

November 23, 2005



Financial Management

Report on Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System (D-2006-029)

Department of Defense
Office of the Inspector General

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Article I, Section 9

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Acronyms

ANSWER	Applications and Support for Widely-diverse End User Requirements
CECOM	Communications and Electronics Command
MIPR	Military Interdepartmental Purchase Request
PACMERS	Pacific Mobile Emergency Radio System



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

November 23, 2005

MEMORANDUM FOR NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System (Report No. D2006-029)

We are providing this report for review and comment. We considered comments from the Assistant Secretary of the Army (Financial Management and Comptroller), the Assistant Secretary of the Navy (Financial Management and Comptroller), and the Army Communications and Electronics Command on a draft of this report when preparing the final report. During the audit of the acquisition of the Pacific Mobile Emergency Radio System (PACMERS), we identified a potential material management control weakness and the need for immediate action to address potential Antideficiency Act violations on the inappropriate use of appropriations, bona fide need for funds, and obligation of the Government before an appropriation was made. In the draft report, we recommended that the Army and Navy initiate a review of the potential violations within 10 days in accordance with DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 3.C. We will issue a second report that will discuss system operational requirements and whether the contracts used to acquire the system satisfied those requirements.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Assistant Secretary of the Navy (Financial Management and Comptroller) comments were partially responsive therefore; we request additional comments on Recommendation 1.b and 1.c. We request that the Assistant Secretary of the Army (Financial Management and Comptroller) provide comments on Recommendation 1.b, 1.c and 2. We request that management provide comments by December 23, 2005.

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

Scope. We conducted this audit from May 2005 to October 2005 in accordance with generally accepted government auditing standards. During the site visit to PACMERS-Hawaii, we identified potential Antideficiency Act violations. We limited the objective to determining whether there were potential Antideficiency Act violations. We reviewed and analyzed the Antideficiency Act, the Financial Management Regulation, the Master Lease Agreement for the PACMERS-Hawaii task order, Military Interdepartmental Purchase Requests (MIPRs), and spreadsheets created by the PACMERS Program Office. We interviewed personnel from the PACMERS Program Office, Offices of the Assistant Secretaries of the Army and Navy (Financial Management and Comptroller), and the General Services Administration.

Background. The PACMERS is a nontactical communications system in Hawaii and Alaska. PACMERS was initiated in response to the National Telecommunications and

Information Administration narrow banding mandate which was intended to make more efficient use of limited frequency. After September 11, 2001, the mission of PACMERS expanded to support emergency first responders and homeland defense. The Hawaii region of PACMERS used the General Services Administration's Applications and Support for Widely-diverse End User Requirements (ANSWER) interagency contract. The General Services Administration awarded the ANSWER contract to 10 service providers. Of the 10 ANSWER contract service providers, Information Systems Support, Inc., was awarded the PACMERS-Hawaii task order. Program officials acquired the system by initiating 51 separate two- and four-year leases for infrastructure and handheld and mobile radios. The PACMERS Task Order is scheduled to end in December 2005; according to program officials, the leases for the PACMERS-Hawaii equipment are being continued through contracts to be awarded by the Navy's Fleet Industrial Supply Center. The PACMERS Program Office is also procuring a new system through the Communications and Electronics Command Base Radio System contract. Program officials stated that the existing system will be kept in service until the new system is fully operational.

Criteria. The Antideficiency Act is codified in a number of sections of title 31 of the United States Code (U.S.C.), such as 31 U.S.C. 1341(a), 1342, 1349-1351, 1511(a), 1512-1519. The purpose of those statutory provisions, known collectively as the Antideficiency Act, is to enforce the Constitutional powers of Congress for the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may trigger violations of the Antideficiency Act provisions; for example, the "bona fide needs rule," 31 U.S.C. 1502(a); the "purpose statute," 31 U.S.C. 1301(a); and violations of various statutory spending limitations such as 10 U.S.C. 2805, "Unspecified Minor Construction." This report discusses potential violations of the Antideficiency Act with respect to 31 U.S.C. 1502(a), 1341(a)(1)(A), and 1341(a)(1)(B).

