

# Inspector General

United States  
Department of Defense



Army Contracting Command - Aberdeen Proving  
Ground Contracting Center's Management of  
Noncompetitive Awards Was Generally Justified

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## Acronyms

ACC-APG  
FAR  
FPDS-NG  
J&A

Army Contracting Command – Aberdeen Proving Ground  
Federal Acquisition Regulation  
Federal Procurement Data System – Next Generation  
Justification and Approval



**INSPECTOR GENERAL**  
**DEPARTMENT OF DEFENSE**  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500

October 19, 2012

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY**

**SUBJECT: Army Contracting Command – Aberdeen Proving Ground Contracting  
Center’s Management of Noncompetitive Awards Was Generally Justified  
(Report No. DODIG-2013-003)**

We are providing this report for your information and use. U.S. Army Contracting Command – Aberdeen Proving Ground Contracting Center, personnel adequately justified contracts as sole source for 28 of the 30 noncompetitive contracts we reviewed. However, contracting personnel did not provide adequate justification for the noncompetitive award of two contracts with an obligated value of about \$29 million. This report is the sixth in a series of audit reports on DoD contracts awarded without competition. We considered management comments on a draft of this report when preparing the final report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077).

*Jacqueline L. Wicecarver*  
Jacqueline L. Wicecarver  
Assistant Inspector General  
Acquisition and Contract Management





# Results in Brief: Army Contracting Command – Aberdeen Proving Ground Contracting Center’s Management of Noncompetitive Awards Was Generally Justified

## What We Did

Our objective was to determine whether DoD noncompetitive contract awards were properly justified as sole source at the Army Contracting Command – Aberdeen Proving Ground (ACC-APG) Contracting Center, Aberdeen, Maryland. We reviewed 30 noncompetitive contracts with a combined obligated value of about \$529.2 million that ACC-APG contracting personnel awarded in FYs 2009 and 2010.

## What We Found

ACC-APG contracting personnel adequately justified contracts as sole source for 28 of the 30 noncompetitive contracts. However, contracting personnel did not provide adequate justification for the noncompetitive award of two contracts. ACC-APG contracting personnel did not:

- approve the Justification and Approval (J&A) until 462 days after contract award for one contract because of funding and organizational changes; or
- produce evidence that a J&A was completed or that market research was adequately documented for one contract. We made multiple attempts to obtain the contract documentation; however, ACC-APG contracting personnel did not provide an adequate reason for why the documentation was not included in the contract file.

In addition, ACC-APG contracting personnel did not include one or both of the statements required in nine contracts to ensure that interested sources were aware of actions they can take to compete for the contracts.

As a result, ACC-APG contracting personnel did not approve the J&A within a reasonable

time after contract award as required by the Federal Acquisition Regulation (FAR). Also, ACC-APG contracting personnel did not have adequate documentation justifying the award of one contract as sole source. In addition, interested sources may not have been aware of actions they could have taken to compete for nine contract awards because ACC-APG contracting personnel did not follow applicable FAR guidance.

## What We Recommend

We recommend that the Executive Director, ACC-APG:

- issue guidance establishing the number of days that a J&A must be approved within when a contract is awarded before approval of a J&A, or require the contracting officer to document the reason(s) for the delay;
- issue a memorandum emphasizing the importance of completing a J&A in accordance with FAR 6.303, adequately performing and documenting market research in accordance with FAR part 10, and including the statements required by FAR 5.207; and
- review the performance of the contracting officer who awarded noncompetitive contract W15P7T-10-C-S225 to determine whether administrative action is warranted.

## Management Comments and Our Response

The Army agreed with all four of our recommendations. We consider the Army’s comments to be responsive. No further comments are required.

## Recommendations Table

| <b>Management</b>   | <b>Recommendations<br/>Requiring Comment</b> | <b>No Additional<br/>Comments Required</b> |
|---|--|--|
| Executive Director, U.S.<br>Army Contracting Command<br>– Aberdeen Proving Ground |  | 1, 2, 3, and 4                             |

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# Introduction

## Objective

Our objective was to determine whether DoD noncompetitive contract awards were properly justified as sole source at the Army Contracting Command – Aberdeen Proving Ground (ACC-APG)<sup>1</sup> Contracting Center, Aberdeen Proving Ground, Maryland. This report is the sixth in a series of reports on DoD contracts awarded without competition. See Appendix A for the scope and methodology and prior coverage related to the objective.

## Background

Full and open competition is the preferred method for Federal agencies to award contracts. Section 2304, title 10, United States Code requires contracting officers to promote and provide for full and open competition when soliciting offers and awarding contracts. According to the Government Accountability Office, promoting competition in Federal contracting presents the opportunity for significant cost savings and can help improve contractor performance, prevent fraud, and promote accountability. Contracting officers may use procedures other than full and competition under certain circumstances. However, each contract awarded without providing for full and open competition must conform to policies and requirements in Federal Acquisition Regulation (FAR) Subpart 6.3, “Other Than Full and Open Competition.”

FAR subpart 6.3 prescribes the policies and requirements for contracting without full and open competition. FAR Part 10, “Market Research,” prescribes policies and requirements for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. FAR Subpart 5.2, “Synopsis of Proposed Contract Actions,” establishes policy to ensure agencies make notices of proposed contract actions available to the public. Appendix B provides additional explanation on FAR subpart 6.3, FAR part 10, and FAR subpart 5.2 requirements.

## ACC-APG Contracting Center

ACC-APG Contracting Center is a full service, life-cycle acquisition organization, which conducts market research and the solicitation, award, and administration of contracts, grants, cooperative agreements, and other transactions according to the ACC-APG Contracting Center Web site. The Web site states that ACC-APG Contracting Center buys soldier equipment as well as laboratory equipment, communications equipment, and chemical, biological, and nuclear items. ACC-APG Contracting Center also buys services, including research and development services; and professional, administrative,

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<sup>1</sup> This audit specifically reviewed contracts awarded by the U.S. Army Communications-Electronics Command and the U.S. Army Research, Development and Engineering Command, Aberdeen Proving Ground, Maryland.

and management services. In terms of contract support, ACC-APG Contracting Center supports the U.S. Army Research, Development and Engineering Command and many U.S. Army and DoD customers.

## **Contracts Reviewed**

Our Federal Procurement Data System – Next Generation (FPDS-NG) queries identified that ACC-APG contracting personnel awarded 147 noncompetitive C and D type contracts<sup>2</sup> with an obligated value of about \$2.9 billion during FYs 2009 and 2010. We selected a nonstatistical sample of 37 contracts, totaling about \$562.1 million, to review. We excluded 7 contracts from our sample of 37 contracts because:

- two contracts were awarded under FAR Subpart 13.5, “Test Program for Certain Commercial Items,” and we did not review contracts awarded under this exception;
- two contracts were awarded for Foreign Military Sales;
- one contract was awarded under FAR Subpart 8.6, “Acquisition from Federal Prison Industries, Inc.,” and we did not review contracts awarded under this exception;
- one contract was transferred to Defense Logistics Agency Troop Support and the contract documentation was not available for review; and
- one contract was located at another installation in Orlando, Florida, and was not available for review.

After we excluded the 7 contracts, we reviewed 30 contracts with an obligated value of about \$529.2 million. See Appendix C for additional details on the noncompetitive contracts reviewed.

## **Review of Internal Controls**

DoD Instruction 5010.40, “Managers’ Internal Control Program (MICP) Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. ACC-APG Contracting Center’s internal controls over its processes for issuing the noncompetitive contract awards we reviewed were effective as they applied to the audit objective.

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<sup>2</sup> Defense Federal Acquisition Regulation Supplement 204.7003, “Basic PII Number,” defines C type contracts as “[c]ontracts of all types except indefinite delivery contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD” and D type contracts as “[i]ndefinite delivery contracts.”

## **Finding. Contract Awards Were Generally Justified as Sole Source**

ACC-APG contracting personnel adequately justified contract awards as sole source for 28 of the 30 noncompetitive contracts with an obligated value of about \$529.2 million. ACC-APG contracting personnel documented compliance with content requirements in FAR 6.303-2, “Content,” and obtained approval from the proper official as required by FAR 6.304, “Approval of the Justification,” for the 29 Justification and Approvals (J&As) we reviewed.<sup>3</sup> In addition, ACC-APG contracting personnel had an approved J&A before awarding 26 noncompetitive contracts, as required by FAR 6.303, “Justifications.” However, contracting personnel did not provide adequate justification for the noncompetitive award of two contracts. Specifically, for the two noncompetitive contracts, with an obligated value of about \$29 million, contracting personnel did not:

- approve the J&A for other than full and open competition until 462 days after contract award for one contract because of funding problems and organizational changes; or
- produce evidence that a J&A was completed or that market research was adequately documented for one contract. We made multiple attempts to obtain the contract documentation; however, ACC-APG contracting personnel did not provide an adequate reason for why they did not include the documentation in the contract file.

ACC-APG contracting personnel also did not include one or both of the statements required<sup>4</sup> in 9 of the 30 contracts to ensure that interested sources were aware of actions they could take if interested in competing for noncompetitive contracts because ACC-APG contracting personnel did not follow applicable FAR guidance.

As a result, ACC-APG contracting personnel did not approve the J&A within a reasonable time after contract award, as required by FAR 6.303-1(d), “Requirements.” Also, ACC-APG contracting personnel did not have adequate documentation justifying the award of one contract as sole source, for which contracting personnel may have been able to award the noncompetitive contract using full and open competition at a lower price if additional sources were available to meet the Government’s needs. In addition, interested sources may not have been aware of actions they could have taken to compete for nine contract awards because ACC-APG contracting personnel did not follow applicable guidance in FAR 5.207, “Preparation and Transmittal of Synopses.”

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<sup>3</sup> ACC-APG contracting personnel did not provide a J&A for contract W15P7T-10-C-S225; therefore, we reviewed 29 J&As.

