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**WAIVERS OF REQUIREMENT FOR CONTRACTORS
TO PROVIDE COST OR PRICING DATA**

Report No. D-2001-061

February 28, 2001

**Office of the Inspector General
Department of Defense**

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Acronyms

DAC	Designated Acquisition Commander
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DCADS	Defense Contract Action Data System
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
FAR	Federal Acquisition Regulation
HCA	Head of the Contracting Activity
IPT	Integrated Product Team
LM/GES	Lockheed Martin Government Electronic Systems
NAVAIR	Naval Air Systems Command
NAVSEA	Naval Sea Systems Command
ODA	Other Defense Agencies
PEO	Program Executive Officer
PPSS	Post-Production Systems Support
SAF/AQCS	Deputy Assistant Secretary of the Air Force (Contracting), Program Division
TINA	Truth in Negotiations Act



INSPECTOR GENERAL
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February 28, 2001

MEMORANDUM FOR DIRECTOR, DEFENSE PROCUREMENT
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Waivers of Requirement for Contractors to Provide Cost
or Pricing Data (Report No. D-2001-061)

We are providing this report for your information and use. We conducted the audit in response to a tasking in the Senate Committee on Armed Services Report on the National Defense Authorization Act for FY 2000. We considered management comments on the draft of this report when preparing the final report.

The comments conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Garold E. Stephenson at (703) 604-9332 (DSN 664-9332) (gstephenson@dodig.osd.mil) or Mr. Eugene E. Kissner at (703) 604-9323 (DSN 664-9323) (ekissner@dodig.osd.mil). See appendix E for the report distribution. Audit team members are listed on the inside back cover.

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Office of the Inspector General, DoD

Report No. D-2001-061

(Project No. D2000CH-0106)

February 28, 2001

Waivers of Requirement for Contractors to Provide Cost or Pricing Data

Executive Summary

Introduction. This audit was initiated in response to a tasking in the Senate Committee on Armed Services Report on the National Defense Authorization Act for FY 2000. The committee noted that during FYs 1997 and 1998, DoD granted roughly \$2.5 billion of waivers to the Truth in Negotiations Act (TINA) requirement that contractors provide cost or pricing data. The TINA authorizes the waivers only in extraordinary circumstances. Additionally, the statement of managers accompanying the Strom Thurmond National Defense Authorization Act for FY 1999 states that Congress intended that this waiver authority be used only in limited circumstances. The committee directed that the Inspector General, DoD, review the Department's use of the waiver authority.

Objectives. The overall audit objective was to determine whether waivers of the requirement for contractors to provide cost or pricing data granted in FYs 1997 and 1998 were properly justified and used in appropriate circumstances. Additionally, we determined whether the Department ensured that prices were fair and reasonable when the requirement was waived. We reviewed 4,590 contract actions, valued at approximately \$2 billion, coded as receiving a waiver to cost or pricing data. We also evaluated the management control program as it related to the overall objective.

Results. Contracting officials properly justified, and used in appropriate circumstances, waivers of the TINA requirement to obtain cost or pricing data in an estimated 189 of the reviewed contract actions, valued at \$1.04 billion, where waivers were used. Contracting officers also ensured fair and reasonable prices for those 189 contract actions. The procedures that DoD contracting organizations used to process the waivers and to determine fair and reasonable prices were effective and not burdensome (finding A).

The information on cost or pricing data in the Defense Contract Action Data System (DCADS) was very inaccurate and misleading. We estimated that 4,264 actions (92.9 percent), valued at \$789 million, of 4,590 contract actions were miscoded. The significant errors grossly inflated the reported number of contract actions in which the requirement for contractors to provide cost or pricing data had been waived. During

the audit, the Director, Defense Procurement, issued guidance requiring the Military Departments and Defense agencies to initiate actions to improve the accuracy of cost or pricing data information (finding B).

Contracting officers at five contracting organizations did not obtain or waive cost or pricing data for a few contract actions in our sample. We estimate that this problem applied to 11 actions, valued at \$15 million, of the 4,590 contract actions. Not obtaining cost or pricing data or a waiver resulted in insufficient support for the contracting officers' determinations that fair and reasonable prices were achieved for the contact actions (finding C).

Summary of Recommendations. We recommend that the Director, Defense Procurement, ensure that the Military Departments and Defense agencies provide the results of this audit to their contracting organizations and periodically review coding accuracy, with a report on coding for FY 2001 actions. We also recommend that the heads of the contracting organizations that did not obtain or waive cost or pricing data require their contracting officers to comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement guidance for obtaining cost or pricing data and the procedures for waiving the requirements when justified.

Management Comments. The Director, Defense Procurement, concurred, stating that she will provide the Military Departments and Defense agencies a copy of this report, emphasizing the need for their institution of management controls designed to ensure correct coding in DCADS, particularly as it regards cost or pricing data. The Director will also request the Military Departments and Defense agencies to report by February 1, 2002, the actions taken and results achieved regarding the accuracy of coding for FY 2001 actions. The Director, Defense Threat Reduction Agency; the Air Force; and the United States Property and Fiscal Officer, Oregon, concurred. The Director, Defense Threat Reduction Agency and the United States Property and Fiscal Officer, Oregon, issued guidance and the Air Force instituted training to increase contracting personnel awareness of the requirements pertaining to cost or pricing data. See the Finding section of the report for a discussion of management comments and the Management Comments section for the complete text of the comments.

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Background

We performed the audit in response to a tasking in the Senate Committee on Armed Services Report on the National Defense Authorization Act for FY 2000. The committee expressed concerns regarding the number reported by DoD of waivers of the Truth in Negotiations Act (TINA) requirement that contractors provide cost or pricing data. The committee noted that DoD reported roughly \$2.5 billion waivers during FYs 1997 and 1998. The TINA authorizes the waivers only in extraordinary circumstances, and managers' statements accompanying the Strom Thurmond National Defense Authorization Act for FY 1999 emphasized that Congress intended this waiver authority use only in limited circumstances. The committee directed that the Inspector General, DoD, review the waivers to ensure that the waiver authority was properly justified and used in appropriate circumstances. DoD was also to ensure that prices were fair and reasonable in cases where the requirement for cost or pricing data was waived.

TINA Requirement. The TINA has been used as an important tool during the negotiation phase of Government contracts for more than 38 years. TINA requires a contractor to provide the Government with "cost or pricing data," during negotiations for certain contracts and contract modifications. This information is broadly categorized to include, ". . . all facts that prudent buyers and sellers would reasonably expect to affect price negotiations significantly." Further, the contractor must certify that the data are "current, accurate, and complete," as of the date the parties agree on a price. The Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) contain guidance for implementing TINA.

Guidance on Cost or Pricing Data

Cost or Pricing Data Defined. FAR 15.401, "Definitions," defines cost or pricing data as data that requires certification in accordance with FAR 15.406-2, "Certificate of Current Cost or Pricing Data." Cost or pricing data submissions are factual, verifiable, and not judgmental. The data represents accumulated information that could reasonably contribute to sound estimates of future costs and also validate costs already incurred. The data includes such factors as:

- vendor quotations,
- nonrecurring costs,
- information on changes in production methods and production or purchasing volume,
- data supporting projections of business prospects and objectives and related operations costs,
- unit cost trends such as those associated with labor efficiency,

-
- make or buy decisions,
 - estimated resources to attain business goals, and
 - information on management decisions that could have a significant bearing on costs.

Both prime contractors and subcontractors can be required to furnish cost or pricing data for contracting officer use in determining reasonableness of contract price.

Determining Cost or Pricing Data Requirements. FAR 15.403, "Obtaining Cost or Pricing Data," requires that contracting officers obtain cost or pricing data for contracts and contract modifications valued at \$550,000 or more when the contracting officer concludes that none of the exceptions in the FAR apply. The threshold changed to from \$500,000 to \$550,000 in FY 2001. Additionally, if sufficient information is available to determine price reasonableness, then a waiver of the requirement to obtain cost or pricing data should be considered. The Head of the Contracting Activity (HCA) may authorize the contracting officer to obtain cost or pricing data for contract actions above the \$100,000 simplified acquisition threshold but below the \$550,000 cost or pricing data threshold unless an exception at FAR 15.403-1(b) applies. The HCA must justify the requirement for cost or pricing data. The documentation must conclude that cost or pricing data are necessary to determine whether the price is fair and reasonable.

Prohibitions and Exceptions to Cost or Pricing Data Requirements.

FAR 15.403-1 prohibits contracting officers from obtaining cost or pricing data for acquisitions that are at or below the simplified acquisition threshold. The guidance also states that contracting officers shall not require cost or pricing data submissions to support any action when one of the following exceptions are present.

- The acquisition is based on adequate price competition or prices set by law or regulation.
- A commercial item is being acquired.
- A waiver has been granted.
- A modification of a commercial item contract or subcontract.

DFARS 215.403, "Obtaining Cost or Pricing Data," states that DoD waived the requirement to obtain cost or pricing data from the Canadian Commercial Corporation and its subcontractors, and from nonprofit organizations (including educational organizations) with cost-reimbursement-no-fee contracts.

Other Circumstances Where Cost or Pricing Data Are Not Required.

FAR 15.403-2 states that cost or pricing data are not required when an option is exercised at the price established at contract award or initial negotiation, and for proposals used solely for overrun funding or interim billing price adjustments.

Contracting officers are required by FAR 15.402, "Pricing Policy," to use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data.

Objectives

The overall audit objective was to determine whether waivers of the requirement for contractors to provide cost or pricing data granted in FYs 1997 and 1998 were properly justified and used in appropriate circumstances. Additionally, we determined whether the Department ensured that prices were fair and reasonable when the requirement was waived. We also evaluated the adequacy of management controls related to the audit objective. See Appendix A for a discussion of the audit process and our review of the management control program.

A. Use of Waivers of Cost or Pricing Data

Contracting officers properly justified, and used in appropriate circumstances, waivers of the TINA requirement to obtain cost or pricing data for certain negotiated contract actions valued at \$500,000 or more. Contracting officers also ensured fair and reasonable prices for the contract actions where cost or pricing data were waived. The procedures that DoD contracting organizations used to process the waivers and to determine fair and reasonable prices were effective and not burdensome.

Granting Cost or Pricing Data Waivers

Review of Contract Actions Coded as Waivers in Our Audit Sample. Of 4,590 actions, valued at approximately \$2 billion, coded cost or pricing data waived, we estimated that the contracting officers properly waived cost or pricing data for 189 actions valued at about \$1 billion. See Appendix A, Table A-4, for the details of the statistical projections. We evaluated contract file documentation and the procedures used to process 44 waivers, valued at \$702.3 million, that were in our statistical sample.

Justifications for Waivers in Sample. The contracting officers properly justified and used in appropriate circumstances the 44 waivers evaluated. The waivers were granted to 17 nonprofit and 27 for profit contractors. Table 1 summarizes the waiver justifications. See Appendixes B and C for a detailed discussion of the waivers.

Table 1. Summary of Cost or Pricing Data Waiver Justifications			
<u>Justifications</u>	<u>Actions</u>	<u>Authority</u>	<u>Value (\$ M)</u>
Canadian Commercial Corporation (nonprofit)	1	DoD blanket waiver	\$0.7
Contractor refused to provide data	4	HCA	\$3.8
Cost or pricing data furnished on previous procurement	22	HCA	\$686.7
Mentor-protégé development assistance development program	1	HCA	\$1.2
Nonprofit educational institutions	16	DoD blanket waiver	\$9.9

Ensuring Fair and Reasonable Prices

The contracting officers ensured fair and reasonable prices in the instances where cost or pricing data had been waived. The contracting officers concluded that they could not determine price reasonableness on four actions, because of insufficient competition and contractor refusals to provide cost or pricing data. Of the four contract actions, two were awarded to Mobil Oil Corporation for fuel storage and throughput at contractor-owned, contractor-operated facilities at Djibouti, East Africa. Mobil Oil refused to provide cost or pricing data, stating that the price was based on prevailing market conditions in the area, not on cost data. The other two contract actions were awarded to Delaware Storage and Pipe Line Company for maintaining, storing, and transferring war reserve materiel. The contractor refused to provide cost or pricing data, stating the data was proprietary. The contracting officers determined fair and reasonable prices on the other 40 actions based on:

- standard tuition rates charged by universities,
- previously negotiated prices that were based on cost or pricing data combined with updated cost data,
- labor rates established by state law and verified by DCAA, and
- cost and price analysis, including assistance from DCAA and the Defense Contract Management Agency (DCMA) when appropriate.

