

A *udit*



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CONTRACTING OFFICER DETERMINATIONS
OF PRICE REASONABLENESS WHEN
COST OR PRICING DATA WERE NOT OBTAINED

Report No. D-2001-129

May 30, 2001

Office of the Inspector General
Department of Defense

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Acronyms

DCAA	Defense Contract Audit Agency
DISA	Defense Information Systems Agency
DLA	Defense Logistics Agency
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
PNM	Price Negotiation Memorandum
TINA	Truth in Negotiations Act
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics



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May 30, 2001

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE INFORMATION SYSTEMS
AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Contracting Officer Determinations of Price
Reasonableness When Cost or Pricing Data Were Not Obtained
(Report No. D-2001-129)

We are providing this report for review and comment. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Under Secretary of Defense for Acquisition, Technology, and Logistics; Army; Navy; Air Force; Defense Logistics Agency; and the Defense Information Systems Agency provided comments. Although many of the comments were concurrences and proposed positive actions, other comments did not fully address the recommendations. We have revised Recommendations 1.c., and 1.d., and request additional comments from the Under Secretary of Defense for Acquisition, Technology, and Logistics. We also request that the Army; Navy; Air Force; and Defense Logistics Agency reconsider their comments on the other recommendations including revised Recommendation 2.f., and provide additional comments by July 30, 2001. Additional comments from the Navy were received too late to be included in the final report. Accordingly, the Navy should determine if its additional comments need to be amended. The Defense Information Systems Agency's comments were acceptable. A summary of the recommendations requiring additional comments is at Table 7, "Management Comments Requested," on page 33 of this report.

Questions on the audit should be directed to Mr. Terry L. McKinney at (703) 604-9288 (DSN 664-9288) (tmckinney@dodig.osd.mil) or Mr. Bruce A. Burton at (703) 604-9282 (DSN 664-9282) (bburton@dodig.osd.mil). See Appendix G for the report distribution. The audit team members are listed inside the back cover.

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Office of the Inspector General, DoD

Report No. D-2001-129
(Project No. D2000CF-0059)

May 30, 2001

Contracting Officer Determinations of Price Reasonableness When Cost or Pricing Data Were Not Obtained

Executive Summary

Introduction. The audit was initiated as a result of issues identified in other recent Inspector General, DoD, audits related to price reasonableness. Specifically, we were concerned about how contracting officials were adjusting to Federal Acquisition Regulation changes dealing with the definition of commercial items and how items were being evaluated for price reasonableness.

We selected our sample from a FY 1998 and FY 1999 DD-350 database of contracts that were more than \$100,000 in value and were either sole-source actions or competitive one-bid actions for which certified cost or pricing data were not obtained. The numerous miscodings in the DD-350 contracts database precluded any use of statistical sampling. The apparent lack of competition and certified cost or pricing data make these contract actions more difficult than many for price analyses and price reasonableness determinations. Our audit examined 145 contracting actions, valued at \$652 million, on contracts worth \$3.1 billion. The actions were awarded in FY 1998 and FY 1999 and included 103 sole-source actions and 42 competitive one-bid actions. Of the 145 contracting actions, 93 were noncommercial and 52 were commercial. The contracts were reviewed at 18 contracting activities (5 each at the Army, Navy, and Air Force, and at 3 Defense agencies).

Objectives. Our objective was to determine whether contracting officials obtained information, in accordance with the Federal Acquisition Regulation, to determine price reasonableness when certified cost or pricing data were not required, and whether these reasonableness determinations were adequate. We also reviewed the management control program as it related to the overall audit objective.

Results. Contracting officials lacked valid exceptions from obtaining certified cost or pricing data, and failed to obtain required data in 46 (32 percent) of the 145 contracting actions. In addition, price analysis documentation did not adequately support price reasonableness in 124 (86 percent) of those 145 actions. Also contracting officials did not challenge items categorized as commercial, and they accepted prices based on contractor catalogs and price lists without analyses. Contracting officials used questionable competition as a basis for accepting contractor prices and relied on unverified prices from prior contracts as the basis for determining that current prices were reasonable. Problems contributing to poor price analysis included an atmosphere of urgency caused by a lack of planning, staffing shortages, the need for additional senior leadership oversight, and a generally perceived lack of emphasis on obtaining

cost or pricing data. As a result, we calculated that 52 of the 124 contract actions in which price reasonableness was not adequately supported were overpriced by about \$23.1 million (22.7 percent). Of the other 72 contract actions, data were inadequate to determine whether overpricing existed.

The Defense Supply Center Richmond was the only organization that did an excellent job analyzing price trends and quality control on pricing actions. For an 8 month period ending May 2000, the Center identified 3,707 contract actions, totaling \$72 million, in which price was determined to be unreasonable, and 682 contract actions, valued at \$15 million, where price reasonableness could not be determined. The urgent purchases were made because delays would effect readiness. The list of contracts will be used to assist management in developing aggressive strategies to solve and prevent future problems. For details of the audit results, see the Finding section of the report. See Appendix A for details on the management control program.

Summary of Recommendations. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics address acquisition staff and workload mismatches at contracting organizations, initiate price trend analyses for sole-source and competitive acquisitions where only one offer is received, and emphasize the proper process for dealing with contractors that refuse to provide needed data when requested by the contracting officer. We also recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; Assistant Secretary of the Navy for Research, Development, and Acquisition; Assistant Secretary of the Air Force (Acquisition); Director, Defense Information Systems Agency; and the Director, Defense Logistics Agency, initiate action to alleviate conditions leading to unnecessarily urgent procurements, obtain cost or pricing data when needed, utilize the Defense Contract Audit Agency for pricing assistance, provide necessary tools to determine price reasonableness, establish controls on the use of exceptions for not obtaining cost or pricing data, establish a process to identify sole-source and competitive one-bid contracts with unreasonably high-priced items, and institute corrective actions for future contracts.

Management Comments. The Director, Defense Procurement responded for the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director stated that her office collected data from the Military Departments and the Defense Logistics Agency about the contract actions addressed in the audit and that they did not agree with pricing problems on a number of contracts. In a subsequent meeting, the Director, Defense Procurement, Military Departments, and Defense Logistics Agency representatives agreed that the documentation supporting the contract prices was not good in many cases, but they believe pricing was adequate in most cases. The Director also stated that reasonable prices for items fall within a range, and that agreeing to a price in the range reflects proper judgement regarding all factors affecting the procurement.

The Director agreed that there is a need for the review of staffing requirements for contracting activities and noted that a workforce review had been initiated. The Army stated it believed it had a contracting manpower crisis. The Director disagreed with the

need for a price trend analysis of sole-source and one-bid contracts. The Director also stated that a contractor refusal to provide data should be made a part of the overall past performance evaluation.

The Defense Information Systems Agency concurred with all recommendations. The Military Departments and the Defense Logistics Agency stated that action had already commenced or that procedures or policy were in place to satisfy the intent of many of the recommendations. The Military Departments and Defense Logistics Agency believed, however, that no widespread problem exists with price analysis. This belief stems from their review of the contract actions cited in the report as having price reasonableness problems and, in some cases, overpricing. They performed a data call to contracting organizations and provided specific comments on 87 contract actions cited in the report. They initially disagreed with the audit conclusions on 65 of the contract actions. For a complete discussion of management comments and our audit response, see the Recommendations, Management Comments, Audit Response, and Required Actions section of this report.

Audit Response. We agree with the Director's comments that a range of anticipated prices can be established prior to negotiating contracts. However, we found that contracting officials were not using historical prices, Defense Contract Audit Agency reviews, government cost estimates, and other data available through basic market research to establish such ranges. Accordingly, we believe the prices we calculated have validity. The Military Departments and Defense Logistics Agency originally provided comments that disagreed with the audit conclusion for 65 contract actions. In subsequent meetings and discussions, disagreements regarding whether price reasonableness had been established were reduced to 42 contract actions. Appendix F provides a summary of the Military Departments and Defense Logistics Agency comments pertaining to their contract actions, and our response.

The Director, Defense Procurement, Military Departments and Defense Logistics Agency comments on the recommendations were not fully responsive. As indicated by the audit results, even if the disputed determinations of price reasonableness and overpricing calculations are set aside, the existing DoD procedures and policies were not adequately working and additional actions are necessary. Sole-source contracts or those with only one offer received are a difficult pricing challenge and require more management attention to be directed at those types of contracts. We request the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Military Departments and Defense Logistics Agency reconsider their responses on the unresolved recommendations, as discussed individually in Part I of the report, and provide additional comments by July 30, 2001.

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Background

The audit was initiated as a result of issues identified in several recent Inspector General, DoD, audits related to price reasonableness. Furthermore, we were concerned about how contracting officials were implementing new commercial practices as part of Acquisition Reform.

Since FY 1998, the Inspector General, DoD, has issued 11 reports related to price reasonableness determinations and the classification of items as commercial. Eight of the reports determined that the Defense Logistics Agency (DLA) frequently did not negotiate the most economical price for items. The audits also determined that DLA often paid higher prices when using contractor catalog prices as opposed to cost-based prices. Two of the reports identified that fair prices were received because the contractor provided cost data and because of the way the contracts were structured. Nine of these audits primarily centered around spare parts provided by a major defense contractor. The complete list of these audits is included in Appendix B. Because this audit was initiated to provide a more comprehensive evaluation of price reasonableness within DoD, the audit focused on contracting offices instead of major suppliers. Specifically, we visited 18 contracting offices in the Military Departments and Defense Agencies.

Our review included 145 actions, valued at \$652 million, (83 contract actions, valued at more than \$500,000 and 62 contract actions, valued at less than \$500,000), on contracts worth about \$3.1 billion. The actions occurred between FY 1998 through FY 1999, and included 103 sole-source actions and 42 competitive one-bid actions--93 actions were for noncommercial items or services and 52 actions were for items or services classified as commercial. Certified cost or pricing data were not obtained on any of the contracts. Items purchased sole-source or on a competitive one-bid contract are more difficult to fairly price, especially if certified cost or pricing data were not obtained. Table 1 provides a breakdown of commercial and noncommercial actions and whether the actions were for goods, services, or both.

	Commercial		Noncommercial	
	<u>Actions</u>	<u>Dollar Amount</u>	<u>Actions</u>	<u>Dollar Amount</u>
Goods	39	\$367,737,305	75	\$170,716,087
Services	12	\$ 29,123,160	14	\$ 52,425,091
Both Goods & Services	1	\$ 596,174	4	\$ 31,195,230
Total	52	\$397,456,639	93	\$254,336,408

Regulatory Changes Related to Contract Pricing. The Federal Acquisition Streamlining Act (FASA) enacted in October 1994 created new Truth In Negotiations Act (TINA) exceptions so that requirements to obtain certified cost or pricing data would not apply to modifications of contracts or subcontracts of commercial items. FASA provided a definition of a commercial item and provided specific guidance about obtaining information for commercial items. Where there is adequate price competition, the head of an agency could not require cost or pricing data to be submitted. If additional information was needed to determine price reasonableness, the agency must to the maximum extent practicable obtain this information from sources other than the offeror. FASA also required the Federal Acquisition Regulation (FAR) to include reasonable limitations on requests for sales data relating to commercial items and limits information from offerors to the form regularly maintained by the offeror in commercial operations. In addition, FASA requires the FAR to include standards for determining when the TINA exceptions were applicable. In making FAR changes to address FASA, the drafters added language that prevented the contracting officer from obtaining any more information than necessary.

The FAR, part 15 provides guidance to determine exemptions from cost or pricing data for these items. In addition, comparing catalog prices with proposed prices could only be done based on similar items so that any difference in price could be identified without resorting to a cost analysis.

In October 1996, the Federal Acquisition Reform Act, subsequently renamed the Clinger-Cohen Act of 1996, enacted several procurement changes that raised the complexity of a contracting official's duties including a change with respect to commercial items. The Clinger-Cohen Act eliminated the previous TINA exception for commercial items based on substantial sales and created a TINA exception for all commercial items. Before this change, only commercial item acquisitions that were based on catalog or market prices for commercial items sold in substantial quantities to the general public were exempt from the requirements for certified cost or pricing data. The change altered the conditions that the contracting official worked under by limiting options for obtaining cost or pricing data to make decisions on price reasonableness. This change occurred at a time when contractors began to increasingly make claims that items were commercial.

Contracting officials' approach for determining price reasonableness can differ depending on whether contract actions are above or below \$500,000.* Negotiated contract actions above \$500,000 require the submission of certified cost or pricing data, unless one of the five exceptions to obtaining cost or pricing data apply. FAR 15.403-1(b) "Exceptions to Cost or Pricing Data Requirements" (formerly FAR 15.804) provides guidance on when certified cost or pricing data are not required. It states that the contracting officer shall not require submission of cost or pricing data:

* On October 1, 2000, the threshold was changed to \$550,000 because of inflation adjustment provisions of 10 USC 2306a

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- (1) When the contracting officer determines that prices agreed upon are based on adequate price competition;
 - (2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation;
 - (3) When a commercial item is being acquired;
 - (4) When a waiver has been granted; or
 - (5) When modifying a contract or subcontract for commercial items.

The changes discussed do not represent all of the changes enacted as a result of the FASA and the Clinger-Cohen Act, only those portions pertaining to the objectives of our audit. Furthermore, the laws and regulations for purchasing services are somewhat different from those that apply to the purchase of goods. Even though certified cost or pricing data can not be obtained for contract actions having valid exceptions, contracting officials still have the responsibility to ensure that fair and reasonable prices are being paid for the goods and services.

Price Trend Analysis. As a result of previously reported problems on pricing of items, section 803(c) of the Strom Thurmond National Defense Authorization Act for FY 1999 requires the Secretary of Defense to implement procedures that provide for the collection and analysis of price trends for categories of commercial items exempt from the submission of certified cost or pricing data. It also stipulates that items selected for analysis be in a single Federal Supply Group or Federal Supply Class, provided by a single contractor, or otherwise logically grouped for the purpose of analyzing information on price trends. Price trends must be analyzed where there is a potential that prices paid will be significantly higher (on a percentage basis) than the prices previously paid for procurements of the same or similar items. Subsection 803(c) further directed that the head of a DoD agency or the Secretary of a Military Department take appropriate action to address any unreasonable escalation in prices being paid for items procured by that agency or Military Department. Subsection 803(c) also required an annual report to the Senate and House Armed Services Committees not later than April 1, 2000, that reviews the price trend analyses conducted during the preceding fiscal year, and describes actions taken to identify and address unreasonable price escalation.

Objectives

The audit objectives were to determine whether contracting officials obtained information, in accordance with the Federal Acquisition Regulation to determine price reasonableness when certified cost or pricing data were not required, and whether these reasonableness determinations were adequate. We also reviewed the adequacy of the management control program as it applied to the audit objectives. See Appendix A for a discussion of the audit scope and methodology and the review of the management control program. See Appendix B for prior coverage related to the audit objectives.

Price Reasonableness

Contracting officials did not comply with FAR requirements and used invalid exceptions as a basis for not obtaining certified cost or pricing data in 46 of the 145 contract actions reviewed. Contracting officials also relied on incomplete information and the cost or price analysis and contract file documentation did not determine or adequately support price reasonableness decisions in 124 of the 145 contract actions.

These inadequacies occurred because of the following issues:

- Program offices and contracting officials did not adequately plan for acquisitions, thus creating an unjustified state of urgency.
- Contracting officers had increased workloads because of staffing shortages at 12 of 18 organizations.
- Contracting officials did not obtain cost data when other means were insufficient to determine price reasonableness. There was limited use of the Defense Contract Audit Agency (DCAA) for price analysis support. Contractors refused to provide cost or other data for 18 contracts when requested by contracting officials.
- Senior leadership oversight of the process needed improvement.

As a result, DoD did not always obtain fair and reasonable prices and paid more than it should have for goods and services. We calculated that for 52 of the 124 contract actions, valued at \$125.1 million, in which price reasonableness was not adequately supported, DoD paid about \$23.1 million (22.7 percent) too much. Data was inadequate to determine whether overpricing occurred on the remaining 72 actions.

Exceptions for Not Obtaining Certified Cost or Pricing Data

Contracting officials used invalid exceptions as a basis for not obtaining certified cost or pricing data. Furthermore, they inappropriately used exceptions to enable them to award contracts more quickly and to avoid delays caused by contractor unwillingness to provide such data. Also, contractors more readily refused to provide cost information requested, and contracting officials used faulty exceptions rather than aggressively challenging contractors to provide the information. Contracting officials, on their own or at the request of contractors, classified items as commercial, improperly determined that adequate competition existed, and inappropriately used waivers, all to avoid having to obtain certified cost or pricing data. Contracting officials also awarded actions valued at more than \$500,000 without obtaining certified cost or pricing data and without using any of the

exceptions. Contracting officials also lost the opportunity to obtain certified cost or pricing data by not combining actions and awarding actions slightly below the \$500,000 threshold. All of the 46 contract actions that were deemed to have invalid exceptions had inadequate documentation to support the price reasonableness determinations. Contracting officials are also responsible for determining whether prices are fair and reasonable, even for procurements that are exempt from the requirements to obtain certified cost or pricing data. Table 2 provides a breakdown of invalid exceptions along with all of the inadequate documentation supporting price justifications and overpriced actions.

Table 2. Breakdown of Invalid Exceptions, Inadequate Price Justifications, and Overpriced Actions				
<u>Exception Used</u>	<u>Contract Actions</u>	<u>Invalid Exception</u>	<u>Inadequate Price Justification</u>	<u>Data Sufficient To Compute Overpricing</u>
Commercial	46	11	42	12
Competition	16	9	9	9
Waiver	8	4	4	1
No Exception	16	16	16	5
Threshold	59	6	53	25
Total	145	46	124	52

Of the 145 contract actions, 62 were below the \$500,000 threshold. Fifty nine of these actions used the threshold as the exception from obtaining certified cost or pricing data including 6 that circumvented the threshold and which we classified as invalid exceptions. Three of the 62 actions used the commercial item status as the exception. Of the remaining 83 contract actions above the threshold, 40 had invalid exceptions. For the 46 actions with invalid exceptions, 23 were Army, 6 Navy, 11 Air Force, and 6 Defense agencies. For the 124 actions with inadequate price justifications, 46 were Army, 20 were Navy, 35 were Air Force, and 23 were Defense agencies. See Appendix C for a complete list of these actions.

Commercial Exceptions. For 46 actions, valued at \$318.6 million, contracting officials used commerciality as the exception for not obtaining certified cost or pricing data. Eleven of those actions, valued at \$217.7 million, had exceptions that were improper. Furthermore, 42 of those actions, valued at \$299 million, including the 11 actions with improper exceptions, had inadequate support for price reasonableness determinations.

Contracting officials inadequately determined price reasonableness for the 42 actions by using catalog prices, prior history, and cost analyses. Catalog prices

were used in 26 actions, valued at \$263.5 million; prior history was used in 13 actions, valued at \$23.4 million; and cost analysis was used in 3 actions, valued at \$12.1 million.

For an example of an improper exception, contracting officials under contract DAAB07-97-C-J230 with Litton Systems, valued at \$1.9 million, accepted the contractor's commercial exception for the repair/conversion of 500 AN/VVS-2 driver's night vision viewers (unit price of \$4,153), used in the M-1 series Abrams Main Battle Tank and M2/M3 family of Bradley Fighting Vehicles. The viewers enable a closed-hatch vehicle to be driven during nighttime conditions by amplifying ambient light. FAR, part 2 states that commercial services must be services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. There was no evidence that contracting officials performed any market research to support the commercial services determination. Also, FAR Part 12 requires firm fixed price contracts for the acquisition of commercial items. Although the Army considered this contract firm fixed-price, the contract pricing was a not to exceed amount and the actual contract costs were not known. The description of the night vision viewers, along with the purpose, indicates that they have military rather than commercial application. In addition, there was no documentation in the contract files that supported any commercial application of the viewers or that the items were sold to the general public. Despite the fact that the contracting official had no knowledge of any commercial application, he stated that he did not recall the circumstances regarding accepting the commercial status of the viewers, but added that he would have had no reason to question the contractor's claim that the viewers were commercial. See item 2, Appendix F for further details.

In another example, contracting officials used the commercial exception when they awarded contract DAAH23-98-D-0117, with Kaiser Aerospace and Electronics Corporation, valued at \$574,476, to acquire "buddy part assemblies" for military helicopters at a unit price of \$5,862. It was evident that contracting officials intended to circumvent the requirement for certified cost or pricing data by awarding the contract under the \$500,000 threshold. An unsigned briefing memorandum stated that the contractor was not set up to provide certified cost or pricing data and that the new strategy was to reduce quantity to under \$500,000 to avoid these hurdles. When the reduction in quantity did not occur, the commercial exception without market research was used even after identifying major differences between the commercial and military versions and after identifying that the commercial price was substantially higher than historical DoD prices. See item 35, Appendix F for details.

Other examples of invalid commercial item exceptions are at items 9, 16, 38, 50, 59, and 62, Appendix F.

Competitive Exceptions. For 16 actions, valued at \$178 million, contracting officials used competition, even though only one offer was received, as the exception to obtaining certified cost or pricing data. Contracting officials also used competition as the primary factor in determining price reasonableness. However,

for 9 of these actions, valued at \$36 million, there was no evidence of either a realistic expectation of competition or that more than a single contractor would submit a proposal.

For example, contracting officials determined that adequate competition had occurred under contract DAAE20-99-D-0099 (delivery order 0001, valued at \$858,700), with Island Components Group, for an alternating current motor, at a unit price of \$277, even though the award was made to the only approved source. There was no evidence of market research to identify other sources. Based on prior history, we calculated that DoD overpaid by \$274,530 on this action. See item 31, Appendix F.

The FAR provides guidance describing when adequate competition occurs. FAR 15.403-1(C)(ii) states that adequate competition occurs when:

There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if-

- (A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g. circumstances indicate that-
 - (1) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and
 - (2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer...

In FY 1999, DoD reported 3,078 contract actions, valued at \$2.2 billion, that were claimed as competitive, even though there was only one offer received. We identified a lack of real competition for 9 actions that were above the \$500,000 threshold and 6 actions below the threshold, with only one offer that cited competition as the primary factor in determining price reasonableness. We caution that our results can not be extrapolated to the reported universe of competitive contract actions with one offer received. However, the Department still needs to evaluate the frequency and validity of adequate price competition with only one bidder. Additional examples of inadequate competition are at items 3, 4, 19, 21, 30, and 44, Appendix F.

Waivers. For eight actions, valued at \$105.7 million, head of contracting activities granted waivers from obtaining certified cost or pricing data. We determined that four of the eight actions, valued at \$25.8 million, were given waivers although facts used to support the waiver were incorrect and included inadequate price reasonableness determinations. Waivers were issued because contracting officials believed there would be sufficient information available to determine price reasonableness without obtaining certified cost or pricing data. However, the

documentation either did not provide support for the waiver or changed before award, and therefore, the waivers should not have been requested or should have been withdrawn. Examples of inadequate waivers are at items 12, 33, and 37, in Appendix F.

No Exceptions. Contracting officials did not obtain required certified cost or pricing data for 16 actions, valued at \$32 million, even though the 16 actions did not qualify for any of the exceptions to certified cost or pricing data. Contracting officials did not adequately document and determine price reasonableness for any of the 16 actions. One of the 16 actions initially had a waiver but it was ultimately deemed invalid, and certified cost or pricing data should have been obtained.

