 7220.1; or as an Economy Act Order under the authority of 31 U.S.C. 1535, governed by the FAR; or under the authority of a specific statute, act, or public law.

All MIPRs or inter-agency agreements sent to non-DoD activities for the contracting of goods or services should cite a specific authority. If the Economy Act is the authority, then the requesting agency must prepare a Determination and Finding (D&F) statement in accordance with FAR 17.5 and DFARS 217.5. The D&F will accompany the MIPR or agreement to DSS-W for approval by the contracting officer. The MIPR or agreement will then be returned here for funds certification and distribution. A D&F is only required when the transfer of funds will result in a contract on the receiving end.

If the transfer document is issued as a project order or under the authority of a specific statute, act or public law, then an appropriate statement to that effect should be entered on the SD 419 or request document for inclusion on the MIPR or agreement.

All requests to transfer fund to non-DoD activities that do not conform to the requirements described above should be returned without action. In addition, all Directorate personnel with approval authority should be informed of these procedures.

Please provide me a list of those individuals with an acknowledgment that they have reviewed and understand this policy by October 1, 1992.

Joe Friedl
Director

Department of the Air Force Comments

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

2 [illegible] 1994

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

FROM: SAF/AQC
1060 Air Force Pentagon
Washington DC 20330-1060

SUBJECT: Air Force Response to Draft DoDIG Report (Project No 2CH-5003.04) "Procurements by the Non-Acoustic Anti-Submarine Warfare Program Through The Environmental Technologies Laboratory," 22 Apr 94

This is in reply to your request for Air Force comments on the subject report.

We concur with the findings and recommendations pertaining to the Air Force's 1100th National Capital Region comptroller organization and the support they provided to the Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence). Our responses to the recommendations are at Attachment 1. A copy of our recently published revised interim guidance on the Economy Act is at Attachment 2. A copy of the 1100th National Capital Region Comptroller's request for the return of funds to the Air Force is at Attachment 3.

Our point of contact is Major Robert D. Winiecki, SAF/AQCO, DSN 227-1136, FAX (703) 697-8817

[illegible]
Deputy
(Contracting)
Assistant Secretary (Acquisition)

Attachments:
1 DSAF Comments
2 SAF/AQC memo, 17 May 94 w/Atchs
3 AFDW/FM memo, 17 May 94

AIR FORCE RESPONSE TO DoDIG RECOMMENDATIONS

RECOMMENDATION 1:

"1. For each amendment that substantially increases funding on an Economy Act order to another Government agency, we recommend that the Washington Headquarters Services require a determination and finding from a DoD contracting officer."

RESPONSE:

As mentioned in the draft report, comptroller guidance was provided in August 1993 to all Air Force Major Commands and Field Operating Agencies, including the 1100th NCR comptroller, requiring a determination and finding (D&F) by the supporting contract office prior to release of Economy Act orders to agencies outside the DoD. Procedures to ensure compliance were implemented immediately at the 1100th NCR.

Additionally, comprehensive interim guidance was published in the Air Force supplement to the Federal Acquisition Regulation (AFFARS) in Jan 1994 to help resolve problems with Economy Act orders. (A copy was previously provided to the DoDIG.) Attachment 2 in this package is a copy of our recently published revised interim guidance incorporating the major change in the Defense Federal Acquisition Regulation Supplement, 25 Apr 94, directed by the Director of Defense Procurement. Approval authority for D&Fs was changed from the contracting officer to a SES/Flag/General Officer in the requiring activity. The new role of the contracting officer would be as a "business advisor, if requested" to the SES/Flag/General Officer. Revised guidance for the Air Force Comptroller community, reflecting this key change, is being prepared now for transmittal to all Major Commands and Field Operating Agencies.