See Appendixes B and C for price reasonableness determinations for actions with cost or pricing data waived.

Processing Waivers of Cost or Pricing Data

Guidance for Waiver Approvals. The FAR authorizes HCAs to grant waivers of the TINA requirement to obtain cost or pricing data only in extraordinary circumstances. The DoD waived the requirement for cost or pricing data for the Canadian Commercial Corporation and its subcontractors, and from nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The Air Force supplements to DFARS designates the Assistant Secretary of the Air Force (Acquisition) as the HCA for Program Executive Officer (PEO) and Designated Acquisition Commander (DAC) programs. The guidance stipulates processing waiver requests through PEO/DAC channels to the Deputy Assistant Secretary (Contracting), Program Division (SAF/AQCS). When the HCA is the Deputy Assistant Secretary of the Air Force (Contracting), waiver requests are also forwarded to SAF/AQCS. The Air Force also maintains a web site addressing TINA waivers and guidance for preparing waiver packages for HCA signature.

The Naval Air Systems Command (NAVAIR) and the Naval Sea Systems Command (NAVSEA) maintain internal guidance on cost or pricing data waivers. The NAVAIR guidance outlines criteria for waivers and includes a sample waiver request. The guidance states that waivers are justified only in situations where

adequate, reliable cost information exists. Cost projections are created from verifiable costs on completed contractual efforts, instead of negotiated numbers. The NAVSEA guidance outlines the four levels of internal review required before the Commander, NAVSEA (the HCA) approves a waiver.

Procedures for Processing Waiver Requests. Although each contracting organization had different internal procedures for processing waivers, the overall process is the same. The waiver request was initiated by the contracting officer, reviewed by various levels of management (program office, cost analyst, legal, and chief of the contracting office), and forwarded to the HCA for approval. The waiver request normally included a clear description of the methods for determining price reasonableness and a summary statement of the requested approval action, or if applicable, a complete description of the data the contractor refused to submit and the basis for refusal. Figure 1 depicts the typical process for waiver requests.

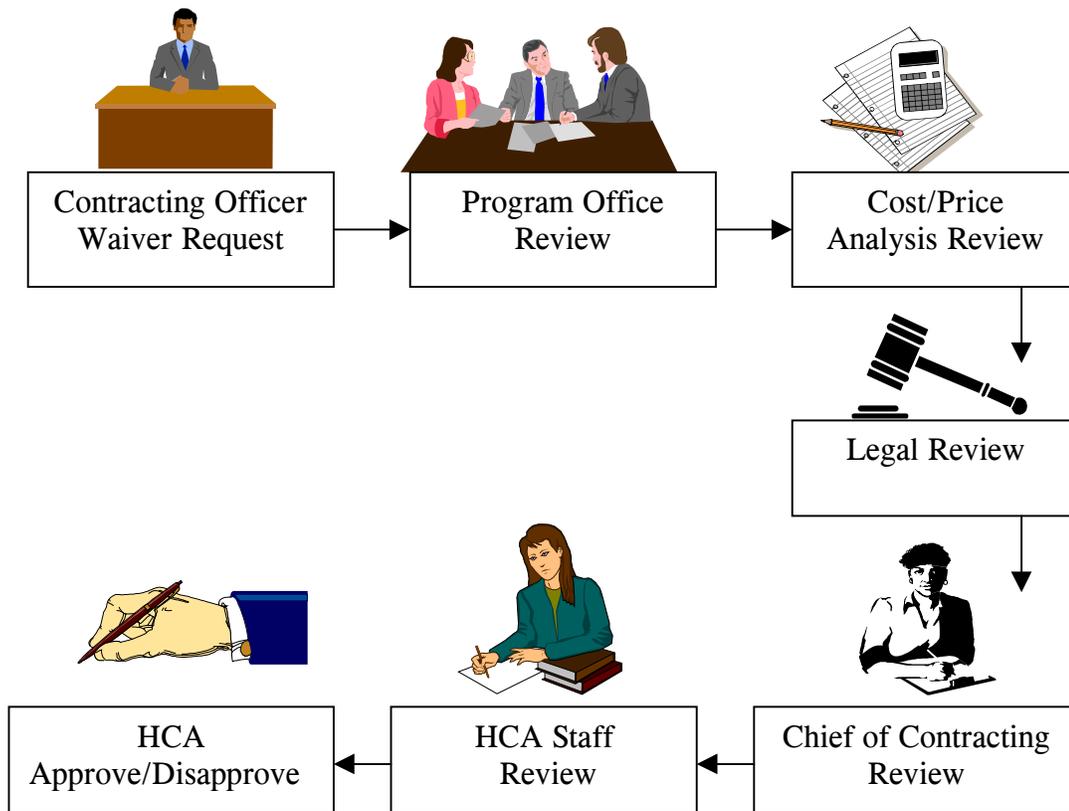


Figure 1. Typical Procedures for Processing Waiver Requests

Conclusion. DoD used effective procedures to process 44 waivers of the TINA requirement to obtain cost or pricing data. The waivers were justified and granted only in exceptional circumstances, and fair and reasonable prices were obtained.

Nothing came to our attention to indicate that a burdensome, unreasonable, or excessive time-consuming process existed. Therefore, we are not making any recommendations concerning DoD contracting organizations procedures for waiver processing.

B. Accuracy of Information on Cost or Pricing Data in DCADS

The information on cost or pricing data in DCADS was very inaccurate and misleading. We estimated that 4,264 contract actions, valued at \$789 million, of 4,590 contract actions valued at approximately \$2 billion, were miscoded as having cost or pricing data waived in DCADS. The inaccurate information in DCADS occurred primarily because the contract specialists coding the Individual Contracting Action Report (DD Form 350) were not aware or did not understand the FAR and DFARS guidance. Also, the contracting officers that signed the DD Forms 350 did not correct the errors. The significant errors resulted in misleading reports that grossly inflated the number of contract actions with cost or pricing data waived.

DCADS

The Office of Federal Procurement Policy Act (41 U.S.C. 405) requires that the administrator for Federal Procurement Policy establish a computer-based Federal Procurement Data System to collect, develop, and disseminate procurement data to Congress, the executive branch, and the private sector. Executive departments and agencies collect and report procurement data to the Federal Procurement Data System. The data measures and assesses the impact of Federal procurements on the nation's economy, the extent which small business firms and small disadvantaged business firms are sharing in Federal procurements, and the impact of full and open competition in the acquisition process and other procurement matters. DCADS is the DoD reporting system that supports the Federal Procurement Data System. Contracting officers are required by DFARS to use the DD Form 350 to report selected information on contract actions, valued at \$25,000 or more, including information on cost or pricing data. Block C11 of the DD Form 350 shows whether cost or pricing data was obtained.

Guidance on Completing Block C11 of the DD Form 350

Contracting officers must enter one of the following codes in block C11 of the DD Form 350 when block B1B is coded "A" (DoD contract), block B5B is coded "N" (not a Government agency contract), and block B13A is not coded "6" (Federal Supply Schedule order or call):

- Code "Y" - Yes - Obtained. Enter code "Y" when cost or pricing data were obtained (see FAR 15.403-4) and certified in accordance with FAR 15.40602.
- Code "N" - No - Not Obtained. Enter code "N" when neither code "Y" nor code "W" applies.

-
- Code "W" - Not Obtained - Waived. Enter code "W" when cost or pricing data were not obtained because the requirement was waived (see FAR 15.403-1[C][4]).

Reporting Information on Cost or Pricing Data to DCADS

Inaccurate and Misleading Information Reported. We estimated that the contracting officers reported inaccurate and misleading information for 4,264 of 4,590 FYs 1997 and 1998 contract actions coded cost or pricing data waived in DCADS. The contracting officers signed DD Forms 350 for the 4,264 actions with the cost or pricing data block (block C11) miscoded "W - Not Obtained - Waived," when no waiver of cost or pricing data was obtained. We evaluated 316 miscoded contract actions, valued at \$736.8 million, to identify the reasons for the miscoding.

Miscoded DD Forms 350. Cost or pricing data were obtained for 33 of 316 miscoded contract actions. Block C11 of the DD Form 350 should have been coded "Y - Yes - Obtained." Block C11 should have been coded "N - No - Not Obtained" for 276 of the miscoded actions, because they were either below the simplified acquisition threshold, or exceptions¹ to, not waivers of, the requirement to submit cost or pricing data. The other seven miscoded actions did not meet the exception criteria and the contracting officers did not obtain the required cost or pricing data or a waiver of the requirement (see finding C). The miscoding resulted primarily from contracting officials erroneously coding block C11 "W - Not obtained - Waived" instead of "N - No - Not Obtained," when an action was below the simplified acquisition threshold or met one of the exemptions in FAR 15.403. The contract specialists that coded the DD Forms 350 were not aware or did not understand the FAR and DFARS guidance concerning coding criteria for block C11. Also, the contracting officers that signed the DD Forms 350 did not notice or correct the errors.

The miscoding grossly inflated the reported number of contract actions with cost or pricing data waived. To reemphasize the need for compliance with cost or pricing data requirements and improve the accuracy of reported cost or pricing information, all DoD contracting organizations should be made aware of the results of this audit.

Action Taken to Improve the Accuracy of Cost or Pricing Data Information Reported to DCADS

During the audit, most of the 104 contracting organizations that reported inaccurate information on cost or pricing data to DCADS issued internal guidance advising

¹For the 276 exceptions, we accepted the contracting officer's determination that an exception applied. We did not evaluate the validity of the determinations. The Inspector General, DoD, Audit Project No. D2000CF-0059, "Audit of Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data Are Not Required," was examining the validity of the determinations that an exception applied.

contracting officials of inaccurate reporting and the need to correctly code block C11 of the DD Form 350. McClellan Air Force Base will close soon and, therefore, did not issue guidance. Additionally, in response to our suggestions, the Director, Defense Procurement, issued a memorandum, July 24, 2000, requesting that Military Departments and Defense agencies initiate actions to improve the accuracy of cost or pricing data information. The Director referenced the Federal Register DFARS rule (DFARS Case 2000-D0001, effective October 1, 2000). The new guidance includes specific instructions for completing block C11 of the DD Form 350. The instructions clarify the use of Code "W" for waiver of cost or pricing data when the data was not obtained because the HCA waived the requirement (see Appendix D). The internal guidance issued by the contracting organizations and the actions taken by the Director, Defense Procurement, should minimize the coding errors and misleading information reported to DCADS. However, follow-up action is necessary to determine whether these measures are effective.

Recommendations and Management Comments

B. We recommend that the Director, Defense Procurement require the Military Departments and Defense agencies to:

1. Provide the results of this audit to their contracting organizations, reemphasizing the need for compliance with FAR and DFARS guidance on cost or pricing data.

2. Periodically monitor the accuracy of coding for contract actions identified in DCADS with cost or pricing data waived, starting with a review of coding for FY 2001 actions and report those results to the Director, Defense Procurement, by February 1, 2002.