The head of the contracting activity waived the requirement for certified cost or pricing data for contract DAAH01-99-D-0076 with Raytheon Company, valued at \$845,046, for Dewar cooler assemblies (unit price \$46,947), because he expected that prior history would provide sufficient information to justify the anticipated unit price of approximately \$12,500. Once the contractor proposed prices that started at \$29,167 and ultimately through additional amendments reached \$68,140, contracting personnel realized the waiver was no longer valid and that certified cost or pricing data would be necessary to determine price reasonableness. However, the contracting official did not obtain certified cost or pricing data and did not justify why this contractor was not required to certify. DoD paid a higher price and lost the benefits of TINA, which allows the Government to recoup overpricing caused by defective cost or pricing data. Based on prior history, we estimated overpricing on this action of \$610,003. See item 32, Appendix F for further details.

Contracting officials did not determine or adequately document price reasonableness for the 16 actions, through their use of catalog prices, prior history, and cost analyses. Catalog prices were used without determining whether items were sold to the general public or whether the general public paid those prices. Prior history was used without the reasonableness of those prices being known and cost data were obtained but included insufficient or no analysis. Catalog prices were used in 1 action, valued at \$0.9 million; prior history in 5 actions, valued at \$9.3 million; and cost analysis was used in 10 actions, valued at \$21.8 million.

In addition, Inspector General, DoD, Report No. D-2001-061, "Waivers of Requirement for Contractors to Provide Cost or Pricing Data," February 28, 2001, identified 11 cases that were coded as waivers but actually had no waiver or any other exception to obtaining certified cost or pricing data.

Threshold. FAR 15.403-4(a)(1) "Requiring Cost Or Pricing Data," states that the threshold for obtaining cost or pricing data is \$500,000. Contracting officials awarded 59 actions, valued at \$17.5 million, below the \$500,000 threshold. Contracting officials should have obtained certified cost or pricing data for six of these contract actions, valued at \$2.9 million, where, in our opinion, the threshold was abused. Obtaining the data would have protected the Government if defective pricing occurred.

For example, contract DAAE07-99-C-N045 was awarded to General Thermodynamics for engine radiators for the Bradley Fighting Vehicle at just under the \$500,000 threshold. Contracting officials had also previously awarded two contracts within a 5-month period of this award, each slightly under the \$500,000 threshold, to the same contractor, for the same item. The total value of the three contracts was \$1,494,844. However, certified cost or pricing data was not required since each of the three procurements was under the \$500,000 threshold. If contracting officials would have added just one more item to any of the three contracts, the contract award amount would have been over the \$500,000 threshold. It appears that the contracting officials intentionally kept the price below the \$500,000 threshold because the number of units procured under each of the contracts was the maximum number of units that could be obtained while keeping the price below the threshold. If not intentionally planned to avoid the threshold, these types of procurements at least indicate a need for more thorough advance planning. We calculated overpricing of \$54,298 based on prior history. Table 3 provides details of these three awards.

Table 3. Contracts Awarded Slightly Under Threshold Requiring Cost Or Pricing Data				
<u>Contract Number</u>	<u>Award Date</u>	<u># Of Units</u>	<u>Unit Price</u>	<u>Total Price</u>
DAAE07-99-C-N013	3/29/99	196	\$2,539	\$497,644
DAAE07-99-C-N033	6/9/99	200	\$2-,493	\$498,600
DAAE07-99-C-N045	8/30/99	200	\$2,493	\$498,600

See item 15, Appendix F for additional details.

Contracting officials did not effectively determine or support price reasonableness for 53 of the 59 actions below the threshold for certified cost or pricing data, valued at \$16 million.

Price Reasonableness Determinations

Contracting officials determined price reasonableness for the 145 contract actions, valued at \$652 million (overall contract value of \$3.1 billion), primarily through the use of contractors' catalog prices, prior history, competition, and cost analysis. Price reasonableness was not adequately determined in 124 of these actions, totaling \$408.9 million. Table 4 depicts the price reasonableness problems related to these 124 contract actions.

Table 4. Summary of Price Reasonableness Problems		
<u>Problems</u>	<u>Number of Occurrences</u>	<u>Data Sufficient To Compute Overpricing</u>
Acceptance of catalog prices without any additional review of price	34	7
Use of prior prices without establishing the reasonableness of the prior prices	42	21
Inadequate competition	15	9
Cost analyses	24	9
Other reasonableness problems	9	6
Total	124	52

Of the 124 contract actions, 19 were for services and 105 were for items. The 19 service contracts were included in the 72 contract actions in which documentation was inadequate to determine whether overpricing existed.

Catalog Prices. Contractor catalogs were typically developed with unit prices for unspecified quantities or with unit prices at varying quantities. When catalog unit prices were shown without quantities, the unit price was developed based on a quantity of one unit; therefore, discounts should have been negotiated off of the catalog unit price for large quantity purchases. FAR specifies the requirements that the contracting officer must follow when determining price reasonableness for commercial catalog items. FAR 15-403.3(c) states:

At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item. The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable.

Contracting officials did not use price analysis or otherwise properly determine price reasonableness for 34 actions awarded at \$282 million. Contracting officials accepted items as commercial even when DoD was the only apparent purchaser of the items. More importantly, contracting officials did not challenge contractor catalog prices. Even when contracting officials made large quantity buys that should have been subjected to discounts, unit prices that applied to single purchases were accepted with very limited review. In cases where discounts were offered, price analyses were not performed, yet there was no other basis to determine whether the discounted price was fair and reasonable. For example, prior to awarding contract N00019-99-C-1598, with Fatigue Technology, valued at \$317,221, the contracting official stated that the contractor had to demonstrate that the item, air frame change modification kits consisting of seven items ranging in

unit price from \$2,221 to \$59,152, was available to the general public at a commercial price before the contract could be awarded for the proposed amounts. However, the contracting official did not conduct adequate market research and eventually relied on a statement from the contractor that the price list was available to the general public. See item 41, Appendix F for details.

In another case, contracting officials disagreed with Allied Signal Inc., over the commercial status of the item being procured. For contract F42630-99-C-0022, the market research and an Air Force engineer concluded that the 367 heat stacks in support of the F-15 aircraft were not commercial items. However, the contractor declared the item to be commercial under the new FAR definition ... and stated that cost or pricing data would not be provided. The Government accepted the contractor's catalog price with no additional documentation such as invoices or price lists to support this claim. There was also no explanation given as to why the Air Force price analysis, which supported a price 38 percent below the Air Force objective, was not used. We used prior history to compute overpricing of \$1.2 million for 367 units on the contracting action. Our computation was based on a difference in unit price of \$3,273 from previous prices paid which was adjusted for inflation, quantity, and learning curve (\$11,445 versus \$8,172 unit price). The Air Force price analysis also supports an overpricing amount almost identical to our computation. See item 62, Appendix F for details.

Prior History. The FAR also allows for the use of prior history and specifies procedures to be used when making this comparison. FAR 15.404-1(b)(2)(ii) states:

Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

There was no evidence in 42 contract actions, valued at \$41.7 million, that the prior price was reasonable when contracting officials used prior history as the basis for price reasonableness. As a rule, contracting officials used prior prices as a basis to determine price reasonableness for the current procurement, but they did not comply with the FAR requirement to ensure the validity of the comparison or the reasonableness of the prior price. Comparisons were made even when quantities were dissimilar or contracting officials lacked complete historical data.

We used an automated database of historical data to determine the prior prices paid. This database provided information on all DoD procurements at Military buying organizations. From this database, we determined that contracting officials often did not have a complete history and reached conclusions based on incomplete information. We believe that each contracting office should have access to current data on prices to make more informed decisions about price reasonableness when historical comparisons are used. The contracting office should validate the reasonableness of any price used in comparisons.

For example, contracting officials awarded Contract F42630-99-C-0161 to Hydro-Mill Company for yoke assembly landing gear for the C-5 Aircraft, at a unit price of \$3,744. The price reasonableness determination was based on a 1990 buy with a

unit price of \$3,362. This determination was based on incomplete information since there was a procurement awarded in 1995 at a unit price of \$1,025, which was not included in the procurement office records. If this information were available to the contracting officer, she would have been in a better position to evaluate factors affecting price. We computed overpricing of \$49,938 for this procurement. See item 63, Appendix F for further details.

Contracting officials, awarded contract SPO475-99-C-5561, valued at \$358,074, to Llamas Plastics Inc., for 76 window panels for the F-4 Aircraft, at an average unit price of \$4,712. The officials determined that prices were fair and reasonable by comparing the proposed amount with a buy from May 1998 at a unit price of \$4,945. However, the officials ignored another procurement from just 5 months earlier for eight window panels awarded at a unit price of \$2,700. This action with a lower unit price was coded as competitive. In addition, there were two other buys from similar time periods at prices that were in the same range. By not reviewing the prior history, the contracting officials paid a price that was 75 percent higher than the recently paid price, notwithstanding the additional savings associated with the larger quantity. We computed overpricing of \$177,273 based on prior history.

Contracting officials awarded contract DAAJ09-97-D-0202, valued at \$188.9 million, to Allison Engine Company for 600 250-C30R/3 engines, containers, engineering and logistical support services, and associated data in support of the Kiowa Warrior helicopter without adequately determining price reasonableness. The 600 engines were to be procured over a 5-year period (120 units per year) at an average unit price of \$309,011. As of March 2001, 255 engines had been procured off this contract totaling approximately \$74 million. The item was classified as a commercial item; however, documentation was not sufficient to support a commercial application for the engine. The engine is not sold to the general public. Therefore, certified cost or pricing data should have been obtained. The contractor had a starting price of \$270,000 per unit in its May 6, 1997, proposal, which was based on a previous buy by another buying command for 78 units. The contractor did not offer a quantity adjustment even though the contract was for 600 units, substantially more than the 78 units. An escalation factor was then applied to the \$270,000 to determine pricing for each of the 5 years (1998 through 2002). Allison significantly increased its escalation about 6 weeks later. Contracting officials included in its negotiation objective the \$270,000 without explaining why the price/technical analysis, that was almost \$20,000 lower in the initial year, was not used. The contracting position also increased the objective in each subsequent year when the contractor proposed higher escalation without explaining why this was reasonable.

DCAA in a June 24, 1997, memorandum to the contracting officer stated, “. . . that the engine unit price of \$270,000 was unsupported because Allison Engine Company would not provide the necessary supporting data as required by the RFP.” In a subsequent memorandum on August 27, 1997, DCAA states, “. . . we have no basis to determine if the proposed engine price to the Government of \$270,000 is reasonable.” Although DoD has been buying the engine for 31 years the contractor now claims it is commercial, however, the contractor refused to provide sales data to support his claim. We calculated overpricing on the 255 engines purchased using this contract. We determined overpricing of \$7.1 million,

based on the price/technical analysis performed by the Government, with potential overpricing of \$24.2 million if the full quantity of 600 engines are purchased. See item 38, Appendix F for details.

Competition. Contracting officials used competition as the primary factor in determining price reasonableness when competition was not apparent and only one offer was received for 15 contract actions, valued at \$37.7 million. The contracting officials had no evidence that a reasonable expectation of competition would occur.

For example, under contract DAAE20-99-C-0074, with General Reliance Corporation, valued at \$175,380, for electrical solenoids at a unit price of \$222, contracting officials used competition as the basis for determining price reasonableness even though there was no likelihood that more than one offer would be received. The contracting office did not conduct adequate market research. In fact, the successful contractor had been the incumbent for 24 years. Based on prior history, we calculated overpricing of \$106,704. See item 26, Appendix F for further details.

Cost Analysis. Contracting officials cited cost analysis as the primary basis for price reasonableness in 24 contract actions, valued at \$43.8 million. Contracting officials appeared to take the extra step of requesting cost data in these 24 actions, where catalog prices, prior history, or competition was insufficient. However, the cost data was neither documented in the file nor supported the price paid. In addition, contracting officials accepted contractor cost data without further analysis.

For example, under contract DAAE20-99-C-0082, with BF Systems Inc., valued at \$318,700 (unit price \$3,187), for 100 actuator, electrical-mechanical units used on the M1 and the M1-A1 tanks, the contract specialist included a cursory cost analysis within the business clearance memorandum. The cost analysis did not provide detailed information related to the specific cost elements. The contracting official accepted direct labor, material, overhead, (general and administrative expenses) and profit as proposed. The amount of effort devoted to the cost analysis is questionable since it was performed on the same day that the contract was awarded. We computed overpricing of \$143,583 based on prior history. See item 27, Appendix F for details.

Under contract DAAH23-98-D-0014, with Allied Signal Inc., valued at \$596,174, the cost analyst merely accepted the contractor's cost estimate for 149 anti-icing valve overhauls, replacement shipping containers and scrap effort, (unit price of \$4,001), without obtaining and reviewing support documentation. See item 34, Appendix F for details.

Other Reasonableness Problems. In addition to the previous stated problems, contracting officials documented that prices were unreasonable in three actions and could not determine reasonableness in six other actions.

For example, in a memorandum on a contractor's pricing, one contracting official at the U.S. Army Aviation and Missile Command, when informed that Raytheon Systems Company's proposal came in at four times the estimate, stated that "she wasn't surprised -- everyone is sticking it to us." She went on to say that "they

have to have these.” We calculated overpricing of \$610,000 on this action based on prior history. See item 32, at Appendix F for further details. At the U.S. Army Tank and Automotive Command, the contracting official expressed concern with the pricing proposed by Minowitz Manufacturing Company, which was the only contractor that expressed interest and submitted a bid. The contracting official stated: “but their price is so OUTRAGEOUS I possibly cannot find any justification for their offer unless you will support the blank check.” This comment was prompted by a unit price increase of 426 percent from the previous procurement (\$6,987 versus \$1,638). We calculated overpricing of \$103,470 on this contract action, valued at \$174,675, based on prior history. See item 18, Appendix F for further details.

In another example, contracting officials determined that it would be in the best interest of the Government to award contract SP0441-99-C-5526, valued at \$462,317, to Roller Bearing Company of America although the price was determined to be unreasonable. The contract was for bearings, rollers, and needles at a unit price of \$1,125. The contracting officials reasoned that since the item was not commercial and since the contractor would not provide cost information, the only option to obtain the item was to purchase it. We calculated overpricing of \$111,602 based on prior history. In this case, we commend DLA for acknowledging that while the part was, indeed needed, it was also priced unreasonably.

Contributing Factors To Price Analysis Problems

Various factors have contributed to contracting officials’ inadequate documentation and support for price reasonableness determinations and failure to obtain certified cost or pricing data when required from contractors. These factors included poor acquisition planning and urgent procurements, staffing shortages, contracting officials’ inappropriate use of the exceptions for submission of certified cost or pricing data, less emphasis on obtaining cost data resulting from acquisition reform, failure to use DCAA for pricing assistance, and the need for additional senior leadership oversight.

Acquisition Planning. Program and contracting offices did not adequately plan for procurements causing acquisitions to be conducted too quickly to adequately determine price reasonableness. Contracting officials worked under urgent and compressed timeframes and took shortcuts when attempting to establish price reasonableness. Forty-seven of the 145 actions reviewed, valued at \$88.8 million, were awarded under urgent conditions. The reader should be aware of the distinction between these 47 actions awarded under urgent conditions and the 47 actions previously stated as having invalid exceptions. In 44 of the 47 actions, contracting officials performed no or limited price analysis and accepted prices that were not justified. Files lacked data and included cursory results even to the extent that basic documentation such as pricing negotiation memoranda were not always prepared.

For example, contract SP0441-99-C-5360, with MRC Bearings, valued at \$496,725, for the acquisition of ball bearings used urgency as justification for not negotiating a fair and reasonable price. In this case, the price was accepted at \$2,685 per unit. This price represented a 54.5 percent increase over the last buy from just 2 years earlier. We calculated overpricing of \$175,057 based on prior history.

Contracting officials stated that contract DAAA09-98-C-0070, with DSE Inc., valued at \$5.9 million, for the acquisition of 727,115 units of 40-millimeter ammunition at a unit price of \$8.14, was awarded quickly because of urgency. As a result, the officials worked so quickly that they did not develop the necessary pre-award documentation such as a solicitation, acquisition plan, independent Government cost estimate, or price negotiation memorandum needed to ensure that DoD paid a fair and reasonable price. By not performing the necessary procedures for obtaining reasonable prices, the Government overpaid \$1.9 million on this contract. See item 1, Appendix F for further details.

Contracting Officials Workloads. Staff shortages and shifts in personnel also contributed to increased workloads that further strained contracting staffs. Personnel at 12 of 18 locations visited cited increased workload, staff shortages from retirements and transfers, along with the urgent atmosphere as key reasons for missing documentation and shortfalls in contracting files. One contracting official at the Naval Air Systems Command was responsible for 34 contracts. In another case, a contracting official at the Army Communications and Electronics Command could not answer basic questions about price reasonableness on one contract because the contract specialist who had worked on the contract had retired and had not documented the files.

A contracting official at the Defense Supply Center Richmond stated that the workload was so great that a delay in the award of even one contract could not be tolerated because of the impact the delay would have on all other pending awards. The official gave this answer to a question about why cost or pricing data was not obtained when there was no other basis to establish reasonableness.

Emphasis on Obtaining Cost Data. Changes in acquisition regulations have placed less emphasis on obtaining cost data for determining price reasonableness. As a result, contracting officials are less inclined to request and contractors are more reluctant or unwilling to provide these data. Contractors have used the changes in the definition of commercial items to classify items as commercial and then have refused to provide cost information. These changes have limited the information available to contracting officials in determining price reasonableness.

Under FAR changes that resulted from the changes in FASA, contracting officials were instructed to obtain just enough information to make informed decisions and not to obtain certified cost or pricing data unless it was absolutely necessary. The Clinger-Cohen Act also changed the requirements for commercial item exceptions for cost or pricing data by not mandating that commercial item prices be based on catalog sales or market prices and be sold in substantial quantities to the general public.

The addition of a commercial item definition and the restrictions imposed on obtaining cost or pricing data has limited the contracting officials' abilities to determine price reasonableness. Items that previously were considered noncommercial, and for which certified cost or pricing data were required, are now being deemed commercial items, which limits the information available to the contracting officials in determining price reasonableness. As a result of these changes, contractors have developed catalog prices and then have refused to provide additional cost or pricing information. Contractors refused to provide additional information to contracting officials in at least 18 contract actions, of which 8 contract actions were for items classified as commercial, involving 17 different contractors. See Appendix E for a list of these 18 contract actions.

The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics has promoted acquisition reform initiatives that emphasize tools and techniques rather than obtaining cost or pricing data and has made the obtaining of such data a last resort. We believe that emphasis should be provided for obtaining cost data in sole-source situations. The TINA was enacted to put the Government on equal footing with the contractor during contract negotiations. Acquisition reform procedures work well when there is competition, but obtaining cost data is often key in sole-source situations.

Contractors used their sole-source market position and the revised definition of commercial items as the basis for proposing unjustified high prices. In contract N00383-98-C-019F, with SMR Technologies, Inc., contracting officials paid significantly higher prices than before for drop cloth used for the repair of F-14 Tomcat wing fuselages. Table 5 shows the purchasing history for this item.

Table 5. Price History For Drop Cloth Thread

<u>Contract Number</u>	<u>Quantity (Yards)</u>	<u>Unit Price</u>	<u>Contract Date</u>	<u>Price Reasonableness Determination</u>
N00383-91-D-7012	1,000	\$55.36	5/92	Certified cost or pricing data. Urgency
N00383-96-M-041F	75	95.00	2/96	Cost or pricing data not requested because of small dollar amount. Urgency
N00383-96-C-015F	600	800.00	5/96	Item now considered commercial. Price reasonableness based on catalog price. Urgency
N00383-98-C-001F	756	800.00	10/97	Contractor refused to provide certified cost or pricing data because material was commercial. Urgency
N00383-98-C-019F	2,565	650.00	6/98	Price reasonableness based on previous contract price of \$800 that was not justified as reasonable.

In 5 years, the unit price for the drop cloth substantially increased from \$55 to \$800, an increase of 1,454 percent. The contracting officer questioned the huge increase in price and requested a cost breakdown. The contractor refused but instead provided a catalog price list showing a price of \$950 per yard. The contractor also stated that the item was now being “classified as a [commercial item] in accordance with the new expanded FAR definition of a commercial item.” The contractor also stated that the item was commercial because it was in its catalog and offered for sale to the general public. However, there was no evidence that the drop cloth thread that is used to repair the wing fuselage seals of the F-14 Tomcat had any other application. The most current contract, N00383-98-C-019F, based price reasonableness on the fact that the unit price was 18.75 percent lower (\$650 versus \$800) than the price paid under the previous contract, N00383-98-C-001F. We calculated overpricing of \$1.5 million based on prior history.

The senior acquisition personnel need to develop an integrated strategy to deal with contractors who refuse to provide data for determining the reasonableness of prices. This strategy should include the involvement of the head of contracting activity, as appropriate, with the contractor. Senior leadership did not have procedures to facilitate its involvement when contracting officials were at impasses with contractors. FAR 15.403(a)(4) states that if a contractor refuses to submit information, it is ineligible for award unless the head of the contracting activity determines the award is in the Government’s best interest based upon the specified

criteria. However, there was no evidence that the senior leadership was ever aware of the significant number of instances of contractors refusing to provide information needed by acquisition personnel to determine fair and reasonable prices, or whether contracting officials were obtaining certified cost or pricing data from contractors when required.

DCAA Assistance. DCAA has the resources and expertise to lend invaluable assistance to contracting officials in their efforts to determine price reasonableness, particularly when cost data have been obtained. However, contracting officials have not always taken advantage of these valuable DCAA services. Fourteen of the 18 sites visited had a DCAA presence on site, while the remaining 4 sites had a local DCAA presence that could have provided help. Of the 124 actions in which the contracting officer did not adequately determine price reasonableness, 25 actions had limited DCAA audit support, and 99 actions had no DCAA involvement.

Senior Leadership Involvement. Senior leadership in the contracting chain of command, from the head of the contracting activity through the major commands to the senior acquisition executives were generally not aware of the poor documentation supporting price reasonableness decisions and that pricing problems were occurring. The senior leadership did not adequately monitor the impact of acquisition personnel reductions, did not determine the effect of acquisition reform initiatives on price trends, and did not establish a system of quality control over contracting official's price reasonableness determinations.

Acquisition Personnel Reductions. The senior leadership in the contracting chain of command did not adequately monitor the impact that personnel reductions have had on the acquisition workforce and did not initiate action to respond to contracting deficiencies that have resulted from the reductions.

In Inspector General, DoD, Report No. D-2000-088, "DoD Acquisition Workforce Reduction Trends and Impacts," February 29, 2000, we identified adverse effects on performance resulting from acquisition workforce reductions and additional adverse effects if further downsizing occurred. The report states that DoD reduced its acquisition workforce from 460,516 to 230,556 personnel, about 50 percent, from the end of FY 1990 to the end of FY 1999. Staffing reductions have clearly outpaced productivity increases and the capacity of the acquisition workforce to handle its still formidable workload.

In Inspector General, DoD, Report No. D-2000-100, "Contracts for Professional, Administrative, and Management Support Services," March 10, 2000, we identified problems related to the award and administration of contracts for services. The problems resulted from acquisition personnel lacking training, familiarity, and time to fulfill their duties. Workforce reductions have resulted in more work and higher demands on time. As a result, cost-type contracts that placed a higher risk on the Government continued for the same services for inordinate timespans. Furthermore, performance measures needed to judge efficiency and effectiveness of the services rendered did not exist.

In Inspector General Report No. D-2001-076, "Acquisition of General and Industrial Items", March 13, 2001, we identified problems resulting from a 27 percent (518 to 378) reduction in acquisition personnel at the Defense Supply Center Philadelphia. Over a 2 year period, inadequate acquisition support resulted in an increase in administrative lead time of 26 percent (85 days to 107 days), a 48 percent increase in backorders (137,929 to 203,663), and a 46 percent increase in the backlog of purchase requests (27,666 to 40,433). The increase in backorders adversely effected depot-level repair and overhaul work on a wide range of aircraft and components at the Oklahoma Air Logistics Center.

