Under Secretary of Defense (Acquisition, Technology, and Logistics) Comments

Final Report Reference

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND TECHNOLOGY

FEB 9 2001

DP/CPF

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

THRU: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS 2/9/01

SUBJECT: Draft of a Proposed OIG Report, "Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data Are Not Required," dated December 11, 2000, Project No. D2000CF-0059

Your memorandum of December 11, 2000, requested comments on the subject draft report. The draft report's objective was to determine whether contracting officers obtained information, in accordance with Part 15 of Federal Acquisition Regulation, to determine price reasonableness when certified cost or pricing data were not required, and whether these reasonableness determinations were adequate.

The findings of the draft report assert that contracting officers did not obtain certified cost or pricing data when they should have in 53 of the 145 contract actions reviewed, and that they relied on incomplete information and did not adequately determine price reasonableness in 126 of the 145 actions. These 126 actions were valued at $241.6 million; the draft report asserts that, for 53 of them, failure to adequately determine price reasonableness led to overpricing of $40.5 million. It also asserts that, of the 46 actions valued at $318.6 million where contracting officers used commerciality as the exception for not obtaining certified cost or pricing data, 42 actions valued at $299.1 million had inadequate price reasonableness determinations, and 11 valued at $217.7 million improperly used the commerciality exception.

Revised

The draft report attributes these findings to several underlying causes. It cites inadequate planning by program managers and contracting officers, which led to an unjustified state of urgency. Forty-seven of the 145 actions reviewed, valued at $88.8 million, were awarded under urgent conditions. Contracting officer workloads were said to be too heavy due to staffing shortages at 12 of 18 activities. The report asserts that contracting officers have not been obtaining cost data when other means were insufficient to determine price reasonableness, in part due to an atmosphere that has de-emphasized the need to obtain cost data and utilize the Defense Contract Audit Agency for price analysis support. This atmosphere was also said to have emboldened contractors to refuse to provide cost data or other data for 18 contracts when requested by contracting officers. Finally, the draft report cites a failure of senior leadership to monitor the impact of workforce reductions, and to provide adequate management oversight of factors affecting price reasonableness.

The draft report portrays pervasive, serious problems with contracting officer determinations of price reasonableness and makes several sweeping recommendations that address the content and performance of price analysis, as well as management involvement in overseeing price reasonableness determinations. Before agreeing to such recommendations, and to afford the Military Departments (MILDEPs) and Defense Agencies an opportunity to advise me of the facts that underlay the report findings as they see them, I requested the MILDEPs and Defense Agencies provide an analysis of the pricing actions cited for deficiencies in the subject report. I requested the input include a succinct description of the action, the basis for the price reasonableness determination, any rebuttal of the report findings regarding that determination, as well as any proposed corrective action, as appropriate. The input of the MILDEPs and Defense Agencies is attached (Attachments 2 through 5). In addition, because the draft report in part attributes problems to a new procurement environment arising from various acquisition reform initiatives implemented in recent years, the Office of the Deputy Undersecretary for Acquisition Reform (DUSD(AR)) has provided detailed comments (Attachment 6).

The MILDEPs and Defense Agencies indicate that, with very few exceptions, they do not agree with assertions that price reasonableness determinations were deficient, nor do they believe that overpricing occurred for most of the actions cited. They frequently take issue with the underlying facts cited in support of the findings, e.g., on the contract for Kiowa helicopter engines, the Army disagrees with the finding that $24.2 million in overpricing occurred, states that the auditors incorrectly calculated the alleged overpricing amount in part based on a quantity of 600 engines when only 239 have been ordered, and indicates that a well-documented fair and reasonable price was negotiated. This one action accounts for 60 percent of the overpricing alleged in the draft report. The MILDEPs also indicate they have experienced no pervasive problems with obtaining information requested from contractors.