Director, Defense Procurement Comments. The Director, Defense Procurement, concurred. The Director agreed to provide copies of this report within 60 days of publication to the Military Departments and Defense agencies, emphasizing the need for the Military Departments and Defense agencies to institute management controls designed to ensure correct coding in DCADS, particularly as it regards cost or pricing data. Additionally, the Director will request that the Military Departments and Defense agencies report by February 1, 2002, the actions taken and results achieved regarding the accuracy of coding FY 2001 actions in DCADS. For the full text of comments from the Director, Defense Procurement, see the Management Comments section of the report.

Air Force Comments. The Air Force also agreed with Recommendations B.1. and B.2., stating that it has provided web-based tools and training to field organizations for determining appropriate use of cost or pricing data. Additionally, it has provided specific guidance to field organizations addressing proper coding of cost or pricing data information in the DCADS. For the full text of Air Force comments, see the Management Comments section of the report.

C. Obtaining Cost or Pricing Data or a Waiver of the Requirement

Contracting officers at five contracting organizations did not obtain or waive required cost or pricing data for sample contract actions. We estimated that this condition applied to 11 actions, valued at \$15 million, in the universe of 4,590 contract actions. The contracting officers reported there was a waiver to the requirement to obtain cost or pricing data when there was no waiver or valid exception to obtaining cost or pricing data. Cost or pricing data were not obtained or waived because the contracting officers ignored the requirement to obtain the information. As a result, insufficient support exists for the contracting officers' determinations that fair and reasonable prices were achieved for the seven contract actions in our sample.

Requirements for Obtaining Cost or Pricing Data

Contracting officers must obtain cost or pricing data from contractors and subcontractors when negotiating contracts or contract modifications valued at \$550,000 or more, unless one of the FAR 15.403-1 exceptions is applicable. The exceptions are:

- when the contracting officer determines that prices agreed upon are based on adequate price competition, or prices set by law or regulation;
- when a commercial item is being acquired;
- when a waiver has been granted; or
- when modifying a contract or subcontract for commercial items.

Contracting Officers' Compliance Issues. Our sample review of the contracts reported as having a waiver for cost or pricing data identified seven sole-source contracts with no waiver or valid exception. The reasons cited were:

- HCA chose not to prepare or sign a waiver (one contract),
- contracting officer was not aware of the requirement to obtain the data (one contract),
- contracting officer ignored the FAR guidance in order to award contract before the close of the fiscal year (three contracts), and
- contracting officer claimed an exemption for competition when none existed (two contracts).

We could not determine whether there was overpricing or adequate pricing because adequate data or documentation did not exist. These cases are basically examples of poor contracting. The seven contracts are described in the following paragraphs.

Defense Threat Reduction Agency

Contract DSWA01-98-C-0016, November 27, 1997, for tunnel closure work valued at \$4,819,501. Awarded to the National Nuclear Center, Republic of Kazakhstan, the sole source designated by DoD and the Republic of Kazakhstan to perform the work. The contracting officer concluded that the contract price was fair and reasonable and stated that the contract costs were developed based on previous contracts for similar work and labor rates and coefficients established by the Republic of Kazakhstan. The contract file has no waiver document and the price negotiation memorandum does not discuss a waiver of cost or pricing data. A Defense Threat Reduction Agency procurement official stated that the HCA, who was also the contracting officer for this contract action, waived cost or pricing data, but chose not to prepare the justification and sign the waiver. The HCA should have documented the waiver.

United States Property and Fiscal Office, Salem, Oregon

Contract DAHA35-97-C-0006, September 30, 1997, for construction services, valued at \$2,086,000, for the Army National Guard Bureau. The contract was a Small Business 8(a) set-aside awarded at the end of the fiscal year. The price negotiation memorandum signed by the contracting officer indicated that fair and reasonable prices were determined by comparing the contractor's proposal to an independent Government estimate, which was used as the target objective for negotiations. The contracting officer stated that a previous contract price for similar services was used to determine a fair and reasonable price and that this was the method for all contracts and that waivers were not secured for those contracts. The contracting officer was not aware that FAR and DFARS guidance required cost or pricing data or a waiver for this contract action. We believe that without cost or pricing data or other significant cost data, the contracting officer had inadequate support for the determination that the contract price was fair and reasonable.

Schriever Air Force Base, Colorado

Contract FA2550-97-C-0008, September 25, 1997, for minor construction and repair of a fitness center valued at \$716,175. The contract was a small business set-aside awarded at the end of the fiscal year. The chief of contracting, Schriever Air Force Base signed a determination and finding stating that waiving cost or pricing data was appropriate. However, a waiver request was not forwarded to, or approved by the HCA (Commander, Air Force Space Command), so that the contract could be awarded before the end of the fiscal year. The contracting officer

determined the price was fair and reasonable based on the prime contractor obtaining the lowest negotiated prices from the subcontractors performing most of the work, a 330-day performance period, and comparison of the proposed price with the Government objective. We believe the contracting officer had inadequate support for the determination that the contract price was fair and reasonable.

Contract FA2550-98-C-0015, September 29, 1998, for building renovations valued at \$892,666. The contract was a small business set-aside awarded at the end of the fiscal year. The contracting officer and the contract specialist stated that because of time constraints (approaching the end of the fiscal year), cost or pricing data were not obtained. The contractor's proposal was analyzed and compared to contract costs for similar services. However, the contracting officials were unable to provide documentation showing the similar contract costs and comparisons. The contracting officer determined the contract price was fair and reasonable based on a Means Guide² comparison, the Government estimate, the technical evaluation recommendations, other information obtained during fact finding, and the contractor's revised proposal. Based on the information provided by contracting officials at Schriever Air Force Base, we were unable to determine whether the contracting officer had adequate support for the determination. The contracting officer should have obtained cost or pricing data, or requested the HCA to grant a waiver of the requirement.

Warner Robins Air Force Base, Georgia

Delivery order F09603-97-G-0003/0016, August 15, 1998, for 19 receivers/transmitters (RT-1571A) valued at \$893,000. The contracting officer determined the price was fair and reasonable based on a price comparison analysis from a March 1993 contract award for two receivers/transmitters. The Chief, Avionics Management Contracting Division, Warner Robins, stated that the contracting officer failed to comply with FAR 15.403-4 because cost or pricing data were not obtained or waived. The contracting officer either ignored the FAR and DFARS requirements or did not request the data in order to make the contract award before the end of the fiscal year. The contracting officer had inadequate support for the determination of a fair and reasonable contract price.

As a part of their corrective actions, contracting officials at Warner Robins Air Force Base also determined that delivery order F09603-97-G-0003/0023, valued at \$542,100, was inappropriately awarded without cost or pricing data or a waiver. The same contracting officer awarded orders F09603-97-G-0003/0016 and F09603-97-G-0003/0023. The contracting officer is no longer employed by DoD.

²The Means Guide contains a fairly comprehensive list of line-item costs for construction projects. It is useful for estimating material acquisition costs and costs of specific reclamation tasks, such as structure removal.

Air Force Research Laboratory, Kirtland Air Force Base, New Mexico

Contract F29601-98-C-0014, March 2, 1998, for research on adaptive control systems, valued at \$734,653, and contract F29601-98-C-0020, April 6, 1998, for research and development work on optical controls for the Ultralite space experiment, valued at \$758,195. Both contracts were Phase II Small Business Innovative Research contracts. The chief, Contract Policy Division, at Kirtland stated that the DD Forms 350 for the contracts were incorrectly coded "W" in block C11, indicating that cost or pricing data was waived. Block C11 should have been coded "N" indicating that cost or pricing data was not obtained because the contracting officer determined that adequate price competition existed. Further, FAR 15.403-1(c)(iii) states that adequate price competition may exist if, ". . . price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition."

The price negotiation memorandum signed by the contracting officer for contract F29601-98-C-0014 did not mention price competition. The chief, Contract Policy Division, stated that informal file documentation indicates that the contracting officer compared the proposed costs to the costs of the prior (Phase I) effort. However, the chief did not provide copies of the informal documents, nor any evidence that adequate price competition was obtained for the Phase I effort, or that Phase I and Phase II efforts were comparable. In the price negotiation memorandum, the contracting officer stated that the contract price was fair and reasonable based on a technical/quantitative evaluation of the proposal by the Project Office; review of all documents submitted by the contractor; discussions and negotiations with the contractor; DCAA October 1, 1997, information on rates for consultant management, subcontract management, direct labor, labor overhead, and general and administrative expenses; and weighted application guidelines.

For contract F29601-98-C-0020, the contracting officer signed a memorandum on April 15, 1998 (9 days after contract award), stating that ". . . the contract action was submitted in response to a competitive solicitation and is assumed to be based on adequate price competition. Circumstances indicate the offer was submitted independently, with a reasonable expectation of competition, and at least one other offeror was capable of submitting a meaningful offer." The accuracy of the contracting officer's statement was questionable because Small Business Innovative Research Phase II contracts continue the R&D effort started in Phase I and only awardees in Phase I were eligible to participate in Phase II. The Chief, Contract Policy Division, stated that the contracting officer's determination that adequate price competition existed was valid because the price negotiation memorandum clearly states that the action was submitted

in response to a competitive solicitation. He further stated that the action was consistent with Air Force Materiel Command guidance concerning adequate price competition. The key element in the guidance was whether price was a substantial factor in the contract award. If price was not a substantial factor, then adequate price competition did not exist and cost or pricing data were required. The chief provided no evidence that price was a substantial selection criteria for this contract award. The contracting officer had inadequate support for the determination that the prices for contracts F29601-98-C-0014 and F29601-98-C-0020 were fair and reasonable without cost or pricing data or other significant data to determine price reasonableness.

Summary

The audit identified seven contract actions, valued at \$10.9 million, in our sample coded as having waived cost or pricing data for which the contracting officers did not obtain or waive cost or pricing data as required by FAR and DFARS guidance. We estimated that contracting officers failed to obtain either cost or pricing data or waivers for 11 actions, valued at \$15 million, in the universe of 4,590 contract actions.

The Inspector General, DoD, Audit Project No. D2000CF-0059, "Audit of Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data Are Not Required," identified where waivers to obtaining cost or pricing data were claimed but the DD Form 350 was coded as "N - No - Not Obtained." Those waivers to obtaining cost or pricing data were not in the universe for this audit. As a result, the validity of the waivers with a DD Form 350 stating there was no waiver will be covered in the final report for the ongoing audit.

Without the cost or pricing data or other significant data to determine price reasonableness, the contracting officers had inadequate support for their determinations that the contract prices were fair and reasonable. The estimated 11 contract actions, valued at \$15 million, for which the contracting officers failed to obtain cost or pricing data identified in this audit indicate a potentially costly problem with contracting officers determining fair and reasonable prices without adequate support for the determinations. To minimize the number of contract awards without adequate support for cost reasonableness determinations, contracting officers should be reminded of the need to comply with FAR and DFARS guidance concerning cost or pricing data. The final report for Audit Project No. D2000CF-0059, "Audit of Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data Are Not Required," will contain a DoD-wide recommendation on compliance with cost or pricing data requirements. Therefore, this report only contains a recommendation specific to the five contracting organizations identified during the audit that did not properly obtain or waive required cost or pricing data.

Recommendation and Management Comments

C. We recommend that the Director, Defense Threat Reduction Agency; the National Guard Bureau, United States Property and Fiscal Officer, Oregon; and the Commanders, Kirtland, Schriever, and Warner Robins Air Force Bases issue guidance requiring their contracting officers to comply with the FAR and DFARS requirements for obtaining cost or pricing data and the circumstances for waiving the requirement.