An August 31, 2000, memorandum from the Under Secretary of Defense for Acquisition, Technology, and Logistics to the Under Secretary of Defense (Comptroller) discussed the impacts of acquisition workforce reductions. The memorandum referred to the Inspector General, DoD, Report No. D-2000-088 and expressed concern that acquisition workforce reductions may have been too drastic and are having an adverse impact. The memorandum states:

I recommend that DoD not have any further mandated acquisition workforce reductions as a goal after FY 2001. By any terms, the DoD acquisition workforce has been drastically reduced while, at the same time the number of DoD procurement and contracting actions has increased. The DoD Inspector General (IG) report on DoD Acquisition Workforce Reduction Trends and Impacts, No. D-2000-088, dated February 29, 2000, provides data that indicate significant adverse impacts from acquisition workforce reductions already taken. In addition, the DoD acquisition organizations, in the IG report, identified adverse impacts that may occur from further downsizing of the acquisition workforce.

We have gone as far as we can in mandating acquisition workforce reductions without causing significant adverse impacts on the DoD acquisition system.

The effect of the memorandum would be to remove the goal of further reductions in the acquisition workforce after FY 2001 from the reports for the National Partnership for Reinventing Government and the Government Performance and Results Act. The August 31 memorandum stopped reporting of the goal but did not stop further reductions of acquisition personnel.

On October 11, 2000, the Under Secretaries of Defense (Acquisition, Technology, and Logistics) and (Personnel and Readiness) jointly issued a report, "Shaping the Civilian Acquisition Workforce of the Future." The report is a roadmap for dealing with the human resource challenges of recruiting, retaining, and training the acquisition workforce of the future. The report does not discuss the number of acquisition personnel required at contracting activities to deal with the contracting workload and challenges.

In our prior reports, we made no recommendations about the acquisition workforce. However, numerous urgent procurements, poor documentation of price reasonableness, and the overpricing identified in our sample, and the belief that overpricing will continue unless there are adequate numbers of acquisition personnel at the contracting organizations, leads us to believe that DoD needs to initiate corrective action. The Under Secretary for Acquisition, Technology, and Logistics should require the Senior Acquisition Executives of the Defense

Components to annually identify the number of acquisition personnel needed at each contracting activity to adequately perform the contracting workload so that all the required functions of awarding a contract are accomplished, to include obtaining and analyzing the data needed for determining fair and reasonable prices. Identifying the number of acquisition personnel needed at the contracting activities should result from a bottom-up review and not from a top-down budget allocation to the contracting activity.

Price Trends. The DoD, report, “Price Trend Analysis of Exempt Commercial Items,” April 1, 2000, addressed efforts to comply with subsection 803(c) of the Strom Thurmond National Defense Authorization Act for FY 1999, which requires DoD to conduct a commercial price trend analysis.

DLA did the best job of trend analysis and was able to identify aggregated cost growth over the most recent 5 years ending September 30, 1999, of 23 percent for commercial items bought through exempt contracts from sole sources of supply. This compared to an overall aggregate material cost growth of 12.3 percent.

The Army, Navy, and Air Force results for the FY 1999 price trend analysis report lacked the quantitative depth and analysis of the DLA effort. The Army and Navy did not identify any problems or trends from their analysis. The Air Force did not complete its trend analysis and is continuing to perform followup analysis with field organizations as necessary to ensure that the largest price changes (increases/decreases of more than 25 percent) are valid and to look for problem areas and successes associated with commercial price trends.

Analysis and Reports Identifying Unreasonable Prices. The Defense Supply Center Richmond was the only office that performed any type of trend analysis and quality control. Contracting officials provided a list for the period from October 1999 through May 2000 of all contract actions in which price was determined to be unreasonable or in which reasonableness could not be determined. The list included 682 actions, totaling \$15 million, where reasonableness could not be determined, and 3,707 actions, totaling \$72 million, in which the price was determined to be unreasonable.

The Defense Supply Center Richmond was unique among the offices visited during our audit because items were coded as bought at unreasonable prices or at prices that could not be determined to be reasonable or unreasonable. The Defense Supply Center Richmond made such purchases because the items were needed and delays in obtaining the items would have affected readiness. In any event, the office was reviewing the data for trends involving contractors and buyers. Additional reviews were planned for items changed to catalog priced actions from other types of previous codes. The information from the reviews as well as the knowledge of contractors who refuse to provide information would greatly assist management in developing strategies to solve these problems. In addition to commercial price trends, we believe all major buying activities should perform such analysis for noncommercial items purchased sole-source and when only one offer is received for commercial items. This information should assist in identifying and preventing future problems.

Fair and Reasonable Prices

Fifty-two contract actions that lacked documentation to adequately support price reasonableness were overpriced. The 52 actions, encompassing 56 national stock numbers, resulted in estimated overpricing of \$23.1 million. Overall, we calculated that DoD paid 22.7 percent more than if a fair and reasonable price had been negotiated. However, on an item by item basis, some of the pricing problems were significant. On 20 of the 56 items, we calculated that prices were over 50 percent greater than a reasonable price.

A range of anticipated prices can be established prior to negotiating contracts. However, we found that contracting officials were not using historical prices, DCAA reviews, government cost estimates, and other data available through basic market research to establish such ranges. Accordingly, we believe the prices we calculated have validity. The amount of overpricing for 48 of the 52 actions was calculated through use of prior history. We took prior contract prices for the same items and adjusted those prices for inflation, quantity discounts, and a learning curve to come up with a fair and reasonable price. We used DoD deflators from the “National Defense Budget Estimates for FY 2001,” to compute the amount of inflation to be added to the base price. In addition, we used a 95 percent learning curve to further adjust the price for differences in quantities procured. The resulting prices were then compared to the contract prices to determine the amount of overpricing. One of the overpriced actions was computed using prior history, but quantity was not a factor. Of the remaining three overpriced contract actions, one was determined using the price/technical estimates prepared by the Government and comparing those to the contract price, another was computed by eliminating unallowable costs that were included in the contract price, and one was computed using the DLA pricing objective. Table 6 depicts 10 actions having the most dramatic price increases for parts related to actions reviewed. See Appendix D for a complete listing of the 52 actions encompassing 56 overpriced items.

Table 6. Dramatic Price Increases of Selected Parts			
<u>Item Description</u>	<u>Awarded Unit Price</u>	<u>Adjusted Prior Unit Price</u>	<u>Percent Increase</u>
Dewar cooler assembly	\$46,947	\$13,058	259.5
Manifold assembly	7,790	3,159	146.6
Aircraft window panel	4,711	2,378	98.1
Primary piston rod	3,860	1,755	119.9
Battery Box	1,606	360	346.6
Drop thread style 106	650	61	959.5
Curl ring diffusers	615	312	99.5
Carriage bleeds	553	274	101.6
Gate valve parts kit	350	167	110.1
Electrical solenoid	222	87	155.4

Management Comments on the Finding and Audit Response

Comments from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics

The Director, Defense Procurement responded for the OUSD(AT&L). The Director stated the comments were based on input received from the Military Departments and Defense agencies which were included as part of its response to the draft report. The Director stated that the Military Departments and DLA do not agree with assertions that price reasonableness determinations were deficient, nor do they believe that overpricing occurred for many of the actions cited in the draft report. The Military Departments also indicated that they have experienced no pervasive problems with obtaining information requested from contractors. The Military Departments and Defense agencies believe such actions do not indicate systemic problems. The Director further stated that Appendix A acknowledges that the pricing actions reviewed by this report were judgmentally selected, statistical sampling techniques were not employed, and

therefore, these results cannot be extrapolated to the universe of contracting actions. The Director went on to state that this supports their conclusion that, even though the Military Departments and Defense agencies agree that some actions have been overpriced or inadequately documented, the findings do not establish that there is a systemic management problem arising from a lack of management controls. In a meeting after receipt of the comments, the Office of the Director, Defense Procurement, Military Departments, and DLA stated they agree that documentation of price reasonableness was often inadequate and needed improvement.

The Acting Deputy Under Secretary of Defense (Acquisition Reform) commented that the report does not recognize the extensive efforts made to safeguard DoD interests and the gains made by acquisition reform. The Acting Deputy Under Secretary of Defense (Acquisition Reform) listed the new guidance policy and training initiated to improve pricing in the acquisition reform environment. The Acting Deputy Under Secretary of Defense (Acquisition Reform) stated that acquisition reform objectives include ensuring that contracting officers have more choices and discretion. It is important to note that contracting officers remain vanguards of the public trust and are charged with taking the actions necessary to ensure the public interests are preserved, to include obtaining cost or pricing data whenever the contracting officer believes it to be necessary. Acquisition reform has not taken this away and in fact has provided additional tools to ensure the contracting officer obtains the best pricing. The details of her comments are shown in the Management Comments Section of this report.

Audit Response. The Director's comments were based on feedback from the Military Departments and DLA, which reported exceptions to our findings of problems pertaining to many of the contracts reviewed. Although the Military Departments have provided information asserting that they completed price analyses that conform to the requirements of the FAR for most of the contracts cited by the audit, the contract file documentation does not support their assertions.

The Military Departments and DLA originally provided comments that disagreed with 65 of the 145 contract actions. In subsequent meetings and discussions, disagreements were reduced to 42 of the 145 actions. We continue to believe that our audit results are correct. Appendix F provides a summary of the Military Departments and DLA comments pertaining to their contract actions, and our audit response.

The extent of our audit coverage represented a substantial portion of the contract universe. The universe of sole-source and one-bid actions where cost and pricing data was not obtained, as reported in the DD-350 contract database was \$8.5 and \$9.6 billion for FYs 1998 and 1999, respectively. For the 18 locations that we included in our review, the contract dollars for the same criteria were \$7.0 billion and \$7.1 billion, respectively. Therefore, the locations that we visited accounted for about 78 percent of the dollar value of the universe. The DD-350 contract database contained numerous errors that precluded use of statistical sampling procedures.

Recommendations, Management Comments, Audit Response, and Required Actions

Revised Recommendations. The Under Secretary of Defense for Acquisition, Technology, and Logistics did not agree with our characterization of previous efforts by the Military Departments to identify commercial items at risk for unusual price escalation as inaction. We agree with the Under Secretary and accordingly, revised the report and draft Recommendation 1.b. We also revised Recommendations 1.c., 1.d., and 2.f.

Regarding Recommendation 1, the Military Departments and DLA provided unsolicited comments. These comments were generally summarized in the Under Secretary's response to the recommendations. Accordingly, we did not address the Military Departments and DLA comments. The details of their comments are shown in the Management Comments Section of this report.

1. We recommend that the Under Secretary of Defense, Acquisition, Technology and Logistics:

a. Initiate a process to require that the Senior Acquisition Executives in the Defense components identify the number of acquisition personnel at contracting organizations required to realistically perform contracting workload so that the required functions of awarding a contract, to include obtaining the data needed for determining fair and reasonable prices, are accomplished. The workforce requirement estimate should result from a bottom-up review of workload and personnel and not from the top down budget allocation for the contracting organization.

Under Secretary of Defense for Acquisition, Technology, and Logistics and Army Comments. The Director, Defense Procurement partially concurred with the recommendation and agreed that future staffing requirements at contracting organizations need review, in light of future workload. However, the USD(AT&L) and the Under Secretary of Defense (Personnel and Readiness) have already initiated a major acquisition "bottom-up" workforce review. Components will develop and implement comprehensive, needs-based human resource performance plans for the acquisition workforce by July 1, 2001. The Army stated that, when 12 of 18 contracting organizations are concerned about the contracting officers' workloads being too heavy because of staffing shortages, there appears to be a problem. The shortcomings are the result of reducing the contracting workforce by more than 50 percent over the past 10 years. According to the Army, significant additional reductions are projected. The remaining workforce is now faced with a more increasingly complex workload. The senior Army leadership was being briefed on what Army acquisition officials believed is a contracting manpower crisis.

Audit Response. The Director, Defense Procurement comments were responsive.

b. Ensure that the Army and Navy improve compliance with subsection 803(c) of the Strom Thurmond National Defense Authorization Act for FY 1999 by conducting price trend analyses of commercial items that are supported by documentation.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments. The Director, Defense Procurement concurred, stating that the Army, Navy, and Air Force are continuing to review price histories of sole-source commercial items, as called for by the Fiscal Year 1999 Defense Authorization Act. A report of their efforts will be included in the report on Price Trend Analysis expected to be submitted to Congress in April 2001. The Director stated that as with the April 2000 report, the 2001 report will consist, for the most part, of an update of DLA's ongoing Price Trend analysis effort. The Director did not agree with our initial characterization of previous efforts of the Military Departments to identify commercial items at risk for unusual price escalation as "inaction."

Audit Response. The Director, Defense Procurement comments were responsive. As of the time of our final report, the Office of the Secretary of Defense 2001 report to Congress has not been issued.

c. Initiate price trend analyses at all major contracting organizations for sole-source and competitive one-bid contract actions where certified cost or pricing data was not obtained.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments. The Director, Defense Procurement nonconcurred, stating the contracting officer should determine what form a price analysis should take, using available information to complete an analysis that supports the price reasonableness determination. The Military Departments have provided information that they have completed price analyses for the preponderance of contracts cited by the audit that conform to the requirements of the FAR.

Audit Response. The Director, Defense Procurement comments were not fully responsive. As detailed in Appendix F, we disagree that the Military Departments had completed price analyses that conform to the requirements of the FAR. We agree that the contracting officer should determine what form a price analysis should take, but feel additional effort is needed in view of the audit findings. Our recommendation is targeted at very specific types of contracts (sole-source, one-bid and no certified cost or pricing data obtained). These are usually more challenging and high-risk types of contracts to price, and as such, strategic analyses of pricing of these contracts can provide benefit to the Department. We revised the recommendation in this final report to make it more specific. We request the USD(AT&L) reconsider its comments and provide additional comments in response to the final report.

d. Emphasize to contracting officers the responsibility to identify contractors that refuse to provide data requested by contracting officials and institute corrective measures to include the involvement of the head of the contracting activity.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments. The Director, Defense Procurement partially concurred agreeing that circumstances that led to customer dissatisfaction, like the denial of data requested by contracting officials, should be made a part of the overall past performance evaluation of a contractor. However, the Director stated that this requirement is already included in the FAR; therefore, there is no need for additional policy guidance. The Director further stated that although it is sometimes appropriate to involve higher levels of management in actions taken in response to contractor refusals to provide data requested by contracting officials, this decision should be left to the discretion of the respective levels of management at contracting activities.

Audit Response. The Director's comments were partially responsive. We agree that it should be left to the discretion of the respective levels of management at contracting organizations to determine when it is appropriate to bring contractor behavior to the attention of higher management. The audit revealed instances where contractors refused to provide contracting officials with additional pricing or cost information when requested, especially in cases where they were the sole source for items needed by DoD. We still believe awareness of the contracting officials' duties in these situations needs to be emphasized. Contracting officials we discussed the issue with felt helpless in dealing with the contractors because of the noncompetitive nature of the procurements and the time constraints. The contracting officials did not pursue the issue any further by either pressuring the contractor to provide the requested information or by raising the problem to higher level management. Accordingly, we have revised draft Recommendation 1.d. We request that the USD(AT&L) reconsider its comments considering the revisions to draft Recommendation 1.d., and provide additional comments in response to the final report.

2. We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; Assistant Secretary of the Navy for Research, Development, and Acquisition; Assistant Secretary of the Air Force (Acquisition); the Director, Defense Information Systems Agency; and the Director, Defense Logistics Agency:

a. Establish procedures that identify situations in the past leading to urgent procurements and initiate action to alleviate these conditions from future procurements.

Army Comments. The Army concurred stating that urgent requirements should be avoided to the maximum extent possible. The Army Materiel Command has recognized the need to improve requirements forecasting to reduce spare parts shortages that can result in urgent procurement actions. A Spare Parts Shortage Integrated Product Team has been established to identify

root causes and recommend corrective actions. In addition, the Army has contracted to replace its legacy inventory management system with state-of-the-art technology that should dramatically improve forecasting accuracy.

Navy Comments. The Navy concurred in principle and stated that urgent procurements should be avoided to the maximum extent practicable; however, they usually arise from the occurrence of unplanned and unpredictable events, and that cannot be eliminated.

Air Force Comments. The Air Force partially concurred stating that the findings in the audit report do not provide sufficient evidence to indicate a systemic problem throughout the Air Force. The Air Force noted that it has no major problems in this area, because of the fact that processes and procedures are already in place early in the acquisition planning process to alleviate such problems.

Defense Information Systems Agency. The DISA concurred stating that it has implemented a spend plan process in which the details of every procurement action (such as award date, contractor, amount, etc.) are presented to the Chief of Staff and the Vice Director before the start of each fiscal year. Once approved by the Vice Director, the spend plan becomes the baseline for the year. Through this process, the contracting officers know when to expect procurement packages, and the program managers can be tracked on their performance.

Defense Logistics Agency Comments. The DLA partially concurred stating that it will issue a memorandum to the centers addressing the audit results and initiating local reviews to identify causes and potential actions for alleviating urgencies and achieving continued improvements in logistics response time frames.

Audit Response. The Army, DISA, and DLA comments were responsive. The Navy comments were not responsive, even though they concurred in principle. Although the urgent nature of some requirements is justified and cannot be eliminated, there are many instances of urgency resulting from poor acquisition planning that can be eliminated with potential cost avoidance to the department. The Air Force comments did not address the issues. Further, although the Air Force felt that no systemic problem existed with urgent requirements, we identified 12 out of 44 Air Force actions that involved urgent requirements. Although the Air Force may already have processes and procedures in place early in the acquisition planning process to alleviate the need for urgent requirements, it appears the procedures may not be working adequately. As an example, in contract F41608-98-D-0338, the contracting officer prepared an undated determination and finding for accelerated delivery because of the extremely critical nature and timeliness of delivery is absolutely essential. The successful contractor submitted pricing for the "emergency solicitation" in October 1996. Yet, the contractor proposals expired and additional proposals were reissued throughout 1997.

The contract was not awarded until June 1998. We request that the Navy, and Air Force reconsider their comments and provide additional comments in response to the final report.

b. Obtain cost or pricing data when other data are insufficient to determine reasonableness and use Defense Contract Audit Agency assistance.

Army Comments. The Army concurred, stating that Army contracting officers routinely obtain cost or pricing data when required and use DCAA assistance when appropriate.

Navy Comments. The Navy concurred with respect to other than commercial items. For commercial items, information other than cost and pricing data may be obtained and reviewed by DCAA.

Air Force Comments. The Air Force partially concurred but stated that there are no indications of a systemic problem within the Air Force. The field understands and appropriately uses correct procedures in applying the exceptions to the requirement for obtaining certified cost or pricing data. The Air Force stated that the field recognizes and uses the support of the DCAA, when necessary.

Defense Information Systems Agency. DISA concurred, stating that DISA will ensure compliance with FAR 15.403 and that a reminder will be issued via the bulletin board system.

Defense Logistics Agency Comments. DLA partially concurred and stated that when required, DLA contracting personnel do request cost or pricing data. Conformance is scrutinized through a normal prenegotiation review process, as well as through a post-award sampling, both locally and at headquarters. DLA will, nevertheless, address this recommendation and existing guidance in a memorandum to its centers.

Audit Response. DISA and DLA comments were responsive, while the Army, Navy, and Air Force comments were partially responsive. The Army, Navy, and Air Force assertion that their contracting officers routinely and appropriately obtain cost or pricing data when it is required, and use DCAA assistance when appropriate, was not evident for the contracts reviewed. For each contract action that the Services and DLA disagreed with the audit conclusions, Appendix F, provides a detailed analysis of the issues and problems of each pricing action. We request that the Army, Navy, and Air Force reconsider their comments and provide additional comments in response to the final report

c. Provide necessary tools for contracting officers to determine price reasonableness including complete price history databases.

Army Comments. The Army concurred, stating that adequate tools are available to perform price reasonableness determinations including price history. The Army

stated that senior management will be reminded of the tools at quarterly procurement conferences. Senior management should then remind their workforces to use the tools as well.

Navy Comments. The Navy concurred.

Air Force Comments. The Air Force concurred with the recommendation, stating that it already has an extensive array of tools in place to adequately support the field. The Air Force believes it only needs to ensure that its workforce is properly trained and aware of the available support tools.

Defense Information Systems Agency Comments. DISA concurred stating that a price history database is maintained in its Pricing Division and that a reminder will be issued via the bulletin board system.

Defense Logistics Agency Comments. DLA concurred and stated that their Standard Automated Material Management System used by their contracting personnel includes a “pricing assistant” that enables a regression analysis of the substantial price history, plus supplemental procurement history of military buying offices available in commercial logistics data products used by their centers. DLA is also developing new and enhanced tools to further assist contracting, and will issue a field memorandum addressing this audit recommendation, existing policies, and the new tools that will support the procurement function.

Audit Response. The Army, Air Force, DISA, and DLA comments were responsive. Although the Navy concurred with the recommendation, it did not provide any plan of action for compliance. We request that the Navy provide additional comments in response to the final report.

d. Consider in the performance appraisal process of contracting officers, whether cost or pricing data were obtained when needed and whether price analysis was properly performed.

Army Comments. The Army nonconcurred stating that securing cost or pricing data and performance of a proper price analysis is already part of its evaluation criteria for contracting officers.

Navy Comments. The Navy nonconcurred stating that securing cost or pricing data and performance of a proper price analysis is already a part of the evaluation criteria for contracting officers. The Navy believes that it would be inappropriate to explicitly specify this as an evaluation factor.

Air Force Comments. The Air Force partially concurred with the recommendation and stated that the aspect of securing cost or pricing data and the performance of a proper price analysis is already well prescribed in the current performance appraisal process. The Air Force, as a standard practice, regularly reviews job performance and responsibilities of contracting officers against professional standards. This review includes an assessment on a case by case basis on whether the contracting officer took the most appropriate level of diligence with respect to pricing information and cost data in a given procurement.

Defense Information Systems Agency Comments. DISA concurred and stated that it uses a pass/fail civilian appraisal system, and that this level of detail cannot be put into performance plans. However, all supervisors of contracting officers will be briefed on key rating evaluation criteria to include proper price analysis. Additionally, supervisors will be briefed to include proper price analysis criteria when recommending contracting officers for cash awards for outstanding performance.

Defense Logistics Agency Comments. DLA partially concurred and stated that these factors are implicitly considered in its contracting officer performance appraisals. Nonetheless, DLA will include a discussion of this matter in its field memorandum addressing the audit results and recommendations.

Audit Response. The Army, Navy, Air Force, DISA, and DLA comments address the intent of the recommendation.

e. Quantitatively identify use of claimed exceptions to the Truth in Negotiations Act at all major contracting offices and require the Head of the Contracting Activity to establish management controls that will qualitatively address use of the exceptions.

Army Comments. The Army nonconcurred stating that this requirement would create additional workload and little benefit at a time when it is facing a contracting manpower crisis.

Navy Comments. The Navy nonconcurred but stated that it agrees that the Head of Contracting Activity needs management controls that will qualitatively address use of the exceptions. However, in the Navy, this is already being done during the review of the business clearance and systemically during the Procurement Performance Measurement and Assessment process.

Air Force Comments. The Air Force partially concurred with the recommendation and stated that the findings of the report do not indicate a systemic problem within the Air Force. The Air Force already has procedures in place to address this issue. In addition, Inspector General, DoD, Report No. D-2001-061, "Waivers of Requirement for Contractors to Provide Cost or Pricing Data," February 28, 2001, contradicts the findings of this report and indicates that the DoD has excellent processes and procedures to adequately manage its waivers, when required.