<sup>4</sup> FAR 5.207(c)(14) requires a statement in the synopsis identifying the intended source and justifying the lack of competition. FAR 5.207(c)(15) requires a statement in the synopsis that all responsible sources may submit capability statements, proposals, or quotations to be considered.

## **Contracting Personnel Adequately Supported 28 Sole-Source Determinations**

ACC-APG contracting personnel adequately supported the use of other than full and open competition in the J&As for 28 of the 30 contracts. ACC-APG contracting personnel

*ACC-APG contracting personnel adequately supported the use of other than full and open competition in the J&As for 28 of the 30 contracts.*

documented the required elements of FAR 6.303-2 in the 29 J&As. ACC-APG contracting personnel obtained approval from the proper official for each of the 29 J&As and 26 J&As were approved before contract award.

FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition," lists the seven exceptions permitting contracting without full and open competition.

A contracting officer must not begin negotiations for or award a sole-source contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification.

ACC-APG contracting personnel appropriately documented the market research conducted or provided adequate justification in the contract file when market research was not conducted for 29 of the 30 contracts. ACC-APG contracting personnel performed market research techniques identified in FAR Part 10, "Market Research," such as conducting Internet searches and contacting individuals in the industry for 26 contract awards that had adequate support documented in the contract file.

## **Contracting Personnel Complied With J&A Content Requirements**

ACC-APG personnel documented all the required J&A content requirements in the 29 J&As available for review. FAR 6.303-2 requires each J&A to contain sufficient facts and rationale to justify the use of the specific authority cited. FAR 6.303-2 identifies the minimum information that must be included in a J&A. For example, FAR 6.303-2 requires information, such as a description of the supplies or services required, to meet the agency's needs, the estimated value, and the statutory authority permitting other than full and open competition.

## ***Contracting Personnel Appropriately Applied the Sole-Source Authority Cited***

ACC-APG contracting personnel applied the appropriate authority permitting other than full and open competition in the 29 J&As<sup>5</sup> reviewed. ACC-APG contracting personnel awarded:

- 18 contracts citing the authority of FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”;
- 10 contracts citing the authority of FAR 6.302-2, “Unusual and Compelling Urgency”; and
- 2 contracts citing the authority of FAR 6.302-3, “Industrial mobilization; engineering, developmental, or research capability; or expert services.”

For the 18 contracts that cited the authority of FAR 6.302-1, ACC-APG contracting personnel provided adequate rationale in the J&A as to why only one contractor could provide the required product or service and why only that product or service could meet the Government’s requirements. For example, in the J&A for contract W15P7T-09-D-K202, ACC-APG contracting personnel explained a contract was needed for the repair and overhaul of Klystron Tubes. FAR 6.302-1(b) states the authority may be appropriate when unique supplies or services are available from only one source or one supplier with unique capabilities. ACC-APG contracting personnel explained in the J&A that the contractor is the original equipment manufacturer of the Klystron Tubes and is the only source with the detailed technical data needed to perform the required repair and overhaul services. Therefore, ACC-APG contracting personnel adequately justified the sole source award of the contract in accordance with FAR 6.302-1.

For 9 of the 10 contracts that cited the authority of FAR 6.302-2, ACC-APG contracting personnel provided adequate rationale in the J&A that supported the unusual and compelling urgency of the acquisition. For example, in the J&A for contract W911SR-09-C-0028, ACC-APG contracting personnel explained the immediate need of 3-Stage Portable Air-cooled High Pressure Compressors because the Consequence Management Response Force teams were currently ill-equipped for the Joint Task Force Civil Support mission because of the lack of these compressors. ACC-APG contracting personnel also stated in the J&A that a delay in award could result in serious injury, loss of life, and/or inestimable financial harm to the Government in the event of a chemical, biological, radiological, nuclear, and high-yield explosive situation. FAR 6.302-2(c) imposes further limitations on contract awards citing this authority.

Contracting personnel are required by FAR 6.302-2(c) to request offers from as many potential sources as practicable. For contract W911SR-09-C-0028, the ACC-APG

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<sup>5</sup> ACC-APG contracting personnel did not provide a J&A for contract W15P7T-10-C-S225; therefore, we reviewed 29 J&As. ACC-APG contracting personnel awarded contract W15P7T-10-C-S225 citing the authority of FAR 6.302-2.

contracting personnel explained in the J&A that no other contractor could provide the compressor. Additionally, in the J&A, ACC-APG contracting personnel stated that the tailored Joint Nuclear Biological Chemical Reconnaissance System Increment 2 systems for military units tasked as Consequence Management Response Force teams are currently using this particular compressor, which was identified as being the best suited to the mission and incorporated into the standardization kit for Consequence Management Response Force use.

ACC-APG contracting personnel awarded two contracts that cited the authority of FAR 6.302-3. For both contracts, ACC-APG contracting personnel provided adequate rationale in the J&A that supported using FAR 6.302-3. In the J&A for contract W15P7T-09-C-C303, ACC-APG contracting personnel explained that a contract was needed for weather/environmental intelligence software and support for the Distributed Common Ground System-Army, including the Integrated Meteorological System and Weather Analysis Tool. FAR 6.302-3(a) allows other than full and open competition when it is necessary to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. ACC-APG contracting personnel explained in the J&A that it is necessary to maintain the capability because failure to obtain support from the university laboratory would result in an inability to design and implement unique weather applications needed for the Distributed Common Ground System-Army in support of Operation Enduring Freedom/Operation Iraqi Freedom and Overseas Contingency Operations. FAR 6.302-3(b) goes on to state the authority may be appropriate to establish or maintain essential capability for engineering or developmental work calling for the practical application of investigative findings or theories of a scientific or technical nature. ACC-APG contracting personnel explained in the J&A that the application is essential to provide critical information concerning severe weather impacts on personnel, weapon systems and components, and mission operations. They also explained in the J&A that the university laboratory has the experience and expertise in the Army-unique meteorological applications for data collection, forecasting, and modeling.

### ***Contracting Personnel Generally Obtained Appropriate Approval for Sole-Source Contract Awards***

ACC-APG contracting personnel obtained approval from the appropriate official on the 29 J&As. FAR 6.304, "Approval of the Justification," defines the proper approval authority at various thresholds for the estimated dollar value of the contract including options. For FYs 2009 and 2010, the FAR authorized the procuring contracting officer to provide the final approval for proposed contract actions up to \$550,000. The FAR also authorized the competition advocate of the procuring activity to provide the final approval for proposed contract actions of more than \$550,000 but not exceeding \$11.5 million. The contracting officer appropriately approved four J&As with an estimated value of \$550,000 or less. The competition advocate appropriately approved 10 J&As, valued at more than \$550,000 but not exceeding \$11.5 million. The Principal Assistant Responsible for Contracting, or a civilian in a position above GS-15 under the general schedule, appropriately approved 14 J&As, valued at more than \$11.5 million,

but not exceeding \$78.5 million. The Assistant Secretary of the Army (Acquisition, Technology, and Logistics), approved the remaining J&A, valued at more than \$78.5 million, as required by FAR 6.304.

The designated official approved the J&A before contract award for 26 of the 29 J&As as required by FAR 6.303, “Justifications.” However, FAR 6.303 allows justifications for contracts awarded under FAR 6.302-2 to be prepared and approved within a reasonable time after contract award when preparation and approval before award would unreasonably delay the acquisitions. ACC-APG contracting personnel awarded three contracts using the authority FAR 6.302-2 that did not have an approved J&A in place at the time of contract award. ACC-APG contracting personnel awarded contract W15P7T-09-C-C014, and 21 days later the appropriate official approved the J&A. ACC-APG contracting personnel awarded contract W15P7T-09-C-N201, and 70 days later, the appropriate official approved the J&A. Although ACC-APG contracting personnel awarded these contracts before the designated official approved the J&As, they were in compliance with FAR 6.303. ACC-APG contracting personnel awarded contract W15P7T-10-C-S230, and 462 days later the appropriate official approved the J&A. However, 462 days is not a reasonable amount of time and therefore not in compliance with FAR 6.303. See Appendix D for additional information on justifications and J&A content and approvals.

### ***Contracting Personnel Appropriately Documented the Market Research Efforts and the Results***

ACC-APG contracting personnel appropriately documented the market research conducted or provided adequate justification in the contract file when market research was not conducted for 29 of the 30 noncompetitive contracts in accordance with FAR part 10. FAR part 10 states that agencies should document the results of market

*ACC-APG contracting personnel appropriately documented the market research conducted or provided adequate justification in the contract file when market research was not conducted for 29 of the 30 noncompetitive contracts...*

research in a manner appropriate to the size and complexity of the acquisition. FAR 10.002, “Procedures,” states the extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. ACC-APG contracting personnel performed market research techniques identified in FAR part 10 for 26 of the 30 contract awards that had adequate support documented in the contract file. For example, ACC-APG contracting

personnel conducted Internet searches and contacted knowledgeable individuals in industry for the 26 noncompetitive awards with estimated J&A values ranging from \$290,540 to about \$2.84 billion. ACC-APG contracting personnel documented the techniques performed and the subsequent results in each of the 26 contract files.

ACC-APG contracting personnel did not conduct market research in 3 of the 30 instances; however, contracting personnel provided adequate documentation in the contract file to support the 3 determinations. For example, ACC-APG contracting personnel did not conduct market research for contract W911SR-10-C-0037 because

none of the other companies capable of performing the same type of work possessed the technical data package to begin or complete the work to build the system. Therefore, the time and substantial cost associated to bring any of these companies up to speed to meet this urgency was not possible. ACC-APG contracting personnel did not include adequate documentation to show compliance with FAR part 10 in the contract file to support 1 of the 30 sole-source determinations, specifically contract W15P7T-10-C-S225.