The following table illustrates the findings provided by the MILDEPs and Defense Agencies:

	Draft Report Alleged Overpricing		MILDEPs/Defense Agency Review Findings	
	# of Actions	$ Amount	# of Actions	$ Amount
Army	24	$30,387,680	6	$851,237
Navy	4	$1,714,307	0	0
Air Force	16	$6,388,028	0*	0
Defense Logistics Agency	13	$1,964,555	9	$1,608,886
TOTAL	57	$40,153,080	15	$2,460,123

* 3 actions could not be located due to work transfers

In sum, while acknowledging some instances of overpricing or inadequate documentation, the MILDEPs and Defense Agencies believe such actions are not indicative of systemic problems. They, as well as the DUSD(AR), lament the fact that the report does not address the many recent efforts already undertaken and completed to improve the performance of price analysis. Nor does the report acknowledge that reasonable prices for an item fall within a range, and that agreeing to a price within that range reflects the exercise of judgment regarding all the factors affecting the particular procurement. Nevertheless, even as they disagree with the overall picture painted by the

draft report, all agree that better training and additional people will be needed to handle the pricing challenges that face DoD. In that regard, the Department has already initiated efforts to address future workforce requirements. We are also working with the Defense Acquisition University on strategies to improve the training provided our workforce to enable them to better perform the pricing function.

Our reply to the specific recommendations made to the Office of the USD(AT&L) is attached (Attachment 1). While we agree that improvements are needed in the performance and oversight of the pricing function, we do not believe that additional top-down direction represents a wise or practical approach. In addition, we do not agree with the assertion in Appendix A of the subject report that inadequacies in the performance of price reasonableness determinations and price analysis fall within the definition of a material control weakness as defined in DoD Instruction 5010.40. The MILDEPs and Defense Agencies have procedures in place for the review of business clearance memoranda and the preparation of other documentation that address the basis for price reasonableness determinations. We also disagree with the assertion in Appendix A that DoD contracting organizations do not perform reviews of areas related to the issues identified by the report. A review of the performance of the pricing function is typically part of the procurement management review of contracting activities as well as the performance evaluation of contracting officials responsible for pricing contracts.

We note 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. This supports our conclusion that, even though the MILDEPs 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.

Finally, I recommend that your office meet with representatives from MILDEPs, Defense Agencies, Office of the DUSD(AR), and my office to discuss the substantial disagreements over facts, assumptions, and estimating techniques before this report is finalized, particularly since some of the 18 locations reviewed have indicated that the auditors did not provide an outbrief of their findings.

Deidre A. Lee
Director, Defense Procurement

Attachments:
As stated

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Recommendations to the Under Secretary of Defense (AT&L):

1a. Require Senior Acquisition Executives (SAEs) identify the number of acquisition personnel required to realistically perform contracting workload, including obtaining the data needed for determining price reasonable, are accomplished. (Should result from a bottom-up review, not the activity's budget allocation.)

USD(AT&L) reply: Partially concur.

We agree that future staffing requirements at our contracting activities need review in light of future workload. However, the USD(AT&L) has already initiated a major acquisition "bottom-up" workforce review. USD(AT&L) and USD(P&R) jointly signed "Shaping the Civilian Acquisition Workforce of the Future," on October 11, 2000 and presented a roadmap for addressing future workforce issues. The report mandates that the components develop and implement comprehensive, needs-based human resource performance plans for the acquisition workforce. The initial plans are due July 1, 2001 and should be action-oriented implementation plans with specific goals based on the current workforce projected/modeled into the future to account for demographic and mission changes and compared against the people and skills needed to accomplish future mission requirements. The report requires detailed needs analyses and incorporation of task force initiatives. Performance plans must be supported by the programming and budgeting process, and integrated into existing strategic and performance plans.

Revised

1b. Correct Army and Navy inaction on the price trend analyses of commercial items.

USD(AT&L) reply: Concur.

The Army, Navy, and Air Force are continuing to review price histories of sole-source commercial items, as called for by the Fiscal Year (FY) 1999 Defense Authorization Act, and a report of their efforts will be included in the report on Price Trend Analysis submitted to Congress in April 2001 pursuant to the Act.

However, we do not agree with that part of this recommendation that characterizes previous efforts of the Military Departments (MILDEPS) to identify commercial items at risk for unusual price escalation as "inaction," for the reasons discussed below. Inaction carries the inference that no effort was expended by the MILDEPS, which is not accurate.