Our Air Force policy differs from the DFARS in one significant way. The involvement of contracting officers in the processing of orders under the Economy Act has helped reduce the abuses and misuses. We want to continue this trend and continue our efforts to eliminate this material weakness in the Air Force's internal management control system. Therefore, we are mandating that Air Force contracting officers remain "in-the-loop" on all Economy Act orders going outside DoD. They will serve as "business advisors" by reviewing all D&F's and providing written comments/advice to the SES/Flag/General Officer. The revised AFFARS contains policy, procedures, and a model D&F for use by requiring activities in preparing D&Fs and for use by contracting officers in reviewing D&Fs.

We believe that our revised interim AFFARS guidance, revised comptroller guidance, and a continuing emphasis to correct problems on Economy Act orders in the Air Force will preclude situations such as the substantial funding increases from occurring again. The Economy Act remains an identified material weakness in the Air Force's internal management control system. We will continue to work this issue until we are convinced that the problem has been resolved.

Atch 1

Final Report Reference

Revised

RECOMMENDATION 2:

"2. We recommend that the Air Force District of Washington 1100th National Capital Region Support Group request the National Oceanic and Atmospheric Administration's Environmental Technologies Laboratory (ETL) to return $345,000 in fees that it retained on the $4.6 million returned to DoD."

RESPONSE:

On 17 May 1994, the 1100th NCR Comptroller requested that ETL return the $345,000 based on the report recommendation. A copy of the request is enclosed in this package at Attachment 3.

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

17 MAY 1994

MEMORANDUM FOR ALMAJCOM FOA-DRU (CONTRACTING)

FROM: SAF/AQC
1060 Air Force Pentagon
Washington DC 20330-1060

SUBJECT: Revised Interim Air Force Policy On Economy Act Purchases - ACTION MEMORANDUM

The Director of Defense Procurement's 25 Apr 94 memorandum (Atch 1) revised DFARS Subpart 217.5 to redefine the role of the contracting officer in the approval process for Economy Act orders going outside the DoD. Contracting officers will no longer approve Determinations and Findings (D&Fs) for Economy Act orders. This approval authority has been assigned "to a level no lower than SES/Flag/General Officer at the requesting activity" per the Secretary of Defense memorandum (Atch 2). The new role of the contracting officer would be as a "business advisor, if requested" to the SES/Flag/General Officer. Contracting officers bring sound business judgment and procurement experience to the task of reviewing D&Fs.

These changes have been incorporated into a revised interim AFFARS policy (Atch 3) that replaces AFAC 92-37, Item E-1, published in March 1994. However, the Air Force policy differs from the DFARS in one significant way. The involvement of contracting officers in the processing of orders under the Economy Act has helped reduce the abuses and misuses. We want to continue this trend and continue our efforts to eliminate this material weakness in the Air Force's internal management control system. Therefore, we are mandating that Air Force contracting officers remain "in-the-loop" on all Economy Act orders going outside DoD. They will serve as "business advisors" by reviewing all D&Fs and providing written comments/advice to the SES/Flag/General Officer. The AFFARS contains policy, procedures, and a model D&F for use by requiring activities in preparing D&Fs and for use by contracting officers in reviewing D&Fs.

We are also working a revision to the Assistant Secretary of the Air Force (Acquisition) Policy Memorandum 93M-008, 10 Mar 1993. Additionally, we will use Command channels to advise SES/Flag/General Officers on their new responsibility. We must continue to work this tough issue until we are confident we have resolved the problems with Economy Act orders. Customer education and customer interaction are at the forefront of our

Atch 2

efforts. Compliance with the FAR, as supplemented in DFARS and the attached AFFARS, will resolve practically all of the problems we've encountered in the DoD. Questions regarding Economy Act issues may be directed to Maj Robert D. Winiecki at DSN 227-1136 or commercial (703) 697-1136.