Management Comments. The Director, Defense Threat Reduction Agency; the Air Force; and the United States Property and Fiscal Officer, Oregon, concurred. The Defense Threat Reduction Agency and the United States Property and Fiscal Officer issued guidance requiring their contracting personnel to comply with FAR and DFARS requirements pertaining to cost or pricing data. The Air Force instituted training to increase contracting personnel awareness of the requirements pertaining to cost or pricing data at the Air Force Research Laboratory, Kirtland Air Force Base, and at Schriever and Warner Robins Air Force Bases. For the full text of the management comments, see the Management Comments section of the report.

Appendix A. Audit Process

Scope

Work Performed. We visited 49 contracting organizations and reviewed documentation on 294 FYs 1997 and 1998 contract actions coded cost or pricing data waived in DCADS. Additionally, we reviewed documentation on 91 contract actions obtained by mail from 55 other contracting organizations. The 385 actions were valued at about \$1.5 billion. The documentation included contracts, price negotiation memorandums, prenegotiation briefing memorandums, business clearance memorandums, signed waivers of the requirement to obtain cost or pricing data, the justification for the waivers, documentation of assistance obtained from DCAA and DCMA, and the DD Forms 350 for the basic contract, agreement, or order. In addition, we reviewed documents relevant to management control programs.

DoD-Wide Corporate Level Government Performance and Results Act (GPRA) Goals. In response to the GPRA, the Secretary of Defense annually established DoD-wide corporate level goals, subordinate performance goals, and performance measures. Although the Secretary of Defense has not established any goals for Contract Management and Information Management, the General Accounting Office lists them as high-risk areas. This report pertains to Contract Management and Information Management.

Methodology

We evaluated DD Forms 350 block C11 entries and contract file documents to determine whether the entries accurately reported waivers of the TINA requirement for contractors to provide cost or pricing data. We evaluated the contracting officers' justifications for cost or pricing data waivers to determine whether the waivers were adequately supported and used in appropriate circumstances. We also evaluated the procedures used to process requests for waivers to determine whether the procedures were efficient. Additionally, we evaluated the actions taken by contracting officers to obtain fair and reasonable prices for procurements with cost or pricing data waived to determine whether the actions were sufficient to ensure fair and reasonable prices.

Use of Computer-Processed Data. We relied on computer-processed data from the DCADS database to select an audit sample and determine which contracting organizations to visit. Although we did not perform a formal reliability assessment of the computer-processed data, we determined that the contract numbers, award dates, contractors, and cost or pricing data codes generally agreed with the information in the computer-processed data. We did not find errors that would preclude use of the computer-processed data to meet the audit objectives or that would change the conclusions in the report.

Statistical Sampling Methodology. The universe population comprised the 22,115 FYs 1997 and 1998 contract actions valued at \$6.3 billion coded "W"

(indicating cost or pricing data was waived) in DCADS. We tested 129 contract actions during the survey phase, 24 of which were included in the audit phase. The audit work during the survey phase revealed that a high proportion of the 22,115 actions did not involve a new agreement or new work and therefore, did not require submission of cost or pricing data or a waiver in FYs 1997 and 1998.

Consequently, we requested a second data call from the Washington Headquarters Service against the same FYs 1997 and 1998 DCADS records. The resulting subpopulation of 4,590 contract actions were, based on DCADS codes, all actions that involved new work added to a basic contract or agreement, or were themselves basic contracts or agreements. As such, the contract actions would require cost or pricing data or a waiver during FYs 1997 and 1998. Table A-1 shows the breakdown of the 22,115 contract actions in the original universe.

Table A-1. Breakdown of 22,115 Contract Actions in Original Universe			
	<u>Actions</u>	<u>Contracts</u>	<u>Value (\$B)</u>
Original universe – all coded ‘W’	22,115	4,138	\$6.338
Actions adding new work or a new agreement	4,590	2,780	\$2.069
Actions not adding new work or a new agreement	17,525	1,358	\$4.269

Subpopulation. After removing actions that did not require cost or pricing data or a waiver in FYs 1997 and 1998, we obtained a subpopulation of 4,590 contract actions that, according to DCADS coding, would require cost or pricing data or a waiver. Table A-2 shows the subpopulation by DoD Component.

Table A-2. Subpopulation by DoD Component				
<u>Component</u>	<u>\$500K and Over</u>		<u>Under \$500K</u>	
	<u>Actions</u>	<u>Value (\$M)</u>	<u>Actions</u>	<u>Value (\$M)</u>
Army	95	\$199.0	1,135	\$102.7
Navy/USMC	178	\$1,191.4	830	\$79.6
Air Force	65	\$315.7	656	\$63.6
DLA	17	\$38.3	1,535	\$57.8
ODA	7	\$13.2	72	\$7.4
Total	362	\$1,757.7	4,228	\$311.1
DLA Defense Logistics Agency				
ODA Other Defense Agencies				

Statistical/Quantitative Approach. We analyzed the 22,115 contract actions in two portions. The 17,525 contract actions that did not involve new work or new agreements were analyzed during the audit survey phase based on the DD Form 350 data reported to DCADS. The remaining 4,590 contract actions were analyzed using a stratified random sample. We tested 279 contract actions statistically selected from the 4,590 actions in the subpopulation. Table A-3 shows the sample selected from the subpopulation.

Table A-3. Sample Selected From 4,590 Subpopulation						
<u>Component</u>	<u>\$500K and Over</u>		<u>Under \$500K</u>		<u>Total</u>	
	<u>Universe</u>	<u>Sample</u>	<u>Universe</u>	<u>Sample</u>	<u>Universe</u>	<u>Sample</u>
Army	95	50	1,135	20	1,230	70
Navy/USMC ¹	178	65	830	20	1,008	85
Air Force	65	40	656	20	721	60
DLA	17	17	1,535	20	1,552	37
ODA	7	7	72	20	79	27
Total	362	179	4,228	100	4,590	279

Measurement Issues. Among the 22,115 contract actions in the universe, there were 17,525 actions, valued at \$4.3 billion, that did not require new work or a new agreement and, therefore, did not require submission of cost or pricing data or a waiver in FYs 1997 and 1998. Among the remaining 4,590 actions, a substantial number were miscoded for a variety of reasons. The reasons for the miscoding are discussed in finding B. The small number of contract actions that were coded correctly are discussed in finding A.

Statistical Results. We computed statistical projections for the percentages and the number of actions in four categories: properly granted waivers, improperly granted waivers, known miscodes, and no determination because contract information was missing or incomplete. We calculated the confidence intervals using a 95 percent confidence level. The projections include point estimates, which are essentially the midpoints between the lower and upper bounds for the respective categories. The dollar value point estimate does not sum to the approximately \$2.0 billion value of the 4,590 contract actions. Not summing to the total is the most common result of a

¹ In analyzing the data, we created an eleventh, "census" stratum and put two Navy actions into it. The two actions, valued at \$251 million and \$159 million, were so atypical of the value of Navy actions over \$500,000 that they skewed the action value projections, so we post stratified them out into a self-representing (census) stratum. Putting the two actions in the separate stratum maintains their part of the population's value while removing their influence on the statistical projection, in a statistically appropriate way.

statistical sample. Given the sample size and characteristics, projecting dollar value from the sample to the population value, the confidence interval should include the book value within its range in 95 out of 100 samples. This audit sample accomplishes that purpose. The 95 percent confidence interval is \$1.5 billion to \$2.4 billion with its midpoint being \$1.9 billion. Table A-4 shows the statistical projections.

Table A-4. Statistical Projections				
<u>Category</u>		<u>Point Estimate</u>	<u>Lower Bound</u>	<u>Upper Bound</u>
Waivers:	Number of actions	189	56	322
	Percentages	4.1	1.2	7.0
	Value (millions)	\$1,042	\$621	\$1,463
Not Obtained:	Number of actions	11	6	16
	Percentages	0.2	0.1	0.3
	Value (millions)	\$15.3	\$9.0	\$21.6
Miscodes:	Number of actions	4,264	4,090	4,437
	Percentages	92.9	89.1	96.7
	Value (millions)	\$789	\$594	\$983
No Data	Number of Actions	126	14	238
	Percentages	2.8	0.3	5.2
	Value (millions)	\$66	\$40	\$91

The projections can be interpreted in statistical terms. To illustrate the projections for “waivers,” we are 95 percent confident that between 56 and 322 of the 4,590 DoD-wide actions sampled had appropriately justified cost or pricing waivers. The unbiased point estimate of 189 actions is the midpoint of the statistically estimated range of values. In terms of percentages, between 1.2 and 7.0 of the 4,590 DoD-wide actions had the waivers, and the unbiased point estimate of 4.1 percent is the midpoint of the statistically estimated range of values for the percentages of waivers in the population.

Summary. We concluded the following information, based on our two-part analysis of the 22,115 "W" coded actions.

- There were from 56 to 322 actions that were properly executed waivers. They were valued between \$621 million and \$1.463 billion.

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- There were from 6 to 16 actions² coded cost or pricing data waived where neither a waiver nor the required data was obtained. They were valued between \$9 million to \$22 million.
 - There were from 21,615 to 21,962 actions³ valued between \$4.861 billion and \$5.250 billion that did not represent actions that required cost or pricing data or a waiver in FYs 1997 and 1998.

Use of Technical Assistance. The Technical Director and Research Analysts from the Quantitative Methods Division, Office of the Assistant Inspector General for Auditing, DoD, developed the statistical sampling plan for the audit. Their work included statistically selecting the audit locations and the number of contracts to be examined at each location, as well as the statistical projections of audit results used in the report.

Audit Type, Dates, and Standards. We performed this program audit from February through November 2000 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary.

Contacts During the Audit. We visited or contacted individuals and organizations within DoD. Further details are available upon request.

Management Control Program Review

DoD Directive 5010.38, "Management Control Program," August 26, 1996, and DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996, require DoD organizations to implement a comprehensive system of management controls that provide reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of the Management Control Program. We reviewed the adequacy of management controls over contract award and reporting processes. Specifically, we reviewed management controls over the preparation of applicable contract award documents such as price negotiation memorandums; prenegotiation briefing memorandums; business clearance memorandums; signed waivers of the requirement to obtain cost or pricing data, including the justifications for the waivers; and DD Form 350 block C11 reporting entries. We also reviewed the adequacy of management's self-evaluation of management controls at each organization we visited.

²Note that while the statistical interval is 6 to 16, our sample included 7 actions that were coded cost and pricing data waived, when they should not have been, consequently the 7 audited errors are the known lower limit.

³This range comprises the confidence intervals from the sample of the 4,590 (4,090 to 4,437) plus the 17,525 actions that involved no new agreement or additional work. The dollar value range was calculated the same way.

Adequacy of Management Controls. Management controls over the contract award process were adequate in that we identified no material management control weaknesses. However, we identified a material management control weakness as defined by DoD Instruction 5010.40 in the contract reporting process. Management controls at DoD contracting organizations over contract reporting were not adequate to ensure that contract specialists correctly coded block C11 of the DD Form 350 concerning cost or pricing data and that the contracting officers that signed the DD Forms 350 corrected the errors. Significant errors resulted in misleading reports that grossly inflated the number of contract actions where the heads of the contracting activities waived the requirement for contractors to provide cost or pricing data. During the audit, the contracting organizations we visited issued internal guidance to contracting personnel advising them of the miscoding problem and the need to correctly code block C11 of the DD Form 350. In addition, the Director, Defense Procurement, issued guidance to correct the control weakness. Recommendations B.1. and B.2., if implemented, will further improve management controls over the accuracy of block C11 coding. A copy of the report will be provided to the official responsible for management controls for DoD contracting organizations.

Adequacy of Management's Self-Evaluation. DoD contracting organizations did not identify the DD Form 350 reporting as an assessable unit and, therefore, did not identify the material management control weakness identified by this audit.

Management Comments on Management Controls and Audit Response

Management Comments. The Director, Defense Procurement, stated that the mistakes in DCADS coding did not fall within the definition of a material management control weakness as defined in DoD Instruction 5010.40. The Director stated that while coding errors affect the accuracy of DCADS data, they have not threatened DoD's ability to complete its contracting mission, nor have they led to fraud, waste, or mismanagement of funds.