The report to Congress of April 2000 described the initial efforts of the Army, Navy, Air Force, and Defense Logistics Agency (DLA) regarding the identification of, and price trend analysis of, commercial items deemed to be at risk for unusual price escalation. The Act directed that price trend analysis be performed on commercial items grouped by category, by contractor, or by other logical groupings, as a way of identifying items that may be at risk for unusual price escalation. Procurement responsibility for the preponderance of commercial items is held by the DLA, which initiated an in-depth review of its extensive price history database to identify overarching price trends by categories (e.g., Federal Supply Groups or Classes). This ongoing DLA effort constitutes the bulk of the price trend analysis efforts of the Department. As with the April 2000 report, the

ATTACHMENT 1

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April 2001 report will consist, for the most part, of an update of DLA's ongoing price trend analysis efforts.

The MILDEPS retain procurement responsibility for a relatively small number of mostly repairable commercial items. As reported in the April 2000 report to Congress, the MILDEPS completed initial reviews of procurement price histories of sole source commercial items at the Army Communications and Electronics Command, the Naval Inventory Control Point Philadelphia, and the Air Force Materiel Command, i.e., buying activities engaged in the procurement of sole source commercial items. Unlike DLA, which studied price trends in the aggregate, the MILDEPS reviewed the price histories of individual parts to determine whether price trends were observable. Both the Army and Navy reported that the price histories of the items examined could not be said to exhibit any discernable trends because of significant variations in quantities purchased, extended time periods between procurements, or other variables. The Air Force indicated it would continue to review commercial spare parts procurements to determine whether there are good candidates for price trend analysis. The MILDEPS have indicated they are continuing to review price histories of individual parts to identify price trends.

1c. Initiate price trend analyses at all major contracting activities for noncommercial items (sole-source and competitive one-bid).

Revised

USD(AT&L) reply: Non-concur.

We believe it should be left to the contracting officer to determine what form a price analysis should take, using available information to complete an analysis that supports the price reasonableness determination. Notwithstanding the findings of the draft audit, the MILDEPS have provided information that asserts that, for the preponderance of contracts cited by the audit, they completed price analyses that conform with the requirements of the FAR to support price reasonableness determinations.

The FAR makes it clear that price analyses should evaluate the reasonableness of a proposed price in the context of price history for the same or similar items and/or other pricing information available from market research. This is already one of several approaches to price analysis identified in the FAR. An overall analysis of price information should ordinarily include some discussion of whether the price history of the item in question, or pricing information of the category of items that include the item being bought, exhibit upward or downward trends, and whether those trends have any significance for the proposed buy. However, trend analysis of prices for a specific item presupposes that the circumstances surrounding the pricing of prior procurements of that item have been reasonably consistent, such that any trends identified have some potential validity for the instant procurement. It is not always possible to identify a price trend in the price history of a single item because too many variables can affect the comparability of prior prices paid. Consequently, we do not agree that price trend analysis should be a mandated technique for all sole source and one-bid procurements.

The Director of Defense Procurement (DDP) has previously reminded contracting activities of existing policy requirements that address obtaining information necessary for performance of price analysis in support of price reasonableness determinations. By memorandum of August 2,

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2000, the DDP cited revisions to FAR Parts 12 and 15 that implemented the requirements of the FY 1999 Strom Thurmond National Defense Authorization Act regarding contractor submittal of pricing information and methods used in determining price reasonableness of sole-source commercial items. The memorandum reminded the DoD contracting community of the importance of obtaining historical pricing information to the extent needed to support determinations of price reasonableness for sole-source commercial items. The same principles apply to non-commercial sole-source and one-bid items.

Revised

1d. Establish procedures to identify contractors that refuse to provide data requested by contracting officials and institute corrective measures *to include involving the HCA, Major commands as appropriate, and SAEs,* and annotating the information in contractor past performance files.

USD(AT&L) reply: Partially Concur.

We agree that circumstances that lead 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. But FAR 42.1501 already indicates that past performance information includes "the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer." Therefore, we see no need for additional policy guidance regarding what specific contractor actions constitute uncooperative behavior requiring documentation in past performance evaluations. We believe that it is not in the Government's best interests to list hypothetical circumstances, like the denial of data, that constitute a basis for customer dissatisfaction. Listing potential causes of dissatisfaction would be too limiting, and could be perceived as establishing a hierarchy of situations that support negative contractor evaluations.