"Bona Fide Needs" Rule. To use appropriated funds, a bona fide need must exist for the requirement in the year that the appropriations are available for obligation. Section 1502(a), title 31, U.S.C. states:

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

The Under Secretary of Defense (Comptroller)/Chief Financial Officer issued a memorandum, "Fiscal Principals and Interagency Agreements," in September 2003. According to the memorandum, an interagency agreement may not be used solely to prevent funds from expiring or to keep them available for a requirement arising in the following fiscal year. Additionally, every order under an interagency agreement must be based upon a legitimate, specific and adequately documented requirement representing a bona fide need of the year in which the order is made. According to 10 U.S.C. 2410a, the Secretary of Defense or the Secretary of a Military Department may enter into a contract for the procurement of severable services or the lease of real or personal property that includes the maintenance of such property when contracted for as part of the lease agreement for a period that begins in one fiscal year and ends in the next fiscal year, if

the contract does not exceed 1 year. Further, 10 U.S.C. 2410a(b) states that funds made available for a fiscal year may be obligated for the total amount of a severable services' contract or lease entered into under the authority of 10 U.S.C. 2410a.

DoD Financial Management Regulation Guidance. The DoD Financial Management Regulation provides policy for all DoD Components on potential violations of the Antideficiency Act as well as procedures for reporting violations. According to the DoD Financial Management Regulation, volume 14, chapter 2, violations of the Antideficiency Act occur when:

- special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used are violated,
- regulatory limitations on the amounts for which an appropriation or fund may be used are violated, or
- obligations or expenditures of funds do not provide a bona fide need for the period of availability of the fund or account, and corrective funding is not available.
- Annual appropriation acts define the uses of and set specific timelines for each appropriation. The DoD Financial Management Regulation, volume 2A, chapter 1, provides guidelines on the most commonly used DoD appropriations for determining the correct appropriation to use for planning acquisitions.

Operations and Maintenance. Expenses incurred in continuing operations and current services are funded with Operations and Maintenance appropriations. The Under Secretary of Defense (Comptroller)/Chief Financial Officer considers all modernization costs under \$250,000 to be expenses, as well as one-time projects such as developing planning documents and conducting studies. Operations and Maintenance funds are available for obligation for 1 year.

Procurement. The acquisition and deployment of a complete system, or the modification of a system with a cost of \$250,000 or more, is an investment and should be funded with a procurement appropriation. Complete system cost is the aggregate cost of all components; for example, equipment, integration, engineering support, and software that are part of, and function together as, a system to meet an approved, documented requirement. Modifications count only the cost of the upgrade (new software, hardware, and technical assistance) towards the investment threshold. Procurement funds are available for obligation for 3 years.

Capital Lease. The DoD Financial Management Regulation contains guidance on determining when an equipment lease would be considered a capital lease because the type of lease affects the appropriation used to fund the lease. According to DoD Financial Management Regulation, volume 4, chapter 7, a lease is classified as a capital lease if any one of the following criteria is met:

- The lease transfers ownership of the property to the lessee by the end of the lease term.

-
- The lease contains an option to purchase the leased property at a bargain price.
 - The lease term is equal to or greater than 75 percent of the estimated economic life of the leased property.
 - The present value of rental and other minimum lease payments equals or exceeds 90 percent of the fair value of the leased property.

If at least one of these criteria is met, the lease is considered an investment and procurement funds should be used.

Results. We identified three potential violations of the Antideficiency Act.

- Violation of the statutory limitations on the purposes for which an appropriation or fund may be used and obligated,
- Expenditure of funds did not provide for a bona fide need in the period of availability of the fund or account and corrective funding was not available, and
- Involvement of the Government in a contract or obligation for the payment of money before an appropriation was made.

Appropriation Limitations. The PACMERS-Hawaii Program Office may have violated the statutory limitations on the purposes for which an appropriation may be used because program officials used Operations and Maintenance funding to obtain a system costing more than \$250,000 and to finance capital leases. Specifically, the life-cycle cost of the PACMERS-Hawaii leases is \$15.7 million and the lease agreement contained an option to purchase the leased property at a bargain price. The DoD Financial Management Regulation states that the acquisition and deployment of a complete system, the aggregate cost of all components such as equipment, integration, engineering support, and software, with a cost of \$250,000 or more, is an investment and should be funded with Other Procurement Funds. In addition, the leases used to acquire the PACMERS equipment contained a \$1 buy-out option at the end of the lease term. With the buy-out option, the leases are classified as capital leases and should be funded with Other Procurement Funds. Of the 7 Army and 4 Navy MIPRs submitted to the General Services Administration's Information Technology Revolving Fund to obtain the equipment, 10 were for Operations and Maintenance funding. Therefore, incorrect appropriations may have been used for PACMERS-Hawaii. For specific MIPR information, see Table 1 in Appendix A.