Audit Response. We continue to believe that inadequate controls to ensure correct coding of DCADS entries is a material management control weakness in the contract reporting function. Subparagraph E.4.1.3, enclosure 4, DoD Instruction 5010.40, identifies contract reporting as an assessable unit. Assessable units usually have specific management controls that are applicable to that unit's responsibilities. The inadequate controls met the two conditions for a material weakness described in subparagraphs E3.1.1. and E3.1.2., enclosure 3, in that there was no reasonable assurance that the objectives of the contract reporting units were being met, and involvement of higher level management was required to correct the problem. Further, the mistakes in DCADS coding impaired fulfillment of the mission of the contract reporting function, diminished the credibility of management, resulted in unreliable information that could cause unsound management decisions, and in adverse congressional interest. Because management makes the final determination on whether to categorize a management control weakness as material based on its judgement about the impact of the weakness, additional comments from management are not required.

Prior Coverage

No prior audits of waivers of the TINA requirement for contractors to provide cost or pricing data have been conducted during the past 5 years. The Inspector General, DoD, Audit Project No. D2000CF-0059, "Audit of Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data Are Not Required," provides related coverage and is referred to in this report. It is anticipated that the final report for Project No. D2000CF-0059 will be issued in March 2001.

Appendix B. Price Determinations and DoD Waivers for Cost or Pricing Data

The DoD waived the requirement that contracting officers obtain cost or pricing data from the Canadian Commercial Corporation and its subcontractors and from nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts (DFARS subpart 215.403-1[c]). The contracting officers authorized blanket waivers of 17 of 44 contract actions and ensured fair and reasonable prices. The 17 waivers and price reasonableness determinations are summarized in the following paragraphs.

Canadian Commercial Corporation (1 waiver)

Contract N000383-97-D-006J/7001. The Naval Inventory Control Point, Philadelphia, Pennsylvania, competitively awarded a \$665,600 contract to the Canadian Commercial Corporation for overhauling P-3C aircraft alternating generators. SPAR Aerospace was the subcontractor for 100 percent of the work in accordance with an agreement between the United States and Canada. The Canadian Commercial Corporation was responsible for monitoring and guaranteeing contract performance, confirming subcontractor responsibility, and confirming price fairness and reasonableness. The contracting officer determined that the contract price was fair and reasonable based on the Canadian Commercial Corporation's endorsement.

Nonprofit Organizations, Research and Development Work (5 waivers)

Contract DABT63-93-C-0062/P00011. The Army Intelligence Center, Fort Huachuca, Arizona, issued a \$941,176 contract modification P00011 to the University of Southern California. The DFARS requires that modifications providing incremental funding be coded the same as the basic contract for cost and pricing information (block C11 of the DD Form 350). The basic contract had cost or pricing data waived in block C11 because DoD granted blanket waivers to nonprofit organizations. The \$3,736,062 basic contract was competitively awarded to the University of Southern California for research and development. Proposals for this cost-reimbursement-no-fee contract were solicited using two broad agency announcements and 213 proposals were received. The contracting officer determined the contract price was fair and reasonable by comparing the proposed cost elements including salaries, fringe benefits, and indirect costs to the cost elements of previous contracts with the University, and rate agreements negotiated by the Department of Health and Human Services. The contracting officer determined that the cost elements were comparable to, or less than, the costs of previous contracts. The contracting officer also obtained assistance from Army Intelligence Center technical personnel, who approved the proposed labor categories, labor mix, labor hours, and skill levels.

Contract DABT63-96-C-0037/P00001. The Army Intelligence Center, Fort Huachuca, Arizona, issued a \$771,862 contract modification P00001 to the Massachusetts Institute of Technology. The basic contract had coded cost or pricing data waived in block C11 because the DoD granted blanket waivers to

nonprofit organizations. The \$3,459,816 basic contract was competitively awarded to the Massachusetts Institute of Technology for research and development work. Proposals for this cost-reimbursement-no-fee contract were solicited using a broad agency announcement and 159 proposals were received. The contracting officer relied on a cost analysis to determine a fair and reasonable price because the research effort precluded price analysis. The contractor's labor, material, services, and employee benefits costs were based on contractor experience/historical costs for these elements, and the indirect rate agreement between the Office of Naval Research and the Massachusetts Institute of Technology. The contracting officer also obtained assistance from Army Intelligence Center technical personnel, who approved the proposed labor categories, labor mix, skill levels, and costs.

Contract DABT63-96-C-0041/P00001. The Army Intelligence Center, Fort Huachuca, Arizona, issued a \$563,200 contract modification P00001 to the University of North Carolina. The basic contract had cost or pricing data waived in block C11 because the DoD granted blanket waivers to nonprofit organizations. The \$4,227,240 basic contract was competitively awarded to the University of North Carolina for research and development. Proposals for this cost-reimbursement-no-fee contract were solicited using a broad agency announcement and 159 proposals were received. The contracting officer used cost analysis to determine a fair and reasonable price because the research effort precluded price analysis. The contractor's proposed costs were based on contractor experience/historical costs and the indirect rate agreement between the Department of Health and Human Services and the University of North Carolina. The Office of Naval Research Atlanta Office verified that the indirect cost rates were in accordance with the rate agreement between the Department of Health and Human Services and the University. The contracting officer also obtained assistance from Army Intelligence Center technical personnel, who approved the proposed labor categories, labor mix, skill levels, and costs.

Contract DABT63-96-C-0044/P00003. The Army Intelligence Center, Fort Huachuca, Arizona, issued a \$579,846 contract modification P00003 to the University of Pittsburgh. The basic contract had cost or pricing data waived in block C11 because the DoD granted blanket waivers to nonprofit organizations. The contracting officer obtained cost or pricing data from the University of Pittsburgh's subcontractor, Allied Signal Aerospace. The subcontract work was valued at \$608,712, about 37 percent of the \$1,637,092 basic contract value. Proposals for this cost-reimbursement-no-fee contract were solicited using a broad agency announcement and 159 proposals were received. The contracting officer relied on a cost analysis to determine a fair and reasonable price because the research effort precluded price analysis. The contract prices for labor, material, supplies, publication, and minor equipment were based on historical costs for these cost elements. The contractor's cost proposal and the subcontractor's cost or pricing data, together with the predetermined rate agreement between the Department of Health and Human Services, the University of Pittsburgh, and the DCAA verification of the subcontractor's labor and materiel overhead rates, were all used to determine that the contract price was fair and reasonable. The

contracting officer also obtained assistance from Army Intelligence Center technical personnel, who approved the proposed labor categories, labor mix, skill levels, and costs.

Contract F08635-98-C-0004. Eglin Air Force Base, Florida, awarded a \$1,699,354 contract to the Georgia Tech Research Corporation (GTRC) for research and development efforts on the bistatic coherent measurement system. The sole-source contract was awarded because the system design is proprietary to the GTRC. The coherent bistatic radar methodology was originally conceived, developed, and tested by GTRC at its own expense before the Air Force became involved in the program. The contracting officer used cost analysis with support from Eglin Air Force Base technical personnel and DCAA to determine that the contract price was fair and reasonable. The technical evaluation took no exception to the labor hours, labor mix, labor categories, and material costs proposed by GTRC. DCAA took no exception to the labor rates established by the Georgia State Legislature for GTRC, the fringe benefit and program management, project level support, technical support, and indirect cost rates.

Nonprofit Organizations, Reserve Officers Training Corps Tuition (11 waivers)

The following 11 contract actions were orders against Army and Navy Educational Services Agreements. These agreements affected students participating in Army and Navy Reserve Officer Training Corps scholarship programs. The DoD waived cost or pricing data requirements for nonprofit organizations including educational institutions on cost-reimbursement-no-fee contracts (DFARS 215.403-1[c][4][B]). The contracting officers determined that the contract prices were fair and reasonable based on standard tuition rates and fees charged by the universities.

- (1) Contract No.: DABT23-97-H-0078/1
Contract Value: \$661,272
Awarded by: Fort Knox, Kentucky
Awarded to: Illinois Institute of Technology
- (2) Contract No.: DABT23-97-H-0258/1
Contract Value: \$667,310
Awarded by: Fort Knox, Kentucky
Awarded to: Marion Military Institute
- (3) Contract No.: N00140-97-G-2952/RQTJ
Contract Value: \$842,010
Awarded by: Fleet and Industrial Supply Center, Philadelphia, Pennsylvania
Awarded to: George Washington University
- (4) Contract No.: N00140-97-G-2944/ROYJ
Contract Value: \$536,723
Awarded by: Fleet and Industrial Supply Center, Philadelphia, Pennsylvania
Awarded to: Carnegie Mellon University
- (5) Contract No.: N00140-97-G-2954/8AP0
Contract Value: \$164,288
Awarded by: Fleet and Industrial Supply Center, Philadelphia, Pennsylvania
Awarded to: Hampton University

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- (6) Contract No.: N00140-97-G-2961/L9B6
Contract Value: \$161,352
Awarded by: Fleet and Industrial Supply Center, Philadelphia, Pennsylvania
Awarded to: Iowa State University
- (7) Contract No.: N00140-97-G-2947/L9MQ
Contract Value: \$648,000
Awarded by: Fleet and Industrial Supply Center, Philadelphia, Pennsylvania
Awarded to: University of Colorado at Boulder
- (8) Contract No.: N00612-93-G-0021/RH09
Contract Value: \$105,711
Awarded by: Naval Supply Center, Charleston, South Carolina
Awarded to: University of Kansas
- (9) Contract No.: N00612-93-G-0039/L921
Contract Value: \$181,233
Awarded by: Naval Supply Center, Charleston, South Carolina
Awarded to: Oregon State University
- (10) Contract No.: N00612-93-G-0046/8AVH
Contract Value: \$620,385
Awarded by: Naval Supply Center, Charleston, South Carolina
Awarded to: University of Rochester
- (11) Contract No.: N00612-93-G-0050/8AB1
Contract Value: \$803,279
Awarded by: Naval Supply Center, Charleston, South Carolina
Awarded to: University of Southern California

Appendix C. Waivers Granted by HCAs

Contracting officers properly justified, and used in appropriate circumstances, waivers granted by HCAs of the TINA requirement for cost or pricing data for certain negotiated contract actions valued at \$500,000 and over. The contracting officers also ensured fair and reasonable prices for the contract actions. The 27 waivers are summarized in the following paragraphs.

Army Organizations

Army Aviation and Missile Command (AMCOM), Huntsville, Alabama (3 actions)

Contract No. DAAH09-94-G-0005/P00097, valued at \$8.6 million, awarded to McDonnell Douglas/Boeing for 100 AH-64 Apache rotary wing blades. The contracting officer requested a waiver of cost or pricing data because the data from a previous procurement and the supplemental cost information provided by the contractor was sufficient to negotiate a fair and reasonable price. Additionally, no other factors, such as configuration changes, were identified that would impact the contracting officer's ability to perform price analysis. The contracting officer performed a price analysis using the contractor's proposal and previously negotiated prices. The Commander, AMCOM, approved the waiver request.