ROBERT W. DREWES, Brig Gen, USAF
Deputy Assistant Secretary
(Contracting)
Assistant Secretary (Acquisition)

Attachments:
1. ODDP Memo, 25 Apr 94
2. SECDEF Memo, 8 Feb 94*
3. AFFARS Part 5317.5

*Not attached. See page 45 for the February 8, 1994, Secretary of Defense memorandum.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000
April 25, 1994

ACQUISITION AND TECHNOLOGY

DP(DAR)

In reply refer to
DFARS Case: 94-D303
D.L. 94-007

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION POLICY, INTEGRITY, AND ACCOUNTABILITY, ASN(RD&A)/API&A
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Economy Act

By memorandum of February 8, 1994 (copy attached), the Secretary of Defense established requirements for approval of a written determination before an Economy Act order may be released outside of DoD for contracting action.

We have revised Subpart 217.5 of the Defense Federal Acquisition Regulation Supplement (DFARS) to define the role of the contracting officer in the approval process for Economy Act orders. Contracting officers should provide advice, if requested, to assist requirements personnel in the preparation of written determinations to support Economy Act orders.

The attached final DFARS rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachments

cc: DSMC, Ft Belvoir

Atch 1

THE SECRETARY OF DEFENSE

WASHINGTON THE DISTRICT OF COLUMBIA

8 FEB 1994

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
COMPTROLLER
GENERAL COUNSEL
INSPECTOR GENERAL
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Use of Orders Under the Economy Act

Before an Economy Act order is released outside of DoD for contracting action, the head of the requesting agency or designee shall determine that:

- the ordered supplies or services cannot be provided as conveniently and cheaply by contracting directly with a private source;
- the servicing agency has unique expertise or ability not available within DoD; and
- the supplies or services clearly are within the scope of activities of the servicing agency and that agency normally contracts for those supplies or services for itself.

The head of agency may delegate this determination only as follows:

- If the servicing agency is required to comply with the Federal Acquisition Regulation (FAR), the written determination shall be prepared by the requesting agency and approved at a level no lower than SES/Flag/General Officer at the requesting activity. In the event the requesting activity does not have an SES/Flag/General Officer, the commander of that activity shall approve the written determination.

02661

- If the servicing agency is not covered by the provisions of chapter 137 of title 10, United States Code, or title III of the Federal Property and Administrative Services Act of 1949 and is not required to comply with the FAR, the written determination must be approved by the Senior Procurement Executive responsible for purchasing for the requesting agency.

To implement this policy statement and to comply with section 844 of the National Defense Authorization Act for Fiscal Year 1994, I am directing that the following actions be accomplished within 90 days:

- The Comptroller shall issue appropriate accounting and finance guidance requiring that documented determination and finding approvals be provided to accounting officers prior to committing funds on Economy Act orders.

- The Under Secretary of Defense for Acquisition and Technology (USD(A&T)) shall reissue DoDI 4000.19, "Interservice, Interdepartmental, and Interagency Support," to incorporate the policy statement and approval requirements as delineated above and in section 844. The DoDI shall also establish the requirement for a tracking system to report, on an annual basis to the USD(A&T), the number and associated dollars of Economy Act orders released outside of DoD.

- The USD(A&T) shall modify the Defense Federal Acquisition Regulation Supplement to define the role of the contracting officer in the approval process for Economy Act orders.

William J. Perry

DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT

SUBPART 217.5--INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

217.500 Scope of subpart.

Acquisitions from required sources, as described in FAR Part 8, are not orders under the Economy Act.

217.502 General.

If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

217.503--Deleted.

* * * * *

AFFARS 5317.5 - - INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

5317.502-90 Air Force requirements for placing orders.

(a) The Economy Act permits a federal agency to order supplies and services from another federal agency under certain conditions. The Act was designed to promote economy in Government operations by permitting efficient use of Government resources, even though they may be in another agency. This eliminates duplication of effort to build expertise in several agencies and allows a federal agency to take advantage of another federal agency's substantial experience in a specific area. The Economy Act also promotes the economy that results from consolidating requirements, i e , quantity discounts and other tangible or intangible benefits.