Congressional Intent. An official from the Office of the Assistant Secretary of the Navy for Financial Management and Comptroller identified a previous legal opinion which stated that if it was the intent of Congress to use Operations and Maintenance funds, there would be no violation of the Antideficiency Act. The legal opinion was part of DoD OIG Report D-2003-082, "Joint Operation Planning and Execution System Funding," which identified a potential Antideficiency Act violation because the program used an incorrect appropriation. The Associate Deputy DoD General Counsel for Appropriations and Authorization Matters stated that he did not believe that an Antideficiency Act violation occurred. According to the previous legal

opinion, the system's funding was clearly identified and justified within the agency's budget for the Operations and Maintenance appropriation, and the funding identified was appropriated by Congress and provided to the agency; therefore, there was an almost irrefutable presumption that the Operations and Maintenance funding for the Joint Operation Planning and Execution System was proper. We believe that the previous legal opinion is not pertinent to PACMERS because the previous legal opinion was fact-specific to the Defense Information System Agency's acquisition of the Joint Operation Planning and Execution System. Congress provided PACMERS Operations and Maintenance funding through the appropriations process. The FY 2000 Appropriations Conference Report stated that PACMERS justification was based upon the theory that a true cost savings would be realized using a total turnkey, leased system that would negate Government risk associated with the maintenance, technological obsolescence, and capital investment of a procured system.¹ However according to documents provided by the PACMERS Program Office, we determined that PACMERS did not conform to this justification because PACMERS equipment was acquired by entering into two- and four-year capital leases. The capital leases did not achieve a true cost savings for the Government because the lease payments exceeded the purchase price of the equipment. In addition, we determined that the length of the handheld radio leases resulted in technological obsolescence because DoD was unable to upgrade PACMERS to the Association of Public-Safety Communications Officials Project 25 standard when available. Therefore, a potential Antideficiency Act violation should be investigated because the acquisition of PACMERS was not properly justified to Congress for the intended use of the operations and maintenance appropriation.

Bona Fide Need. The 51 PACMERS-Hawaii leases were funded by 11 MIPRs submitted to the General Services Administration Information Technology Revolving Fund. The General Services Administration's Information Technology Revolving Fund does not require that MIPR funds match requirements obtained. Thus, there is no assurance that available FY 2001 funds were used for FY 2001 requirements. PACMERS program officials created a spreadsheet that identified the funds for each lease. We identified 13 leases that were funded with 2 MIPRs valued at \$6.1 million from a fiscal year before the notice to proceed was given to the contractor. For example, the notice to proceed for Lease No. 010303-01 was given in FY 2003, however, the MIPR was for Operations and Maintenance funds for FY 2001. Therefore, there may not have been a bona fide need for the \$6.1 million and a potential Antideficiency Act violation may have occurred. See Table 2 in Appendix A for the leases that were funded with MIPRs from a fiscal year before the notice to proceed was given.

Obligation Before Appropriation. The PACMERS-Hawaii Program Office may have involved the Government in an obligation for payment before making an appropriation because the program office entered into two- and four-year leases, which both the program office and the General Services Administration deem to be nonseverable. The overall task order for PACMERS is ending in December 2005; however, the leases will extend beyond the contract period of performance and will be continued under another contract. According to the master lease agreement, if the program office were to end the leases before the end of the lease term but expend funds for equipment or services performing the functions which the assets were procured to

¹ See House of Representatives Report 106-371, "Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2000, and for Other Purposes Conference Report," October 8, 1999.

perform, then the Government would be in breach of the contract. The program office funded the leases with Operations and Maintenance funding (see Table 1 in Appendix A). Multiyear procurement is permissible only in two limited circumstances: when multiyear or no-year appropriations are available, at the time the contract is executed, covering the entire period of the government's commitment, or when permitted by specific statutory authority. Therefore, a potential Antideficiency Act violation may have occurred because the program office obligated the Government for two and four years with one-year money.

Prior Related Audit Coverage. DoD IG Report No. D-2005-096, "DoD Purchases Made Through the General Services Administration," July 29, 2005, evaluated DoD internal control over DoD purchases made through the General Services Administration; specifically, whether there was a legitimate need for DoD to use General Services Administration, whether DoD requirements were clearly defined, and whether funds were properly used and tracked. The results showed that contracting officials in the General Services Administration and DoD management officials did not comply with the Constitution, appropriations law, and the Federal Acquisition Regulation when making purchases through General Services Administration. Additionally, the audit showed that 38 of the 75 evaluated purchases had potential Antideficiency Act violations or other funding violations according to DoD Regulation 7000.14, "Financial Management Regulations."