Defense Information Systems Agency Comments. DISA concurred and stated that there currently is no activity level quantitative process in place to track exceptions to TINA, other than through Departmental level, DD-Form 350 reporting. However, pre- and post-negotiation business clearance memorandums contain information regarding cost and pricing data and the applicability of exceptions. The Defense Information Technology Contracting Office will use these memorandums to collect the data and determine appropriate use of TINA exceptions. In addition, compliance reviews will start monitoring all actions listing an exception to TINA in the pricing memorandums and maintain this data for trend analysis.

Defense Logistics Agency Comments. DLA partially concurred and stated that reviews of procurement actions involving all types of TINA exceptions are accomplished through its normal preaward clearance reviews, and various local and headquarters DLA reviews of the procurement function, which should substantially meet the objectives of this recommendation. DLA will also send a memorandum to the field to underscore the importance of continuing to adequately document and monitor this matter, to continue to assure the validity of all TINA exceptions.

Audit Response. The DISA and DLA comments were responsive. The Army, Navy, and Air Force comments did not address the intent of the recommendation. We disagree with the Army that this requirement would have little benefit. We also disagree with the Navy because the results of our audit indicate that whatever effort is being expended by Navy in this regard is not adequately working. Although the Air Force does not feel there is a systemic problem within the Air Force, our audit indicates otherwise. The Finding and Appendix F details the problems with inappropriate use of exceptions. Although Inspector General, DoD, Report No. D-2001-061, "Waivers of Requirement for Contractors to Provide Cost or Pricing Data," February 28, 2001, did not find any problems with the use of waivers to TINA, the universe used to select contract actions for that review was entirely different from the universe used in our audit. Report D-2001-061, clearly explains that contracting officials took the time to document and prepare a waiver for the Head of the Contracting Activity to sign, and did it well. However, this audit shows that contracting officials who chose to use an exception to TINA had no paperwork to submit and did not have to get Head of Contracting Activity approval. Use of an exception to TINA is much easier for contracting officials to do than prepare a waiver. Of the 145 contract actions reviewed, 47 had invalid exceptions. We request that the Army, Navy, and Air Force reconsider their comments and provide additional comments in response to the final report.

f. Establish a system similar to that at the Defense Supply Center Richmond that will identify sole-source and competitive one-bid commercial and noncommercial procurements at all major buying organizations and list contracts issued with unreasonably priced items. Institute a process for corrective actions for future contracts with the same vendor.

Army Comments. The Army partially concurred stating that future Procurement Management Reviews will include a review of contract pricing. If an unreasonably priced contract is found, they will take the appropriate action to ensure that future contracts for the items are awarded at a reasonable price.

Navy Comments. The Navy concurred.

Air Force Comments. The Air Force partially concurred with the recommendation and stated that contracting officers must consider the last price paid in their fair and reasonableness price determination. If the current price variance exceeds the prior index adjusted price by more than 25 percent, Defense Federal Acquisition Regulation 215.404-1(a) requires that further analysis must be accomplished and

documented. The Air Force is in the process of developing a program that will alert the contracting officer of any action that fits this situation.

Defense Information Systems Agency Comments. DISA concurred and stated that although none of the Defense Information Technology Contracting Office contracts were cited in the report as containing unreasonably priced items, it recognizes the potential for such a problem. Therefore, the Head of the Contracting Activity is implementing preventive action whereby the price analysts will review any pricing solicitations that receive only one response.

Defense Logistics Agency Comments. DLA partially concurred and stated that both DoD and DLA have longstanding programs for seeking to secure competition and improved prices on noncompetitive items. DLA will send a memorandum to its field offices which addresses the audit results, and require feedback on local actions and results achieved.

Audit Response. The DISA comments were responsive. The Army, Navy, Air Force, and DLA comments were partially responsive. Although the Army review of contract pricing in future Procurement Management Reviews is a positive step we believe more needs to be done. Although the Navy concurred with the recommendation, it did not provide any input as to planned actions. The Air Force is in the process of developing a program that will alert the contracting officer of any action that fits the 25 percent variance in price; however, more action is needed. The Defense Federal Acquisition Regulation guidance that addresses proposal analysis for spare parts or support equipment also states that proposal analysis should be conducted on all significantly high-dollar value line items, and a random sample done on the remaining low dollar items. In addition, the Defense Federal Acquisition Regulation guidance is limited to spare parts or support equipment and does not include service type contracts such as professional administrative and support. Although DLA plans to send a memorandum to its field offices which addresses the audit results, and require feedback on local actions and results achieved, more aggressive action needs to be taken. We believe the actions that are being initiated at the supply center in Richmond are a good step. However, these actions need to be extended to other DLA centers. The Army, Navy, and Air Force should take action to establish a system similar to the Defense Supply Center Richmond, which identifies overpriced contracts and targets actions on future contracts to deal with the excessive prices. We revised the recommendation to clarify the intent of the recommendation. We request the Army, Navy, Air Force, and DLA provide comments on the revised recommendation.

g. Include in Procurement Management Reviews whether cost or price data was obtained as needed, price analysis was properly performed, price reasonableness was adequately established, and urgent awards were necessary.

Army Comments. The Army concurred stating these procedures will be covered in all future Program Management Reviews.

Navy Comments. The Navy concurred.

Air Force Comments. The Air Force concurred with the recommendation and stated that this is already a key aspect of the Air Force Procurement Management Review Guide.

Defense Information Systems Agency Comments. DISA stated that the scope of Procurement Management Reviews is not under the purview of the Director, DISA, but rather the Director, Defense Procurement. However, internal compliance reviews will be conducted to ensure this occurs.

Defense Logistics Agency Comments. DLA concurred and stated that these elements are examined during Procurement Management Reviews. Nonetheless, a discussion of this matter will be included in memorandums to the field.

Audit Response. Management comments from the Army, Air Force, DISA, and DLA were responsive. We request that the Navy provide additional comments in response to the final report stating their plan of action.

Management Comments Requested. Management is requested to comment on the items indicated with an X in the following table.

Table 7. Management Comments Requested on the Recommendations		
<u>Recommendation Number</u>	<u>Organization</u>	<u>Additional Comments Requested</u>
1c	OSD	X
1d	OSD	X
2a	Navy Air Force	X X
2b	Army Navy Air Force	X X X
2c	Navy	X
2e	Army Navy Air Force	X X X
2f	Army Navy Air Force DLA	X X X X
2g	Navy	X

Appendix A. Audit Process

Scope

Work Performed. We reviewed the methodology DoD used to establish price reasonableness for contract actions awarded from FY 1998 through FY 1999 in which certified cost or pricing data was not required. The review included analyses of DoD and contractor generated documentation developed to support price reasonableness determinations along with interviews of contracting officials.

Our universe consisted of contract actions listed in the DD-350 database that were sole source and competitive with one-bid actions of more than \$100,000 without certified cost or pricing data that were awarded at contracting sites with at least \$25 million in activity. The table below identifies the sites visited along with the actions reviewed.

Organizations Visited			
<u>Organizations Visited</u>	<u>Number of Sites Visited Within Organization</u>	<u>Actions Reviewed</u>	<u>Dollar Value Reviewed</u>
Army	5 Sites	47 actions	\$289,760,098
Navy	5 Sites	27 actions	\$102,100,591
Air Force	5 Sites	44 actions	\$217,770,657
Defense Commissary Agency	1 Site	1 action	\$9,912,328
DISA	1 Site	7 actions	\$18,946,637
DLA	1 Site	19 actions	\$13,302,736
Totals	18 Sites	145 actions	\$651,793,047

We reviewed 145 contract actions, 103 sole-source and 42 competitive one-bid actions, valued at \$652 million, on contracts with values of \$3.1 billion. On the 145 contract actions, 121 contractors were awarded these actions. These actions included 52 commercial and 93 noncommercial items. The contract actions

reviewed dated from FYs 1998 through 1999. We examined basic contracts, delivery and task orders, negotiation memorandums, acquisition plans, source selection decisions, price analyses, justification and approvals, and miscellaneous correspondence. We interviewed contract and program personnel at 18 audit sites.

Related Inspector General, DoD, Report No. D-2001-061, "Waivers of Requirement for Contractors to Provide Certified Cost or Pricing Data," February 28, 2001, used a sample of contracts coded in the automated contract database as having a waiver. This audit included items that were not coded as having a waiver; thus the eight contracts included in our review with waivers were not subject to review in that audit.

DoD-Wide Corporate Level Government Performance and Results Act Coverage. In response to the Government Performance and Results Act, the Secretary of Defense annually establishes DoD-wide corporate level goals, subordinate performance goals, and performance measures. This report pertains to achievement of the following goal and subordinate performance goal:

- **FY 2000 DoD Corporate Level Goal 2:** Prepare now for an uncertain future by pursuing a focused modernization effort that maintains U.S. qualitative superiority in key warfighting capabilities. Transform the force by exploiting the Revolution in Military Affairs, and reengineer the Department to achieve a 21st century infrastructure. **(00-DoD-2.1)**
- **FY 2000 Subordinate Performance Goal 2.3:** Streamline the DoD infrastructure by redesigning the Department's support structure and pursuing business practice reforms. **(00-DoD-2.3)**

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the DoD. This report provides coverage of the Defense Contract Management high-risk area.

Methodology

Use of Computer-Processed Data. To achieve the audit objectives, we relied on computer-processed data from the DoD DD-350 database for contract actions of more than \$100,000. Although we did not perform a formal reliability assessment of the computer-processed data, we determined that the contract delivery order numbers, award dates, and amounts generally agreed with the information in the computer-processed data. We did find errors but not of the magnitude that would preclude use of the computer-processed data to meet the audit objectives or that would change the conclusions in the report.

Audit Type, Dates, and Standards. We performed this economy and efficiency audit from November 1999 through April 2001 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 contracted individuals and organizations within DoD. Further details are available upon request.

Management Control Program Review

DoD Directive 5010.38, “Management Control (MC) 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 provides 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 management control procedures related to procurement of goods and services when certified cost or pricing data was not required. Specifically, we reviewed management controls over acquisition, procurement, contract administration, and contract management.

Adequacy of Management Controls. We identified material management control weaknesses as defined by DoD Instruction 5010.40. At the Army, Navy, Air Force, DISA, and DLA organizations visited, controls did not ensure that tasks were properly planned to allow for obtaining relevant documentation supporting price reasonableness determinations. In addition, controls were not adequate for higher level contracting officials’ involvement in contract awards that were significantly higher than previously paid and in situations when contractors refused to provide cost information. The Army, Navy, Air Force, and DLA contracting organizations’ management controls for acquisition, procurement, contract administration, and contract management were not adequate to ensure that contracts were reasonably priced and that certified cost or pricing data were obtained in compliance with the TINA. All the recommendations, if implemented, will improve the adequacy of price reasonableness determinations and compliance with the TINA. A copy of the report will be provided to senior officials responsible for management control within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Military Departments.

Adequacy of Management’s Self-Evaluation. DoD contracting organizations did not perform reviews of areas related to the issues we identified by the audit.

Appendix B. Prior Coverage

Inspector General

Inspector General, DoD, Report No. D-2001-077, "Buying Program of the Standard Automated Materiel Management System Automated Small Purchase System: Defense Supply Center Philadelphia," March 13, 2001.

Inspector General, DoD, Report No. D-2001-061, "Waivers of Requirement for Contractors to Provide Certified Cost or Pricing Data," February 28, 2001.

Inspector General, DoD, Report No. D-2001-001, "Contract Award for the Fluid Flow Restrictor Spare Part," October 3, 2000.

Inspector General, DoD, Report No. D-2000-192, "Results of the Defense Logistics Agency Strategic Supplier Alliance for Catalog Items," September 26, 2000.*

Inspector General, DoD, Report No. D-2000-098, "Spare Parts and Logistics Support Procured On A Virtual Prime Vendor Contract," June 14, 2000.

Inspector General, DoD, Report No. D-2000-099, "Procurement of the Propeller Blade Heaters for the C-130 and P-3 Aircraft," March 8, 2000.

Inspector General, DoD, Report No. 99-218, "Sole-Source Noncommercial Spare Parts Orders On A Basic Ordering Agreement," October 12, 1999.

Inspector General, DoD, Report No. 99-217, "Sole-Source Commercial Spare Parts Procured On A Requirements Type Contract," August 16, 1999.*

Inspector General, DoD, Report No. 99-026, "Commercial Spare Parts Purchased On A Corporate Contract," January 13, 1999.

Inspector General, DoD, Report No. 98-088, "Sole-Source Prices for Commercial Catalog and Noncommercial Spare Parts," October 13, 1998.

Inspector General, DoD, Report No. 98-064, "Commercial and Noncommercial Sole-Source Items Procured On Contract N000383-93-G-M111," June 24, 1998.

*These reports identified where fair prices were received because of the way the contract was structured and cost data was received from the contractor.

Appendix C. Summary of Price Reasonableness Determination Problems

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
<u>ARMY</u>				
<u>IOC¹, Rock Island, IL</u>				
DAAA09-98-C-0070	-	X	-	-
<u>CECOM², Fort Monmouth, NJ</u>				
DAAB07-97-C-J230	-	X	-	-
DAAB07-97-C-J541	-	-	X	-
DAAB07-97-C-J542	-	-	X	-
DAAB07-98-C-6004	X	-	-	-
DAAB07-98-C-B263	-	X	-	-
DAAB07-98-C-D510	-	X	-	-
<u>TACOM³, Warren, MI</u>				
DAAE07-00-P-S009	-	-	-	X
DAAE07-94-D-A013	X	-	-	-
DAAE07-96-C-X124	X	-	-	-
DAAE07-96-D-T024	X	-	-	-
DAAE07-96-D-T024	X	-	-	-
DAAE07-97-G-T003	-	-	-	X
DAAE07-98-D-T041	-	-	-	X
DAAE07-99-C-L038	X	-	-	-
DAAE07-99-C-N017	-	X	-	-
DAAE07-99-C-N029	-	X	-	-

Note: See the footnotes at the end of the appendix.

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
DAAE07-99-C-N045	-	X	-	-
DAAE07-99-C-N049	-	X	-	-
DAAE07-99-C-Q008	-	-	-	X
DAAE07-99-C-Q011	X	-	-	-
DAAE07-99-C-T023	-	-	-	X
DAAE07-99-C-T067	-	-	X	-
DAAE07-99-D-N021	-	-	X	-
<u>TACOM³, Rock Island, IL</u>				
DAAE20-97-C-0242	-	X	-	-
DAAE20-98-C-0017	-	-	X	-
DAAE20-99-C-0022	-	X	-	-
DAAE20-99-C-0016	-	-	-	X
DAAE20-99-C-0028	-	X	-	-
DAAE20-99-C-0072	-	-	-	X
DAAE20-99-C-0073	X	-	-	-
DAAE20-99-C-0074	-	-	X	-
DAAE20-99-C-0082	-	-	-	X
DAAE20-99-C-0110	-	X	-	-
DAAE20-99-C-0113	-	-	-	X
DAAE20-99-C-0123	-	X	-	-
DAAE20-99-D-0026	-	-	X	-
DAAE20-99-D-0099	-	-	X	-

Note: See the footnotes at the end of the appendix.

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
<u>MICOM⁴, Huntsville, AL</u>				
DAAH01-98-C-0155	-	X	-	-
DAAH01-99-D-0076	-	X	-	-
DAAH23-98-C-0133	X	-	-	-
DAAH23-98-D-0014	-	X	-	-
DAAH23-98-D-0117	-	X	-	-
DAAJ09-96-C-0116	-	-	-	X
DAAJ09-97-D-0196	-	X	-	-
DAAJ09-97-D-0202	X	-	-	-
Army Subtotal:	10	18	8	10
<u>NAVY</u>				
<u>NAVAIR⁵, Pax River, MD</u>				
N00019-96-C-0220	X	-	-	-
N00019-97-D-2008	-	-	-	X
N00019-98-C-0092	-	-	-	X
N00019-99-C-1059	-	-	-	X
N00019-99-C-1252	X	-	-	-
N00019-99-C-1330	-	X	-	-
N00019-99-C-1598	X	-	-	-

Note: See the footnotes at the end of the appendix.

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
N00019-99-C-1648	-		X	-
N00019-99-C-1681	-	-	-	X
<u>FISC⁶, Philadelphia, PA</u>				
N00140-97-D-1756	X	-	-	-
N00140-98-A-D310	X	-	-	-
N00140-98-C-1071	X	-	-	-
N00140-98-D-0341	X	-	-	-
N00140-98-D-4551	X	-	-	-
N00140-99-D-E220	X	-	-	-
<u>NAVICP⁷, Philadelphia, PA</u>				
N00383-97-G-005B	-	-	-	X
N00383-98-C-019F	-	X	-	-
N00383-98-D-003G	-	X	-	-
N00383-99-C-D010	-	X	-	-
N00383-99-C-P014	-	X	-	-
Navy Subtotal:	9	5	1	5

Note: See the footnotes at the end of the appendix.

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
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AIR FORCE

Warner Robbins ALC⁸, GA

F09603-98-C-0296	-	X	-	-
F09603-98-C-0303	-	-	X	-
F09603-99-D-0250	X	-	-	-

ASC⁹, Wright-Patterson AFB, OK

F33657-96-D-0021	-	-	-	X
F33657-98-C-0014	X	-	-	-

Oklahoma City ALC⁸, OK

F34601-96-C-0326	-	-	X	-
F34601-97-C-0244	X	-	-	-
F34601-97-G-0002	-	-	-	X
F34601-98-G-0004	X	-	-	-

San Antonio ALC⁸, TX

F41608-97-A-0001	X	-	-	-
F41608-97-A-0001	X	-	-	-
F41608-98-C-0698	-	X	-	-
F41608-98-D-0338	-	-	X	-
F41608-98-D-0531	-	X	-	-
F41608-98-F-0144	X	-	-	-

Note: See the footnotes at the end of the appendix.

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
F41608-99-C-0237	-	-	X	-
F41608-99-C-0530	-	X	-	-
F41608-99-C-0574	-	-	-	X
F41608-99-D-0079	-	-	-	X
F41608-99-D-0185	X	-	-	-
F41608-99-D-0341	-	-	X	-
Ogden ALC⁸, UT				
F42630-98-C-0331	-	-	-	X
F42630-98-C-0341	-	X	-	-
F42630-98-D-0163	X	-	-	-
F42630-99-C-0022	-	X	-	-
F42630-99-C-0039	-	X	-	-
F42630-99-C-0074	-	X	-	-
F42630-99-C-0084	-	-	X	-
F42630-99-C-0139	-	-	-	X
F42630-99-C-0143	-	X	-	-
F42630-99-C-0161	-	X	-	-
F42630-99-C-0178	X	-	-	-
F42630-99-C-0200	-	X	-	-
F42630-99-C-0247	-	X	-	-
F42630-99-C-0268	-	X	-	-
Air Force Subtotal:	10	13	6	6

Note: See the footnotes at the end of the appendix.

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
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DEFENSE AGENCIES

DISA¹⁰, Scott Air Force Base, IL

DCA200-97-C-0039	X	-	-	-
DCA200-97-D-0074	X	-	-	-
DCA200-98-C-0004	-	X	-	-
DCA200-98-D-0012	-	-	-	X
DCA200-98-D-0019	X	-	-	-
DCA200-99-C-0020	X	-	-	-

DSC¹¹, Richmond, VA

N00383-95-G-054M	-	-	-	X
N00383-96-G-005D	-	-	-	X
N00383-99-G-012N	-	-	-	X
SPO441-99-C-5666	-	-	-	X
SPO441-99-C-5736	-	-	-	X
SPO451-99-C-5526	-	-	-	X
SPO451-99-C-5827	-	X	-	-
SPO475-99-C-5561	-	X	-	-
SPO480-98-G-0011	-	X	-	-
SPO480-99-C-5204	-	-	-	X
SPO480-99-C-5450	-	X	-	-
SPO430-99-C-5495	-	-	-	X
SPO430-99-C-5323	-	-	-	X

Note: See the footnotes at the end of the appendix

<u>Locations/ Contract Number</u>	<u>Accepted Catalog Pricing Without Additional Review</u>	<u>Prior Prices Used Were Not Justified as Reasonable</u>	<u>Used Competitive Pricing When No Competition Existed</u>	<u>Accepted Costs That Were Not Supported or Warranted</u>
SPO430-99-C-5371	-	X	-	-
SPO440-99-D-0547	X	-	-	-
SPO441-99-C-5324				X
SPO441-99-C-5360	-	-	-	X
Defense Agencies Subtotal:	5	6	0	12
Totals:	34	42	15	33

Total by Defense Components

Army	46
Navy	20
Air Force	35
Defense Supply Center Richmond	17
Defense Information Systems Agency	6
Total:	124

- | | |
|---|--|
| 1. U.S. Army Industrial Operations Command | 7. Naval Inventory Control Point |
| 2. U.S. Army Communications and Electronics Command | 8. Air Logistics Center |
| 3. U.S. Army Tank Automotive Command | 9. Aeronautical Systems Center |
| 4. U.S. Army Missile Command | 10. Defense Information Systems Agency |
| 5. Naval Air Systems Command | 11. Defense Supply Center |
| 6. Naval Fleet Industrial Supply Center | |

Appendix D. Overpricing

<u>Contracting Office/ Contract Number</u>	<u>Contractor</u>	<u>Weapon System (Item)</u>	<u>Adjusted Unit Price</u>	<u>Awarded Unit Price</u>	<u>Contract Amount</u>	<u>Overpricing</u>	<u>Percent Increase</u>
Army							
TACOM/Rock Island							
DAAE20-99-C-0110	Beretta USA Corp	N/A (M9 9MM Pistol)	429.00	462.00	\$846,846	\$60,489 ¹	7.7
DAAE20-99-C-0072	Seiler Instrument and Mfg. Co. Inc.	M-198 Howitzer (Aiming Post Light)	34.33	130.00	260,000	191,343	278.7
DAAE20-99-C-0082	B.F. Systems Inc.	M-1 Abrams Tank (Electrical-Mechanical Actuator)	1,751.17	3,187.00	318,700	143,583	82.0
DAAE20-99-C-0016	Stanley Machining and Tool Corp.	M1-A1 Abrams Tank (King Nut Bearing)	2,203.24	3,100.00	148,800	43,045	40.7
DAAE20-99-C-0123	Kemp Industries Inc.	M-60 Tank (Elev. Valve Assembly)	6,739.88	10,634.00	297,752	109,035	57.8
DAAE20-99-C-0074	General Reliance Corp.	N/A (Electrical Solenoid)	86.93	222.00	175,380	106,704	155.4
DAAE20-99-D-0099	Island Components Group Inc.	N/A (Alternating Current Motor)	188.44	277.00	858,700	274,531	47.0
DAAE20-99-D-0026	Truetech, Inc.	N/A (Decontaminating Resin)	66.14	78.21	1,120,152	964,212 ²	18.3
TACOM/Warren							
DAAE07-99-C-N029	NA Molded Products	Combat Recovery Vehicle (Solid Rubber Wheel)	182.80	235.00	985,355	218,887	28.6
DAAE07-99-C-T067	Minowitz Mfg. Co.	Combat Recovery Vehicle (Parts Kit)	2,848.22	6,987.00	174,675	103,470	145.3
DAAE07-96-D-T024	Cummins Engine Co.	N/A (NTC 400 Diesel Engine)	15,637.00	18,183.00	818,235	114,570 ³	16.3
DAAE07-99-D-N021	General Dynamics LS	Combat Recovery Vehicle (Crankshaft Engine)	10,243.80	11,136.75	2,171,666	174,126	8.7
DAAE07-00-P-S009	AM General Corp.	HMMWV Up Armored/ECV (6.5 Liter Turbo Engine)	8,016.81	9,628.61	2,888,583	483,540	20.1
DAAE07-99-C-N017	Electro-Methods Inc.	M1-A1 Abrams Tank (Curl Ring Diffusers)	311.55	615.22	261,469	129,061	99.5
DAAE07-99-C-N045	General Thermodynamics Inc.	Bradley Fighting Vehicle (Engine Radiator Coolant)	2,221.51	2,493.00	498,600	54,298	12.2
DAAE07-99-C-N049	Highland Engineering	M1-A1 Abrams Tank (Ground Hop Support Set)	36,094.55	41,636.00	499,632	63,033	15.4
DAAE07-99-C-T023	Borisch Mfg. Corp	M1-A1 Abrams Tank (Circuit Card Assembly)	199.45	293.26	121,703	38,930	47.0

¹⁻²⁻³ Footnotes explained at end of appendix.