For contract W15P7T-10-C-S225, ACC-APG contracting personnel did not include adequate documentation to show compliance with FAR part 10. ACC-APG contracting personnel included a discussion of the market research conducted in the memorandum for urgent requirements included in the contract file. In the memorandum for urgent requirements, the Project Manager for Night Vision/Reconnaissance, Surveillance & Target Acquisition stated that Government technical experts made numerous calls and determined that only one contractor can meet the immediate need because the Government does not own the technical data package for the proprietary commercial items. The Project Manager for Night Vision/Reconnaissance, Surveillance & Target Acquisition did not identify the companies or individuals they contacted to determine that only one contractor could meet the Government's requirements. In addition, the Project Manager for Night Vision/Reconnaissance, Surveillance & Target Acquisition did not include any dates or time frames of when market research was conducted. Further, ACC-APG contracting personnel did not include any additional information on market research in the contract file or provide an adequate reason for why they did not include the market research documentation in the contract file. See Appendix E for additional information on the market research ACC-APG contracting personnel conducted.

## **Contracting Personnel Awarded Two Noncompetitive Contracts Without Proper Justification**

ACC-APG contracting personnel did not adequately justify the noncompetitive contract award for 2 of the 30 noncompetitive contracts. ACC-APG contracting personnel did not approve the J&A until 462 days after the contract award for one contract because of funding problems and organizational changes. For the other contract, ACC-APG contracting personnel did not produce evidence that a J&A was completed or that market research was adequately documented. In addition, ACC-APG contracting personnel did not provide an adequate reason for why they did not include the documentation in the contract file.

### ***Contract W15P7T-10-C-S230***

ACC-APG contracting personnel did not approve the J&A for contract W15P7T-10-C-S230 until 462 days after the contract award because of funding problems and organizational changes. ACC-APG contracting personnel awarded contract W15P7T-10-C-S230 on September 29, 2010, with a not to exceed amount of \$51,662,496 for the acquisition of 130 Cerberus-Lite Systems. According to FAR 6.303-1(d), justifications for contracts awarded under the authority of FAR 6.302-2, may be prepared and approved within a reasonable time after contract award when preparation and approval before award would unreasonably delay the acquisitions.

ACC-APG contracting personnel awarded contract W15P7T-10-C-S230 using the authority FAR 6.302-2, so approval of the J&A after contract award is permitted. However, 462 days is not a reasonable amount of time to have the J&A approved after contract award as required by FAR 6.303-1(d). The Executive Director, ACC-APG, should issue guidance establishing the number of days that a J&A must be approved within when a contract is awarded before approval of a justification using the authority cited at FAR 6.302-2, or, if that timeframe will not be met, require the contracting officer to document in the contract file before the approval deadline the reason(s) for any additional delay.

*However, 462 days is not a reasonable amount of time to have the J&A approved after contract award...*

The ACC-APG contracting officer explained the J&A was not approved in a reasonable period of time because the contract was originally for an immediate requirement of 241 systems. The ACC-APG contracting officer explained funding was not available for all 241 systems. The Deputy Chief of Staff requested a reprogramming of funds that was approved by Congress in July 2010. However, sufficient funds were reprogrammed to procure only the 130 systems purchased in this contract action. The ACC-APG contracting officer revised and resubmitted the J&A for the 130 systems for which funding was available. As of August 2012, ACC-APG contracting personnel had not ordered the additional 111 systems under this contract that were mentioned in the original J&A.

In addition, the ACC-APG contracting officer explained that at the same time, the J&A was resubmitted for approval, the U.S. Army Communications-Electronics Command and the U.S. Army Research, Development and Engineering Command merged together and new leadership assumed responsibility, including the Principal Assistant Responsible for Contracting, competition advocate, and legal personnel. Therefore, new personnel reviewed the revised J&A. The ACC-APG contracting officer explained that the realignment efforts and the fact that the J&A was being carefully reviewed because of the lack of funds and personnel turnover caused the J&A review process to be delayed even further.

### **Contract W15P7T-10-C-S225**

ACC-APG contracting personnel were unable to produce evidence that a J&A was completed or that market research was adequately documented for contract W15P7T-10-C-S225. ACC-APG contracting personnel awarded contract W15P7T-10-C-S225 on September 28, 2010, using FAR 6.302-2 in the amount of \$4,052,277 to procure Integrated Base Defense System of Systems Maintenance Kits to reduce significant loss of life and injury to the warfighter. When asked, ACC-APG contracting personnel were not able to provide an adequate reason for why they did not include the documentation in the contract file. ACC-APG contracting personnel awarded contract W15P7T-10-S225 without including a J&A or adequate market research documentation in the contract file and did not provide an adequate reason for not including this documentation. Therefore, ACC-APG contracting personnel did not have adequate documentation justifying the award of the contract as sole source for which

contracting personnel may have been able to award the noncompetitive contract using full and open competition at a lower price if additional sources were available to meet the Government's needs.

ACC-APG contracting personnel did not include a J&A in the file for contract W15P7T-10-C-S225 or provide an adequate reason for why they did not include a J&A as part of the contract documentation. FAR 6.303 requires contracting officers to document the justification of noncompetitive contract actions before beginning negotiations. Additionally, FAR 6.303 permits the contracting officer to prepare the J&A and have it approved within a reasonable time after contract award for contracts awarded under FAR 6.302-2. ACC-APG contracting personnel awarded contract W15P7T-10-C-S225 under the authority cited at FAR 6.302-2 in September 2010, but, as of July 2012, did not include documentation of a completed J&A in the contract file. According to the contracting officer, the J&A should have been documented in the Army Paperless Contract File system; however, we did not find evidence of a completed J&A in the Army Paperless Contract File system. The contracting officer also stated that a contract specialist uploaded the electronic contract documentation to the Army Paperless Contract File system and the J&A should have been added as part of the electronic contract documentation. As of July 2012, we made numerous attempts to obtain the J&A from the contracting officer and the division chief; however, they were unable to provide a reason for why the J&A was not documented in the contract file.

ACC-APG contracting personnel awarded contract W15P7T-10-C-S225 without adequately documenting the market research conducted. FAR part 10 states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition. The ACC-APG contracting personnel's description of the market research conducted included the "Memorandum for US Army Contracting Command, CECOM Contracting Center, Subject: Urgent Requirement for Base Expeditionary Targeting and Surveillance Systems – Combined Integrated Base Defense System of Systems Maintenance Kits in Support of Operation Iraqi Freedom/Operation New Dawn," September 22, 2010, signed by the Project Manager for Night Vision/Reconnaissance, Surveillance, & Target Acquisition stated that Government technical experts made numerous calls and determined that only one contractor can meet the Government's urgent requirements. While the memorandum included a discussion of the market research conducted, the Project Manager for Night Vision/Reconnaissance, Surveillance, & Target Acquisition did not identify the companies the Government's technical experts contacted to determine that only one contractor could meet the Government's requirements. The Executive Director, ACC-APG, should emphasize the importance of completing a J&A, in accordance with FAR 6.303, and adequately performing and documenting market research, in accordance with FAR part 10, for all noncompetitive awards using FAR 6.302. The Executive Director, ACC-APG, should also review the performance of the contracting officer who awarded noncompetitive contract W15P7T-10-C-S225 to determine whether administrative action is warranted.

## **Contracting Personnel Did Not Comply With FAR 5.207 for Nine Noncompetitive Contracts**

ACC-APG contracting personnel did not follow applicable guidance by not including one or both of the statements required by FAR 5.207 in the synopsis for 9 of the 30 noncompetitive contracts, possibly excluding sources that may be interested in the noncompetitive contracts. In addition, ACC-APG contracting personnel used an exception to not synopsise a contract action that should have been synopsized. FAR 5.207(c)(14)<sup>6</sup> requires the issuance of synopsis of intended noncompetitive contract awards to identify the intended source and a statement of the reason justifying the lack of competition. FAR 5.207(c)(15)(ii) requires the synopsis of noncompetitive contract actions using FAR 6.302-1 as the authority cited to include a statement that “all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency.” For proposed contract actions made under FAR 6.302-2 through 6.302-7, FAR 5.207(c)(15)(i), requires the synopsis to include a statement that “all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.” Because ACC-APG contracting personnel did not include one or both of the statements required by FAR 5.207 in nine synopses, interested sources may not have been aware of actions they could have taken to compete for the awards.

ACC-APG contracting personnel did not include a copy of the synopsis in the contract file for contract W15P7T-10-C-S228. Instead, they included a memorandum in the contract file stating the contracting officer need not submit a synopsis in accordance with FAR 5.202(a)(2). The exception listed at FAR 5.202(a)(2) states that contracting officers need not submit a synopsis when the proposed contract action is made under the conditions described in FAR 6.302-2, “Unusual and Compelling Urgency.” However, ACC-APG contracting personnel awarded contract W15P7T-10-C-S228 under FAR 6.302-1, which is “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements,” and, therefore, should have synopsized the contract action. ACC-APG contracting personnel should include the statements required by FAR 5.207 in the synopsis of contract actions made under FAR 6.302 to ensure that interested sources are aware of actions they can take if interested in competing for the contract. The table on page 12 identifies the nine noncompetitive contracts that did not include the statement or statements required by FAR 5.207(c)(14) and/or (15).

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<sup>6</sup> Effective May 31, 2011, the requirements for FAR 5.207(c)(14), FAR 5.207(c)(15)(i), and FAR 5.207(c)(15)(ii) were moved to FAR 5.207(c)(15), FAR 5.207(c)(16)(i), and FAR 5.207(c)(16)(ii), respectively.