Conclusion. PACMERS program officials intend to procure new equipment to replace the existing equipment. However, the acquisition options for the PACMERS-Hawaii equipment will be influenced by the results of the investigation of the potential violations. If the PACMERS Program Office is required to procure the existing equipment, the pending contract action for the new system may not be necessary. The contracting officer at the Communications and Electronics Command stated that the contract award had been postponed indefinitely until the preliminary Antideficiency Act investigation is completed.

Management Comments on Results and Audit Response

Management Comments on Bona Fide Need. According to the Director, Budget Policy and Procedures Division, the Department of the Navy is not convinced that a potential violation of the Bona Fide Needs rule occurred. The Director stated that even though the requirement to pay a lease does not occur in the same fiscal year as the obligation, it does not constitute an Antideficiency Act violation because it does not completely indicate that a bona fide need did not exist at the time of obligation.

Audit Response. We agree that expenditure or payment in a subsequent fiscal year does not automatically constitute an Antideficiency Act violation; however, according to the Under Secretary of Defense (Comptroller)/Chief Financial Officer, every order under an interagency agreement must be based upon a legitimate, specific, and adequately documented requirement representing a bona fide need of the year in which the order is made. As a result of management comments, we revised our report to include the date that the notice to proceed was given to the contractor. The PACMERS was a time and materials, level of effort contract. Specifically, an overall task order existed; however, the task order did not identify specific requirements for the equipment. Subsequent work orders were issued to notify the contractor to provide equipment and services. These notices to proceed initiated each of the leases. Therefore, we believe that

the obligation of the Government occurred when the notice to proceed was given to the contractor on each individual work order.

Management Comments on Obligation Before Appropriation. According to the Director, Budget Policy and Procedures Division, the Department of the Navy is not convinced that a potential violation of 31 U.S.C. 1341 (a)(1)(b) occurred. The Director stated that when contracts are awarded, funding for the current fiscal year is normally cited on the contract; the fact that payment or expenditure is due 2 years later may not be relevant. According to the Director, the example in the report indicates that the PACMERS Program Office cited FY 2001 funds on a lease where the requirement to pay would not occur until FY 2003. Expenditure or payment in subsequent fiscal years does not constitute an Antideficiency Act violation.

Audit Response. We agree that expenditure or payment in subsequent fiscal years does not constitute an Antideficiency Act violation; however, DoD Regulation 7000.14, "Financial Management Regulations," volume 14, chapter 2, states that an Antideficiency Act violation may occur when an obligation is authorized or incurred in advance of the funds being available. As a result of management comments, we revised the report to include the terms of the master lease agreement. Multiyear procurement is permissible only in two limited circumstances: when multiyear or no-year appropriations are available, at the time the contract is executed, covering the entire period of the government's commitment, or when permitted by specific statutory authority. Because the program office entered into two- and four-year nonseverable leases with one year Operations and Maintenance funds, an Antideficiency Act violation may have occurred.

Recommendations, Management Comments, and Audit Response

1. We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller) and the Assistant Secretary of the Navy (Financial Management and Comptroller):

a. Initiate a preliminary investigation of these potential Antideficiency Act violations within 10 days to determine whether a violation occurred.

The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) Comments. The Army provided a copy of the memorandum sent to the Commander, U.S. Army Pacific Command, which stated that a preliminary investigation is to be completed within 90 days to determine whether an Antideficiency Act violation occurred.

The Office of the Assistant Secretary of the Navy (Financial Management and Comptroller) Comments. The Director of the Budget Policy and Procedures Division concurred, stating that the appropriate organization will conduct a preliminary investigation of the Antideficiency Act violations.

b. Complete the preliminary investigation in a timely manner (within 90 days) as required by the DoD Regulation 7000.14-R "DoD Financial Management Regulation," and provide the results of the preliminary investigation to the Office of the Inspector General.

The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) Comments. According to the memorandum sent to the Commander, U.S. Army Pacific Command, results of the preliminary report on the alleged violation is due to the Deputy Assistant Secretary of the Army (Financial Operations) by February 3, 2006.

The Office of the Assistant Secretary of the Navy (Financial Management and Comptroller) Comments. The Director of the Budget Policy and Procedures Division concurred, stating that a preliminary investigation of Antideficiency Act violations had been tasked to the appropriate organization.

Audit Response. The comments from the Army and Navy were only partially responsive because they did not state that the results will be provided to the Office of the Inspector General. In addition, we request that the Navy provide additional comments with the estimated date of completion. We request that the Army and the Navy provide additional comments by December 23, 2005, in response to the final report.

c. We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller) and the Assistant Secretary of the Navy (Financial Management and Comptroller) fund the remainder of the existing leases with the correct appropriations.