<u>Contracting Office/ Contract Number</u>	<u>Contractor</u>	<u>Weapon System (Item)</u>	<u>Adjusted Unit Price</u>	<u>Awarded Unit Price</u>	<u>Contract Amount</u>	<u>Overpricing</u>	<u>Percent Increase</u>
CECOM/Fort Monmouth							
DAAB07-98-C-B263	Rockwell Collins, Inc.	C-130, AH-64, and UH-60 Aircraft (Radio Receiver/ARN-149 System)	8,263.21	9,097.00	2,001,340	183,433	10.1
Same as above	Rockwell Collins, Inc.	C-130, AH-64, and UH-60 Aircraft (Radio Set Control ARN-149 System)	2,132.43	2,413.00	786,638	91,466	13.2
Same as above	Rockwell Collins, Inc.	C-130, AH-64, and UH-60 Aircraft (Direction Control ARN-149 System)	2,353.42	2,413.00	207,518	5,124	2.5
Same as above	Rockwell Collins, Inc.	C-130, AH-64, and UH-60 Aircraft (Antenna ARN-149 System)	1,378.13	1,741.00	553,638	115,394	26.3
IOC/Rock Island							
DAAA09-98-C-0070	DSE, Inc.	MK-19 Grenade Machine Gun (Project Assembly M918)	5.49	8.14	5,918,716	1,928,083	48.3
AAMCOM							
DAAJ09-97-D-0202	Allison Engine Co.	Kiowa Helicopter (250-C30R/3 Engine)	261,782.65	289,616.84	73,852,294	7,097,717 ⁴	11.0
DAAH01-99-D-0076	Raytheon Co.	Avenger Weapon System (Dewar Cooler Assembly)	13,057.92	46,947.00	845,046	610,003	259.5
Navy							
NICP/Philadelphia							
N00383-99-C-D010	Allied Signal Aerospace/Grimes Aerospace Co.	FA-18 Aircraft (Heat Exchanger)	6,018.43	6,425.00	237,725	15,043	6.8
N00383-98-D-003G	Dunlop Aircraft Tyres Limited	AV8B Aircraft (Tires)	534.10	630.00	1,256,220	191,227	18.0
N00383-98-C-019F	SMR Technologies, Inc.	F-14 Aircraft (Drop Thread Style 106)	61.35	650.00	1,072,500	971,276	959.5
Same as above	SMR Technologies, Inc.	F-14 Aircraft (Drop Thread Style 107)	63.38	650.00	594,750	536,761	925.6

⁴ Footnote explained at end of appendix

<u>Contracting Office/ Contract Number</u>	<u>Contractor</u>	<u>Weapon System (Item)</u>	<u>Adjusted Unit Price</u>	<u>Awarded Unit Price</u>	<u>Contract Amount</u>	<u>Overpricing</u>	<u>Percent Increase</u>
Air Force							
ASC/Wright-Patterson AFB							
F33657-98-C-0014	Innovative Solutions and Support Inc.	KC-135 Aircraft (Altitude Alerters)	1,636.76	2,070.00	349,830	73,218	26.5
OO-ALC/Hill AFB							
F42630-99-C-0161	Hydro-Mill Co.	C-5 Aircraft (Yoke Assembly)	2,883	3,744.00	217,152	49,938	29.9
F42630-99-C-0074	Coltec Industries, Inc.	C-5 Aircraft (Manifold Assembly)	3,159.33	7,790.00	311,600	185,227	146.6
F42630-99-C-0178	Aircraft Braking Systems Corp.	B-1B Aircraft (Torque Tube Assembly)	10,717.67	13,200.00	2,191,200	412,067	23.2
F42630-99-C-0022	Allied Signal	F-15 Aircraft (Heat Stacks)	8,172.28	11,445.00	4,200,315	1,201,089	40.0
F42630-99-C-0084	All Tool Inc.	C-5 Aircraft (Cylinder Assembly)	24,721.51	36,342.00	472,446	151,066	47.0
F42630-99-C-0139	Michelin Aircraft Tire	F-15 Aircraft (Aircraft Tires)	358.63	405.00	2,673,000	306,042	12.9
OC-ALC/Kelly AFB							
F41608-97-A-0001	Allison Engine Co.	T-56 Aircraft (Turbine Inlet Case)	8,095.73	17,206.57	2,615,399	1,384,848	112.5
F41608-99-C-0237	Empire Mfg. Corp.	N/A (Carriage Bleeds)	274.30	553.00	188,020	94,758	101.6
F41608-99-D-0185	Ferrotherm Co.	C-5 Aircraft (Shroud)	287.88	565.00	1,220,965	598,856	96.3
F41608-97-A-0001	Allison Engine Co.	T-56 Aircraft (Rear Turbine Bearing Support)	11,466.97	15,994.94	4,254,654	1,204,441	39.5
F41608-98-D-0338	Precision Metal Products Inc.	C-5 Aircraft (Outer Vane, Fan Stator)	548.65	1,418.00	470,776	288,624	158.5
F41608-99-C-0530	Purdy Corp.	F-15/16 Aircraft (Synchronizing Rings)	4,935.08	5,839.13	391,222	60,571	18.3
F41608-98-C-0698	Networks Electronics Inc	F-15 and F-16 Aircraft (Connecting Links)	60.68	87.50	437,500	134,089	44.2
WR-ALC/ Warner Robins AFB							
F09603-98-C-0303	Marvin Engineering Co.	AV-8/F15/F16 Aircraft (Guided Missile Fin)	757.78	1,045.00	243,485	66,922	37.9

<u>Contracting Office/ Contract Number</u>	<u>Contractor</u>	<u>Weapon System (Item)</u>	<u>Adjusted Unit Price</u>	<u>Awarded Unit Price</u>	<u>Contract Amount</u>	<u>Overpricing</u>	<u>Percent Increase</u>
Defense Agency							
DSC-Richmond							
SP0475-99-C-5561	LLAMAS Plastics Inc.	F-4 Aircraft (Aircraft Window Panel)	2,378.46	4,711.00	358,074	177,273	98.1
N00383-96-G-005D	Parker-Hannifin Corp.	F-16 Aircraft (Primary Piston Rod)	1755.00	3,860.00	447,760	244,180 ⁵	119.9
SP0480-99-C-5450	Johnson Technology Inc.	A-10 Aircraft (Aircraft Case, Turbine)	198.38	316.00	474,000	176,425	59.3
SP0480-99-C-5204	ITT Corp.	C-130/141 Aircraft (Gate Valve Parts Kit)	166.57	350.00	246,750	129,319	110.1
SP0480-99-C-5371	Arkwin Industries Inc.	F-5 Aircraft (Actuator Parts Kit/J85-5 Engine)	99.50	199.00	208,950	104,471	100.0
SP0441-99-C-5526	Roller Bearing Co. of America	CH-46 Helicopter (Bearing, Roller, Needle)	853.32	1,124.86	462,317	111,602	31.8
SP0441-99-C-5360	MRC Bearings	B-1B Aircraft (Ball Thrust Bearing)	1,738.75	2,685.00	496,725	175,057	54.4
SP0441-99-C-5736	Kaydon Corporation	Apache AH-64 Helicopter (Bearing, Ball, Annular)	1,188.16	1,558.00	623,200	147,934	31.1
SP0441-99-C-5666	Specline Inc.	Hercules C-130 Aircraft (Bearing, Sleeve)	208.31	318.33	477,495	165,030	52.8
SP0441-99-C-5324	Kamactics Corp	F-15 and F-16 Aircraft (Bearing, Sleeve, Self-Aligning)	27.18	30.85	462,750	55,100	13.5
SP0451-99-C-5827	Techniservices Inc.	Whidbey Island Class LSD Ship (Cable Assembly)	232.20	327.20	165,890	48,164	40.9
SP0430-99-C-5323	OECO Corporation	S3-A Surveillance Aircraft (Power Supply)	5,493.39	7,572.00	378,600	103,931	37.8
SP0430-99-C-5495	B & B Devices Inc.	LHD/LSD Class Ships (Battery Box)	359.61	1,606.00	311,564	241,799	346.6
Total					\$125,124,277	\$23,110,425	

¹ Overpricing was computed using prior history. Quantity was not a factor.

² Overpricing was computed using the maximum contract quantity (200,000) and the cumulative quantity purchased (79,885 pounds).

³ Overpricing was computed by eliminating marketing costs and taxes that we determined were unallowable.

⁴ Overpricing was computed using price and technical estimate prepared by the Government.

⁵ Overpricing was computed using the DLA objective.

Appendix E. Contractors That Refused to Provide Additional Information

<u>Location/ Contract Number</u>	<u>Contractor</u>	<u>Item</u>	<u>Weapon System</u>	<u>History With Contractor</u>	<u>Commercial Item</u>
Army					
DAAH23-98-D-0117	Kaiser Aerospace and Electronics	Buddy Start Assembly	UH-60 Helicopter	2 Years ¹	Yes
DAAJ09-97-D-0202	Allison Engine Company	250-C30R/3 Engine	Kiowa Helicopter	31 Years	Yes
DAAE07-96-C-X124	KVH Industries Inc.	TAC/NAV Compass Kits	Bradley Fighting Vehicle	N/A	Yes
DAAE07-96-D-T024	Cummins Engine Co. ²	VTA903 Series D Engine	Bradley Fighting Vehicle	7 Years	Yes
DAAE20-97-C-0242	Remington Arms Co.	Repair Services	M24 Sniper System	10 Years	Yes
DAAE07-99-C-T067	Minowitz Mfg. Co.	Vehicle Compartment Parts Kit	N/A	First Time Buy ¹	No
DAAH01-99-D-0076	Raytheon Co.	Dewar Cooler Assembly	Avenger Weapon System	3 Years	No
Navy					
N00383-98-C-019F	SMR Technologies, Inc.	Drop Thread Style 106 and 107	F-14 Tomcat Aircraft	3 Years	No

¹ First time item purchased from this contractor.

² Two commercial actions were awarded to Cummins Engine Co. therefore the 18 actions were related to 17 different contractors.

<u>Location/ Contract Number</u>	<u>Contractor</u>	<u>Item</u>	<u>Weapon System</u>	<u>History With Contractor</u>	<u>Commercial Item</u>
Air Force					
F41608-98-D-0531	Unison Industries	Cable Assembly	F100 Engine	First Time Buy ¹	No
F42630-99-C-0022	Allied Signal Inc.	Heat Stacks	F-15 Aircraft	11 Years	Yes
Defense Agencies					
SP0480-99-C-5450	Johnson Technology Inc.	Case, Turbine, Aircraft	A-10 Aircraft	7.5 Years	No
SP0441-99-C-5526	Roller Bearing Co. of America	Bearing, Roller, Needle	N/A	20 Years	No
SP0430-99-C-5495	B and B Devices Inc	Battery Box	N/A	First Time Buy ¹	No
SP0441-99-C-5736	Kaydon Corp.	Bearing, Ball, Annular	Apache AH-64 Helicopter	15 Years	No
SP0440-99-D-0547	Vaisalia Inc.	Radiosonde Meterological Measuring Set	None	2.5 Years	Yes
SP0441-99-C-5324	Kamatics Corp.	Bearing, Plain, Self-Aligning	N/A	11 Years	No
SP0441-99-C-5360	MRC Bearings	Ball Thrust Bearing	B1B Bomber	5.5 Years	No

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¹ First time item purchased from this contractor.

² Two commercial actions were awarded to Cummins Engine Co. therefore the 18 actions were related to 17 different contractors.

Appendix F. Management Comments on Individual Contract Actions and Audit Response

This appendix lists contract actions that the Services and Defense Logistics Agency either fully or partially disagreed with the audit conclusions. They disagreed that either or both price reasonableness was not adequately established or our calculation of the amount of overpricing.

Comments From the Army

Contracting Organization – U.S. Army Industrial Operations Command, Rock Island, Illinois

1. Contract: DAAA09-98-D-0070

Unit Price: \$8.14

Contract Action Amount: \$5,918,716.10

Contractor: DSE, Inc.

Price Reasonableness Basis: Prior history

Overpricing Amount: \$1,928,083.05

Army Comments: The Army partially concurred with the audit conclusion. The Army agreed that prior prices used were not justified. The Army disagreed on the amount of overpricing stating that the price analysis showed a reduced overpricing amount of \$483,531.

Audit Response: Our primary intent was to determine whether contracting officers were adequately determining price reasonableness. Based on the Army response, it is evident that they agree that price reasonableness was not adequately determined for this contract. While the overpricing just established an impact for that decision, we believe the overpricing should be \$1.9 million. The overpricing calculation was determined based on the previous unit price of \$5.26 in 1996 escalated for inflation, similar quantities, and learning curve. The Army response indicated an overpricing amount of \$483,531, but did not provide any detail.

Note: See the list of acronyms at the end of the appendix.

**Contracting Organization – U.S. Army Communications and Electronics
Command, Fort Monmouth, New Jersey**

2. Contract: DAAB07-97-C-J230

Unit Price: \$4,153 (Maximum) Contract Action Amount: \$1,905,000

Contractor: Litton Systems Inc.

Price Reasonableness Basis: Prior History

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion, stating that price analysis supports the award price. In addition, the Army stated the contractor claimed an exemption from certified cost or pricing data and the contracting officer accepted that the night viewer met the definition of commercial item. The Army also believed the audit overlooked the point that the procurement was for the repair of the viewers.

Audit Response: The unit price was derived from the unit price on the preceding contract, J255 and the Army's response tends to support our conclusion. The contracting officer accepted the contractor's contention that the item was commercial, however there was no detail to explain how the military night viewer in the Bradley fighting vehicle would be similar to a commercial night viewer. There was also no detail to explain any differences. The Federal Acquisition Regulation (FAR) requires firm fixed price contracts for commercial items. We disagree with the Army classification of this contract as firm fixed price, as the pricing was a not to exceed amount with the actual contract amount unknown. The Army also incorrectly believed that we did not understand that the procurement was for repair of the night viewer. However, the report clearly states on page 6 that the work is repair/conversion. The FAR Part 2 includes additional requirements for commercial services. It states in part that commercial services must be services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. There was no evidence that the contracting officer evaluated these services against the FAR requirements. Beyond that point, the file provided no basis for the reasonableness of actual repairs and maintenance, but merely established maximum amounts that they could not exceed. In essence, what costs the contractor spent were likely to be considered reasonable as long as they were below the maximum. It is possible a repair that would, in actuality, be reasonable at one amount, might be accepted as reasonable at a higher amount merely because it falls below the maximum price. Since the price for

Note: See the list of acronyms at the end of the appendix.

this contract was a maximum price, we needed support for the reasonableness of the actual cost items comprising the repairs/conversions. It does not appear that pre-award reviews of repairs and maintenance were even made on a case by case basis. The prior contract had no documentation supporting price reasonableness. It appears that this type of work would have been better suited to task order type contracting so that as a requirement is known, a specific task could be established to define the requirements and establish price.

3. Contract: DAAB07-97-C-J541

Unit Price: None

Contract Action Amount: \$2,318,500

Contractor: Hughes Aircraft Company

Price Reasonableness Basis: Competition

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that cost analysis supports the award price.

Audit Response: The Army based award on full and open competition. As a result it did not require certified cost or pricing data. The two known offerors collaborated to submit only one proposal. There was no evidence of additional market research to determine that other contractors were likely and capable of submitting a meaningful proposal. Mere expressions of intent for a highly complex effort such as this are insufficient to justify likelihood of other bids. The lack of competition from the two sources was known before negotiations and certified cost or pricing data should have been required. Contracting officials stated that some preaward documentation was missing and as a result, they could not provide support for information used to determine reasonableness. Personnel at the Army Communications and Electronics Command (CECOM) acquisition center advised against two separate awards under this scenario because of problems with administration, technical evaluation, coordination of changes, equipment transfers, and possible adversarial relationships between the two contractors. Essentially, we received all of the disadvantages of having two contractors instead of the normal prime/sub without any of the protections afforded by the Truth in Negotiations Act (TINA). The Government had to deal with two independent contractors and lost the prime accountability for its subcontractor and we were paying for two prime management teams. The CECOM Legal office also advised that "it does not make good business sense," but added that "there is nothing illegal about it." The Army stated a review of indirect rates was initiated within the Defense Contract Audit Agency (DCAA), however the Army waived a formal audit by DCAA even though estimated costs were \$30 million. As for the Army cost analysis, the cost analysis did not provide any detail as to what position was being taken or what was derived from the analysis. There was no breakdown of

Note: See the list of acronyms at the end of the appendix.

Price Reasonableness Basis: Catalog prices (Primary) and market survey

Overpricing Amount: Unknown

Army Comments: The Army disagreed and stated that other sources were checked and that a discount was negotiated.

Audit Response: The Army relied on the Contractor's internal price list to compare prices offered to the general public to the contractor's proposed prices. Although the proposed prices were lower than those quoted in the internal price list, there was no supporting documentation that any customers paid these prices. This could have been accomplished by obtaining sales invoices or contacting companies that have made purchases from the contractor. The Army could have made additional inquiries and comparisons to prior or existing buys to further substantiate the reasonableness of the proposed price. A discount offered off catalog prices does not establish a reasonable price unless the reasonableness of the catalog prices were known.

6. Contract: DAAB07-98-C-B263

Unit Price: Part 1	\$9,097	Contract Action Amount:	\$1,774,567
Part 2	\$2,413		
Part 3	\$2,413		
Part 4	\$1,741		

Contractor: Rockwell Collins, Inc.

Price Reasonableness Basis: Prior history (Primary)

Overpricing Amount: Part 1	\$183,433.20
Part 2	\$91,465.67
Part 3	\$5,123.58
Part 4	\$115,394.05

Army Comments: The Army partially concurred with the audit conclusion and stated that it calculated a reduced overpricing amount of \$23,532 based on a price analysis.

Audit Response: Based on the Army response it is evident that they agree that price reasonableness was not adequately determined for this contract. Based on our calculations we determined overpricing of over \$395,417. We determined overpricing on the four parts comprising this procurement, based on the prior prices and quantities contained in the independent government cost estimate. We then adjusted those 1995 prices for inflation and a learning curve to come up with a fair and reasonable price. The difference between the current price paid

Note: See the list of acronyms at the end of the appendix.

and the adjusted price was our overpricing amount. The Army in its response has a reduced overpricing amount to \$23,532; however, the Army did not provide any detail. The primary focus of our review was the adequacy of the price reasonableness determinations, and the overpricing provides an effect. We stand by our computed amount of overpricing.

**Contracting Organization – U.S. Army Tank-Automotive
Command (TACOM), Warren, MI**

7. Contract: DAAE07-00-P-S009

Unit Price: Part 2. \$9,628.61 Contract Action Amount: \$4,908,345
Part 1. \$6,732.54

Contractor: AM General Corporation

Price Reasonableness Basis: Cost analysis

Overpricing Amount: \$483,540 (Part 2)

Army Comments: The Army disagreed with the audit conclusion and stated that cost and pricing information was obtained and analyzed.

Audit Response: The price was higher than the price paid on the previous contract less than 1 year ago, when if anything, we would have expected a lower rate because of the increase in quantity from 120 engines to 300 engines on this order. The magnitude of the price change, an increase of 16 percent from the Government's own estimate and from the prior price, would have required more extensive analysis of factors and costs. TACOM prepared a limited award summary and recommendation even though the price was 16 percent higher. This acquisition also appears to have been made under a false sense of urgency. General Motors Corporation informed TACOM on August 11, 1999, that the production line would be closing in December 2000. Instead of acting in August 1999, TACOM waited until October 6, 1999 before issuing the solicitation. In fact, justifications for non-synopsis and justification for other than full and open competition were not prepared until after the order was awarded. Clearly, there was no intent to compete, but justifications were not even prepared to properly show this decision. There was also no evidence of market research performed for this acquisition. The cost and pricing data contained in the files were insufficient to support the price reasonableness. The contractor provided cost breakdowns, but there was no analysis documented showing why the prices were considered reasonable. There was also no evidence in the file that rates were verified against a Forward Pricing Rate Agreement.

Note: See the list of acronyms at the end of the appendix.

8. Contract: DAAE07-94-D-A013

Unit Price: \$16,714

Contract Action Amount: \$2,690,954

Contractor: Detroit Diesel Corporation

Price Reasonableness Basis: Catalog price (Primary) and pricing report

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that a 34.4 percent discount was negotiated from the catalog price.

Audit Response: The Army relied on information from the contractor without independent review. The Army did not perform an independent verification of commercial sales to other customers or a review of price history. Acceptance of a discount off the contractor's catalog price even a 34.4 percent discount does not make the price reasonable. Verification that the catalog price is valid and represents a reasonable price paid by other customers is necessary to determine the price as fair and reasonable.

9. Contract: DAAE07-96-C-X124

Unit Price: Part 1. \$1,254
Part 2. \$8,816

Contract Action Amount: \$4,501,138

Contractor: KVH Industries

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that a reduced price was negotiated and that sales information was provided.

Audit Response: The basis for reasonableness states that kits were proposed with a copy of a catalog page showing published prices. The contractor's proposal is priced at 2 percent below his catalog published price. No additional data was obtained to show the reasonableness of the proposed price. The pricing report stated that the items are represented as being commercially available and as a result incorrectly assumes that requesting further pricing data is not an option. The items being procured are tactical navigation compass kits and driver's display assemblies for the Bradley fighting vehicle systems. There was no evidence of this item being sold commercially. Several purported foreign government sales were no more than typed numbers provided by the contractor without any supporting documentation. Even the Army appears to

Note: See the list of acronyms at the end of the appendix.

Army Comments: The Army disagreed with the audit conclusion and stated that cost analysis supports award price. The Army stated that DCAA was part of the team that reviewed the cost.

Audit Response: Delivery Order No. 2 was awarded for under \$5 million to avoid small business competition requirements. This basic ordering agreement had an expected value of \$20 to \$25 million for a period of 3 years. Instead of ordering the full amount of 14,000 units required on one solicitation, the Army issued a reduced order for only 7,074 units to stay under the \$5 million threshold, requiring competition on small business awards. In fact, two months after the award of this order three other orders were placed for an additional 7,400 units. By combining these orders, the Army would have surpassed the threshold thereby requiring competition. In total, TACOM bought over 50,000 units, avoided competition, and did not obtain pricing data for such a large quantity. Although DCAA provided adequate support, it was not aware of the full amounts of potential business. DCAA also found that the cost or pricing data submitted by the offeror was inadequate in some respects. In addition, the amounts calculated using DCAA's results did not support the \$520 unit price negotiated, but, in fact, a lower amount. While the DCAA audit results supported a price similar to the proposal price for the first 8,000 units, the DCAA audit results only supported a price of \$448 for units thereafter.

12. Contract: DAAE07-98-D-T041

Unit Price: 11 parts purchased Contract Action Amount: \$6,987,832

Contractor: Goodyear Tire & Rubber Company

Price Reasonableness Basis: Cost Analysis

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusions and stated that cost analysis supports award price.