**Table. Contracts Not Compliant With FAR 5.207(c)(14) and/or FAR 5.207(c)(15)**

| <b>Contract</b>  | <b>Synopsis Did Not Include the Statement Required by FAR 5.207(c)(14)</b> | <b>Synopsis Did Not Include the Statement Required by FAR 5.207(c)(15)</b> |
|------------------|--|--|
| W911SR-10-C-0031 | ✓  | ✓  |
| W15P7T-09-D-K202 | ✓  | ✓  |
| W911SR-10-C-0043 | ✓  |  |
| W911SR-09-D-0008 | ✓  |  |
| W911SR-09-D-0009 |  | ✓  |
| W91CRB-10-D-0029 | ✓  |  |
| W15P7T-10-D-C007 |  | ✓  |
| W15P7T-09-D-H213 |  | ✓  |
| W15P7T-09-D-H201 | ✓  | ✓  |

## **Conclusion**

ACC-APG contracting personnel adequately justified contracts as sole source for 28 of the 30 noncompetitive contracts reviewed. ACC-APG contracting personnel complied with FAR 6.303-2 requirements, appropriately applied the authority cited, and obtained approval from the proper personnel for the 29 J&As reviewed. ACC-APG contracting personnel had an approved J&A before awarding 26 noncompetitive contracts as required by FAR 6.303. Further, ACC-APG contracting personnel generally documented compliance with FAR part 10. However, ACC-APG contracting personnel did not include 1 or both of the statements required by FAR 5.207 in the synopsis for 9 of the 30 noncompetitive contracts and used an exception to not synopsise a contract action that should have been synopsized.

Contracting personnel did not provide adequate justification for the noncompetitive award of two contracts with an obligated value of about \$29 million. ACC-APG contracting personnel did not approve the J&A until 462 days after contract award for one contract because of funding problems and organizational changes or did not produce evidence that a J&A was completed or that market research was adequately documented for one contract. In addition, ACC-APG contracting personnel did not provide an adequate reason for why they did not include the documentation in the contract file. As a result, ACC-APG contracting personnel did not approve the J&A within a reasonable time after contract award as required by FAR 6.303-1(d). Also, ACC-APG contracting personnel did not have adequate documentation justifying the award of one contract as sole source for which contracting personnel may have been able to award the noncompetitive contract using full and open competition at a lower price if additional sources were available to meet the Government’s needs.

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

**We recommend that the Executive Director, U.S. Army Contracting Command – Aberdeen Proving Ground:**

**1. Issue guidance establishing the number of days that a Justification and Approval for other than full and open competition must be approved within when a contract is awarded before approval of a justification using the authority cited at Federal Acquisition Regulation 6.302-2, “Unusual and Compelling Urgency” or, if that timeframe will not be met, require the contracting officer to document in the contract file before the approval deadline the reason(s) for any additional delay.**

### ***U.S. Army Contracting Command – Aberdeen Proving Ground Comments***

The Executive Director, Army Contracting Command-Aberdeen Proving Ground, responding through the Army Contracting Command-Redstone Arsenal, agreed. He stated that on February 16, 2012, Army Contracting Command-Aberdeen Proving Ground issued Acquisition Instruction 12-14. Acquisition Instruction 12-14 states that an urgent Justification and Approval valued at \$85.5 million and below must be approved within 7 calendar days after contract award and an urgent Justification and Approval valued above \$85.5 million must be submitted to the Deputy Assistant Secretary of the Army (Procurement) within 7 days after contract award. He stated that the requirement to file documentation when the completion dates will not be met will be added to the guidance. He also stated that this guidance will be reissued and highlighted in a memorandum no later than October 30, 2012. The Director included Acquisition Instruction 12-14 with his response.

### ***Our Response***

The Executive Director’s comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

**2. Issue a memorandum to contracting officers emphasizing the importance of completing a Justification and Approval in accordance with Federal Acquisition Regulation 6.303, “Justifications” and adequately performing and documenting market research in accordance with Federal Acquisition Regulation Part 10, “Market Research” for all noncompetitive awards using Federal Acquisition Regulation 6.302, “Circumstances Permitting Other Than Full and Open Competition.”**

### ***U.S. Army Contracting Command – Aberdeen Proving Ground Comments***

The Executive Director, Army Contracting Command-Aberdeen Proving Ground, responding through the Army Contracting Command-Redstone Arsenal, agreed. He stated that a memorandum will be issued no later than October 30, 2012.

### ***Our Response***

The Executive Director's comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

**3. Review the performance of the contracting officer who did not produce evidence of a Justification and Approval for other than full and open competition or that market research was adequately documented for noncompetitive contract W15P7T-10-C-S225 to determine whether administrative action is warranted.**

### ***U.S. Army Contracting Command – Aberdeen Proving Ground Comments***

The Executive Director, Army Contracting Command-Aberdeen Proving Ground, responding through the Army Contracting Command-Redstone Arsenal, agreed. He stated that the Chief, Division C reviewed the actions of the contracting officer and counseled the contracting officer on proper file documentation. He stated that the counseling constitutes the administrative action that will be taken and any documents that were not properly filed in the Army Paperless Contract Files, but were available elsewhere, will be uploaded to the Army Paperless Contract Files. The Director included a memorandum signed by the Chief, Division C, September 7, 2012, documenting the administrative action taken with his response.

### ***Our Response***

The Executive Director's comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

**4. Provide contracting personnel training or issue a memorandum on including the statements required by Federal Acquisition Regulation 5.207, "Preparation and Transmittal of Synopses," in the synopsis of contract actions made under Federal Acquisition Regulation 6.302, "Circumstances Permitting Other Than Full and Open Competition."**

### ***U.S. Army Contracting Command – Aberdeen Proving Ground Comments***

The Executive Director, Army Contracting Command-Aberdeen Proving Ground, responding through the Army Contracting Command-Redstone Arsenal, agreed. He stated that a memorandum will be issued reminding contracting officers of the requirement to include the statements in Federal Acquisition Regulation 5.207(c)(15) and (16) no later than October 30, 2012.

### ***Our Response***

The Executive Director's comments were responsive, and the actions met the intent of the recommendation. No further comments are required.

## **Appendix A. Scope and Methodology**

We conducted this performance audit from July 2011 through August 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Our scope included only noncompetitive contract awards during FYs 2009 and 2010 to determine whether DoD noncompetitive contract awards were properly and adequately justified as sole source. We also excluded contracts that were awarded for national security purposes, foreign military sales, classified contracts, or contracts that were improperly coded in the FPDS-NG as noncompetitive.

The project was suspended from August 8, 2011, through March 19, 2012. To provide timely reporting for each location audited, we decided to issue site reports under individual subprojects from the initial project. In October 2011, we reannounced the revised audit approach of issuing separate audit reports for each audit site as well as the revised audit objective to determine whether DoD noncompetitive contract awards were properly justified as sole source. This report is the sixth in a series of audit reports on DoD contracts awarded without competition.

### **Universe and Sample Information**

We used the FPDS-NG to identify noncompetitive contract actions issued by the Military Services and DoD agencies during FYs 2009 and 2010. The queries were limited to actions issued on contracts that were awarded during FYs 2009 and 2010 and coded as a “noncompetitive delivery order” or “not competed” in FPDS-NG. The queries also excluded contract actions that received more than one offer as identified in FPDS-NG. We then selected the four DoD Components with the highest dollar value of awards, specifically the Army, Navy, Air Force, and the Defense Logistics Agency, to identify specific audit locations.

We focused our site selection on three sites for the Department of the Army that awarded 20 or more C and D type noncompetitive contracts\* and obligated approximately \$200 million or more during FYs 2009 and 2010. Our site selection excluded sites that were visited during the recent Government Accountability Office and Army Audit Agency reviews on noncompetitive contract awards. In addition, we reviewed reports issued by the DoD Office of Inspector General, Acquisition and Contract Management

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\* Defense Federal Acquisition Regulation Supplement 204.7003, “Basic PII Number,” defines C type contracts as “[c]ontracts of all types except indefinite delivery contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD” and D type contracts as “[i]ndefinite delivery contracts.”

Directorate, from October 2008 through April 2011 that covered acquisition and contracting issues and excluded sites that have been visited on numerous occasions.

The initial data obtained from FPDS-NG resulted in a universe of 147 noncompetitive C and D type contracts for the U.S. Army Communications-Electronics Command and the U.S. Army Research, Development and Engineering Command, Aberdeen Proving Ground, Maryland. We requested 37 of the 147 contracts to review during the site visit to ACC-APG Contracting Center. However, for the 37 contracts requested, we did not review contracts awarded for national security purposes, foreign military sales, classified contracts, or contracts that were improperly coded in the FPDS-NG as noncompetitive. In addition, we did not review contracts that were not truly noncompetitive, such as contracts that were competitive one bids or those contracts set aside to develop small businesses.

Two contracts were excluded from our sample because they were awarded under FAR Subpart 13.5, "Test Program for Certain Commercial Items," and two contracts were awarded for foreign military sales. One contract was excluded because it was transferred to the Defense Logistics Agency Troop Support and the contract documentation was not available for review. One contract file was excluded from our sample because it was located at another installation in Orlando, Florida, and was not available for review. In addition, one contract was excluded from our sample because it was awarded under FAR Subpart 8.6, "Acquisition from Federal Prison Industries, Inc." Based on these exclusions, we reviewed 30 of the 37 contracts requested. See Appendix C for additional details on the noncompetitive contracts we reviewed.

## **Review of Documentation and Interviews**

We evaluated documentation against applicable criteria including:

- FAR Part 5, "Publicizing Contract Actions";
- FAR Subpart 6.3, "Other Than Full and Open Competition";
- FAR Part 10, "Market Research";
- Defense Federal Acquisition Regulation Supplement 204.7003, "Basic PII number";
- Army Federal Acquisition Regulation Supplement Part 5110, "Market Research"; and
- Army Federal Acquisition Regulation Supplement 5106.304, "Approval of the Justification."