The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) Comments. The Assistant Secretary of the Army (Financial Management and Comptroller) did not comment on this recommendation. Therefore, we request that the Army provide comments by December 23, 2005, in response to the final report.

The Office of the Assistant Secretary of the Navy (Financial Management and Comptroller) Comments. The Director of the Budget Policy and Procedures Division concurred, stating the Department of the Navy fully intends to fund the remainder of the Navy leases from the correct appropriation. However, in accordance with the DoD Financial Management Regulation, the existence of a violation will not be determined until the preliminary and formal Antideficiency Act investigations are completed.

Audit Response. Although the Navy concurred with the recommendation, the comments did not identify a plan of actions and milestones that will be taken to fund the remainder of the leases correctly. We ask that the Navy provide additional comments by December 23, 2005, in response to the final report.

2. We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller) not fund the procurement of a new Pacific Mobile Emergency Radio System until the investigations of all potential Antideficiency Act violations are completed.

The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) Comments. The Assistant Secretary of the Army (Financial Management and Comptroller) did not comment on this recommendation. Therefore, we request that the Army provide comments by December 23, 2005 in response to the final report.

Army Communications and Electronics Command (CECOM) Comments. Although not required to comment, the contracting officer, Army Communications and Electronics

Command stated that the contract award had been postponed indefinitely until the preliminary Antideficiency Act investigation is completed.

We appreciate the courtesies extended to the staff. Questions should be directed to Ms. Jacqueline L. Wicecarver at (703) 604-9077 (DSN 664-9077) or Mr. Daniel S. Battitori at (703) 604-9012 (DSN 664-9012). See Appendix B for the report distribution. The team members are listed inside the back cover.

By direction of the Deputy Inspector General for Auditing:



Mary L. Ugone
Assistant Inspector General
for Acquisition and Technology Management

Appendix A. Military Interdepartmental Purchase Requests

The following table identifies 11 MIPRs used to lease the PACMERS-Hawaii equipment.

Table 1. MIPRs Provided to the General Services Administration for PACMERS-Hawaii Equipment			
<u>Service</u>	<u>MIPR</u>	<u>Fiscal Year</u>	<u>Funding</u>
Army	MIPR1CGSA0M016	2001	2020 – Operations and Maintenance
Army	MIPR2JGSA0M085	2002	2020 – Operations and Maintenance
Navy	N6144902MPDE002	2002	1804 – Operations and Maintenance
Army	MIPR2KGSA00716	2002	2020 – Operations and Maintenance
Navy	N6144902POSA005	2002	1804 – Operations and Maintenance
Navy	N3225303MP11001	2003	1804 – Operations and Maintenance
Army	MIPR3CGSA0M023	2003	2020 – Operations and Maintenance
Army	MIPR3KGSA0M211	2003	2020 – Operations and Maintenance
Army	MIPR3FGSA0M072	2003	2020 – Operations and Maintenance
Army	MIPR4BGSA0M012	2004	2020 – Operations and Maintenance
Navy	KB2KUCAMP93020	None	4930 – Working Capital Fund

The following table identifies 13 leases in which the MIPR fiscal year preceded notice to proceed fiscal year.

Table 2. Notice to Proceed and MIPR Fiscal Year			
<u>Lease Number</u>	<u>MIPR Program Office Matched with Lease</u>	<u>MIPR Fiscal Year</u>	<u>Notice to Proceed Month/Year (FY)</u>
022202-01	MIPR1CGSA0M016	2001	April 25, 2002 (FY02)
040902-01	MIPR1CGSA0M016	2001	April 23, 2002 (FY02)
041702-01	MIPR1CGSA0M016	2001	April 26, 2002 (FY02)
041802-01	MIPR1CGSA0M016	2001	May 7, 2002 (FY02)
082901-02	MIPR1CGSA0M016	2001	October 2, 2001 (FY02)
100101-01	MIPR1CGSA0M016	2001	October 15, 2001 (FY02)
100101-02	MIPR1CGSA0M016	2001	October 19, 2001 (FY02)
101801-01	MIPR1CGSA0M016	2001	November 16, 2001(FY02)
101901-01	MIPR1CGSA0M016	2001	October 31, 2001 (FY02)
010303-01	MIPR1CGSA0M016	2001	March 1, 2003 (FY03)
050702-03	MIPR1CGSA0M016	2001	July 31, 2002 (FY02)
052303-01	N6144902POSA005	2002	June 26, 2003 (FY03)
010203-01	MIPR1CGSA0M016	2001	No Notice to Proceed for this Lease.