We also agree that it is sometimes appropriate to involve higher levels of management, up to and including the Service Acquisition Executive (SAE), in actions taken in response to contractor refusals to provide data requested by contracting officials. However, we believe it would be unnecessarily prescriptive to use formal procedures to describe what constitutes effective business judgment. It should be left to the discretion of the respective levels of management at contracting activities to determine when it is appropriate to bring unsatisfactory contractor behavior to the attention of higher management. This is an inherent part of the management of the business affairs of a contracting activity, and is already subject to periodic management reviews.

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ACQUISITION AND TECHNOLOGY

23 March 2001

MEMORANDUM FOR DIRECTOR, DEFENSE PROCUREMENT

SUBJECT: DoDIG Draft Audit Report, "Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data are Not Required" (Project No. D2000CF-0059)

I appreciate the opportunity to comment on the subject draft report. The report evaluated whether contracting officers obtained information, in accordance with the Federal Acquisition Regulation, Part 15, "Contracting by Negotiation" to determine price reasonableness when certified cost or pricing data were not required, and whether these reasonableness determinations were adequate. The report also reviewed the cognizant management control program as it related to the overall audit objective. Comments and recommendations are attached.

I recommend the Director, Defense Procurement incorporate my comments in your response to the DoDIG draft report.

for Donna S. Richbourg
Acting Deputy Under Secretary of Defense
(Acquisition Reform)

Attachment:
As stated

DUSD(Acquisition Reform)
Comments and Recommendations

1. **Issue**: Page ii, 1st paragraph, 2nd sentence. "We further recommend that they require the Head of the Contracting Activity establish controls regarding the use of exceptions, and identify all fiscal year 2001 contracts with unreasonably high priced items and institute corrective actions, and include in Program Management Reviews whether cost or pricing data was obtained as needed, price analysis was properly performed and whether price reasonableness was adequately established."

Response: Many of the examples the audit cites as being problems were contracts awarded shortly after regulation changes were made. The examples the IG highlights misrepresent the Department, the efforts the Department is already taking to safeguard DoD interests, and the gains made by recently implemented acquisition reform practices. In fact, since many of the cited contract awards were made, the following relevant new guidance and policy was issued to support new Department acquisition practices:

Air Force:

- The Deputy Assistant Secretary of the Air Force for Contracting (SAF/AQC) Commercial Acquisition Web Site is available at: http://www.safaq.hq.af.mil/contracting/policy/commercial_acq.cfm
- Headquarters Air Force Materiel Command - Directorate of Contracting Policy Division (HQ AFMC-PKP) Commercial Homepage includes various links for commercial items, market research and price based acquisition (click on the training materials section). It is available at: http://www.afmc-mil.wpafb.af.mil/organizations/HQ-AFMC/PK/pkp/pkpc/com-aq.htm
- Air Force Materiel Command Commercial (AFMC) Acquisition Guide is available on the HQ AFMC/PKP Guides Page at: http://www.afmc-mil.wpafb.af.mil/organizations/HQ-AFMC/PK/pkp/guides.htm
- AFMC has developed a Student Workbook from the two-hour Commercial Item Pricing Training available at: http://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/pkpc/com-aq.htm#list1
- Air Force market research and pricing tools can be found at: http://www.safaq.hq.af.mil/contracting/toolkit/part15/price/com_pxing.htm http://www.afmc-mil.wpafb.af.mil/organizations/HQ-AFMC/PK/pkp/pkpc/mr-caqc.htm

- SAF/AQC developed Captain Commercial. This publication builds on the Air Force's positive commercial item pricing experiences and is the first official, specific guidance from SAF/AQC to buyers on how to approach the pricing of commercial items. It serves two specific purposes. First, the handbook consolidates the best practice advice from the leading texts in commercial pricing practices. Second, the handbook integrates this advice with selected government acquisition cases. Combined, this information begins to form the knowledge base for approaching the task of pricing commercial items. It is available at:
  http://www.safaq.hq.af.mil/contracting/captcommercial/

Defense Acquisition University (DAU):