Audit Response: This situation is very similar to contract item 11. The contractor was justified as a sole source and no other contractor was capable. The contractor did not have a system capable of providing certified cost or pricing data even though the contractor was a long time Government contractor. An initial preaward survey should have been done prior to award of contracts to ensure that the contractor could comply with Army requirements. The Army granted a waiver on this action because the contractor did not meet any exception for not providing certified cost or pricing data. The waiver was inappropriate. The contractor refused to provide any data on selling and administrative costs of the company and the contracting officer had to make adjustments in an attempt to compensate for this denial. The contracting officer was unable to break out the elements of cost for each type of part produced.

Note: See the list of acronyms at the end of the appendix.

Instead, costs were shown as a bottom line basis for cost with a separate profit line. The contract file was also lacking in what details were tested for reasonableness and how those tests related to each part.

13. Contract: DAAE07-99-C-L038

Unit Price: \$164,870 Contract Action Amount: \$164,870

Contractor: O'Gara-Hess & Eisenhardt Armoring Company

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that a 7.7 percent discount was negotiated off of the catalog price.

Audit Response: In our opinion, this was an abuse of the exception to competition “unusual and compelling urgency” in order to avoid the use of competition to award a contract. The justification of unusual and compelling urgency was to replace the Chairman of the Joint Chiefs of Staff vehicle that was over age. Any acquisition planning at all would have allowed for a fair and open competition that likely would have resulted in better pricing. The contract was awarded on a sole source basis with the rationalization that only one contractor could provide the requirement in a “timely manner.” Contracting officials were unable to produce any negotiation documents to explain how price reasonableness was established. Neither the file nor the contracting official in charge of the file could show where a reduction was negotiated. The contractor proposed a price that represented a reduction off retail, but there was no evidence that other customers paid the retail price. The contractor’s price list also showed a number of vehicles that were less expensive including Lincoln Town Cars and Roll Royces.

14. Contract: DAAE07-99-C-N029

Unit Price: \$235 Contract Action Amount: \$985,355

Contractor: North American Molded Products Corp

Price Reasonableness Basis: Prior history (Primary) and cost analysis

Overpricing Amount: \$218,887

Army Comments: The Army disagreed with the audit conclusion and stated that a cost analysis supported the award price.

Note: See the list of acronyms at the end of the appendix.

Audit Response: This June 4, 1999 procurement was for a quantity of 4,193 with a unit price of \$235.00 for solid rubber wheels. According to documentation in the file, a purchase was made 6 months before at a unit price of \$174 for a quantity of 5,238. The current price was an increase of 30 percent from the \$174 unit price; this increase in price was due to an urgent situation and the Army accepted the price. Cost and pricing data was submitted supporting the proposed price of \$235.00. Price reasonableness was determined to be fair and reasonable based on a previous buy in 1996 with the current contractor with a unit price of \$225. Instead of using the most recent price the Army compared the current price with the price paid 3 years ago with the same contractor without justifying how that price was determined to be fair and reasonable. There was no documentation in the file to state why the most recent contract was not used to establish price reasonableness or to show that the Army knew the basis of reasonableness of the prior procurement used. The Army response attempts to use hindsight to explain why the more current price history was not used. The Army stated that it did not believe the previous price provided a good basis for comparison because it was from an Israeli company, however the Army's contract files did not provide any support for this argument.

15. Contract: DAAE07-99-C-N045

Unit Price: \$2,493

Contract Action Amount: \$498,600

Contractor: General Thermodynamics, Inc.

Price Reasonableness Basis: Prior history price analysis

Overpricing Amount: \$54,298

Army Comments: The Army partially agreed with the audit results. The Army stated that the initial quantity was reduced to expedite award, but additional quantities were not anticipated. The Army stated that price analysis supports award.

Audit Response: This was the third of three procurements for the same items within a 5-month period. Besides the issue of urgency which resulted in the sole source award and avoided competition, sufficient acquisition planning would have disclosed the actual requirement needs before the first of the three awards. There was no evidence of detailed economic order quantity planning. Instead, this appears to be a deliberate attempt to avoid the requirement for certified cost or pricing data since all three awards were less than one unit under the amount that would have triggered the requirement for certified cost or pricing data. If one more item had been bought on any of these three procurements, the threshold for cost or pricing data would have been exceeded. The Army price reasonableness determination for this buy was based on comparison to the price

Note: See the list of acronyms at the end of the appendix.

from the buy 2 months earlier which was supposedly based on a cost/price report from 1996. The contracting official could not provide the cost/price report or show that the prior price was otherwise reasonable.

16. Contract: DAAE07-99-C-Q008

Unit Price: Part 1 \$80,202 Contract Action Amount: \$2,585,611
 Part 2 \$69,975.83
 Part 3 \$27,606.97
 Part 4 \$21,762.99
 Part 5 \$15,919.01

Contractor: Technology Ventures, Inc.

Price Reasonableness Basis: Cost analysis

Overpricing Amount: Unknown

Army Comments: The Army did not agree with the audit conclusions and stated that cost and price analysis support the award price.

Audit Response: A preaward survey report performed on the contractor indicated that the company was unsatisfactory in technical capabilities and quality assurance. The report recommended no award and stated that the contractor provided insufficient evidence to demonstrate its ability to obtain resources and perform as required for the pending procurement. The company consisted of one employee, the owner. The report further stated that the owner had limited marketing and management experience as a consultant and had worked for the Government as a traffic management specialist. We do not understand why any contracting officer would want to continue to pursue award of an equipment support and preventive maintenance contract to this company with the information presented by the preaward survey report. This contract was eventually terminated. The contract file contained no evidence to explain why certified cost or pricing data was not obtained especially in light of the technical recommendation to not award a contract. During interviews, a contracting official claimed that certified cost or pricing data was not obtained because these services were commercial. We found no evidence in the file where this claim for commerciality was made or accepted. It is also questionable that no other companies would be interested in obtaining a \$2.5 million contract that with options will exceed \$13 million to perform ordinary equipment support and preventive maintenance services. The award also appears to have been necessitated by a lack of planning. The contracting official interviewed indicated that she did not want to award the contract to this company because of excessive burden costs but the current contract was getting close to completion and the command had to have a contract in place. This contracting official also did not believe the Army received a fair price. Several proposals were received and reviewed by the contracting official.

Note: See the list of acronyms at the end of the appendix.

The contracting official noted a number of errors in the proposal because it included questionable costs, unsupported costs and excessive costs. We believe that this procurement was not in the best interest of the Army.

17. Contract: DAAE07-99-C-T023

Unit Price: \$293.26 Contract Action Amount: \$121,703

Contractor: Borisch Manufacturing Corp

Price Reasonableness Basis: Cost analysis

Overpricing Amount: \$38,930

Army Comments: The Army disagreed with the audit conclusion and stated that cost analysis supports award price.

Audit Response: The cost analysis did not adequately support price reasonableness. The analyst compared direct material proposed prices to a procurement history database and based on the comparison stated the material costs were reasonable. However, the use of prior prices without establishing reasonableness is insufficient. The analyst also stated that the proposed labor rates appeared to be reasonable for the types of skills proposed. There was no documentation in the files to support this statement. According to the files there was no objection to the proposed indirect rates because historically, Borisch's rates have been acceptable. This also is insufficient justification for accepting the rates as fair and reasonable. The analyst needed to present evidence that the material costs and labor rates were reasonable based on verifiable data. In addition, it was stated that the annualized price increase from the previous contract was 1 percent. This is incorrect since the unit price on the contract was \$293.26 while the unit price on the prior contract in 1991 was \$155.58, an increase of over 88 percent. Adjusting the prior price for inflation and quantity, we determined this acquisition was overpriced by \$38,931.

18. Contract: DAAE07-99-C-T067

Unit Price: \$6,987 Contract Action Amount: \$174,675

Contractor: Minowitz Manufacturing Company

Price Reasonableness Basis: Competition

Overpricing Amount: \$103,470

Note: See the list of acronyms at the end of the appendix.

Army Comments: The Army disagreed with the audit conclusion and stated that competitive pricing was not used and that two price analyses were used to support the award price.

Audit Response: There was no evidence in the contract files that the price reasonableness was supported by any price analysis. The procurement history for the items noted in the award summary showed contract DAAE07-85-C-1844 with L&S Industries for 272 units at a price of \$1,638. The proposed unit price of \$6,987 submitted by Minowitz Manufacturing represents an annualized price increase of 22.97 percent since the last buy. The award summary stated that “Price is determined fair and reasonable based on competitive quotations received, pursuant to FAR 15.402(a).” We do not believe that there was a reasonable expectation of competition. The contract was solicited three times without successfully generating other bidders. Even a contracting official had stated, “We are unable to locate or obtain competition.” The contracting official stated that: “... their price is so OUTRAGEOUS I possibly cannot find any justification for their offer unless you will support the blank check.” The Army stated that an independent government cost estimate and an item manager’s pricing of components supported the price. However, it appears that the Army is attempting to reconstruct events that weren’t apparent to the contracting officer. The contract award summary and the file show no other analyses. Price reasonableness was not supported and based on historical data, the Government overpaid by \$103,470. This is an example of the contracting officer claiming nonexistent competition as a basis for establishing price reasonableness, when price reasonableness was not evident. While this action was below the threshold for certified cost or pricing data, the contracting officer has the prerogative to request such data. In this case it would have been prudent for the contracting officer to request certified data given the concerns about the price increase and the lack of competition.

19. Contract: DAAE07-99-D-N021

Unit Price: \$11,136.75 Contract Action Amount: \$2,171,666

Contractor: General Dynamics Land Systems Inc

Price Reasonableness Basis: Competition (Primary) and price analysis

Overpricing Amount: \$174,126

Army Comments: The Army disagreed with the audit conclusion. The Army stated that the award was made with the expectation of competition and that price analysis supports price.

Audit Response: There was inadequate market research and no evidence that other qualified contractors were likely to bid. Even the Army legal office nonconcurred with the decision that adequate price competition existed.

Note: See the list of acronyms at the end of the appendix.

The attorneys believed the Army had not sufficiently established that General Dynamics believed that at least one other offeror was capable of submitting a meaningful offer. General Dynamics proposed a unit cost of \$11,136.75 and the Army's own price analysis reflected an adjusted unit price of \$9,930 (based on the minimum guarantee of 51 units). Therefore, the proposed unit price was 12 percent higher than the price analysis. The Army accepted General Dynamics' increase from this adjusted price by claiming it was only a 3.2 percent increase per year from the last procurement. However, within 3 months of the contract award, the Army had already ordered 311 units. Just relying on simplistic judgements such as stating the price is only 3.2 percent higher per year does not do an adequate job to establish that a price is reasonable. The Army should not have negotiated this contract on the minimum amount of 51. In fact, the award abstract even stated that the item manager had an initial requirement of 259 units. Because the Army knew that more than 51 units would be ordered, it should have negotiated this contract based on a higher unit quantity in order to obtain a lower unit price. In addition, the difference between the Army's price analysis and the proposed price does not support its assertion that the contractor believed others were likely to bid. General Dynamics had received all prior awards on a sole source basis. The contracting officer did not show evidence of adequate market research, but instead relied on the expression of interest from one contractor. In our opinion, the contract was overpriced by \$174,126 and was considered by the Army to be competitive in order to avoid the requirements for obtaining certified cost or pricing data.

Contracting Organization – U.S. Army Tank Command, Rock Island, IL

20. Contract: DAAE20-97-C-0242

Unit Price: \$140,000

Contract Action Amount: \$140,000

Contractor: Remington Arms Company Inc.

Price Reasonableness Basis: Prior history

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that cost analysis supports award price.

Audit Response: Remington Arms was awarded this sole-source contract since it was the only source that can provide the required repair parts, and prior history indicates that it has been the contractor for at least 10 years. There was also a memorandum in the file that stated that the contractor refused to discuss or provide any detailed cost data. This memorandum also stated that even though the contractor was unwilling to provide the data, contracting personnel recommended accepting the costs. There was also no support for the proposed

Note: See the list of acronyms at the end of the appendix.

fully loaded labor hour rate. A certification of cost and pricing data was obtained for this contract, but since no cost or pricing data was provided with it, it is meaningless. The contracting office attempted to reconstruct the price by backing out inflation; however, no data in the file determined the reasonableness of the proposed rate for the components or the prior proposed rates used for comparison.

21. Contract: DAAE20-98-C-0017

Unit Price: \$2,137.50 Contract Action Amount: \$1,282,500

Contractor: Graflex Inc.

Price Reasonableness Basis: Competition (Primary) and other than cost and pricing data

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that a competitive environment did exist and that cost data was obtained and analyzed.

Audit Response: Graflex Inc was the incumbent contractor and appears to have been the only producer of this item in the past. The contracting officers appear to substitute expression of interest from contractors for adequate market research. Although four contractors were solicited, there was no documentation showing that there was a reasonable expectation of receiving other offers in addition to Graflex. There was also no market research to show any other contractor was capable. The price negotiation memorandum (PNM) stated that prices were determined fair and reasonable based on the use of information other than cost and pricing data. There was no documentation noting any analysis of cost data, or even any evidence that cost data had been obtained. This is a contract where the Army should have requested certified cost or pricing data.

22. Contract: DAAE20-99-C-0022

Unit Price: \$965.20 Contract Action Amount: \$673,710

Contractor: Rocker Industries

Price Reasonableness Basis: Prior history

Overpricing Amount: Unknown

Note: See the list of acronyms at the end of the appendix.

Price Reasonableness Basis: Cost Analysis

Overpricing Amount: \$143,583

Army Comments: The Army partially concurred with the audit conclusions. The Army agreed that cost analysis should have been better, but disagreed that it accepted unsupported costs by stating that the price was compared to a competitive follow-on contract.

Audit Response: We accept the Army's response that the cost analysis could have been better. The price paid was \$3,187 per unit for 100 units. The last price paid was \$1,598 per unit for 121 units. The price was almost double in less than 4 years. This is a good example of a contracting officer not having all information available. The contracting officer and specialist stated that they could not identify any prior history. They were surprised that the Office of the Inspector General (OIG) had this information and asked for the source. While a cost breakdown was provided, all costs were accepted as proposed with very cursory evaluation stated in the business clearance memorandum. The procurement was justified as urgent on May 26, 1999 and the contractor's proposal was received the same day. There was no evidence of detailed market research. The contractor selected was justified as the only known source, but procurement history showed four other potential sources. The Army acknowledged that the procurement history file was fragmentary and other sources were subsequently identified. Also while the procurement was justified as urgent on May 26, 1999, it was not negotiated and awarded until August 9, 1999. During that time the contractor did not update or change its price.

28. Contract: DAAE20-99-C-0110

Unit Price: \$462

Contract Action Amount: \$846,846

Contractor: Beretta USA Corporation

Price Reasonableness Basis: Prior history (Primary) and competition

Overpricing Amount: \$60,489

Army Comments: The Army partially concurred with the audit conclusion. The Army concurred that the prior price was used improperly. The Army nonconcurred with overpricing based on the audit price analysis.

Audit Response: According to procurement history found in the contract file, the latest procurement was in April 1999 with a unit price of \$429. This procurement was in September 1999 with a unit price of \$462. The procurement of 9mm pistols does not appear to be quantity sensitive therefore, with a simple mathematical computation we computed overpricing of \$60,489 with a quantity of 1,833 on this procurement. In a footnote to the report, we

Note: See the list of acronyms at the end of the appendix.

contractors were capable of producing the resin to fulfill the requirements of this contract. Only one bid from Truetech Inc. was received for this contract according to the abstract of offers. The Army appears to rely on expressions of interest as a substitute for market research. Many contractors routinely request solicitations, but that does not mean they are capable or qualified. Although two contractors merely expressed interest, that in itself is not evidence that shows that these contractors were capable of producing resin or that there was the threat of competition. In the price analysis a comparison of the previous price paid and the current price was made; however, there was no documentation stating how the previous price was determined to be fair and reasonable. There was no competition and the Army should have requested certified cost or pricing data.

31. Contract: DAAE20-99-D-0099

Unit Price: \$277

Contract Action Amount: \$858,700

Contractor: Island Components Group Inc

Price Reasonableness Basis: Competition (Primary) and price analysis

Overpricing Amount: \$274,531

Army Comments: The Army agreed that cost or pricing data should have been requested, but also stated that a competitive environment existed. The Army disagreed with the amount of overpricing and stated the price analysis supports the award price.

Audit Response: We disagree that the price analysis supports the award price. The Army contends that its procurement history is incorrect and should have reflected a higher value that supported the price shown in the price analysis of \$265.67. We discussed this issue with the contracting officer during our visit and she stated that an engineering change accounted for the difference, however, she could provide no information to support the basis of the change or the reasonableness for the cost of such change. All prior history supported amounts consistent with a price of \$184 rather than \$265 so it would be incumbent upon the contracting officer to support the basis of price reasonableness for the higher amount. We also disagree with the Army on the issue of competition. In an email in the file, contracting officials indicated that this “would be a sole source acquisition to Island...” in the same email there was evidence that the “current technical data package was insufficient for competition,” and FAR 6.302-1 – “Only One Responsible Source” was cited and it further stated the acquisition should proceed. Therefore, we conclude the threat of competition was insufficient. This was another example of an Army award that was made based on competition when the likelihood of more than one bidder did not exist. This award inappropriately avoided obtaining certified cost or pricing data.

Note: See the list of acronyms at the end of the appendix.

Contracting Organization – U.S. Army Missile Command, Huntsville, AL

32. Contract: DAAH01-99-D-0076

Unit Price: \$46,947

Contract Action Amount: \$845,046

Contractor: Raytheon Corporation

Price Reasonableness Basis: Prior History

Overpricing Amount: \$610,003

Army Comments: The Army disagreed with the audit conclusion. The Army stated that cost information supports the award price and a waiver to cost or pricing data was properly executed.

Audit Response: We had extensive discussions with the contracting staff when we were at the installation about the invalid waiver. While the waiver was properly executed under the circumstances that existed when it was executed, it quickly became apparent that those circumstances supporting the waiver were no longer valid and the waiver was null and void. The waiver was granted based on the fact that prior pricing was sufficient to support award at an anticipated price of between \$12,575 and \$13,017 per unit. When the contractor's first proposal was received at a price of over \$29,000 per unit, price history was no longer available that supported this price and the support for the waiver did not exist. This became more apparent when the contractor increased his proposed cost to \$66,158 per unit and then to \$68,140 per unit. Even the Executive Director of Contracting recognized that the waiver was no longer valid and that the submission of certified cost or pricing data was required. The contracting officer did not document in the file why certified cost or pricing data was not obtained. As a result, the Army lost the protection of TINA. Even though the contracting officer did obtain some cost or pricing data, several factors indicated a need for certified cost or pricing data. First, there was tremendous variability in the contractor's proposed costs. Three proposals were received plus mistakes and updates culminating in the contractor providing what he considered his bottom line price. The price went from \$29,167 to \$66,158 to \$68,140 to \$46,947. Second, DCAA was unable to assess the impact that corporate acquisitions and mergers had on pricing. Third, the technical evaluator expressed concern in his report about escalating material costs, unjustified costs and increases that could not be tolerated. He stated that "it would appear that the command is being subject to economic blackmail." Fourth, the program office admitted the contractor was "sticking it to us." With all these factors present, the only prudent course of action should have been to obtain and negotiate based on certified cost or pricing data.

Note: See the list of acronyms at the end of the appendix.

33. Contract: DAAH23-98-C-0133

Unit Price: 11 Line Items Contract Action Amount: \$15,968,686

Contractor: Robertson Aviation LLC

Price Reasonableness Basis: Catalog Price

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that price analysis and DCAA audit support the award amount.

Audit Response: The contractor has been the provider of this part since at least 1988. There are a number of procurement problems associated with this award. This contractor has been allowed to sell this product to the DoD for many years without requiring the contractor to have an accounting system capable of providing meaningful cost data. Normally, it is a prerequisite for doing business with the DoD that a contractor have an acceptable accounting system and this is normally documented during the initial contract with the contractor. However, this contractor was allowed to sell to the DoD using a catalog price without any verification of the reasonableness of the price for many years. The basis for the waiver granted on this contract was that the contractor's accounting system is not acceptable for submission of certified cost or pricing data. In addition, the first award was made on the basis of adequate price competition even though in the waiver for this contract it states that the contractor is the only qualified and capable source of this product. The contracting office had no evidence to show the extent of market research to indicate whether, in fact, there was a threat of competition on the initial award. The extent of DCAA's involvement was simply to verify that this item has always been sold to the DoD at the catalog price. DCAA offered no comments on the reasonableness of the price. Contracting officials attempted to justify this buy as a commercial item until they determined that there were only government customers. The Army had ultimately ended up using hypothetical and theoretical tools to attempt to justify price reasonableness, because the contractor was never required to develop a system to support pricing.

34. Contract: DAAH23-98-D-0014

Unit Price: Part 1 \$4,001.17 Contract Action Amount: \$596,174
 Part 2 \$513.00
 Part 3 \$189.83

Contractor: Allied Signal Inc

Note: See the list of acronyms at the end of the appendix.

Price Reasonableness Basis: Prior history (Primary) and cost data

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusions and stated that cost history includes certified cost or pricing data and cost analysis supports award price.

Audit Response: There were several items included in the contract action. There were the costs to overhaul anti-icing valves, scrap, shipping container costs and also an upgrade portion. While we agree the pricing data supporting the basic overhaul portion of the price was fair and reasonable, costs were accepted at face value based on contractor statements of what his estimated amounts were for the shipping containers and for the increase in overhaul costs from the prior buy. In addition, there was no independent review or explanation of the determination of price reasonableness for the upgrade portion of the price. Also, while we did not find fault with the price reasonableness of the unescalated overhaul costs, we believe several factors may have indicated that it would be prudent to have revisited these costs. First, this was only a second time buy and the contracting officer of the prior buy had indicated that because indirect rates were new at that time, they simply split their differences (contractor versus the Government) and several overhead rates were high in relationship to labor costs including one overhead rate of over 700 percent.

35. Contract: DAAH23-98-D-0117

Unit Price: \$5,862

Contract Action Amount: \$574,476

Contractor: Kaiser Aerospace and Electronics Corp.

Price Reasonableness Basis: Prior history

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusion and stated that previous prices were compared to prices paid by other customers.

Audit Response: We believe that this contract is a good example of contracting staff justifying an item as commercial to save time, failing to extensively review or research the commercial nature of the item, and avoiding the requirement to obtain cost or pricing data. The contractor admitted that the helicopter in question has not been sold commercially. The contracting staff appear to have already made the decision to buy as a commercial item even before they evaluated the item. In a July 21, 1998 memorandum, a contracting official wrote that, "because of the dollar value and because it is IDIQ [indefinite delivery, indefinite quantity], it would be best to do as commercial to keep the

Note: See the list of acronyms at the end of the appendix.

contractor from having to submit cost or pricing data, it will also save time." It further stated that on July 20 the contracting official had talked to another Army official and quoted that individual as stating that, "he could not understand why it was commercial." The item was not determined to be commercial until 9 days later even though the contracting officer stated that there were two major differences between this item and the contractor's commercial item. There was no detailed analysis of these differences in the file to show that the part would qualify as commercial. There was also no evidence to show that the contracting officer determined that the prior prices were fair and reasonable before using those prices to establish price reasonableness for this contract action.

36. Contract: DAAJ09-96-C-0116

Unit Price: None

Contract Action Amount: \$887,503

Contractor: Bell Helicopter Textron, Inc.

Price Reasonableness Basis: Cost analysis

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusions. The Army stated that a DCAA audit was done and that cost analysis and negotiation supported award price.