Appendix B. Report Distribution

Office of the Secretary of Defense

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 Director, Acquisition Resources and Analysis
Under Secretary of Defense (Comptroller)/Chief Financial Officer
 Deputy Chief Financial Officer
 Deputy Comptroller (Program/Budget)
Director, Defense Procurement and Acquisition Policy
Assistant Secretary of Defense for Networks and Information Integration/Chief
 Information Officer
Director, Program Analysis and Evaluation

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Auditor General, Department of the Army
Commander, U.S. Army Pacific Command
 Deputy Chief of Staff for Information Management
 Deputy Chief of Staff for Resource Management
Contracting Officer, Communications and Electronics Command

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Naval Inspector General
Auditor General, Department of the Navy
Commander, Navy Region Hawaii
 Comptroller, Navy Region Hawaii

Department of the Air Force

Auditor General, Department of the Air Force

Combatant Commands

Commander, U.S. Pacific Command
 Comptroller, U.S. Pacific Command
Inspector General, U.S. Joint Forces Command

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Office of Management and Budget
General Services Administration

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Homeland Security and Governmental Affairs

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Government Reform

House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform

House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform

Assistant Secretary of the Army (Financial Management and Comptroller) Comments



REPLY TO
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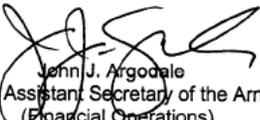
DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
FINANCIAL MANAGEMENT AND COMPTROLLER
100 ARMY PENTAGON
WASHINGTON DC 20310-0108

NOV 9 2005

MEMORANDUM FOR COMMANDER, U.S. ARMY PACIFIC COMMAND,
ATTN: AP-RM, FORT SHAFTER, HAWAII, 96858-5100

SUBJECT: Antideficiency Act (ADA) Violation Case 06-07

1. Reference DoDIG draft report, October 31, 2005, subject: Draft Report on Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of the Pacific Mobile Emergency Radio System (Project No. D2005-D000AS-0177.000). The DoDIG draft report identifies seven Army Military Interdepartmental Purchase Requests used to lease a communication system. The case control number 06-07 has been assigned to this investigation and should be used for subsequent identification and reporting purposes.
2. In accordance with DFAS-IN Regulation 37-1, a preliminary investigation is to be completed within 90 days from the date of discovery. The purpose of the preliminary investigation is to ascertain whether or not an Antideficiency Act (ADA) violation occurred. A preliminary report that includes the facts surrounding the alleged violation is due to the Deputy Assistant Secretary of the Army (Financial Operations) by February 3, 2006.
3. If it is determined that an ADA violation has occurred, a complete and final summary report is due by April 28, 2006. The final summary report should be prepared in accordance with DFAS-IN Regulation 37-1. An Antideficiency Act Investigation Manual is located on the ASA(FM&C) website (WWW.ASAFM.ARMY.MIL) that you should use as a guide for ADA investigation and reporting requirements. It is critical that the investigation be conducted and documented in accordance with these documents. The final report should include:
 - a. The name, rank, title and position of individuals determined to be responsible for the violation.
 - b. A copy of the transmittal letters forwarding a copy of the final report to the responsible individual and his/her signature for receipt of the report.
 - c. Proposed disciplinary actions (you should not take disciplinary action until final review of the report by DoD OGC).
 - d. Corrective actions taken to include funding correction(s).
4. Violation of the Antideficiency Act is a serious matter. You should exercise personal oversight to ensure the final summary report is properly completed and submitted on schedule. My point of contact for this action is Ms. Claire Nelson, who can be reached at (703) 693-3383 or email: claire.nelson@hqda.army.mil.


John J. Argodale
Deputy Assistant Secretary of the Army
(Financial Operations)

Assistant Secretary of the Navy (Financial Management and Comptroller) Comments

Final Report
Reference



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(FINANCIAL MANAGEMENT AND COMPTROLLER)
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

NOV 9 2005

MEMORANDUM FOR DEPARTMENT OF DEFENSE DEPUTY INSPECTOR GENERAL FOR AUDITING

Subj: COMMENTS ON DODIG DRAFT REPORT ON POTENTIAL
ANTIDEFICIENCY ACT VIOLATIONS IDENTIFIED DURING THE AUDIT
OF THE ACQUISITION OF THE PACIFIC MOBILE EMERGENCY RADIO
SYSTEM (PACMERS)

Ref: (a) Draft DODIG Report D2005-D000AS-0177.000 of 31 October 2005

Encl: (1) Department of the Navy Response

The Department of the Navy (DoN) response to reference (a) is provided at enclosure (1). We concur with recommendations 1.a. and 1.b. We also concur with recommendation 1.c., pending Department of Defense (Comptroller) acceptance of the final Antideficiency Act (ADA) report.