We interviewed contracting personnel at ACC-APG Contracting Center to discuss noncompetitive contract awards and to obtain information regarding the noncompetitive contract files identified in our sample, specifically about the J&A and market research. We reviewed contracts with award dates ranging from December 15, 2008, through September 29, 2010. We also interviewed the competition advocates at ACC-APG Contracting Center to gain an understanding of the competition advocates'

responsibilities and role in noncompetitive contract awards. In addition, we obtained some of the contract documentation from the Army Paperless Contract Files at <https://pcf.army.mil/>.

## **Use of Computer-Processed Data**

We relied on computer-processed data from the FPDS-NG to establish the initial universe for this audit by identifying noncompetitive contract actions issued by the Services and DoD agencies. We also used the data from the FPDS-NG to help determine the contracting organizations to visit and to perform the nonstatistical sample selection. We used the Electronic Document Access database to obtain contract documentation, such as the contract and modifications to the contract before our site visit to the ACC-APG Contracting Center. To assess the accuracy and appropriateness of the computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at the contracting activity. We determined that data obtained through the FPDS-NG and the Electronic Document Access databases were sufficiently reliable to accomplish our audit objective when compared with contract records. We used the FPDS-NG only to identify the universe, to help determine the contracting organizations to visit, and to identify our nonstatistical sample. In addition, we used the Army Paperless Contract Files to obtain electronic contract files, such as the J&A and market research documentation. The Army Paperless Contract Files is a complete document, storage and workflow solution where Acquisition Professionals store, edit, send for review and approval, and archive the contract files they work with every day. We obtained files that were not available from the Army Paperless Contract Files from ACC-APG contracting personnel. The reliability of the Army Paperless Contract Files had no direct effect on our findings or conclusions.

## **Use of Technical Assistance**

We held discussions with personnel from the DoD Office of Inspector General's Quantitative Methods Division. We determined that we would use FPDS-NG data to select a nonstatistical sample of contracting activities and then use FPDS-NG data to select a nonstatistical sample of noncompetitive contracts to review. During our site visit, we worked with ACC-APG contracting personnel to verify that the selected contracts met the scope limitations of our review and to identify additional contracts that did not meet the selection criteria. Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other ACC-APG Contracting Center-issued or Army-issued contracts.

## **Prior Coverage**

During the last 5 years, the Government Accountability Office (GAO), Department of Defense Inspector General (DoD IG), and the Army Audit Agency issued eight reports discussing noncompetitive contract awards. Unrestricted DoD IG reports can be accessed over the Internet at <http://www.dodig.mil>. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted Army Audit Agency reports can be accessed from .mil and .gov domains over the Internet at <https://www.aaa.army.mil/>.

## **GAO**

GAO Report No. GAO-12-263, “Improved Policies and Tools Could Help Increase Competition on DOD’s National Security Exception Procurements,” January 13, 2012

GAO Report No. GAO-10-833, “Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received,” July 26, 2010

## **DoD IG**

DoD IG Report No. DODIG-2012-084, “Air Force Aeronautical Systems Center Contracts Awarded Without Competition Were Properly Justified,” May 10, 2012

DoD IG Report No. DODIG-2012-077, “Naval Surface Warfare Center Crane Contracts Awarded Without Competition Were Properly Justified,” April 24, 2012

DoD IG Report No. DODIG-2012-076, “Army Contracting Command – Rock Island Contracts Awarded Without Competition Were Properly Justified,” April 19, 2012

DoD IG Report No. DODIG-2012-073, “Natick Contracting Division’s Management of Noncompetitive Awards Was Generally Justified,” April 10, 2012

DoD IG Report No. DODIG-2012-042, “Naval Air Systems Command Lakehurst Contracts Awarded Without Competition Were Properly Justified,” January 20, 2012

## **Army**

Army Audit Agency Report No. A-2011-0002-ALC, “Extent of Competition in Army Contracting,” October 12, 2010

# Appendix B. Federal Acquisition Regulation Criteria

## Federal Acquisition Regulation Subpart 6.3, “Other Than Full and Open Competition”

Federal Acquisition Regulation (FAR) subpart 6.3 prescribes the policies and requirements for contracting without full and open competition. Contracting without full and open competition is a violation of statute such as Section 2304, title 10, United States Code, unless permitted by an exception provided in FAR 6.302, “Circumstances Permitting Other Than Full and Open Competition.” FAR 6.302 lists seven exceptions for contracting without full and open competition:

- FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”;
- FAR 6.302-2, “Unusual and Compelling Urgency”;
- FAR 6.302-3, “Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services”;
- FAR 6.302-4, “International Agreement”;
- FAR 6.302-5, “Authorized or Required by Statute”;
- FAR 6.302-6, “National Security”; and
- FAR 6.302-7, “Public Interest.”

A contracting officer must not begin negotiations for or award a noncompetitive contract without providing full and open competition unless the contracting officer justifies the use of such action in writing, certifies the accuracy and completeness of the justification, and obtains approval of the justification. FAR 6.303-2, “Content,” requires each justification to contain sufficient facts and rationale to justify the use of the authority cited. At a minimum, each justification must contain the following.

- The name of the agency and contracting activity and identification of the document as a “Justification for other than full and open competition.”
- A description of the action being approved.
- A description of the supplies or services required to meet the agency’s needs including the estimated value.
- The statutory authority permitting other than full and open competition.
- A demonstration that the contractor’s unique qualifications or the nature of the acquisition requires the use of the authority cited.
- A description of the efforts made to ensure offers are submitted from as many sources as practicable.
- The contracting officer’s determination that the cost to the Government will be fair and reasonable.

- A description and the results of the market research conducted or, if market research was not conducted, a reason it was not conducted.
- Any other facts supporting the use of other than full and open competition.
- A listing or sources that expressed written interest in the acquisition.
- A statement of the actions the agency may take to overcome any barriers to competition before a subsequent acquisition.
- The contracting officer's certification that the justification is accurate and complete to the best of his or her knowledge and belief.

FAR 6.304, "Approval of the Justification," identifies the person responsible for approving the J&A based on the value of the proposed contract.\* The contracting officer approves the J&A for a proposed contract not exceeding \$550,000. The competition advocate approves the J&A for a proposed contract of more than \$550,000 but not exceeding \$11.5 million. The head of the procuring activity, a general or flag officer if a member of the military, or a civilian in a position above GS-15 under the general schedule approves the J&A for a proposed contract more than \$11.5 million but not exceeding \$78.5 million. The senior procurement executive of the agency approves the J&A for a proposed contract over \$78.5 million.

## **FAR Subpart 5.2, "Synopsis of Proposed Contract Actions"**

FAR 5.201, "General," requires agencies to provide a synopsis of proposed contract actions for the acquisition of supplies and services. The contracting officer must submit the synopsis to the Governmentwide Point of Entry that can be accessed on the Internet at <https://www.fedbizopps.gov>. FAR 5.203, "Publicizing and Response Time," requires the synopsis to be published for at least 15 days before the issuance of a solicitation or proposed contract action; however, the contracting officer may establish a shorter period of time for commercial items. Each synopsis submitted to the Governmentwide Point of Entry must include certain data elements as applicable, such as the date of the synopsis, the closing response date, a proposed solicitation number, a description, and the point of contact or contracting officer. In addition, FAR 5.202, "Exceptions," lists circumstances when the contracting officer does not need to submit a synopsis. Examples of instances when the contracting officer does not need to submit a synopsis include the following.

- The proposed contract action is made under FAR 6.302-2, and the Government would be seriously injured if the agency complied with time periods specified by FAR 5.203.
- The proposed contract action is made under FAR 6.302-3 or FAR 6.302-5 with regard to brand name commercial items authorized for resale.
- The proposed contract action is made under FAR 6.302-3 with regard to the services of an expert to support the Government in a litigation or dispute.

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\* On October 1, 2010, the approval thresholds increased. Our review was limited to noncompetitive contract awards during FYs 2009 and 2010; therefore, we used the approval thresholds in place during FYs 2009 and 2010.

Contracting officers are required by FAR 5.207, “Preparation and Transmittal of Synopses,” to include statements in the synopses of noncompetitive contract actions stating their intent to award a noncompetitive contract and notifying interested sources of actions they can take if interested in the noncompetitive contract. FAR 5.207(c)(14) requires the synopsis of noncompetitive contract actions to identify the intended source and a statement of the reason justifying the lack of competition. FAR 5.207(c)(15)(ii) requires the synopsis of noncompetitive contract actions using FAR 6.302-1 as the authority cited to include a statement that all responsible sources may submit a capability statement, proposal, or quotation, which will be considered by the agency. For other proposed contract actions made under FAR 6.302, FAR 5.207(c)(15)(i) requires the synopsis to include a statement that all responsible sources may submit a bid, proposal, or quotation, which shall be considered by the agency.