Audit Response: We agree with the Army statements except on the portion of costs included in the contract for unanticipated maintenance and repair. The contract included a lump sum figure of \$6 million that was supposed to represent initial funding of unanticipated maintenance and repair costs. The contractor stated that these costs were based on prior lots actual costs. This statement alone was not sufficient to support price reasonableness. Further, the proposal was significantly lacking in detail for the unanticipated maintenance portion. The contractor even stated at the time of their proposal that he did not have the time and material rates for FY 1998 that would be necessary to evaluate pricing. The contract action that we reviewed was a contract modification of \$887,503. This action was a modification to increase the lump sum unanticipated maintenance from \$6,000,000 to \$6,887,503. This action by itself exceeded the threshold of \$500,000 for obtaining certified cost or pricing data. However, there was no evidence to support this amount and no evidence that certified cost or pricing data was obtained. The contractor appeared to have a free hand in determining the need and cost of unanticipated maintenance and repair and the costs that were spent were considered the basis for determining reasonableness. In our opinion, the Army may have been better served to include these costs in a separate contract in which specific task orders could be priced and awarded as unanticipated needs developed or at the very least provide specific details when actions changing this cost result in the need to obtain certified cost or pricing data.

Note: See the list of acronyms at the end of the appendix.

37. Contract: DAAJ09-97-D-0196

Unit Price: \$585,243

Contract Action Amount: \$1,170,486

Contractor: General Electric Company

Price Reasonableness Basis: Prior history (Primary) and cost analysis

Overpricing Amount: Unknown

Army Comments: The Army disagreed with the audit conclusions and stated that the price analysis supports the award price.

Audit Response: We agree with the Army that the prior price was reasonable and represented a good starting position for negotiation of the new contract. However, the new proposed and negotiation prices for FY 1998 were 14.9 and 9.1 percent higher than the FY 1997 price. The Army accepted the contractor's proposed material escalation without aggressively pursuing reductions even though standard escalation forecasts indicated lower escalation factors. In addition, the Army original negotiation position was \$558,033. This was over 5 percent lower than the revised negotiation position and would have been compounded for each out year. Documentation in the file did not fully explain why the Army did not continue to use the original negotiation position. We understand the need for give and take in negotiations. Certainly, the contractor factors contingencies into his price for negotiation purposes and the Army would have been in a better position to negotiate a lower price had it maintained its original strategy or at the very least, explained why it needed to deviate from that position.

38. Contract: DAAJ09-97-D-0202

Unit Price: \$314,868

Contract Action Amount: \$188,920,755

Contractor: Allison Engine Company

Price Reasonableness Basis: Catalog price (Primary) and cost analysis

Overpricing Amount: \$7,097,717

Army Comments: The Army disagreed with the estimated overpricing on this contract based on several points. The Army stated that the OIG suggested a unit price discount based on a quantity of 600 when only 239 were bought. The Army stated that overpricing was calculated based on the full 5-year quantity of 600. The Army further believed that based on price analysis a well-documented fair and reasonable price was obtained.

Note: See the list of acronyms at the end of the appendix.

Audit Response: We do acknowledge that overpricing was initially computed on a quantity of 600 because the contract continues through FY 2002 and there has been nothing to suggest that the full quantity will not be bought. The contract period can be extended and quantities can be modified for out years. We agree with the Army that the overpricing amount should be based on the number of engines actually bought to date, which according to the Army, has increased to 255 engines. We recalculated the overpricing based on 255 engines, resulting in a reduced overpricing amount of \$7.1 million. However, the Army did not address the main issues of allowing consideration as a commercial item and not using their own detailed cost analysis which supported a much lower price and escalation. In addition, the Army did not address major concerns from DCAA about obtaining data to support pricing. The prenegotiation objective and the price used for negotiations was based on the prior buy from a different contracting organization. There was no evidence in the file that showed that the Army knew if or how price reasonableness was established for that smaller quantity. The Army had a detailed price and technical analysis that supported a price of \$252,362 which was \$26,113 lower than the negotiated amount for the first year of the contract. There was no explanation for ignoring the results of this analysis. We also believe that because of the problems that DCAA encountered in trying to obtain and review information, and since purported unaudited commercial sales were made to other long time Government contractors, it was incumbent upon the contracting officer to eliminate any concerns about giving up the rights available with the TINA and accepting prior prices before awarding this contract. Further, at a quantity of 120 each year, it would certainly be a reasonable position to assume the price would be lower than for a quantity of 78 from a prior purchase. It appears that the Army accepted the contractor's assertion that the item was similar to a commercial item. This resulted in a prior price being accepted as equivalent to a commercial price even though the Army had done extensive price and technical analysis that supported a substantially lower amount.

Note: See the list of acronyms at the end of the appendix.

Comments From the Navy

Contracting Organization – Naval Air Systems Command, Pax River, MD

39. Contract: N00019-96-C-0220

Unit Price: \$28,483

Contract Action Amount: \$1,053,871

Contractor: Allied Signal Inc.

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusion. The Navy stated the Business Clearance Memorandum (BCM) supported price analysis by commercial sales history, vendor quotes for subcomponents and comparison to General Services Administration (GSA) prices.

Audit Response: The item is a militarized version of a ground proximity warning system. The BCM did not adequately support price analysis by commercial sales history. The commercial prices reflected ranged from \$21,000 to \$37,977. The contract unit price per mod P00002 was \$28,483. There were numerous sales depicted in the sales history attached to the BCM that were below the purchase price of \$28,483. Also, the purchase history showed sales of much lower quantities than what was acquired in this contract. The Naval Air Systems Command contracting officer agreed that the catalog and GSA price does not ensure that the price is fair and reasonable. He stated that the price was greater than the price history because of added costs. However, the contract files did not state anything about additional costs and did not address any add ons to the commercial items. The contracting officer agreed that the BCM should have addressed the additional costs and changes to the commercial item. Based on the available information and the meeting with the contracting officer, the documentation was not adequate to determine price reasonableness. The contracting officer also stated that he could not answer questions about specific details of the procurement because he had "inherited" it.

40. Contract: N00019-99-C-1252

Unit Price: 5 Line Items

Contract Action Amount: \$857,287

Contractor: Rockwell Collins Inc.

Note: See the list of acronyms at the end of the appendix.

Price Reasonableness Basis: Catalog price (Primary) and price analysis

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusions. The Navy stated that the field pricing report was received from Defense Contract Management Agency and DCAA and was used in price analysis. Price analysis included historical price comparisons, commercial sales history, and parametric price analysis run by the cost/price group.

Audit Response: We acknowledge that there is a large amount of information associated with the negotiation of this procurement and the Navy did perform a number of procedures related to the review including learning curves. However, the basic premise still remains that the majority of cost for this action revolved around the transmitter/receiver portion of this contract and the price reasonableness procedures performed involved evaluations and manipulations against the contractor's Government price list. This proposed price was reduced by a percentage to give the Navy a preferred price off of the catalog price. However to be reasonable, the Navy needed to show that other customers paid the same or similar prices. The sales history summary appears to be nothing more than a typed list prepared by the contractor that shows part number, quantity, unit price and extended price. There were no dates of sales, customers, invoice numbers, contract numbers or any actual supporting documentation that would allow us to independently and assuredly know that sales were actually made at these prices to other customers.

41. Contract: N00019-99-C-1598

Unit Price: 7 Line Items

Contract Action Amount: \$317,221

Contractor: Fatigue Technology Inc.

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusions. The Navy stated that although pressed by shortage of time and people, the PCO relied on contractor published commercial price and price analysis of proposal to justify price as reasonable.

Audit Response: The price negotiation memorandum stated that materials are based on the established price list and are considered fair and reasonable. However, the Navy did not do any independent evaluation to determine whether any customers paid the prices on the price list. Instead, it relied on the statements of the vice president of the company that said these prices were available to the general public. Furthermore, the contracting officer expressed

Note: See the list of acronyms at the end of the appendix.

Price Reasonableness Basis: Cost Analysis, market research

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusion. The Navy stated that the procurement contracting officer (PCO) had three price quotes and past history to support reasonable price.

Audit Response: According to the BCM, price reasonableness was based on requests for quotes received from three contractors and cost support on similar units produced for private industry. The quotes received from the three contractors were however, not detailed or formal and did not support price reasonableness. According to contract officials, the contractors verbally gave the requests for quotes over the phone and cursory hand written notes on the sheets by the Naval Air Systems Command included no details or terms. There were no official responses to the request for quotations and notes were not specific enough to know what the contractors were actually quoting on. The quotes lacked detail and credibility. Even though, the value of this procurement was almost \$5 million, pricing information was cursory. A price was handwritten on two of the quotes and the other stated a rough order of magnitude for approximately half the quantity of what was being ordered under this contract. There was no support documentation in the contract files for any cost support and past history to support prices. Based on this, the price reasonableness determination for this contract was inadequate. A procurement of this magnitude would certainly warrant much more evaluation. Also, the original contracting officer was no longer employed by the Navy and the new PCO was not involved in the contract award.

44. Contract: N00019-99-C-1648

Unit Price: Part 1 \$2,250 Contract Action Amount: \$21,998,250
 Part 2 \$4,914

Contractor: Lockheed Martin Tactical Defense Systems

Price Reasonableness Basis: Competition

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusion that no competition existed. The Navy stated that the PCO believed adequate competition existed, and that price comparison to previous buys supported the price.

Audit Response: The contractor was the only provider of this work since 1989. Since 1989, a series of sole-source contracts were issued to the same contractor. This contractor was responsible for development of the laser guided training round and because of the contractor's background and knowledge of the

Note: See the list of acronyms at the end of the appendix.

program, the contracting officer has not demonstrated that with this contractor's competitive advantages there was an expectation or threat of competition. There was insufficient evidence of adequate market research to show that other sources were capable of providing meaningful bids. The contracting officer relied on other companies' expression of interest to support the decision that competition existed. Prudence especially with a long-standing incumbent would require a serious likelihood of competition instead of a veil of competition. This is an example of the inappropriate claim that competition existed with only one source and thus certified cost or pricing data were not requested.

45. Contract: N00019-99-C-1681

Unit Price: \$490,359

Contract Action Amount: \$490,359

Contractor: Raytheon Systems Company

Price Reasonableness Basis: DCAA audit and prior costs, no support (Primary)

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusion that costs were accepted that were not supported or warranted. The Navy stated that price reasonableness was supported based upon element by element examination of contractor's cost.

Audit Response: This contract was an example of inadequate planning. The contract was a sole-source award to Raytheon using a fixed price contract with all costs incurred before the contract was negotiated and awarded. The contract period was January 1999 through October 1999. The negotiation memorandum was prepared September 29, 1999, and the award date was September 30, 1999. The price was based on actual costs. There was no decision regarding price reasonableness before work began.

**Contracting Organization – Naval Inventory Control Point,
Philadelphia, PA**

46. Contract: N00383-97-G-005B

Unit Price: \$40,600

Contract Action Amount: \$203,000

Contractor: Northrop Grumman Corporation

Price Reasonableness Basis: Cost Analysis

Overpricing Amount: Unknown

Note: See the list of acronyms at the end of the appendix.

Audit Response: There was no evidence in the contract file that cost analysis was performed and used in determining price reasonableness. According to the contract files, the price was deemed fair and reasonable as it compared favorably with the previous price awarded in July 1998. Contracting officials were unable to provide us with documentation showing that the prior price was reasonable and could be used to support price reasonableness for this award.

49. Contract: N00383-99-C-P014

Unit Price: \$6,454.29

Contract Action Amount: \$109,723

Contractor: Lockheed Martin Corporation

Price Reasonableness Basis: Prior history (Primary) and cost analysis

Overpricing Amount: Unknown

Navy Comments: Navy disagreed with the audit conclusion. The Navy stated that price was established through cost analysis and DCMC revised interim indirect forward pricing rate recommendations.

Audit Response: The contract file contained no information to indicate a price objective based on cost analysis. In fact, the amount that is stated as the negotiated reduction off the contractor's proposal is actually the contractor's updated proposal as of January 7, 1999. The pre/post negotiation clearance also states that negotiated price compares favorably to history. However, the historical quantity was less than half of the quantity for this procurement and there was no supporting detail to show the price reasonableness of the previous price used in the comparison. This contract was awarded on January 21, 1999 and was terminated for the convenience of the Government, less than 4 months later on May 10, 1999.

**Contracting Organization – Fleet Industrial Supply Center,
Philadelphia, PA**

50. Contract: N00140-98-F-D310

Unit Price: 25 Line Items

Contract Action Amount: \$6,750,000

Contractor: Lockheed Martin Technology Services Group

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Note: See the list of acronyms at the end of the appendix.

Navy Comments: Navy disagreed with the audit conclusions. The Navy stated that pricing was not based on a "catalog." The prices were in a competitively established blanket purchase agreement (BPA) under Lockheed Martin Corporation GSA schedule contract.

Audit Response: The proposed services under the original BPA consisted of a series of proposed labor categories and rates and did not establish that the services were commercial. The contract file documentation also showed the Navy may have inappropriately avoided competition. The file noted that a justification and approval for a sole-source award might be needed if the contractor did not improve its discount. This appears to be an obvious misunderstanding of the need for preparing a justification and approval for not having competition. The amount of discounts offered by a contractor would not dictate the need for a justification and approval for a sole-source award. A justification and approval for a sole-source award would be needed if there were not full and open competition. The Navy did not establish the commercial nature of the work or price reasonableness. Further, if competition occurred it is likely that prices would decrease.

51. Contract: N00140-98-D-0341

Unit Price: Part 1. \$369 Contract Action Amount: \$2,816,782
 Part 2. \$ 99
 Part 3. \$ 7
 Part 4. \$ 2

Contractor: Template Software, Inc.

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Navy Comments: Navy disagreed that catalog prices were accepted without additional review. The Navy stated that price analysis was performed. The negotiator confirmed that prices paid by commercial customers were consistent with the price list, and that the negotiated discount from the price list of up to 23 percent was consistent with equivalent volume discounts.

Audit Response: While the contracting officer stated that certain things were done to support price reasonableness, the contract file was seriously lacking documentation to support the statements of the contracting officers purported actions. The contracting officer was unable to provide any further support to allow us to independently determine if data supported the conclusions. In addition, the justification and approval for a sole source award to develop a prototype system for the Navy Standard Integrated Personnel System for \$5 million was questionable. Developing a prototype software system is not a normal catalog line item.

Note: See the list of acronyms at the end of the appendix.

52. Contract: N00140-99-D-E220

Unit Price: Part 1 \$27,155 Contract Action Amount: \$453,215
 Part 2 \$47,195

Contractor: Ciprico, Inc

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Navy Comments: Navy disagreed that catalog prices were accepted without additional review. The Navy stated that “substantial review was performed. Pricing at greatest available qty [quantity] discount plus non-commercial pricing for ruggedization.”

Audit Response: The contract file was lacking in documentation that would support the pricing decisions. The contracting officer stated that he probably got verbal feedback from the contractor to support statements that price was as good or better than offered other Government or commercial customers. This certainly supports our conclusion that catalog prices were accepted without additional review. For the non-commercial ruggedization, statements were made in the PNM that analysis was conducted, however, costs were accepted as reasonable without support for the costs elements. Comparison to previous prices paid also did not show that the contracting officer understood the basis of prior price reasonableness.

53. Contract: N00140-9997-D-1756

Unit Price: \$156.45 Contract Action Amount: \$8,999,121

Contractor: Cyber Source Corporation

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Navy Comments: Navy disagreed that catalog prices were accepted without additional review. The Navy stated that “no ‘catalog’ price specific to combination of licenses and license maintenance acquired. ‘Per seat’ price significantly less than aggregate individual ‘catalog’ prices for items. Per seat price also compares favorably to corporate and GSA schedule pricing for comparable items as well as Gartner Group benchmark.”

Audit Response: The subject procurement for an estimated value of approximately \$49 million was justified as other than full and open competition

Note: See the list of acronyms at the end of the appendix.

to acquire software products of Microsoft, Cybermedia and Intessera. The Navy limited the procurement to one contractor, which the Navy stated was the only approved source of Microsoft products delivered via electronic distribution. The contractor's proposal offered two alternatives. The first was a bundled option that offered a full range of products and services at a bottom line price with no detail. Alternative 2 offered individual prices for the products and services. Under the individual pricing, most of the money was proposed for 3 items. These were: line item 3-Office Professional at \$122.22 per unit; line item 7 BackOffice client access license at \$112.19 each; and line item 4-Project at \$67.52 each. Prices were proposed per computer. However, the Navy wanted to use a per user (seat) approach and it appears that even though there was wide variability in the number of quantities proposed for the different items (i.e. base year- 37,000 units of office professional, 23,000 units of Windows 95) the Navy wanted to use one overall unit price. The contractor had major concerns about this pricing methodology as it limited accountability and control relative to quantities in use and as compared to the synopsis. The negotiation memorandum stated that a price of \$156.45 per user was negotiated. The price analysis to support price reasonableness consisted of 5 unit prices with no supporting detail. The unit prices were negotiated \$156.45, proposed \$300,00, Best Corporate \$311.00, GSA \$450.00 and Gartner Group \$510.00. The price negotiation goes on to note that price analysis on this acquisition is a difficult task, since this is such a non-traditional approach to pricing software licenses. The negotiator utilized pricing for similar acquisitions to determine the negotiated "price per user" to be fair and reasonable. The similar acquisition's pricing is per computer. This method is the more traditional way of doing business in the information technology industry. It is difficult to understand how the Navy could use other similar acquisitions for comparison when it stated that this contractor was the only one capable of providing these products in the manner required. Besides being very difficult to determine even what the negotiator was actually doing since pricing detail is lacking, the actual support for price reasonableness is seriously lacking and cursory. For a \$49 million, procurement, it would certainly be prudent to expect much more documentation supporting the price. We expected a lot of documentation to support the price because the Navy limited the award to one contractor in an industry that would normally be extremely competitive.

54. Contract: N00140-98-D-4551

Unit Price: 159 Line Items Contract Action Amount: \$4,070,477

Contractor: United Computer Products Co.

Price Reasonableness Basis: Catalog price

Overpricing Amount: Unknown

Note: See the list of acronyms at the end of the appendix.

Navy Comments: Navy disagreed that catalog prices were accepted without additional review. The Navy stated that this was a small and disadvantaged business Section 8(a) contract with contractor providing Optia hardware. The Navy also stated that price analysis was conducted, and that contract prices were discounted 20 percent from Optia GSA schedule and 28.8 percent from Optia published price list.

Audit Response: This contract was a set aside for small business award for an estimated value of \$4,999,924 to provide standard off the shelf computer hardware. There was no acquisition plan because the award was \$76 under the threshold that requires competition for Section 8(a) contracts. The procurement also appeared to be rushed so it could be awarded prior to the end of the fiscal year. Request for quotes was issued on September 15, 1998 and closed on September 25, 1998. The contract was issued on September 30, 1998. The selected contractor was considered the only capable source. This decision was questionable in light of the type of product provided. The Navy seems to justify commercial item on one hand, but unique requirement of the Government agency allowing only one contractor on the other hand. This clearly seems like an attempt to circumvent competition that almost certainly would have resulted in a better price. Price was supposedly established as fair and reasonable based on comparison to the contractor's price list and the contractors' published GSA schedule. According to the price negotiation, prices were 10 to 20 percent below the GSA pricing and 28.8 percent below the list price. All of the comparative data was from the contractor's proposal. The contracting officer did not determine if any sales were made at the listed price nor did he show any independent review of the contractor's statements on GSA prices. Reliance on information furnished by contractor without independent verification is considered insufficient market research. As such, price reasonableness was not adequately established.

Note: See the list of acronyms at the end of the appendix.

Comments From the Air Force

Contracting Organization – Aeronautical Systems Center, Wright-Patterson Air Force Base, OH

55. Contract: F33657-98-C-0014

Unit Price: Part A. \$4,900
Part B. \$2,070 Contract Action Amount: \$1,447,430

Contractor: Innovative Solutions and Support Inc.

Price Reasonableness Basis: Catalog prices (Primary) and prior pricing

Overpricing Amount: \$73,218 (Part B)

Air Force Comments: The Air Force nonconcurrent with the audit results. The Air Force stated that the alerter kit is a commercial item that is purchased as a total package that consists of Group A (the alerter) and Group B (installation). The Air Force also stated, it is not prudent to focus specifically on the purchase of one Group A without consideration of Group B. It appears that the auditor only considered an adjusted price for Group B (installation).

The Group B (installation) had been purchased previously at a price of \$1,800, and Group A at a price of \$7,500. The proposed price was \$2,150 per unit for installation, and \$7,275 per unit for the alerter kit. The Air Force secured additional information from the contractor and negotiated a unit price of \$2,070 for the installation, and \$4,900 for the alerter kit. The Air Force concluded that there was no overpricing on this action.

Audit Response: We did not focus on the installation (Group B) portion of the altitude alerter kit only. We also reviewed pricing for the altitude alerter (Group A). However, we only had sufficient information to compute overpricing on the Group B portion. We do believe that insufficient review was done on both parts to support price reasonableness. The Air Force failed to address the significant quantity variance between the purported prior buys for the alerter kit and the current requirement. The purported price history in the price negotiation memorandum shows support for a \$7,500 unit price for the alerter and is based on quantities ranging from 3 to 36. The quantity for this procurement is 400 with an option for 224 more. There is absolutely no relationship between the prior procurement and this contract. In addition the catalog unit price only included quantities up to 250 and there was no explanation of what would be an appropriate catalog price above this level.

Note: See the list of acronyms at the end of the appendix.

Beyond that, there was no market research or documentation for the sales to others. There were no invoice numbers or other verifiable basis to determine that sales were actually made. Further, since the purported sales were all to one contractor that is a long time Federal Government contractor, it would also have been appropriate to determine whether these sales were part of a Government prime contract. There was also no explanation of the rationale for the \$4,900 price other than the fact that this was the price offered by the contractor because of the “rough order of magnitude.” In regard to the alerter kit, the purchase was made at a price 15 percent above the price on the previous year’s buy which was for only 30 units. This price negotiation memorandum for this procurement was for a quantity of 326 kits with an option for 224 more kits. The contracting officer did not adequately establish price reasonableness because he did not do any independent review of statements made by the prime contractor. The contracting officer’s original objective did not include the contractor’s estimate for research and development contracts. This was consistent with the price paid for the smaller quantity of kits previously procured. However, the contracting officer accepted the contractor’s statement that research and development was applied across all efforts and products without verifying the statement. The prior procurement clearly excluded research and development costs. The contracting officer stated that he accepted the research and development costs even though the kits were fully designed by Boeing. There was also no verifiable support for the statement in the contract file that Boeing’s cost for the kit would remain flat with the significant increase in quantity. This was especially important since Boeing selected Innovative Solutions and Support as the contractor for the alerters and then Innovative Solutions and Support selected Boeing to provide the kits. We believe that the objective and price should have been at least as low as the price for the smaller quantity previously procured and stand by our estimate of overpricing.

Contracting Organization – San Antonio Air Logistics Center, TX

56. Contract: F41608-97-A-0001 (Order 152)

Unit Price: \$17,206.57 Contract Action Amount: \$2,615,399

Contractor: Allison Engine Company

Price Reasonableness Basis: Catalog price

Overpricing Amount: \$1,384,848

Air Force Comments: The Air Force nonconcurred with the audit conclusions. The Air Force stated that the order was placed against a negotiated Blanket Purchase Agreement (BPA) established for the sole source procurement of T-56 engine replacement parts. The key information on this contract action was located in the price negotiation memorandum of the BPA file. The auditors

Note: See the list of acronyms at the end of the appendix.

relied only on the order file. The contract file provides the order schedule submitted by the contractor showing the catalog price and the discounted unit price offered to the contractor's other favored customers. Both of these prices are significantly higher than the Government's discounted unit price as calculated in accordance with the negotiated agreement.