Contract No. DAAH09-94-G-0009, valued at \$11.2 million, awarded to McDonnell Douglas Helicopter Systems to acquire the Apache post-production systems support (PPSS) for FY 1997. The FY 1997 procurement, identified as Apache PPSS 16, was the 16th consecutive procurement of Apache PPSS from McDonnell Douglas Helicopter Systems. The contracting officer requested that a waiver of cost or pricing data because the effort from Apache PPSS 15 to Apache PPSS 16 had not changed significantly. The price settlement for the PPSS 15 award was based on cost or pricing data and the information could be used to determine a fair and reasonable price. Additionally, DCAA reviewed the McDonnell Douglas Helicopter Systems actual costs for the PPSS 15 effort and used it as the baseline for PPSS 16. DCAA found no questioned, unsupported, or unresolved costs. The contracting officer concluded that the cost or pricing data submitted for the PPSS 15 procurement, combined with the additional data provided for PPSS 16, and several years of past history was sufficient to determine that a fair and reasonable price could be negotiated for the PPSS 16 effort. The contracting officer used extensive price history that was supported by cost or pricing data, the current forward pricing rate agreement, and updated cost data to determine a fair and reasonable price for the PPSS 16 award. The contracting officer also used integrated product team results to streamline the PPSS 16 procurement. In addition, technical evaluator recommendations were used to determine a fair and reasonable price for the PPSS 16 award. The Commander, AMCOM, approved the waiver request.

Contract No. F09603-95-G-0002/BS06, valued at \$2.37 million, awarded to Smith Industries and Aerospace Defense Systems, Incorporated, for production of 95 data receptacle units and 190 data transfer modules in support of the control display system for the OH-58D Kiowa Warrior Aircraft. The contracting officer requested a waiver of cost or pricing data because extensive historical cost or pricing data (production lots 1 through 12) coupled with current cost data was sufficient to determine a fair and reasonable contract price. The contracting officer performed

price analysis using the contractor's proposal, previous production cost history, and DCAA's updated labor and overhead rates to determine a fair and reasonable price. The Commander, AMCOM, approved the waiver request.

Navy Organizations

NAVAIR, Patuxent River, Maryland (5 actions)

Contract No. N00019-95-C-0004/P00026, valued at \$4.2 million, awarded to Rockwell International Corporation for the purchase of 84 receiver/transmitters, radio system components, and reliability warranties. The contracting officer requested a waiver because of extensive cost history (5 years in production), combined with field pricing support provided by DCMA. The waiver concluded that detailed cost breakdown in a work category structure was sufficient to determine a fair and reasonable price. The contracting officer used cost data furnished from previous production purchases in conjunction with updated cost information, and the DCMA field pricing report, to determine a fair and reasonable price. The Commander, NAVAIR, approved the waiver.

Contract No. N00019-97-C-0099, valued at \$159.4 million, awarded to McDonnell Douglas Corporation for purchasing six F/A-18D aircraft and related ancillary equipment. The contracting officer requested a waiver of cost or pricing data because the aircraft was in mature production, extensive program cost history was available, and the tentative fixed-price agreement was better than could be achieved through traditional negotiations based on cost or pricing data. The contracting officer determined the contract price was fair and reasonable by comparing the proposed price to the NAVAIR estimated unit price, FYs 1995 and 1996 unit prices, and extensive price history. The contracting officer concluded that the proposed price was well supported by 18 previous production negotiations that included cost or pricing data. The contracting officer also obtained DCAA assistance to evaluate the contractor's proposal. The Commander, NAVAIR, approved the waiver.

Contract No. N00019-95-C-0132/P00017, valued at \$35.08 million, awarded to General Electric Aircraft Engines for 24 F404-GE-402 engines and modules. The contracting officer requested a waiver of cost or pricing data because NAVAIR knew the cost of engines and modules based on analysis of actual cost data and prior engine production prices from 1990 with 692 engine deliveries. The contracting officer performed price analysis using shop cost data from previous production procurements, acceptable escalation factors established by in-house analysts, and forward pricing rate agreements negotiated by DCAA to determine a fair and reasonable price. The contracting officer also obtained assistance from DCMA analysts to evaluate the contractor's proposal. The Commander, NAVAIR, approved the waiver.

Contract No. N00019-97-C-0049, valued at \$21.2 million, awarded to Allison Engine Company for eight T56-A-427 aircraft engines and related data. The contracting officer requested a waiver of cost or pricing data because the engine was in mature production, and cost or pricing data from previous procurements, and updated information would be sufficient to determine a fair and reasonable price. Allison Engine Company was the sole manufacturer of the T56-A-427 engine for over 30 years. The DCMA concurred with the request to waive cost or pricing

data. The contracting officer performed price analysis that projected FYs 1995 and 1996 prices, adjusted for escalation, quantity, and learning, to determine a fair and reasonable price for the FY 1997 contract. The FYs 1995 and 1996 prices provided a valid base to project prices because negotiations were based on the FYs 1995 and 1996 combined requirements and contractor certified cost or pricing data. The prices negotiated for the previous production procurements were tested for validity by comparing actual vendor costs with contract prices. The Commander, NAVAIR, approved the waiver.

Contract N00019-97-C-0082/P00003, valued at \$17,138,090, awarded to McDonnell Douglas Corporation to procure 20 additional all-up-round lightweight canister harpoon missiles. This additional acquisition procured under contract N00019-97-C-0082 brought the total to 135. The waiver was requested because sufficient cost and pricing data was available to determine a fair and reasonable price. Cost or pricing data were obtained for five previous production contracts. The contract prices were derived from extensive cost analysis and negotiations supported by DCAA and DCMA. Further, the contract was repriced for a total of 135 missiles resulting in a downward price adjustment of over \$2.6 million. The contracting officer determined that the price for the 20 additional missiles was fair and reasonable by comparing the unit price of the additional missiles to the unit prices on previous contracts. The Commander, NAVAIR, approved the waiver.

Naval Inventory Control Point (NAVICP) - Philadelphia, Pennsylvania (3 actions)

Contract No. N00383-96-G-004D/P1112, a basic ordering agreement (BOA) order, valued at \$1,945,205, awarded to McDonnell Douglas/Boeing for various airframe components needed to support the low-rate initial production of F/A-18E/F aircraft. The contracting officer requested a waiver because the cost or pricing data submitted for the same airframe components on a previous BOA order was sufficient to establish a fair and reasonable price. The contracting officer considered the prices supported by cost or pricing data on the previous order combined with updated cost information to determine a fair and reasonable price. The Commander, NAVICP Philadelphia, approved the waiver.

Contract No. N00383-93-G-010V/P7006, a BOA order, valued at \$731,486, awarded to Litton Systems Incorporated for repairing 26 components of the inertial measurement unit test set system. These components test electro-optics on various aircraft. The contracting officer requested a waiver because the data from two negotiated BOA orders for repair of the same test unit components was sufficient to determine a fair and reasonable price. The contracting officer used the prices from previous cost or pricing data to determine that prices for 25 of the 26 repair items included in the order were fair and reasonable. The negotiated prices for the 25 items were identical to those negotiated for similar quantities on the previous orders. For the one item that was not included in the previous orders, the contracting officer used a pricing methodology that was based on the firm-fixed prices negotiated for the other 25 items to negotiate a price that was about 17 percent less than the contractor's proposed price. The Commander, NAVICP Philadelphia, approved the waiver.

Contract No. N00383-96-G-025G/0007, a BOA order, valued at \$4,953,690, awarded to General Dynamics Armament Systems (formerly Lockheed Martin) for 21 gun turret and feeder assemblies for the AH-1W helicopter program. The contracting officer requested the waiver because the cost or pricing data and the DCAA and DCMA advisory reports for two previous orders coupled with DCAA and DCMA recommendations were sufficient to determine a fair and reasonable price. The contracting officer used the actual costs for the gun turrets from the contractor under the previous orders to determine a fair and reasonable price. For the feeders, the contracting officer used the negotiated prices on the previous order that were supported by cost or pricing to determine a fair and reasonable price. The Commander, NAVICP Philadelphia, approved the waiver.

NAVSEA, Arlington, Virginia (6 actions)

Contract No. N00024-97-C-5184, valued at \$251.4 million, awarded to Lockheed Martin, Government Electronics Systems for production, integration, and testing of four MK7 AEGIS Weapon Systems for the Spanish Navy. The contracting officer requested a waiver because the MK7 was in mature production (since 1978), and extensive historical cost and pricing data existed. Additionally, the contractor was required to submit adequate cost information for pricing the monitoring and managing Spanish subcontractors. Two Spanish subcontractors were specifically excluded from the waiver requirement to submit cost or pricing data. The contracting officer determined that the historical data combined with updated labor and overhead rates was sufficient to determine fair and reasonable prices for the procurement. The contracting officer comparatively analyzed the contractor's proposal with the actual costs on previous procurements to determine a fair and reasonable price for the procurement. The contracting officer also relied on DCAA and DCMA pricing and technical recommendations, the administrative contracting officer's rate recommendations, and the AEGIS Program Office technical recommendations to determine a fair and reasonable price. The Commander, NAVSEA, approved the waiver.

Contract No. N00024-97-C-5193, valued at \$85.6 million, awarded to Raytheon Electronic Systems for production of transmitters and radar for the AEGIS fire control system for the Spanish Navy. The contracting officer requested a waiver because NAVSEA had continuous contracts with Raytheon since 1984, and extensive historical cost and pricing data existed. Additionally, the contractor was required to submit adequate cost information for pricing the monitoring and managing of a Spanish subcontractor that traveled to and from Spain with no previous history. The Spanish subcontractor was specifically excluded from the waiver requirements to submit cost or pricing data. The contracting officer determined that the cost or pricing data submitted for previous procurements combined with updated information was sufficient to determine a fair and reasonable price. The contracting officer performed cost and price analyses of the contractor's proposal, using the recommendations of the DCMA field pricing report, updated DCAA labor and overhead rates, and FYs 94 through 96 AEGIS production cost histories to determine a fair and reasonable price. The Commander, NAVSEA, approved the waiver.

Contract No. N00024-98-C-5197/P00003 and P00009, valued at \$17.7 million, awarded to Lockheed Martin Government Electronic Systems (LM/GES) for research and development of AEGIS combat system baseline upgrades and critical experiments in support of the AEGIS development program. Modification P00003

provided incremental funding in the amount of \$4,443,198 and modification P00009 exercised an option and provided incremental funding valued at \$13,235,060. The DFARS requires that cost or pricing information (block C11 of the DD Form 350) for modifications that provide incremental funding and modifications that exercise a priced option be coded the same as the basic contract. The basic contract was coded cost or pricing data waived. The contracting officer requested the waiver because LM/GES has been the prime contractor for AEGIS development since 1969 and extensive historical cost or pricing data existed to determine a fair and reasonable price. Additionally, an integrated product team (IPT), comprised of NAVSEA, LM/GES, DCAA, and DCMA representatives assisted in developing the proposal and determining a fair and reasonable price. The IPT participants agreed that sufficient historical and other data were available to determine fair and reasonable prices. The contracting officer performed cost and price analyses of the contractor's proposal and obtained assistance from the IPT, DCAA, and DCMA in determining a fair and reasonable price. The Commander, NAVSEA, approved the waiver.

Contract No. N00024-98-C-5416, valued at \$37.4 million, awarded to Hughes Aircraft Company Naval and Maritime Systems for procurement of up to 15 shipsets of AN/UYQ-21 unmanned equipment. The contract includes 2 separate actions, the procurement of up to 11 shipsets, valued at \$28,155,190, for the U.S. Navy, and the procurement of 4 shipsets valued at \$9,234,248 for the Spanish Navy. The contracting officer requested the waiver because the AN/UYQ-21 equipment was in mature production, extensive historical cost and pricing data existed, and updated information combined with cost or pricing data submitted on previous production procurements was sufficient to determine a fair and reasonable price for the current procurements. Additionally, an Integrated Product Team comprised of representatives from NAVSEA, a Government support contractor, Hughes Aircraft Company, DCAA, and DCMA assisted in developing the proposal and determining a fair and reasonable price. The IPT participants agreed that sufficient historical and other data was available to determine a fair and reasonable price. The IPT used actual cost data from the FY 1993 through FY 1996 production contracts to develop hours and dollars value for the proposed tasks. The contracting officer performed cost and price analyses of the contractor's proposal and obtained assistance from the IPT to determine a fair and reasonable price. The Commander, NAVSEA, approved the waiver.