## **FAR Part 10, “Market Research”**

FAR part 10 prescribes policies and requirements for conducting market research to arrive at the most suitable approach for acquiring, distributing, and supporting supplies and services. Agencies are required to conduct market research appropriate to the circumstance before soliciting offers for acquisitions with an estimated value over the simplified acquisition threshold. Agencies are required to use the results of market research to determine if there are appropriate sources or commercial items capable of satisfying the agency’s requirements. The extent of market research the agencies conducts varies depending on factors such as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Agencies use market research techniques, such as contacting knowledgeable individuals in Government and industry, reviewing results of recent market research, publishing formal requests for information, querying database, participating in on-line communication, obtaining source lists of similar items, and reviewing available product literature. Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

## Appendix C. Noncompetitive Contracts Reviewed

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|   | Contract Number  | Product or Service | Description  | Award Date | Contract Type | Authority Cited | Contract Value <sup>1</sup> |
|---|------------------|--------------------|--|------------|---------------|-----------------|-----------------------------|
| 1 | W911SR-10-C-0037 | Service            | Modification and component fabrication of eight joint nuclear biological, chemical reconnaissance system                                   | 5/27/2010  | FFP           | FAR 6.302-2     | \$360,731                   |
| 2 | W91CRB-10-C-0100 | Service            | Professional mentoring and training support services   | 4/29/2010  | CPFF          | FAR 6.302-2     | 32,241,459                  |
| 3 | W911SR-10-C-0031 | Service            | Research and development of chemical biological decontamination formulations   | 4/22/2010  | CPFF          | FAR 6.302-1     | 1,470,000                   |
| 4 | W15P7T-10-D-F201 | Product            | Spare parts for the air traffic navigation system  | 9/24/2010  | FFP & IDIQ    | FAR 6.302-1     | 49,500,000                  |
| 5 | W15P7T-09-D-K202 | Service            | Evaluation and repair of Klystron Tubes  | 3/26/2009  | FFP & IDIQ    | FAR 6.302-1     | 8,000,000                   |
| 6 | W15P7T-09-D-B402 | Service            | Evaluation, repair, and engineering services   | 6/25/2009  | IDIQ & T&M    | FAR 6.302-1     | 45,000,000                  |
| 7 | W15P7T-10-C-A856 | Service            | Plan, design, test, implementation, and maintenance of the defense prisoner of war/missing personnel office geo-spatial information system | 9/29/2010  | FFP & Cost    | FAR 6.302-2     | 499,013                     |
| 8 | W15P7T-10-C-F008 | Product            | Battery adapters   | 6/23/2010  | FFP           | FAR 6.302-2     | 365,224                     |

Acronyms and footnotes used throughout the Appendix C are defined on the final page of Appendix C.

## Appendix C. Noncompetitive Contracts Reviewed (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Product or Service | Description  | Award Date | Contract Type     | Authority Cited | Contract Value         |
|----|------------------|--------------------|--|------------|-------------------|-----------------|------------------------|
| 9  | W911SR-10-C-0043 | Service            | Support services for on-going engineering, technical, analytical, training, and program management | 6/29/2010  | CPFF              | FAR 6.302-1     | 8,398,998              |
| 10 | W91CRB-09-C-0110 | Service            | Logistics and engineering support  | 9/25/2009  | CPFF              | FAR 6.302-1     | 19,419,170             |
| 11 | W911SR-09-D-0008 | Product            | Manufacturing and delivery of M-53 chemical biological protective mask systems                     | 7/09/2009  | IDIQ & FFP        | FAR 6.302-1     | 4,958,532 <sup>2</sup> |
| 12 | W911SR-09-D-0009 | Service            | Web Puff information system improvements and contractor manpower reporting                         | 9/25/2009  | IDIQ, CPFF, & FFP | FAR 6.302-1     | 22,500,000             |
| 13 | W15P7T-09-C-A011 | Product            | Four electric power plant IIIs   | 9/16/2009  | FFP               | FAR 6.302-1     | 4,154,092              |
| 14 | W15P7T-09-C-C303 | Service            | Software support and engineering services for the distributed common ground system-army            | 9/29/2009  | CPFF              | FAR 6.302-3     | 6,310,947              |
| 15 | W911SR-09-C-0028 | Product            | High pressure compressor   | 4/02/2009  | FFP               | FAR 6.302-2     | 290,540                |
| 16 | W15P7T-09-C-M410 | Product            | Boomerang III systems with boomguards and Mine Resistant Ambush Protected vehicle integration kits | 8/10/2009  | FFP               | FAR 6.302-1     | 22,460,000             |

Acronyms and footnotes used throughout the Appendix C are defined on the final page of Appendix C.

## Appendix C. Noncompetitive Contracts Reviewed (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Product or Service | Description   | Award Date | Contract Type | Authority Cited | Contract Value |
|----|------------------|--------------------|---|------------|---------------|-----------------|----------------|
| 17 | W91CRB-10-C-0028 | Product            | Land warrior systems and support equipment                                    | 12/23/2009 | FFP & CPFF    | FAR 6.302-1     | 27,938,064     |
| 18 | W91CRB-10-C-0111 | Service            | Non-personal services necessary to perform field service                      | 5/28/2010  | FFP & CPFF    | FAR 6.302-2     | 7,575,110      |
| 19 | W15P7T-09-C-C014 | Product            | Environmental control units   | 9/30/2009  | FFP           | FAR 6.302-2     | 2,650,572      |
| 20 | W15P7T-09-C-F402 | Service            | Engineering, technical and management support services for the JASON program  | 8/06/2009  | CPFF          | FAR 6.302-3     | 3,946,384      |
| 21 | W15P7T-09-C-N201 | Product            | 655 quick erect antenna mast  | 12/18/2008 | FFP           | FAR 6.302-2     | 2,063,250      |
| 22 | W91CRB-09-C-0065 | Product            | Ground penetrating radars   | 3/19/2009  | FFP           | FAR 6.302-1     | 867,600        |
| 23 | W91CRB-10-D-0029 | Service            | Testing of high performance fibers  | 9/15/2010  | FFP & IDIQ    | FAR 6.302-1     | 1,500,000      |
| 24 | W15P7T-10-C-S230 | Product            | 130 Cerberus lite systems   | 9/29/2010  | FFP           | FAR 6.302-2     | 51,662,496     |
| 25 | W15P7T-10-D-C007 | Service            | Operational test and evaluation for Warfighter Information Network-Tactical   | 3/24/2010  | FFP & FPIF    | FAR 6.302-1     | 338,010,919    |
| 26 | W15P7T-10-C-S228 | Service            | U.S. Army tactical fuel accounting and inventory data utilizing DoD software. | 9/27/2010  | FFP           | FAR 6.302-1     | 2,861,500      |

Acronyms and footnotes used throughout the Appendix C are defined on the final page of Appendix C.

## Appendix C. Noncompetitive Contracts Reviewed (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Product or Service | Description  | Award Date | Contract Type    | Authority Cited | Contract Value |
|----|------------------|--------------------|--|------------|------------------|-----------------|----------------|
| 27 | W15P7T-09-D-H213 | Service            | Support the modernization program in the areas of satellite communications, command and control information systems and technical assessments of programs. | 12/15/2008 | FFP, T&M, & IDIQ | FAR 6.302-1     | 74,600,000     |
| 28 | W15P7T-09-D-H201 | Service            | Engineering, technical and program management support services for the Defense communications and Army transmission systems.                               | 5/29/2009  | FFP, T&M, & IDIQ | FAR 6.302-1     | 74,764,813     |
| 29 | W15P7T-10-D-S003 | Service            | Technical and software support services and spare parts for the meteorological measuring set.  | 3/30/2010  | FFP, T&M, & IDIQ | FAR 6.302-1     | 5,000,000      |
| 30 | W15P7T-10-C-S225 | Product            | Integrated Base Defense System of Systems Maintenance Kits.  | 9/28/2010  | FFP              | FAR 6.302-2     | 4,052,277      |

<sup>1</sup>The contract value is the base award value excluding options or the maximum ceiling price at award.

<sup>2</sup>The contract value is the amount ordered on the contract since July 19, 2010.

|             |   |
|-------------|---|
| Cost        | Cost Reimbursement  |
| CPFF        | Cost-Plus-Fixed-Fee   |
| FAR 6.302-1 | Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements  |
| FAR 6.302-2 | Unusual and Compelling Urgency  |
| FAR 6.302-3 | Industrial mobilization; engineering, developmental, or research capability; or expert services |
| FFP         | Firm-Fixed-Price  |
| FPIF        | Fixed-Price-Incentive-Fee   |
| IDIQ        | Indefinite-Delivery, Indefinite-Quantity  |
| T&M         | Time-and-Material   |

## Appendix D. Adequate Justification and Approvals

Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Content Requirements Met | Authority Cited Appropriately Met | Justification & Approval Approved by Proper Personnel | Justification & Approval Approved Before Contract Award |
|----|------------------|--------------------------|-----------------------------------|---|---|
| 1  | W911SR-10-C-0037 | √                        | √                                 | √   | √   |
| 2  | W91CRB-10-C-0100 | √                        | √                                 | √   | √   |
| 3  | W911SR-10-C-0031 | √                        | √                                 | √   | √   |
| 4  | W15P7T-10-D-F201 | √                        | √                                 | √   | √   |
| 5  | W15P7T-09-D-K202 | √                        | √                                 | √   | √   |
| 6  | W15P7T-09-D-B402 | √                        | √                                 | √   | √   |
| 7  | W15P7T-10-C-A856 | √                        | √                                 | √   | √   |
| 8  | W15P7T-10-C-F008 | √                        | √                                 | √   | √   |
| 9  | W911SR-10-C-0043 | √                        | √                                 | √   | √   |
| 10 | W91CRB-09-C-0110 | √                        | √                                 | √   | √   |
| 11 | W911SR-09-D-0008 | √                        | √                                 | √   | √   |
| 12 | W911SR-09-D-0009 | √                        | √                                 | √   | √   |
| 13 | W15P7T-09-C-A011 | √                        | √                                 | √   | √   |

## Appendix D. Adequate Justification and Approvals (cont'd)

Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | <b>Contract Number</b> | <b>Content Requirements Met</b> | <b>Authority Cited Appropriately Met</b> | <b>Justification &amp; Approval Approved by Proper Personnel</b> | <b>Justification &amp; Approval Approved Before Contract Award</b> |
|----|------------------------|---------------------------------|--|--|--|
| 14 | W15P7T-09-C-C303       | √                               | √  | √  | √  |
| 15 | W911SR-09-C-0028       | √                               | √  | √  | √  |
| 16 | W15P7T-09-C-M410       | √                               | √  | √  | √  |
| 17 | W91CRB-10-C-0028       | √                               | √  | √  | √  |
| 18 | W91CRB-10-C-0111       | √                               | √  | √  | √  |
| 19 | W15P7T-09-C-C014       | √                               | √  | √  |  |
| 20 | W15P7T-09-C-F402       | √                               | √  | √  | √  |
| 21 | W15P7T-09-C-N201       | √                               | √  | √  |  |
| 22 | W91CRB-09-C-0065       | √                               | √  | √  | √  |
| 23 | W91CRB-10-D-0029       | √                               | √  | √  | √  |
| 24 | W15P7T-10-C-S230       | √                               | √  | √  |  |
| 25 | W15P7T-10-D-C007       | √                               | √  | √  | √  |
| 26 | W15P7T-10-C-S228       | √                               | √  | √  | √  |
| 27 | W15P7T-09-D-H213       | √                               | √  | √  | √  |

## Appendix D. Adequate Justification and Approvals (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | <b>Contract Number</b> | <b>Content Requirements Met</b> | <b>Authority Cited Appropriately Met</b> | <b>Justification &amp; Approval Approved by Proper Personnel</b> | <b>Justification &amp; Approval Approved Before Contract Award</b> |
|----|------------------------|---------------------------------|--|--|--|
| 28 | W15P7T-09-D-H201       | √                               | √  | √  | √  |
| 29 | W15P7T-10-D-S003       | √                               | √  | √  | √  |
| 30 | W15P7T-10-C-S225*      |                                 |  |  |  |

\*ACC-APG contracting personnel did not provide a J&A for contract W15P7T-10-C-S225.