(b) Orders to purchase supplies or services under contracts entered into or administered by another agency (or for supplies/services produced in-house by the servicing agency), may be placed with other agencies under the Economy Act only if:

(1) The purchase is appropriately made under an existing contract that the servicing agency entered into, before the requesting agency's order was placed, in order to meet the requirements of the servicing agency for the same or similar goods or services;

(2) The servicing agency is better qualified to enter into or administer the contract for such goods or services (or is producing the good or service in-house) because they possess capabilities or expertise not available within the Air Force;

(3) The servicing agency is specifically authorized by law or regulation to purchase the goods and services on behalf of other agencies; or,

(4) The purchase is authorized by an executive order or specifically allowed elsewhere in the FAR

(c) The Air Force shall not place an order with another agency unless adequate supporting documentation, including a Determination and Finding, is prepared. This supporting documentation shall be prepared and developed by the requiring activity Supporting documentation and general information about the servicing agency's contract will be used in the preparation of the Determination and Findings (D&F) described in 5317.503-90.

(d) Interagency acquisitions are entered into by mutual agreement between the requesting agency and the servicing agency. If a requesting agency's

1

Atch 3

order will interfere with the servicing agency's ability to meet its mission, the servicing agency may reject the order The servicing agency can also reject the order if the requested supply or service is not within the scope of activities normally performed by the agency, within the scope of work of a particular contract, or if the order lacks adequate funding or required supporting data

(e) The Economy Act may not be used to circumvent the conditions and limitations imposed on the use of Government funds appropriated for the procurement (i e Expiration of funds at the end of a fiscal year) This applies to conditions and limitations affecting either the requesting or the servicing agency

(f) Orders for supplies or services may also be placed with other agencies under authorities other than the Economy Act. Orders placed under these authorities are not subject to the requirements of the Economy Act. These additional authorities include:

(1) Acquisitions from required sources, as described in FAR Part 8

(2) Coordinated acquisitions, prescribed in DFARS Part 208.

(3) Project Orders (41 U.S.C 23). Project orders are authorized for use when one government agency wishes to procure a supply or service from another government agency. DoD Instruction 7220.1 governs the use of project orders within the DoD. There are several conditions for use of the project order including the requirements that the servicing agency must be capable, be authorized, and produce the item or perform the service in-house. Only an incidental portion of a project order may be contracted-out by the servicing agency

(4) Other specific statutory authorities may be used to acquire supplies and services from another agency.

5317.503-90 Air Force determination requirements.

(a) The decision by an Air Force activity to place an interagency order under the Economy Act with an agency outside the Department of Defense, instead of contracting directly with a private source, shall be documented in a written Determination and Findings (D&F). The requiring activity shall prepare the D&F for approval at a level no lower than SES/Flag/General Officer in the requesting activity's chain of command. If an SES/Flag/General Officer in the requesting activity's chain of command is not

available at the installation, the D&F will be approved by the Wing or Installation Commander.

(b) The D&F shall be reviewed by the Air Force contracting officer who would normally have procured the requirement The contracting officer will review the proposed D&F and supporting documentation as a "business advisor" to the approval authority The content of the D&F will be compared to the policies and procedures contained in applicable FAR, DFARS, and AFFARS Subparts The ability of the local contracting office to procure the requirement under an Air Force contract will also be considered. Written comments will be provided to the approval authority to help in the decision to place the order with an agency outside the DoD

(c) When assessing the cost of obtaining the supplies or services through an interagency agreement, the Air Force shall consider any administrative fees charged by the servicing agency as part of the total cost of the order. In accordance with Section 844 of the National Defense Authorization Act for FY 1994, fees paid to the servicing agency shall not exceed the actual cost or, if actual costs are unknown, the estimated costs of entering into and administering the contract or other agreement under which the order is filled The administrative cost of providing the supplies or services by normal Air Force contracting procedures shall also be considered.