Other comments related to the draft audit follow:

- **Appropriations Limitations:** We agree that the Department of the Navy (DoN) may have violated 31 U.S.C. 1301 citing the use of operations and maintenance funds vice procurement funds. Absent results of the preliminary ADA report, and pending the Department of Defense (DoD) acceptance of the final ADA report, we cannot determine whether operations and maintenance funds or procurement funds should have been used for the acquisition of PACMERS.
- **Obligation Before Appropriation:** The Department of the Navy (DoN) is not convinced a potential violation of 31 U.S.C. 1341(a)(1)(B) occurred. When contracts are awarded, funding of the current fiscal year is normally cited on the contract. The fact that payment/expenditure is due 2 years later may not be relevant. The DoDIG draft report states that 6 Military Interdepartmental Purchase Requests (MIPRs) cited funding from a fiscal year prior to the first lease payment. In the DoDIG example, a MIPR citing FY 2001 funds was provided for Lease No. 010303-01; however, payment for this lease didn't occur until FY 2003. This example does not indicate that the PACMERS Program Office obligated the Government before making a valid appropriation; however, it does indicate the

Revised,
Page 6

Subj: COMMENTS ON DODIG DRAFT REPORT ON POTENTIAL ANTIDEFICIENCY
ACT VIOLATIONS IDENTIFIED DURING THE AUDIT OF THE ACQUISITION OF
THE PACIFIC MOBILE EMERGENCY RADIO SYSTEM (PACMERS)

PACMERS Program Office cited FY 2001 funds on a lease where the
requirement to pay that lease didn't occur until FY 2003.
Expenditure/payment in subsequent fiscal years does not constitute an
ADA.

- Bona Fide Need: As stated above, even though the requirement to pay a
lease does not occur in the same fiscal year as the obligation, this does not
constitute an ADA, and further does not indicate that a bona fide need
didn't exist in the year of obligation. While Table 2 of the draft audit
report reflects payments for the PACMERS leases occurring in fiscal years
subsequent to the fiscal years of the MIPRs, this does not completely
indicate that a bona fide need did not exist at the time of obligation.

My point of contact is Kathleen Cohen, who may be reached at 703-692-1671 or via
email at Kathleen.cohen@navy.mil.



Gaye L. Evans
Director
Budget Policy and Procedures Division
Office of Budget

Copy to:
OUSD(C)

Department of the Navy
Response to DODIG Draft Audit Report (Project No. D2005-D000AS-0177.000)
Potential Antideficiency Act Violations Identified During the Audit of the Acquisition of
the Pacific Mobile Emergency Radio System (PACMERS)
Dated October 31, 2005

Recommendation 1.a. Initiate a preliminary investigation of these potential Antideficiency Act violations within 10 days to determine whether a violation occurred.

Department of the Navy Response: Concur. The Office of the ASN (Financial Management & Comptroller (ASN(FM&C))) has tasked the requisite activity to conduct a preliminary Antideficiency Act violation investigation pertaining to the PACMERS acquisition.

Recommendation 1.b. Complete the preliminary investigation in a timely manner (within 90 days) as required by the DoD Regulation 7000.14-R "DoD Financial Management Regulation," and provide the results of the preliminary investigation to the Office of the Inspector General.

Department of the Navy Response: Concur. A preliminary Antideficiency Act violation investigation has been tasked to the requisite activity.

Recommendation 1.c. Fund the remainder of the existing leases with the correct appropriation.

Department of the Navy Response: Concur. The Department of the Navy fully intends to fund the remainder of the Navy leases with the correct appropriation. However, in accordance with the DoD Financial Management Regulation, the existence of a violation will not be determined until the results of the preliminary and formal ADA investigation are completed.