Air Force Organizations

Sacramento Air Logistics Center (AFMC), California (1 action)

Contract No. F04606-97-C-0118, valued at \$1.5 million, awarded to Rockwell International Corporation for 21 AN/GRC-171D(V)4 radio sets for the Government of Thailand. The contracting officer requested a waiver because the price on the previous contract, awarded 8 months earlier, for 31 radio sets was based on cost or pricing data and additional cost or pricing data was not needed to determine a fair and reasonable price for the current contract. The contracting officer determined

the proposed contract price was fair and reasonable because it was the same as the price on the previous contract for 31 radio sets, which was based on cost or pricing data. The Commander, Air Force Materiel Command, approved the waiver.

Wright-Patterson Air Force Base, Dayton, Ohio (1 action)

Contract No. F33657-97-C-0028, valued at \$18.9 million, awarded to McDonnell Douglas Corporation for efforts in support of FY 1998 production of up to six F-15E attrition reserve fighter aircraft for the Air Force F-15E follow-on production program. The contracting officer requested a waiver because previously negotiated prices were based on cost or pricing data, combined with updated cost information. The current procurement is for follow-on production of a mature weapons system (annual production buys began in FY 1973) for which substantial reliable cost or pricing data exists. The contracting officer performed price analysis using updated cost information submitted with the contractor's proposal and previously submitted cost or pricing data. The Principal Deputy Assistant Secretary of the Air Force (Acquisition and Management) approved the waiver.

Defense Logistics Agency Organizations

Defense Energy Support Center, Fort. Belvoir, Virginia (4 actions)

Contract No. DLA600-94-C-5433 with two actions (P00015 and P00018), valued at \$711,000, awarded to Mobil Oil Corporation for fuel storage and throughput at contractor-owned, contractor-operated storage facilities at Djibouti, East Africa. Modification P00015 provided \$177,750 incremental funding and modification P00018 provided \$533,250 incremental funding. The DFARS requires that cost or pricing information (block C11 of the DD Form 350) for modifications that provide incremental funding be coded the same as the basic contract. The basic contract was coded cost or pricing data waived. The contracting officer requested the waiver because Mobil Oil Corporation refused to provide cost or pricing data, stating that the price was based on prevailing market conditions in the area, not on cost data. The contracting officer solicited 62 sources and Mobil Oil Corporation submitted the only offer. The contracting officer concluded that no determination could be made on the reasonableness of Mobil Oil Corporation's proposed prices because of the lack of price competition, and Mobil Oil Corporation's refusal to submit cost or pricing data. The services provided by Mobil Oil Corporation were mission essential and there was no alternative sources in the Djibouti area. The Commander, Defense Energy Support Center, approved the waiver request.

Contract No. SP0600-96-C-5609 with two actions (P00003 and P00006), valued at \$3,097,000, awarded to Delaware Storage and Pipe Line Company for maintaining, storing, and transferring war reserve materiel. Modification P00003 provided \$1,548,500 second year funding and modification P00006 provided the \$1,548,500 third year funding. The DFARS requires that cost or pricing information (block C11 of the DD Form 350) for modifications that exercise a priced option be coded the same as the basic contract. The basic contract was coded cost or pricing data waived. The contractor refused to submit cost or pricing data, stating that the data was proprietary to Delaware Storage and Pipe Line Company. The contractor receives, stores, and pipes jet fuel to Dover Air Force Base and the Air National Guard at Dover. Delaware Storage and Pipe Line Company owns the pipeline and the Air Force has no other practical alternatives. The contracting officer

determined that additional requests to Delaware Storage for cost and pricing data would be fruitless. The Commander, Defense Energy Support Center, approved the waiver.

Defense Supply Center Richmond, Virginia (3 actions)

Contract No. F34601-95-G-0012/TYK5, valued at \$5,900,259, for 27,525 engine blades for the T56 turboprop engine under an Air Force BOA with Allison Engine Company. The contracting officer requested a waiver because the cost or pricing data from previous procurements, coupled with updated data were sufficient to determine price reasonableness. The contracting officer used cost and price analysis and price history to determine a fair and reasonable price. The Commander, Defense Supply Center Richmond, approved the waiver.

Contract No. SP0430-97-C-5014, valued at \$897,798, awarded to Concorde Battery Corporation for 2,200 lead acid storage batteries. The contracting officer requested a waiver because historical cost or pricing data, when combined with updated data, were sufficient to determine a fair and reasonable price. The contracting officer used the cost analysis performed under the previous contract, and the price of the previous contract adjusted for inflation and quantity differences, to determine a fair and reasonable price. The Commander, Defense Supply Center Richmond, approved the waiver.

Contract No. N00383-95-G-M120/TYZH, valued at \$628,575, for 493 vane shroud assemblies under a Navy BOA with Allied Signal Incorporated. The contracting officer requested a waiver because cost and pricing data submitted on previous production buys, when combined with updated information, were sufficient to determine price reasonableness. Additionally, Allied Signal claimed a commercial item exemption from the requirement to submit cost or pricing data, stating that the item was a component of an angle of attack transducer that was similar in design, form, and function to a system used on various commercial aircraft. The contracting officer could not verify that the item was commercial because Allied Signal did not furnish drawings of the items in response to requests by DCAA and DCMA. The contracting officer obtained the assistance of a cost analyst to evaluate the pricing and cost breakdown provided by Allied Signal and used the price of the previous procurement adjusted for inflation and quantity differences to determine a fair and reasonable price. The Commander, Defense Supply Center Richmond, approved the waiver.

Other Defense Agency

Defense Information Systems Agency, Defense Information Technology Contracting Organization, National Capital Region, Arlington, Virginia (1 action)

Contract No. DCA100-97-C-0034, valued at \$1,199,365, awarded to Booz Allen & Hamilton Inc. for a mentor-protégé developmental assistance program. The contracting officer requested a waiver because of the unique nature of the mentor-protégé program and a DCAA audit that determined the proposed rates were fair and reasonable. The contracting officer compared the contractor's proposed costs to the Government objective, evaluated the proposed labor categories and skill mix, and compared the labor rates to previous contracts to determine a fair and reasonable price. The Commander, Defense Information Technology Contracting Organization, approved the waiver.

Appendix D. Director, Defense Procurement Memorandum of August 7, 2000



ACQUISITION AND
TECHNOLOGY
DP/CPF

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

AUGUST 7, 2000

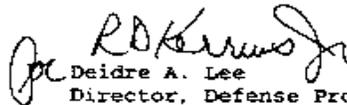
MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE,
ATTENTION: DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

SUBJECT: Audit of Waivers of Requirements for Contractors to
Provide Certified Cost or Pricing Data (Project No. D2000-
D000CH-0106)

Your memorandum of June 16, 2000, advised that a significant number of actions sampled from the Defense Contract Action Data System (DCADS) in performance of the subject audit reflect an apparent miscoding of the information supplied in Block C11 of the Individual Contract Action Reports (DD Form 350) that comprise the DCADS database. By memorandum of July 24, 2000, I apprised the Military Departments and Defense Agencies of this deficiency and requested they advise contracting professionals of the need to correctly code Block C11 to reflect the distinction between actions that are exempt from submission of certified cost or pricing data under the Truth in Negotiations Act, versus actions that received a waiver of the submittal of such data by the Head of the Contracting Activity pursuant to FAR 15.403-1(c)(4). A copy of my memorandum of July 24, 2000, is attached. Prior to issuing this memorandum, I discussed the importance of proper coding of DD Forms 350 with the procurement policy representatives of the Military Departments and Defense Logistics Agency at my Interdepartmental Staff Meeting of July 11, 2000.

In addition to these actions, the instructions for filling out the DD Form 350 contained in Defense FAR Supplement were recently revised to more specifically reflect that Code W for waiver of cost or pricing data is to be used when the Head of the Contracting Activity has granted a waiver.


Deidre A. Lee
Director, Defense Procurement

Attachment:
As stated





ACQUISITION AND
TECHNOLOGY

DP/CFP

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

JULY 24, 2000

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RDEA)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
EXECUTIVE DIRECTOR FOR PROCUREMENT MANAGEMENT
(DLSC/DLA)

SUBJECT: Miscoding of Block C11 of Individual Contract Action
Reports (DD Form 350)

The Department of Defense Inspector General (DoDIG) is performing a review of waivers granted to Truth in Negotiations Act (TINA) requirements for submission of certified cost or pricing data. The IG staff has been frustrated by the fact that only 14 out of its initial sampling of 127 actions were correctly coded as "W" in Block C11 of the DD Form 350 submitted to the Defense Contract Action Data System (DCADS), meaning that data that would have otherwise been required by the TINA was not obtained because its submission was waived by the Head of the Contracting Activity.

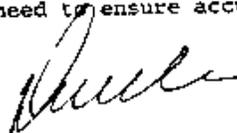
This is an error rate in coding of 89 percent. Most of the actions reported to the DCADS database as Code "W" to indicate a waiver was granted were in fact actions exempt from TINA requirements, and should have been coded "N" for "No - not obtained," because the action was exempt by law from submittal of certified cost or pricing data. It appears that many in the DoD contracting community do not fully appreciate the significant difference between actions exempt from TINA requirements by law (Code N), such as contracts where the price was arrived at through adequate price competition or contracts for procurement of commercial items, and actions subject to TINA that have received a written waiver of submission of certified cost or pricing data (Code W) pursuant to FAR 15.403-1(c)(4).

The DoDIG has requested that action be taken to address this miscoding. Accordingly, on June 27, 2000, the Federal



ATTACHMENT

Register published a final DFARS rule (DFARS Case 2000-D0001, effective October 1, 2000) that includes more specific instructions for filling out Block C11 of the DD Form 350 to indicate that Code W for waiver of cost or pricing data is used when the data was not obtained because the Head of the Contracting Activity waived the requirement. In addition, I request your immediate assistance in reminding your contracting professionals of the need to ensure accurate coding of DD Forms 350.



Deidre A. Lee
Director, Defense Procurement

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Director, Defense Procurement
Under Secretary of Defense (Comptroller)
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Deputy Under Secretary of Defense (Acquisition Reform)

Department of the Army

Auditor General, Department of the Army

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Contract Management Agency
Director, Defense Information Systems Agency
Director, Defense Logistics Agency
Director, Defense Threat Reduction Agency

Non-Defense Federal Organization

Office of Management and Budget

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 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, Financial Management, and Intergovernmental Relations, Committee on Government Reform

House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform

House Subcommittee on Technology and Procurement Policy, Committee on Government Reform

Director, Defense Procurement Comments



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

JAN 30 2001

DP/CPF

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

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *M. Mond 2/1*

SUBJECT: Draft of a Proposed OIG Report, "Waivers of the Requirement for Contractors to
Provide Cost or Pricing Data," dated December 4, 2000, Project No. D2000CH-0106

Your memorandum of December 4, 2000, requested review and comment from the Director of Defense Procurement (DDP) regarding the subject draft report. The subject report reviewed whether waivers of the requirement of the Truth in Negotiation Act (TINA) for contractors to provide cost or pricing data granted in FYs 1997 and 1998 were properly justified and used in appropriate circumstances. You also determined whether the Department of Defense (DoD) ensured that prices were fair and reasonable when the requirement was waived.

The subject report found that contracting officials properly justified, and used in appropriate circumstances, waivers of the TINA requirement to obtain cost or pricing data in all 189 of the reviewed contract actions where waivers were used. It also found that contracting officers ensured fair and reasonable prices for those 189 actions, and that the procedures used to process waivers and determine fair and reasonable prices were effective and not burdensome. I concur in those findings.