(d) The requiring activity shall include with the Military Interdepartmental Procurement Request (MIPR) any documentation required to support the D&F. Examples include independent cost estimates and documentation of urgency of need Copies of the documentation shall be retained with the requiring activity's file copy of the MIPR and provided to the servicing agency upon their request

(e) If the work was previously performed by Government personnel and will now be performed by a contractor under a servicing agency's contract (or if the work was previously performed under a contract and will now be performed in-house by the servicing agency), the requiring activity must have complied with the requirements of FAR Subpart 7 3, Contractor versus Government Performance This shall be documented in the D&F

(f) The contracting office shall retain a record copy of each Economy Act D&F in a central file.

3

(g) The requiring activity shall prepare a D&F substantially the same as the model shown below The D&F may be tailored to appropriately address the instant requirement

Model Determination and Findings

1 I have reviewed the requirement for (description of supply or service to be procured) that (Air Force requiring activity) intends to place with (Agency) as an interagency order under the Economy Act. My review produced the following findings:

a The proposed acquisition is authorized under the authority of the Economy Act.

b. The Air Force is legally authorized to acquire the supplies or services

c Adequate funds are available.

d. The action does not conflict with any other agency's authority or responsibility. Specifically, a review of Part 8 of the FAR, Part 208 of the DFARS, or other part as applicable, reveals that the responsibility for acquiring this supply or service has not been assigned to an agency other than the one proposed

e The supplies or services cannot be provided as conveniently and more economically by private contractors under an Air Force contract

f The servicing agency has unique expertise or ability not available within the Department of Defense

g. The servicing agency will accept the order and can satisfy the requirement.

h The supplies or services are clearly within the scope of activities of (Agency) and that agency normally contracts for (and/or produces in-house) those supplies or services for itself.

i The cost to the Air Force for the requirement, including the administrative fees charged by (Agency) appears to be reasonable. The fees proposed to be paid to the servicing agency do not exceed the servicing agency's actual cost (or estimated costs if actual costs are unknown) of entering into and administering the contract or other agreement under which the order is filled.

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j The contract administration procedures related to (Agency)'s contract are adequate for Air Force requirements (or the order contains additional contract administration requirements that will result in contract administration procedures that comply with Air Force and DoD regulations and policies.)

k. All approvals and authorizations required by Air Force and/or DoD policies for acquiring the supplies or services have been obtained.

l The requirement is a bona-fide need of the Air Force

(Add the following if the work will be performed by a Federally Funded Research and Development Center:)

m The work will be performed by a Federally Funded Research and Development Center (FFRDC). Performance by the FFRDC will not place the servicing agency and its FFRDC in direct competition with private sources.

(Add the following if the work was previously performed by Government personnel and will now be performed by a contractor under a servicing agency's contract (or if the work was previously performed under a contract:))

n The requiring activity has complied with the requirements of FAR Part 7 3, Contractor versus Government Performance

2 Given the findings outlined above, I hereby determine that it is in the best interest of the Government to place an order for (requirement) with (Agency) under the authority of the Economy Act

5317.504-90 Air Force Ordering Procedures.

(a) The Air Force shall include complete contract administration requirements and contract audit responsibilities appropriate for the type of contract and scope of work on all orders placed outside of the Department of Defense

(b) If it is necessary for the servicing agency to award a contract or modify an existing contract to accommodate the Air Force's order, the Air Force requiring activity shall supply all supporting data necessary to prepare the required contract documentation.

(c) The Air Force requiring activity shall also provide special contract terms or other requirements applicable to Air Force funds. This includes

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information such as special funds tracking and reporting requirements, additional contract administration requirements, special delivery or packaging instructions, a copy of the executed determination, and other supporting documents

(d) Additional D&Fs are not required to incrementally fund an existing order or to administratively modify an order, if the scope of work remains the same throughout the order's period of performance

(e) The servicing agency is responsible for complying with the Competition in Contracting Act when it awards the original contract. Therefore, the requesting agency is not required to compete the requirement between potential servicing agencies