## Appendix E. Market Research Conducted

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|   | <b>Contract Number</b> | <b>Estimated Value on the J&amp;A</b> | <b>Specific Steps Performed</b>  | <b>Results of Market Research or Justification for Not Conducting Market Research</b>                                | <b>Supporting Documentation</b>  | <b>Market Research Considered Adequate</b> |
|---|------------------------|---------------------------------------|--|--|----------------------------------|--|
| 1 | W911SR-10-C-0037       | \$413,240                             | Market research was not conducted.   | No other company has the technical data package necessary to begin or complete the work.                             | J&A                              | Yes <sup>1</sup>                           |
| 2 | W91CRB-10-C-0100       | \$34,000,000                          | Market research was not conducted.   | No other potential contractor could provide the services needed without a lapse in support.                          | J&A                              | Yes <sup>1</sup>                           |
| 3 | W911SR-10-C-0031       | \$1,470,000                           | Conducted a literature search through the Defense Technical Information center library. Additionally, a synopsis of this requirement was published in FedBizOpps.  | The selection of any other source would delay the outcome by at least 8 months and would result in additional costs. | J&A                              | Yes  |
| 4 | W15P7T-10-D-F201       | \$49,500,000                          | A Sources Sought Announcement was posted on FedBizOpps. In addition, monitored equipment industrial base and conducted weekly meetings with various industrial sources to discuss the latest technologies. | Only the contractor can meet the Government's requirement.   | J&A and market research document | Yes  |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|   | <b>Contract Number</b> | <b>Estimated Value on the J&amp;A</b> | <b>Specific Steps Performed</b>   | <b>Results of Market Research or Justification for Not Conducting Market Research</b>                    | <b>Supporting Documentation</b>  | <b>Market Research Considered Adequate</b> |
|---|------------------------|---------------------------------------|---|--|----------------------------------|--|
| 5 | W15P7T-09-D-K202       | \$8,000,000                           | A Sources Sought Announcement was published on FedBizOpps, to determine if any other sources could provide the services.  | Only the contractor can meet the requirements.   | Market research document and J&A | Yes  |
| 6 | W15P7T-09-D-B402       | \$35,000,000                          | Published a Sources Sought Announcement and reviewed trade journals, periodicals, company catalogs, the internet, and Government files.                                     | The contractor is the only source that can meet the Government's requirements.                           | Market research document and J&A | Yes  |
| 7 | W15P7T-10-C-A856       | \$495,000                             | Researched the U.S. Army Computer Hardware Enterprise Software and Solutions website for potential sources and attendance at numerous technical symposiums and conferences. | The contractor has existing resources to complete the urgent and mission specific requirements.          | J&A                              | Yes  |
| 8 | W15P7T-10-C-F008       | \$403,804                             | Market research was conducted via telephone, technical pamphlets, and industry events.  | The only known source for the urgently required adapter is the contractor.                               | Statement of Urgency and J&A     | Yes  |
| 9 | W911SR-10-C-0043       | \$12,000,000                          | Performed market research on an on-going basis including internet searches as well as spend analysis.   | The contractor was the only source that could meet the short term requirement in the timeframe required. | Market research report and J&A   | Yes  |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Estimated Value on the J&A | Specific Steps Performed   | Results of Market Research or Justification for Not Conducting Market Research                                | Supporting Documentation | Market Research Considered Adequate |
|----|------------------|----------------------------|--|---|--------------------------|-------------------------------------|
| 10 | W91CRB-09-C-0110 | \$48,400,000               | Attended industry symposiums and met with industry sources. All potential Commercial Off-The-Shelf/Government Off-The-Shelf solutions were reviewed to verify current availability, Information Assurance Compliance, capability, and radio compatibility. | Based on the review of 12 Foreign and 2 U.S. systems, no other system can meet the Government's requirement.  | J&A                      | Yes                                 |
| 11 | W911SR-09-D-0008 | \$43,685,361               | The acquisition team continually reviews the international commercial market by conducting internet searches, attendance at international symposia, conferences, and information exchange with foreign government personnel.                               | The market research did not identify a product that meets the requirements of the performance specifications. | J&A                      | Yes                                 |
| 12 | W911SR-09-D-0009 | \$22,500,000               | Multiple sources sought were issued to identify if any new interest or capabilities had been created, attended conferences to provide exposure to commercially available software, and also investigated alternative models.                               | The contractor was the only one capable of providing the services.  | J&A                      | Yes                                 |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | <b>Contract Number</b> | <b>Estimated Value on the J&amp;A</b> | <b>Specific Steps Performed</b>   | <b>Results of Market Research or Justification for Not Conducting Market Research</b>    | <b>Supporting Documentation</b>  | <b>Market Research Considered Adequate</b> |
|----|------------------------|---------------------------------------|---|--|----------------------------------|--|
| 13 | W15P7T-09-C-A011       | \$4,500,000                           | Published a Sources Sought Announcement on the FedBizOpps page seeking potential sources who could meet the Government's requirement.   | Only the contractor can meet the Government's requirement.                               | Market research document and J&A | Yes  |
| 14 | W15P7T-09-C-C303       | \$6,000,000                           | Reviewed information on the World-Wide-Web, trade journals, procurement history, and available technical documentation.   | Only the contractor can meet the Government's requirements.                              | Market research document and J&A | Yes  |
| 15 | W911SR-09-C-0028       | \$290,540                             | Research through the Internet and telephonic inquiries to locate any additional sources for the compressors.  | No other company could provide the 3-stage portable air-cooled high pressure compressor. | J&A                              | Yes  |
| 16 | W15P7T-09-C-M410       | \$22,500,000                          | A request for information detailing short-term and long-term requirements was sent to eight sources that had previously expressed interest in providing Acoustic Gunshot Detection Systems. | Only the contractor could meet the Government's short-term requirement.                  | Market research document and J&A | Yes  |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Estimated Value on the J&A | Specific Steps Performed  | Results of Market Research or Justification for Not Conducting Market Research                                    | Supporting Documentation         | Market Research Considered Adequate |
|----|------------------|----------------------------|---|---|----------------------------------|-------------------------------------|
| 17 | W91CRB-10-C-0028 | \$78,150,000               | Conducted an ongoing market research program to obtain information on changes, advances, and trends in technology. In addition attended various industry days in 2008.        | No commercial off-the-shelf or Government off-the-shelf solutions systems can meet the Government's requirements. | J&A                              | Yes                                 |
| 18 | W91CRB-10-C-0111 | \$15,159,478               | Market research was not conducted.  | No other sources were capable of meeting the strict time requirement.   | Market research document and J&A | Yes <sup>1</sup>                    |
| 19 | W15P7T-09-C-C014 | \$2,650,000                | Read trade journals, reviewed product information on the World Wide Web, and held discussions with various industry representatives.  | Only the contractor could meet the Government's urgent requirements.  | J&A                              | Yes                                 |
| 20 | W15P7T-09-C-F402 | \$30,000,000               | Analyzed commercial vendors that could potentially meet the Government's requirements and review of on-line literature published by manufacturers, distributors, and dealers. | Only the contractor could meet the requirements.  | Market research summary and J&A  | Yes                                 |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Estimated Value on the J&A | Specific Steps Performed   | Results of Market Research or Justification for Not Conducting Market Research                           | Supporting Documentation         | Market Research Considered Adequate |
|----|------------------|----------------------------|--|--|----------------------------------|-------------------------------------|
| 21 | W15P7T-09-C-N201 | \$1,140,300                | Contacted two potential sources that had previously produced the Quick Erect Antenna Mast.   | Only the contractor could meet the delivery requirements.  | Market research document and J&A | Yes                                 |
| 22 | W91CRB-09-C-0065 | \$7,997,500                | Mined information from online web sources, searching the worldwide technology marketplace to identify all companies that have ground penetrating radars experience.  | Only the contractor was identified as being able to satisfy all four of the required criteria.           | Market research document and J&A | Yes                                 |
| 23 | W91CRB-10-D-0029 | \$1,500,000                | Meetings with the Army's body armor and protective equipment technical expert who has hosted or attended over 232 meetings on a regular basis to share the latest designs, new technologies, new materials, and new testing methodologies. | The contractor is the only source that has the required technology that can meet the Government's needs. | J&A                              | Yes                                 |
| 24 | W15P7T-10-C-S230 | \$51,700,000               | A request for information was posted on FedBizOpps and the Night Vision Electronic Sensors Directorate constantly surveys members of industry through trade shows or informal conversations.   | The contractor is the only source capable of meeting the urgent schedule requirement.                    | Market research document and J&A | Yes                                 |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Estimated Value on the J&A | Specific Steps Performed  | Results of Market Research or Justification for Not Conducting Market Research   | Supporting Documentation         | Market Research Considered Adequate |
|----|------------------|----------------------------|---|--|----------------------------------|-------------------------------------|
| 25 | W15P7T-10-D-C007 | \$2,840,000,000            | Review internet and trade journals, attended various trade shows, and discussions with other technical experts. | Only the contractor can meet the Government's requirement.   | J&A                              | Yes                                 |
| 26 | W15P7T-10-C-S228 | \$7,700,000                | A Sources Sought Announcement was posted on the FedBizOpps Web site.  | No other source was identified. The software is proprietary to the contractor, only this contractor could provide a license to use its software. | Market research document and J&A | Yes                                 |
| 27 | W15P7T-09-D-H213 | \$74,600,000               | A Sources Sought Announcement was posted on the FedBizOpps Web site.  | Only this contractor could meet the Government's requirements.   | Market research document and J&A | Yes                                 |
| 28 | W15P7T-09-D-H201 | \$74,700,000               | Contacted five federal supply schedule sources that provide these types of support services                     | This contractor is the only source that can provide the unique knowledge required to meet the requirements.                                      | Market research document and J&A | Yes                                 |

Acronyms and footnotes used throughout the Appendix E are defined on the final page of Appendix E.