The draft report indicates, however, that information on cost or pricing data in the Defense Contract Action Data System (DCADS) was very inaccurate and misleading, to such an extent that 92.9 percent of 4,590 actions in the DCADS were found to have been incorrectly coded to reflect the granting of a TINA waiver when in fact no waiver was granted. The extensive miscoding gave rise to the misperception that TINA waivers were being employed to a far greater degree than what actually took place. Most of the miscoding resulted from contracting officials erroneously indicating that a waiver had been granted when in fact the action was below the simplified acquisition threshold or was otherwise exempt from the requirement for submittal of cost or pricing data. The subject report notes that during the course of the audit, at the suggestion of the OIG, the DDP issued a memorandum dated July 24, 2000, requesting the Military Departments and Defense Agencies initiate actions to improve the accuracy of the coding regarding the submittal of cost or pricing information.

Accordingly, the subject draft report recommends that the DDP require the Military Departments and Defense Agencies to provide the results of the subject audit to their contracting organizations, reemphasizing the need for compliance with FAR and DFARS guidance on cost or pricing data. In addition, the report recommends the Military Departments and Defense Agencies



periodically monitor the accuracy of coding for contract actions identified in DCADS with cost or pricing data waived, beginning with the coding for FY 2001 actions, and report those results to the DDP by February 1, 2002.

I agree with those recommendations. Pursuant thereto, within 60 days of its publication as a final report, I will provide a copy of the subject report to the Military Departments and Defense Agencies, emphasizing the need for their institution of management controls designed to ensure correct coding in the DCADS system, particularly as it regards cost or pricing data. I will also request the Military Departments and Defense Agencies provide me a report by February 1, 2002, of actions taken and results achieved regarding the accuracy of coding for FY 2001 actions.

However, I do not agree with the assertion in Appendix A of the subject report that mistakes in DCADS coding fall within the definition of a material control weakness as defined in DoD Instruction 5010.40. While coding errors affect the accuracy of DCADS data, they have not threatened DoD's ability to complete its essential contracting mission, nor have they led to fraud, waste, or mismanagement of funds. Indeed, the subject report indicates that miscoding did not result from, nor has it led to, any improper use of TINA waivers. Appendix A indicates that contracting organizations have already issued guidance to improve the accuracy of DCADS coding, and as I previously noted, I will require a report from the Military Departments and Defense Agencies by February 1, 2002, to assess how effective these measures have been.



Deidre A. Lee
Director, Defense Procurement

Department of the Air Force Comments



Office Of The Assistant Secretary

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC

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

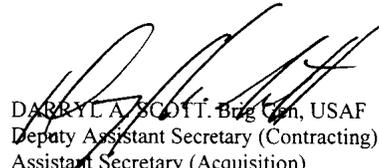
30 JAN 2001

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

SUBJECT: Response to DoDIG Report on Waivers of Requirement for Contractors to Provide
Cost or Pricing Data (Project No. D2000CH-0106) (Your Memo, 14 Dec 00)

This is in reply to your memorandum, requesting a response to subject report. We have reviewed the findings and recommendations of the report and provide our comments in Atch 1.

My staff officer for this review is Lt Col Alan J. Boykin, SAF/AQCP, (703) 588-7056, email alan.boykin@pentagon.af.mil. Should you need additional information, please feel free to contact him.


DARRYL A. SCOTT, Brig Gen, USAF
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachment:

1. AF Comments
2. SAF/AQCI-P Email to Field, 28 Sep 00

AIR FORCE RESPONSE

to

**DODIG DRAFT REPORT ON WAIVERS OF
REQUIREMENT FOR CONTRACTORS TO PROVIDE
COST OR PRICING DATA (PROJECT NO. D2000CH-0106)**

1. DoDIG Recommendation: We recommend that the Director, Defense Procurement require the military departments and Defense agencies to: Provide the results of this audit to their contracting organizations, reemphasizing the need for compliance with FAR and DFARS guidance on cost or pricing data. Periodically monitor the accuracy of coding for contract actions identified in DCADS with cost or pricing data waived, starting with a review of coding for FY 2001 actions and report those results to the Director, Defense Procurement by February 2002.

AF Response - Concur.

- The Air Force has provided web-based tools and training to assist the field to support the organizations in their efforts to determine the appropriateness and use of the TINA waiver process. We will continue to update and incorporate the most effective methods to ensure efficient and accurate procedures are used. Additionally, we will adhere to any specific request from the Director, Defense Procurement to ensure the accuracy of DD 350 reporting issues.
- The accuracy of DD 350 information for cost or pricing data is a problem area that the Air Force has initiated actions to correct problems in the field. A message was sent from SAF/AQCP/I (Atch 2) to the field specifically addressing the proper coding of Block C-11 (Atch 3). Also, a **Contract Reporting Interactive Instructional Guide (15 Nov 00)**, suitable for DD 350 training purposes, is on the AQC home page at URL <http://www.safaq.hq.af.mil/contracting/reporting/AQCI/CRInstGd.shtml> to enhance the accuracy of DD 350 coding across the service. Additionally, HQ AFMC/PK has provided training to its ALCs and product centers.
- The DFARS was changed for FY 01 to clarify the coding of the DD 350 for waivers. It specifically addresses that the Head of the Contracting Activity waives the requirement for certified cost or pricing data when coding the action as waived from obtaining cost or pricing data. Previous coding instructions in the DFARS did not elaborate on who waives the requirement.

2. DoDIG Recommendation: We recommend that the Director, Defense Threat Reduction Agency; the National Guard Bureau, United States Property and Fiscal Officer, Oregon; and the Commanders, Kirtland, Schriever, and Warner Robins AFBs issue guidance requiring their contracting officers to comply with FAR and DFARS requirements for obtaining cost or pricing data and the circumstances for waiving the requirement.

AF Response -- Concur.

- Three locations were cited in the report. Training has been instituted for all locations.
 - Schriever AFB CO -- The Director of Contracting at Schriever has immediately instituted comprehensive training for the entire squadron on DD350's in general and TINA. Three classes have been given already. Additionally, they have instructed the DD350 monitor to bring any DD350 coded W in Block C-11 to a procurement analyst who will investigate the circumstances prior to transmission.
 - HQ AFMC/PK (Warner Robins AFB GA/AFRL) -- Has complied with this recommendation and presented training to all centers, including WR-ALC and AFRL.

Boykin, Alan J. LtCol. SAF/AQCP

Subject: RE: Miscoding of DD350 Information

-----Original Message-----

From: Robuck, John. . SAF/AQCP

Sent: Thursday, September 28, 2000 1:55 PM

To: RSS - SAF/AQC (LGC/DRUs/Chiefs)

Cc: Cobb, Sharon L., Civ, SAF/AQCI; Reynolds, Mary E., . SAF/AQCI; Reyes-Salas, C., . SAF/AQCI;

Schill, Paul. . SAF/AQCP; Petering, Karen, .SAF/AQCP; Boykin, Alan J. Maj. SAF/AQCP

Subject: Miscoding of DD350 Information

The Director of Defense Procurement issued a memorandum <<http://www.safaq.hq.af.mil/contracting/whatsnew/files/misleading.PDF> > in late July describing some serious DD350 coding errors found by the DoD Inspector General, and asking us to remind our contracting professionals of the need to ensure accurate coding of DD Forms 350. As you reconcile your contract reporting data over the next two weeks, please pay particular attention to these areas where errors have been noted by the IG.

DDP Memo summarization: Buyers all over DoD have been confusing the Block C-11 code "W," to be used when a waiver to the Truth In Negotiations Act (TINA) has been executed by the HCA, with the code "N" which is to be used when TINA does not apply to the action. Based on the resulting FPDS data, Congress was under the erroneous impression that DoD had been issuing hundreds of TINA waivers, and asked the IG to study the situation. After finding that the problem was really large-scale miscoding of the DD350, the IG asked that the coding instructions for Block C-11 be clarified--as stated in the DDP memo, this has been done in a recent DFARS rule <<http://www.acq.osd.mil/dp/dars/fedregs/2000d001f.txt> >.

While the DDP memo specifically addressed the miscoding of TINA, the Air Force has also seen miscoding occur with the newly added HUBZone reporting requirement. SAF/AQCI has been working closely with your contract reporting monitors to address these coding problems and clarify reporting requirements in this area. As you know, BGen (S) Scott's contract reporting theme is "The Year of Accuracy for DD350 reporting!" All managers should emphasize the necessity of careful and accurate coding on DD 350s -- especially with HUBZones. Buyers and contracting officers need to be adequately trained on how to code DD350s, and contracting offices should take appropriate measures (appoint an "expert advisor" who has in-depth knowledge of the coding instructions in DFARS, review DD350s for accuracy, and perform random checks, either pre- or post-award). A **Contract Reporting Interactive Instructional Guide**, suitable for DD 350 training purposes, is on the AQC home page at URL <http://www.saf.hq.af.mil/contracting/reporting/AQCI/CRIInstGd.shtml>.

Please share this e-mail with your commanders/directors so they can highlight these requirements to their buyers over the next two weeks before we finalize our FY00 Contract Reporting dollars/actions.

ATCH 2

1/26/01

Both AQCP and AQCI appreciate your support!

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Defense Threat Reduction Agency Comments



Defense Threat Reduction Agency

8725 John J Kingman Road MS 6201
Ft Belvoir, VA 22060-6201

JAN 31 2001

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: DTRA Comments on Proposed Audit Report on Waivers for Requirement for Contractors to Provide Cost or Pricing Data (Project No. D2000CH-0106)

The Defense Threat Reduction Agency (DTRA) extends its appreciation to the audit staff for its work in reviewing waivers of the requirement for contractors to provide cost or pricing data to determine if they were properly justified and used in appropriate circumstances. As requested in your correspondence to us dated December 4, 2000, we offer the following comment in response to the draft audit report developed by your office.

The audit report cites one recommendation for improving DTRA's waivers to obtaining cost or pricing data as follows:

We recommend that the heads of contracting organizations that did not obtain or waive cost or pricing data require their contracting officers to comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement guidance for obtaining cost or pricing data and the procedures for waiving the requirements when justified.

DTRA has taken corrective action in response to your recommendation. The Director of Acquisition Management issued a memorandum reminding all contracting personnel of the regulatory requirements to obtain, or properly waive, cost or pricing data. The memorandum provides guidance to address the requirement for providing adequate file documentation.

Please contact Mrs. Catherine Benavides, DTRA/AMM at (703)767-7879 or via e-mail at catherine.benavides@dttra.mil for additional information.


Jan Davis
Director

United States Property and Fiscal Officer, Oregon Comments



PROPERTY
ACTIVITY CENTER

USPFO

DEPARTMENT OF THE ARMY AND THE AIR FORCE

NATIONAL GUARD BUREAU
OFFICE OF THE UNITED STATES PROPERTY AND FISCAL OFFICER, ORIGINALLY
1706 MILITARY WAY, SUITE 1100
SALVEMORE, MD 21064-5047

20 December 2000

MEMORANDUM FOR Inspector General, Department of Defense, ATTN: Contract
Management Directorate, 400 Army Navy Drive
Arlington, Virginia 22202-2855

SUBJECT: Response to Audit Report on Waivers of Requirement for Contractors to
Provide Cost or Pricing Data (Project No. D2000CH-0106)

1. Reference draft audit report for project number D2000CH-0106, dated 4 December 2000.
2. We concur with the findings of the audit report relating to contract DAHA 35-97-C-0006 administered by the United States Property and Fiscal Office for the Oregon National Guard.
3. I have issued instructions to the Contracting Office to fully comply with the provisions of the FAR and DFARS with respect to obtaining cost and pricing data.
4. Questions concerning these comments should be directed to the undersigned.

DOUGLAS A. PRITT
COL, NGB
USPFO For Oregon

CF:
NGB-IR
USPFO-Contracting

Audit Team Members

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