(f) Relationships with a servicing agency can involve one order or many orders over a long period of time. Where the Air Force desires to enter into a long term, continuing relationship with a servicing agency under the authority of the Economy Act, the requiring activity should ensure that the resulting interagency agreement includes, in addition to any other requirements of this section, the following:

(1) Enhanced management controls, as appropriate for the circumstances, to ensure that the interagency agreement is only used for its intended purpose(s). Such controls shall include a mechanism for periodic reassessment of the interagency agreement, at intervals not exceeding every five years, to determine its continuing need and relevancy. The review shall be conducted by the same personnel that review similar requirements that are being separately procured by the Air Force. The reassessment shall include review by a contracting officer to ensure that the agreement complies with appropriate business practices

(2) A well-defined scope of work that includes clear objectives, work areas, and, where appropriate, reports and deliverables; and,

(3) A definitive term of agreement

(g) The following policy applies to orders placed with the Air Force as a servicing agency under the Economy Act

(1) The Air Force is not required to accept the requesting agency's order, if accepting the order will prevent the Air Force from fulfilling its mission or the requesting agency fails to provide appropriate supporting information, funding, and evidence of an appropriate level of requesting agency approval

(2) The Air Force shall process the order in accordance with normal internal policies and procedures for awarding and modifying contracts This includes complying with the Competition in Contracting Act.

(3) The Air Force contracting officer shall execute and issue all D&Fs or J&As required by Air Force regulations to place the order on contract, just as if the requirement was generated by an Air Force activity.

(4) Before allowing a non-sponsoring agency to use an FFRDC, the Air Force shall ensure that the work falls within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow when using other than full and open competition.) If the order does not conform with these requirements, the Air Force may not place the order with the FFRDC. The order also may not be placed with the FFRDC if the sponsoring agreement does not permit work from other than the sponsoring agency.

5317.590 Orders with agencies not covered by the FAR. In accordance with Section 844 of the National Defense Authorization Act for FY 1994, orders may not be placed with agencies not required to comply with the FAR unless the purchase is approved in advance by the Air Force Senior Acquisition Executive (SAF/AQ). This approval authority has been delegated to the Air Force Deputy Assistant Secretary (Contracting), SAF/AQC Approvals will be accomplished by forwarding the D&F (and necessary supporting documentation) through SAF/AQCO for endorsement by the Air Force Deputy Assistant Secretary (Contracting), SAF/AQC Prior to submittal to SAF/AQCO, the D&F must be reviewed by an Air Force contracting officer and coordinated by the SES/Flag/General Officer in the requiring activity's chain of command (See 5317 503-90(a)).

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 1100TH NATIONAL CAPITAL REGION SUPPORT GROUP (AFDW)

17 May 94

MEMORANDUM FOR NOAA/Environmental Research Laboratories (ERL)
325 Broadway, Mail Code R/EF (Jeanne Schump)
Boulder, CO 80303

FROM: AFDW/FM
1430 Air Force Pentagon
Washington DC 20330-1430

SUBJECT: Additional Funding Withdrawal on Military Interdepartmental Purchase Request (MIPR) N93-051 dated 7 Dec 92

Reference Draft DoDIG Audit Report, dated 22 Apr 94 on Procurements by The Non-Acoustic Anti-Submarine Warfare Program Through the Environmental Technologies Laboratory (DoDIG Project No 2CH-5003.04)

In response to reference audit, Appendix C - Summary of Potential Benefits Resulting From Audit indicated through economy and efficiencies, fees should be returned in the amount of $345,000. The report also went on to say the exact amount to be returned will be determined after Environmental Technologies Laboratory agrees to return the funds.

Based on above direction, request $345,000 be returned against MIPR N93-051 dated 7 Dec 92. Upon your reconciliation any balance remaining should also be returned. If questions arise, please contact my Director, Financial Analysis, Mr. Keith Payne on (703)697-2991.

GEORGE V. CAVA
Financial Management and Comptroller

Atch 3.

Audit Team Members

Paul J. Granetto
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