Audit Response: We did have the price negotiation memorandum for the BPA. We reviewed all necessary files to reach our conclusions including the BPA file. The Air Force believes that because it received a discount off of a catalog price that the price is good. The Air Force negotiated a unit price of \$17,296.57 for order 152 which would equate to a discount of about 58 percent off the catalog price of \$40,611.77. This discounted price greatly exceeds the price of previous buys at unit prices of less than \$11,000. These prior buys would equate to discounts of approximately 75 percent off the catalog price. A discount off a catalog price no matter how large does not establish price reasonableness. In addition, the contracting officer stated that the 119 units used for the analysis of pricing for this order were the universe of sole-source parts that the Air Force expected to buy. Since these parts were not part of the universe and were added later, they had no chance to be part of the BPA price analysis and results from other part reviews would not be projectable to these parts. The contracting officer was also unable to explain why parts histories could not be matched with price analyses in a number of cases. The contracting officer was also unable to explain and the contracting file did not provide evidence of the priced proposals for the military that were purportedly used to support price reasonableness. In addition, the statement that prices were also reasonable because of the existence of DCAA rates also has little meaning since the parts were not broken down by cost element it is not possible to determine what rates were used or applied. While documentation was available to support discounts off the contractor's catalog prices, the purchase history for the two parts reviewed showed even larger discounts than the discounts negotiated in the order. At a minimum, the contracting officer should have explained why discounts were less for this contract than in prior purchases. The contracting officer did not adequately support price reasonableness and we computed overpricing based on actual price history for these two parts.

57. Contract: F41608-97-A-0001 (Order 159)

Unit Price: \$15,994.94 Contract Action Amount: \$4,254,655

Contractor: Allison Engine Company

Price Reasonableness Basis: Catalog price

Overpricing Amount: \$1,204,441

Note: See the list of acronyms at the end of the appendix.

Price Reasonableness Basis: Catalog price

Overpricing Amount: \$598,856

Air Force Comments: Air Force partially concurred with the audit conclusions. The Air Force stated that the price was not based upon the acceptance of the proposed catalog price. The Air Force review of the contract concluded that the documentation was inadequate and does not support the determination of a fair and reasonable price. The Air Force agreed that there is overpricing on this contract. To ascertain an estimated amount, the Air Force considered the historical price of \$345, escalated 3 percent for 5 years to equate an approximate adjusted unit price of \$396.75. This amounts to \$146,677 in overpricing.

Audit Response: We agree that price reasonableness was not adequately established and the overpricing did occur. However, we disagree with the amount of overpricing estimated by the Air Force. The Air Force computed an adjusted price of \$396.75, based on the prior contract unit price of \$345. However, the Air Force did not account for the large quantity difference for this contract. The prior contract was for only 39 units whereas this contract was for 2,161 units. The Air Force apparently adjusted the price for inflation without regard to quantity differences. Our overpricing was based on the same unit price from the prior contract, but took into consideration inflation as well as quantity differences. We believe our estimate of the amount of overpricing was valid.

60. Contract: F41608-99-C-0530

Unit Price: \$5,839.13

Contract Action Amount: \$391,222

Contractor: Purdy Corp.

Price Reasonableness Basis: Prior history

Overpricing Amount: \$60,571

Air Force Comments: The Air Force nonconcurred with the audit results. The Air Force stated that the PNM shows that the current requirement is for the same item and there was reasonable expectation based on market research or other assessment that two or more responsible offers competing independently would submit priced offers. Furthermore, the buyer conducted a price analysis using the previous price, adjusted to current month values using the Bureau of Labor Statistics commodity index, and using 88 percent and 92 percent logarithmic curves to obtain a range of acceptable prices of \$6,658.28 to \$6,752.72. The Air Force concluded that the price of 67 each at a unit price of \$5,839.13 was acceptable and reasonable.

Note: See the list of acronyms at the end of the appendix.

Audit Response: The only source for the part was the prime contractor. In this case, the competition could only consist of nothing more than the prime contractor passing through the actual vendor's part with additional overheads and profit. This would also account for the significant difference between the past two prices from the actual vendor and the prime contractor. Purdy Corp., as the actual vendor, provided this part at prices ranging from \$3,908 to \$3,994 on prior procurements. The prime contractor on the most recent buy provided the part at a price of \$6,169. This price was 55 percent higher than the last price from Purdy. We don't know why the contracting officer decided to use the prime contractor instead of the actual vendor and thereby paid a higher price. However, we do know that the contracting officer did not fulfill the FAR requirements to determine the reasonableness of a prior price before using it as the basis for reasonableness. The contracting officer could provide no evidence that price reasonableness of the prior price was known. The price on this part has continued to increase over time.

61. Contract: F41608-98-C-0698

Unit Price: \$87.50

Contract Action Amount: \$437,500

Contractor: Networks Electronics Inc

Price Reasonableness Basis: Prior History

Overpricing Amount: \$134,089

Air Force Comments: The Air Force nonconcurred with the audit conclusions. The Air Force said that the OIG contended that this contract was priced based upon the fact the "prior prices used were not justified as reasonable." Air Force review of this contract action demonstrates that the DCAA audit support was used to establish the price reasonableness of the prior price. The buyer for this action used price history to establish a price range of \$101 to \$96.34 per unit. Based upon this analysis, the \$87.50 unit price was accepted as fair and reasonable.

Audit Response: The FAR requires that the reasonableness of prior prices should be known before using those prices to establish price reasonableness. The contracting officer did not have the prior price negotiation memorandum to know how the price was derived and as such did not have complete information to establish price reasonableness. The contracting officer did have a DCAA audit report which would have provided information on rates and some elements of cost, but the DCAA audit report stated that it did not have the technical evaluation of labor hours and material quantities. This information would have been crucial to establish price reasonableness.

Note: See the list of acronyms at the end of the appendix.

Contracting Organization – Ogden Air Logistics Center, UT

62. Contract: F42630-99-C-0022

Unit Price: \$11,445

Contract Action Amount: \$4,200,315

Contractor: Allied Signal Inc.

Price Reasonableness Basis: Prior history (Primary) and uncertified cost data

Overpricing Amount: \$1,201,089

Air Force Comments: The Air Force nonconcurred with the audit conclusions. The Air Force stated that initially, the engineer noted that the item was not commercial and the justification and approval document stated the item was not commercial, however, the PCO did a further review of the analysis of contractor submittals and documented the conclusion that the item was commercial. The contractor also submitted a cost breakdown to support its proposed price. The PCO used this information, along with recommended rates and factors from DCMC South Bend to help determine price reasonableness. The PCO also performed a learning curve analysis, using a 90 percent curve and the previous price of \$11,267 from the May 29, 1998 buy to help determine price reasonableness. Based upon the above information, price analysis clearly establishes a range of price effectiveness appropriate to make an adequate price reasonableness determination. The Air Force concluded that the procurement is not overpriced.

Audit Response: Market research documented that the item was not commercial. The Air Force stated that the PCO further reviewed the contractor submittals and documented the conclusion that the item was commercial. However, the commerciality claim was initiated by the contractor and the contracting officer questioned the characterization of the item as commercial. The contracting officer stated to us that she had raised her concern about whether this item was commercial. She also acknowledged that prior buys were not considered commercial under the “old FAR regulations.” The Air Force also agreed that its engineer noted the item was not commercial. We believe an engineer’s position should carry more weight in a commercial item determination especially since this was the first time the Air Force was relinquishing the rights provided by the TINA. There was no documentation in the file to support any commercial analysis that showed similarities to and difference from a commercial item. An informal cost breakdown was provided, but was cursory and provided no details. For example, material was shown at a lump sum per unit with no further breakdown. The contracting officer relied on the contractor’s statement that material was based on vendor quotes and labor actuals without any further verification. In an interview, the contracting officer stated that there was no additional documentation. She stated that she did not ask for this mainly due to the fact that the data was uncertified. She also stated

Note: See the list of acronyms at the end of the appendix.

that normally they do not challenge the contractor. There is also no explanation for the basis of the Air Force price objective of \$11,440. The price objective does not appear to have considered the very significant quantity difference between the new procurement and prior procurements, while the Air Force price analysis does consider this information. The prior buy was for 34 units and the current buy is for 367. The unexplained price objective is \$11,440 while the supported price analysis was \$8,286. There was no documentation to explain why the price analysis was not used. We do not believe price reasonableness was established especially in light of the price analysis that was 38 percent below the price objective of \$11,440, cursory acceptance of the commerciality claim and the limited amount of cost data obtained. The Air Force price analysis also supports an overpricing amount almost identical to our computation.

63. Contract: F42630-99-C-0161

Unit Price: \$3,744

Contract Action Amount: \$230,429

Contractor: Hydro-Mill Co

Price Reasonableness Basis: Prior history (Primary) and price analysis

Overpricing Amount: \$49,938

Air Force Comments: The Air Force partially concurred with the audit results. The Air Force agreed that it appears the buyer had no knowledge of the contract termination of Sean Air or the consistent pricing history of Hydro Mill. This information should have been a consideration in the buyers final price determination. However, the buyer used a 1990 prior price of \$3,362 escalated to current year dollars to calculate an adjusted price of \$3,744. Although the buyer did not use the most recent pricing history, the Air Force did not agree that this resulted in overpricing. Sean Air was unable to perform the two contracts it was awarded at the prices of \$1,825 and \$1,026 per unit. On the other hand, Hydro Mill was consistent in its bidding of both contracts at \$4,308 and \$3,497 per unit.

The OIG report used an adjusted unit price of \$1,043.67 to calculate the amount of overpayment. It is inappropriate to use this price as prior price basis, since this represents a Sean Air price that was terminated for default. Based upon our analysis, we conclude there is no overpricing on this contract

Audit Response: The Air Force agreed that price reasonableness was not adequately established but disagreed with the overpricing. The price negotiation was very cursory in nature. Besides using the prior price without verification of price reasonableness, the contracting officer did not provide any support for purported costs for a reworked die. While we do not know if the termination of the other contractor had anything to do with non performance for cost reasons,

Note: See the list of acronyms at the end of the appendix.

we do agree that in light of the new information about the termination of the other contractor, it would not be appropriate in this case to use this information to determine overpricing. As a result, we have used the price analysis performed by the Air Force of \$2,883 per unit and recomputed overpricing of \$49,938 (\$3,744-2,883, multiplied by 58 units).

64. Contract: F42630-99-C-0074

Unit Price: \$7,790

Contract Action Amount: \$311,600

Contractor: Coltec Industries, Inc.

Price Reasonableness Basis: Prior history (Primary) and competition

Overpricing Amount: \$185,227

Air Force Comments: The Air Force nonconcurred with the audit conclusions. The Air Force stated that four contractors on the approved source list were solicited; award was made to a large business, Coltec Industries (now BF Goodrich Aerospace) which was the only offer received. However, based upon the fact that only one offer was received, the buyer requested additional cost information to validate non-recurring costs for a one-time charge for new dies. The contractor submitted a complete cost breakdown for unit price and dies. Input from DCMC Dallas was received on rates.

The OIG stated that prior prices were used as a basis for the negotiated price. However, it should be noted that the buyer considered adequate price competition in accordance with FAR 15.403-1 and the use of additional cost information to make an appropriate price determination.

The OIG used an adjusted unit price of \$3,159.33 from a contractor now deemed as an unapproved source due to poor past performance. The buyer was aware of this and thereby felt a need to secure additional cost information to make an appropriate price determination.

The Air Force concluded that based upon analysis, there is no overpricing on this contract.

Audit Response: We disagree with the Air Force. We do not believe the contracting officer adequately established price reasonableness. There was no evidence of adequate market research. The only other source with any price history was the other source that was removed from the approved source list. According to the contracting officer, she realized that the only other source would have been the prior contractor. Therefore, the contracting officer decided to review cost data. However, the material costs with additives applied accounted for all of the costs except for profit, and the contracting officer had nothing in the file to support these costs except for a verbal statement from the

Note: See the list of acronyms at the end of the appendix.

engineer who stated that costs were reasonable. In addition, while lower rate information was received from DCAA, the contracting officer still accepted rates and costs as proposed without explanation. The contracting officer conducted a price analysis, but when the price analysis did not support the contractor's price, the contracting officer's justification for the difference lacked logic. The contracting officer concluded the difference was due to rate differences because the contractor was a small business. However, every business has its own rate structure that has no bearing on whether it is large or small. At the very least, since the proposed price was 170 percent higher than the price analysis, the contract file should have contained information on material costs. In this case we believe the overpricing is valid. The prior contractor was taken off the approved source list for quality and not cost reasons and this contractor had successfully performed at least four other contracts at prices similar to the price that we used for establishing overpricing. Since the contracting officer did not establish price reasonableness on the current procurement, we believe the best measure of overpricing would be prices from successfully completed contracts.

65. Contract: F42630-99-C-0178

Unit Price: \$13,200

Contract Action Amount: \$2,191,200

Contractor: Aircraft Braking Systems Corp

Price Reasonableness Basis: Catalog price (Primary) and prior history

Overpricing Amount: \$412,067

Air Force Comments: The Air Force nonconcurred that the contract was awarded based on accepting a catalog price without additional review. The PNM illustrates that the price analyst used additional information to adjust the comparison price of the "virtually identical" DC-10 commercial item. The Air Force used the prior price of \$13,002 and adjusted it using normal escalation equating to \$13,794. As a result, the Air Force disagreed that the negotiated price of \$13,200 was overpriced. The Air Force also stated that the contractor stated that the prior unit price was in error. Additionally, the Air Force takes exception to the OIG using an adjusted unit price of \$10,717.67, which is even lower than the previous 1997 buy for 31 units at a cost of \$13,002.15. The Air Force concluded that there was no overpricing on this contract.

Audit Response: There was no verifiable support in the file other than a statement from the contractor that the prior unit price was in error. While the PNM included the contractor's claim that a process was erroneously deleted, there was nothing in the price negotiation memorandum to show that the contracting officer attempted to verify this claim. This prior price was important since it showed the contractor provided this item at prices of \$10,150 and \$9,660 for quantities similar to the current buy. Contractors generally pay

Note: See the list of acronyms at the end of the appendix.

close attention to their profit line and a missed process that decreased profits would normally be found during the course of a contract. The negotiation memorandum also incorrectly stated that “based on new rules of FASA [Federal Acquisition Streamlining Act] a price analysis was performed on this item, the price generated in the price comparison was rounded to the nearest dollar and used as the Air Force objective.” However, the price generated in the price analysis was \$11,657. The Air Force price objective was \$13,200 and the accepted price was \$13,200. The difference between the price analysis price of \$11,657 and the price objective of \$13,200 was not explained. Also, when we looked at the three pages of documents included in the file to support the justification of commercial pricing as similar to the DC-10, we did not see the “virtually identical” decision reached by the contract administrator. The components had different numbers, different descriptions and difference quantities. Further, sizes, features and additional parts were also different. Since this decision on commerciality removed the requirement for obtaining certified cost or pricing data, we believe more attention and detail should have been included. Also, a qualified engineer should have been involved before reaching this conclusion. We continue to believe price reasonableness wasn’t established and the overpricing was valid.

66. Contract: F42630-99-C-0084

Unit Price: \$36,342

Contract Action Amount: \$472,446

Contractor: All Tool Inc.

Price Reasonableness Basis: Competition

Overpricing Amount: \$151,066

Air Force Comments: The Air Force partially concurred. The Air Force stated the solicitation was issued competitively to four approved sources. One response was received from All Tool Inc. at a proposed unit price of \$36,342; total price of \$472,446.

The use of FAR 15.403-1 as a basis for price reasonableness on this contract action cannot be validated, as no PNM was accomplished. Though the probability of adequate price competition can be argued, the fact is that there is no record of this determination. The Air Force agreed that additional analysis and a PNM should have been accomplished. However, the use of the 1990 price may not produce a valid overpricing estimate. The mere fact that adequate price competition exists does not automatically satisfy a fair and reasonable determination. Though the buyer sought additional historical information and applied an appropriate index to normalize a past price to current dollars, the inadequacy of documentation does not validate a fair and reasonable price.

Note: See the list of acronyms at the end of the appendix.

The Air Force estimated the overpricing on this contract to be approximately \$93,015 which applies 3 percent escalation to the previously negotiated price from 1990 of \$22,982.

Audit Response: Our overpricing calculation of \$151,066 was based on certain learning curve and inflation index assumptions which represent what we believe is the best estimate of the overpriced amount. However, we acknowledge the Air Force might make different assumptions and compute an amount that could be equally defensible.

67. Contract: F42630-99-C-0139

Unit Price: \$405

Contract Action Amount: \$2,673,000

Contractor: Michelin Aircraft Tire Corp

Price Reasonableness Basis: Cost analysis (Primary) and prior history

Overpricing Amount: \$306,042

Air Force Comments: The Air Force nonconcurred with the audit conclusions. The Air Force stated that the mission critical circumstances of this acquisition necessitates an immediate contract award to the second source. The Air Force also stated it is in the process of reengineering the specifications of this requirement to expand the realm of potential sources in support of future requirements.

The OIG contends that the PCO accepted non-supportive costs, reflecting on a \$358.63 unit price identified in the PNM. After further research, however, it was discovered that this figure was in fact an error and is, therefore, not overpriced. This is further validated by the fact that it is inconsistent with any available price history for this item.

Audit Response: The Air Force is attempting to defend the price on a contract that violated the requirements of the TINA to obtain cost or pricing data. The Air Force states that after additional research the amount of \$358.63 identified in its price negotiation memorandum was an error. However, the contracting officer was interviewed on July 12, 2000 and was specifically asked about the price analysis amount of \$358.63. The contracting officer stated that this amount was generated through a learning curve. In light of this apparent conflict surrounding the circumstances of the price analysis amount, we are not sure which information is correct. We do know that the quantity on this purchase (6,600 tires) was significantly higher than the quantity on the last purchases from Goodyear (4,292 tires) and Michelin (2,218 tires). The prices for both of these buys were also less than the current procurement, and it is possible that a learning curve may have reduced the price to the price analysis amount. In addition, since the award was made sole source and exceeded the

Note: See the list of acronyms at the end of the appendix.

threshold for obtaining certified cost or pricing data, either a waiver to the TINA or certified cost or pricing data was required. The contracting officer stated that certified cost or pricing data was waived because the contractor's accounting system would not provide it. However, the contracting officer did not obtain a waiver. Therefore, the contracting officer violated the requirements of the TINA. Based on all of the available information, we stand by our conclusions.

Note: See the list of acronyms at the end of the appendix.

Comments From the Defense Logistics Agency (DLA)

Contracting Organization – Defense Supply Center, Richmond, VA

68. Contract: N00383-95-G-054M (Order TY45)

Unit Price: \$78,251.50 Contract Action Amount: \$5,086,348

Contractor: Rolls-Royce PLC

Price Reasonableness Basis: Cost analysis

Overpricing Amount: Unknown

DLA Comments: The DLA stated that cost or pricing data was obtained.

Audit Response: Although DLA did not specifically disagree with our conclusion that price reasonableness was not adequately determined, it implied disagreement by citing that cost or pricing data was obtained. A certificate of current cost or pricing data was obtained. However, there was no evidence of any cost or pricing data obtained to go with the certificate. The certificate process was flawed because the contracting officer did not appear to understand the TINA. First, the Price Negotiation Memorandum stated that at the conclusion of negotiations the buyer requested the contractor to submit its “best proposal” with a certificate. However, a proposal at the conclusion of negotiations would not have been relied upon and hence, would be null and void. Second, there was also no statement of reliance by the contracting officer included in the price negotiation memorandum. The price negotiation memorandum was seriously lacking in detail. In addition, a DLA contracting official disclosed to us that the certificate was useless because no cost or pricing data was obtained.

69. Contract: SP0440-99-D-0547

Unit Price: \$924 Contract Action Amount: \$2,055,900

Contractor: Vaisalia Inc

Price Reasonableness Basis: Catalog price (Primary) and prior history

Overpricing Amount: Unknown

Note: See the list of acronyms at the end of the appendix.

DLA Comments: DLA stated that the part was commercial and the contractor provided its published catalog, but refused to provide sales data. DLA negotiated a discount off the published price and reviewed prior prices paid to establish price reasonableness.

Audit Response: DLA appears to agree with our conclusion that price was not adequately determined. The contracting officer attempted to establish price reasonableness using two bases, comparison to catalog prices and comparison to previous prices. Since the actual sales history is unknown, the DLA does not know if a 10 percent, 20 percent or even a 50 percent discount off the catalog price is reasonable. The use of prior price was equally ineffective because there was no evidence to show that the prior prices were determined to be reasonable. The price negotiation also shows that attempts to achieve better pricing during negotiations on the last contract were unsuccessful.

70. Contract: SP0441-99-C-5736

Unit Price: \$1,558

Contract Action Amount: \$623,200

Contractor: Kaydon Corporation

Price Reasonableness Basis: Cost Analysis

Overpricing Amount: \$147,934

DLA Comments: DLA disagreed with the audit conclusions. DLA stated that pricing was based on adequate price competition and that additional information was obtained to support price reasonableness.

Audit Response: The two most current prior procurements of this item were both from the same company that received this award. Overall, this company's price has increased approximately 218 percent in 11 years on 5 procurements. Its unit price went from \$490 in 1988 to \$620 in 1989, to \$969 in 1990, to \$1,048 in 1992 to \$1,558 in 1999. The action was listed in the DD350 contract data system as sole-source, which would have required obtaining certified cost or pricing data. The Acting Chief of the Cost and Price Analysis Branch recommended obtaining certified cost or pricing data. He further stated that it is not realistic to assume that the contractor's offer responds to the threat of competition. However, even though the contract exceeded \$500,000, cost or pricing data was not obtained. In our opinion, the price trend clearly indicates that the price is not reasonable.

Note: See the list of acronyms at the end of the appendix.

71. Contract: SP0441-99-C-5324

Unit Price: \$30.85

Contract Action Amount: \$462,750

Contractor: Kamatics Corp

Price Reasonableness Basis: Other reasonableness problems (Justified as unreasonable)

Overpricing Amount: \$55,100

DLA Comments: DLA disagreed that price reasonableness was not adequately determined. DLA stated that the contractor would not provide adequate information, but that adequate procurement history was available to make a price reasonableness decision.

Audit Response: One of the finding areas in our report was the use of prior history without determining if the prior prices were fair and reasonable. Using a prior price that was not determined reasonable would not now provide a reasonable price. The PNM acknowledges that the contracting officer accepted the price as proposed and that it was unknown as to if and how prior prices were determined fair and reasonable. The PNM also acknowledges that price for this procurement cannot be determined fair and reasonable. Although this procurement was only slightly under the \$500,000 threshold, the contractor refused to provide cost or pricing data.

Note: See the list of acronyms at the end of the appendix.

Acronyms

BCM	Business Clearance Memorandum
BPA	Blanket Purchase Agreement
CECOM	Army Communications and Electronics Command
DCAA	Defense Contract Audit Agency
DCMC	Defense Contract Management Command
DLA	Defense Logistics Agency
FAR	Federal Acquisition Regulation
GSA	General Services Administration
OIG	Office of the Inspector General
PCO	Procurement Contracting Officer
PNM	Price Negotiation Memorandum
TACOM	U.S. Army Tank-Automotive Command
TINA	Truth In Negotiations Act

Appendix G. Report Distribution

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Deputy Under Secretary of Defense (Logistics)
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Assistant Secretary of the Navy (Research, Development, and Acquisition)
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House Subcommittee on Technology and Procurement Policy, Committee on Government Reform

The full text of Management Comments is located at:

<http://www.dodig.osd.mil/audit/reports/fy01/01-129pt2.pdf>

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