## Appendix E. Market Research Conducted (cont'd)

### Noncompetitive Contracts Awarded by ACC-APG Contracting Center From FY 2009 Through FY 2010

|    | Contract Number  | Estimated Value on the J&A | Specific Steps Performed   | Results of Market Research or Justification for Not Conducting Market Research   | Supporting Documentation  | Market Research Considered Adequate |
|----|------------------|----------------------------|--|--|---------------------------|-------------------------------------|
| 29 | W15P7T-10-D-S003 | \$5,000,000                | A Sources Sought Announcement was posted on the FedBizOpps Web site.                                 | Only this contractor can currently meet the Government's requirements.   | J&A                       | Yes                                 |
| 30 | W15P7T-10-C-S225 | N/A <sup>2</sup>           | The Government's technical experts made numerous calls; however, specific details were not provided. | Only this contractor can meet the Government's urgent requirements because they own the technical data packages for these items. | Statement of urgency memo | No <sup>3</sup>                     |

<sup>1</sup> Although market research was not conducted, the rationale provided for not conducting research was considered appropriate.

<sup>2</sup> ACC-APG contracting personnel did not provide a J&A for contract W15P7T-10-C-S225.

<sup>3</sup> Although market research was conducted, the market research was not adequately documented.

FedBizOpps      Federal Business Opportunities  
J&A              Justification and Approval

# Department of the Army Comments



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
4400 MARTIN ROAD  
REDSTONE ARSENAL, AL 35898-5000

26 SEP 2012

AMCIR

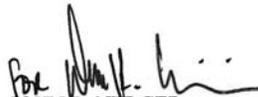
MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN:  
Acquisition and Contract Management ([REDACTED], Assistant Inspector  
General), 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Comments requested on DoDIG Draft Report; Army Contracting Command –  
Aberdeen Proving Ground Contracting Center's Management of Noncompetitive Awards Was  
Generally Justified, Project No. D2011-D000CG-0228.002

1. The U.S. Army Materiel Command (AMC) has reviewed the subject draft report and the  
response provided by the U.S. Army Contracting Command (ACC). AMC endorses the enclosed  
ACC response.

2. The AMC point of contact is [REDACTED] or email:  
[REDACTED]

Encl

  
JOHN B. NERGER  
Executive Deputy to the  
Commanding General



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY CONTRACTING COMMAND  
3334A WELLS ROAD  
REDSTONE ARSENAL, AL 35898-5000

SEP 11 2012

AMSCC-IR

MEMORANDUM FOR [REDACTED], Director, Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898

SUBJECT: Draft Report on the Audit of Army Contracting Command – Aberdeen Proving Ground Management of Noncompetitive Awards Was Generally Justified (Project No. D2011-D000CG-0228.002) (D1247) (12341)

1. Memorandum and Audit Report, 20 August 2012, subject: Draft Report on the Audit of Army Contracting Command – Aberdeen Proving Ground Contracting Center's Management of Noncompetitive Awards Was Generally Justified (Project No. D2011-D000CG-0228.002).
2. The Army Contracting Command (ACC) concurs with the enclosed ACC-Aberdeen Proving Ground (APG) comments, to include the documentation supporting the closure of recommendation 3.
3. Additionally, the correct designation for the contracting center is ACC-APG. The subject report identifies the organization as ACC-APG Contracting Center.
4. The ACC point of contact is [REDACTED], Internal Review and Audit Compliance Office, [REDACTED], email: [REDACTED].

FOR THE COMMANDER:

Encl

  
RANDLE K. JACKSON  
Acting Chief of Staff



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
U.S. ARMY CONTRACTING COMMAND - ABERDEEN PROVING GROUND  
4401 BOOTHBY HILL AVENUE  
ABERDEEN PROVING GROUND, MD 21005-3013

CCAP

30 August 2012

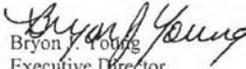
MEMORANDUM THRU [REDACTED], Army Contract Command Internal Review and Audit Compliance Office

FOR Ms [REDACTED], Assistant Inspector General, Acquisition and Contract Management, Department of Defense Inspector General

SUBJECT: DoDIG Project No. D2011-D000CG-0228.002, Army Contracting Command – Aberdeen Proving Ground Contracting Center’s Management of Noncompetitive Awards Was Generally Justified.

1. Army Contracting Command – Aberdeen Proving Ground (ACC-APG) comments on recommendations within subject draft report are enclosed.
2. Point of contact is [REDACTED], CCAP-OPC. [REDACTED]

Encl

  
Bryon Young  
Executive Director

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG)  
RESPONSE TO DODIG PROJECT NUMBER D2011-D000CG-0228.002

BACKGROUND

DoD Inspector General (DoDIG) conducted a review of Army Contracting Command – Aberdeen Proving Ground (ACC-APG) to evaluate the management of noncompetitive actions awarded in Fiscal Years 2009 and 2010. The objective of the project was to determine if noncompetitive contract awards were properly justified as sole source. A total of 30 contracts actions awarded for a value of \$529.2 million were reviewed. The report determined 28 of the 30 actions were adequately justified for noncompetitive award. One action included the Justification and Approval for Other Than Full and Open Competition (J&A) approved 462 days after contract award, and another action did not have a J&A associated with it when a J&A was clearly required.

The report also determined that ACC-APG contracting personnel did not include one or both of the statements required by FAR 5.207 in 9 of the 30 contracts to ensure that interested sources are aware of actions they can take if interested in competing for noncompetitive contracts.

DoDIG concluded that ACC-APG contracting personnel generally documented compliance with content requirements in FAR 6.303-2, and obtained approval from the proper official as required by FAR 6.304 for 29 of the 30 contracts reviewed. Additionally, J&A approval was obtained prior to award for 26 of the contracts as required by FAR 6.303, “Justifications.”

DRAFT REPORT RECOMMENDATION 1 FOR EXECUTIVE DIRECTOR, ACC-APG

Issue guidance establishing the number of days within which a J&A must be approved when a contract is awarded before approval of a justification using the authority cited at Federal Acquisition Regulation 6.302-2, “Unusual and Compelling Urgency” or, if that timeframe will not be met, require the contracting officer to document the file with the reasons for delay before the approval deadline passes.

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. ACC-APG Acquisition Instruction 12-14 was issued on 16 February 2012 establishing that J&As for urgent actions valued at \$85.5M and below which did not have approval prior to award must be approved not later than 7 days after contract award. J&As for actions valued greater than \$85.5M must be submitted to DASA(P) within 7 calendar days after award.

This guidance will be reissued and highlighted within the memorandum to be issued under the resolution to recommendations 2 and 4 of the subject report. Additionally, the requirement for

OFFICE SYMBOL: CCAP

SUBJECT: ACC-APG Response to DoDIG Project Number D2011-D000CG-0228.002

file documentation when the required completion dates will not be met will be added to the guidance. The memorandum will be issued not later than 30 October 2012.

DRAFT REPORT RECOMMENDATION 2 FOR EXECUTIVE DIRECTOR, ACC-APG

Issue a memorandum to contracting officers emphasizing the importance of completing a J&A in accordance with FAR 6.303, "Justifications," and adequately performing and documenting market research in accordance with FAR Part 10, "Market Research" for all noncompetitive awards using FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition."

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. The memorandum will be issued not later than 30 October 2012.

DRAFT REPORT RECOMMENDATION 3 FOR EXECUTIVE DIRECTOR, ACC-APG

Review the performance of the contracting officer who did not produce evidence of a J&A or documentation of adequate market research for contract W15P7T-10-C-S225 to determine whether administrative action is warranted.

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. The Chief, Division C reviewed the actions of the contracting officer with regards to this action on 28 August 2012 to determine whether administrative action was warranted. The contracting officer was counseled regarding the importance of proper file documentation including J&As. Any documents for this particular action which were not properly filed in PCF, but were available elsewhere, will be uploaded to PCF. The counseling constitutes the administrative action that will be taken. ACC-APG requests this finding be closed.

DRAFT REPORT RECOMMENDATION 4 FOR EXECUTIVE DIRECTOR, ACC-APG

Provide training or issue a memorandum on including the statements required by FAR 5.207, "Preparation and Transmittal of Synopses," in the synopsis of contract actions made under FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition."

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. A memorandum will be issued not later than 30 October 2012 reminding contracting personnel of the requirement to include the statements in FAR 5.207(c)(15) and (16) when synopsisizing an action issued under the authority of FAR 6.302.



# Inspector General Department of Defense