Enclosure 1

Army Communications and Electronics Command Comments

Final Report
Reference



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY COMMUNICATIONS-ELECTRONICS
LIFE CYCLE MANAGEMENT COMMAND, (C-E LCMC) ACQUISITION CENTER
FORT MONMOUTH, NEW JERSEY 07703-5000

REPLY TO
ATTENTION OF

09 November 2005

AMSEL-ACCB-RTK-Z (NBD)

Jacqueline L. Wicecarver, Program Director
Information Technology Acquisition Division
Acquisition and Technology Management
Inspector General DOD
400 Army Navy Drive
Arlington, VA 22202-4704

MEMORANDUM FOR PROGRAM DIRECTOR, INSPECTOR GENERAL DOD, ACQUISITION
AND TECHNOLOGY ACQUISITION DIVISION

SUBJECT: Draft Report on Potential Antideficiency Act Violations
Identified During the Audit of the Pacific Mobile Emergency Radio
System (Project No. D2005-D000AS-0177.000)

1. Reference your Memorandum, SAB dated 31 Oct 2005, this memorandum confirms review and acknowledges request for comments in accordance with DoD Directive 7650.3.
2. Reference Draft Report above, Recommendations, page 6, paragraph 2, the impact of withholding funds until the investigations of all potential Anti-deficiency Act violations are completed will result in the following actions by this office:
 - a. No further pre-award actions will be taken until a determination of a preliminary investigation is confirmed. If a preliminary investigation is initiated; no award action will occur during the initial 10-day violation determination period. If a violation has occurred, then this office will postpone award for a period of no less than 90 days, until all potential investigations are completed and resolved. In the event of no follow-on investigation, this office will resume pre-award actions to award.
 - b. Conclusion: Page 5, last sentence. The contract award forecast for the new procurement has been postponed indefinitely until completion and results of subject report are made known as aforementioned in paragraph a. above.

Revised,
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AMSEL-ACCB-RTK-Z (NBD)
SUBJECT: Draft Report on Potential Antideficiency Act Violations
Identified During the Audit of the Pacific Mobile Emergency Radio
System (Project No. D2005-D000AS-0177.000)

3. Procurement Impact: The new procurement consolidates efforts with Joint Services (Army, Navy, Air Force). The following table (Fig. 1.1) lists 11 new Sites in the shaded cells and Table 2.(Fig. 1.2) displays 15 Dispatch Consoles that were not covered under PACMERS leases as part of the new proposed acquisition.

1.1	SITE	CURRENT UNDER LEASE	NEW PROPOSED ACQUISITION
	Fort Shafter, Bldg 1292	X	X
	Red Hill	X	X
	Mt. Kaala	X	X
	Mauna Kapu	X	X
	Diamond Head		X
	Kahuka Training Area	X	X
	MCBH (Kansas Tower)		X
	Kawaihae Harbor (transportable)		X
	Makua Valley Training Area (transportable)		X
	Waimanalo Ridge		X
	Kaena Point		X
	PMRF Bldg 27		X
	Kokee Site A		X
	Kukui		X
	Halaeakala		X
	Mauna Loa Observatory	X	X
	Kahua Ranch		X

1.2	DISPATCH CONSOLES	CURRENT UNDER LEASE	NEW PROPOSED ACQUISITION	DELTA (CHANGE)
	RDC	4	11	+7
	Hickham Fire/Crash	0	3	+3
	Hickam Security	0	2	+2
	Schofield Barracks PMO	2	2	0
	Fort Shafter PMO	2	2	0
	Pohakuloa Training Area PMO	1	1	0
	Fort Shafter Bldg 1292	1	1	0
	Schofield Barracks IOC/EOC	1	1	0
	Schofield Barracks 196 th	2	2	0
	MCB PMO	0	1	+1
	Tripler Army Medical Center	2	2	0
	PMRF	0	2	+2
	TOTAL	15	30	+15

AMSEL-ACCB-RTK-Z(NBD)
SUBJECT: Draft Report on Potential Antideficiency Act Violations
Identified During the Audit of the Pacific Mobile Emergency Radio
System (Project No. D2005-D000AS-0177.000)

4. This office reserves the right to re-solicit and procure the supplies and/or services necessary to support those areas/locations that are outside the scope of subject investigation.

5. We await the final IG audit report determinations and will take any recommendations under advisement, especially those pertaining to the new acquisition pending award.

6. If you require additional information, please do not hesitate to contact the undersigned at (732)532-4148 (DSN: 992-4148) or Contract Specialist, Ms. Betty Cuzzolino (732)532-2365 (DSN: 992-2365).



Nelson Duncan
Contracting Officer

CF: PM, DCATS, E. Swenson, M. Corzine
CE-LCMC Legal, W. Kampo
ACQ Process Change Group, S. Mielke
ACQ Business Management Grp, J. Anderson, K. Walk

Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Acquisition and Technology Management, prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

Mary L. Ugone
Jacqueline L. Wicecarver
Daniel S. Battitori
Carol J. Johnson
David M. Staley
Dustin W. Karp
Jacqueline N. Pugh