- DAU revised three courses (CON 101, CON 104 and CON 204) from the basic Contracting Curriculum to address different aspects of commercial item acquisition. These updated courses have been offered since autumn 1999. Information about the courses can be found at:
  http://www.acq.osd.mil/dau/
- DAU offers the course CON 235 Advanced Contract Pricing. This course is designed for buyers, price analysts, and contracting officers tasked with obtaining fair and reasonable prices in today's defense acquisition environment. The course addresses understanding market forces and the market research process critical to deciding if an acquisition should be commercial. Application of quantitative tools used in price analysis for commercial items and price or cost analysis for non-commercial items are explored. Statistical analyses and parametric methods are examined. The following topics are embodied during course discussions, exercises, and cases: Market Research, Developing an Estimating Tool, Analogy Technique, Parametric Estimating, Computer Software Applications, Best Value, Integrated Product Team Pricing, Getting Expert Opinions, and Commercial Item Pricing. Information about DAU courses can be found under the "Course Listing" at:
  http://dau3.fedworld.gov/dau/index.htm
- DAU worked with the Department of the Army in partnership with the University of Virginia's Darden Graduate School of Business to develop the course Competing in a New Business Environment: A Program for Defense Acquisition Executives. This course was specifically developed to address the perceived deficiency of government personnel's knowledge of what drives private-sector business decisions. This course is held bi-annually, offering students exposure to real business case studies, guest corporate and government lecturers, and a follow-up session identifying lessons learned for implementation into the Department. Lt Col John Manning is the point of contact for this course; for

information regarding specifics on course content, contact him at: manninj@acq.osd.mil or at (703) 845-6738.

Defense Contract Management Agency/Defense Contract Audit Agency

- DCMA has a commercial item acquisition web site at:
  http://www.dcmc.hq.dla.mil/Hot/Citem/Citem.htm
- DCMA policy can be found at:
  http://www.dcmc.hq.dla.mil/onebook/3.0/3.2/ContRecRevContTypes.htm#Commercial
- DCMA and DCAA chartered the Joint Industry/Government Parametric Cost Estimating Initiative. This group including members from both the chartering organizations, the services and representatives of industry prepared a Parametric Cost Estimating Handbook. Parametric estimating is an acceptable method, according to the Federal Acquisition Regulation, for preparing proposals based on cost or pricing data or other types of data. This handbook is a guide for Industry and Government acquisition professionals who prepare, evaluate, or negotiate proposals based on parametric estimating techniques. The Parametric Cost Estimating Handbook can be found at:
  http://www.ispa-cost.org/PEIWeb/cover.htm

Defense Logistics Agency

- SD-2: Buying Commercial & Non-developmental Items handbook offers guidance on commercial and NDI acquisitions. The information is applicable to all types of materiel: systems, subsystems, assemblies, parts, and items of supply. This guide does not present a "cookbook" approach to commercial and NDI acquisitions -- such an approach could not accommodate that vast array of potential applications. It does offer "lessons learned" and "things to consider" to help you shape your overall thought process.
  http://www.dsp.dla.mil/documents/sd%2D2.html

Defense Standardization Program Office

- DSPO publishes a set of guidance documents that are identified as "SD's" (Standardization Directories). SD-2: Buying Commercial and Nondevelopmental Items: A Handbook was published on April 1, 1996. (Actually, it was a revision of an earlier "Nondevelopmental Item (NDI)" handbook.) The document has been well received. The SD-2 has also been incorporated into the Defense Acquisition Deskbook. You may view a more interactive copy of the document (in HTML format) on the DSP home page at:
  http://dsp.dla.mil/documents/sd-2/default.htm
- DSPO sponsored the development of a 2-day course on Buying Commercial and Nondevelopmental Items, which has been part of

the DAU curriculum for the last few years. You can find more details about PQM 202, "Commercial and Nondevelopmental Item Acquisition" on the DAU home page at:
http://www.acq.osd.mil/dau/chap5.html#PQM202

- Since acquisition of commercial items requires both market research and, for standard items, the preparation of commercial item descriptions, SDPO has also developed resources for those topics. SD-5: Market Research was published in July 1997. DSPO has already funded an effort to have the Appendix to the SD-5 (essentially a catalog of online resources) converted to an interactive Web index of resources available soon through the DSPO Web Page at:
http://www.dsp.dla.mil/
- The related DAU courses are PQM 203, "Preparation of Commercial Item Descriptions" and PQM 212, "Market Research". You can find them on the DAU web site, respectively, at:
http://www.acq.osd.mil/dau/chap5.html#PQM203
http://www.acq.osd.mil/dau/chap5.html#PQM212

Navy:

- The Assistant Secretary of the Navy (Research, Development and Acquisition) issued a memorandum in June 1997 informing the acquisition community that the Department of Defense is encountering situations where sole source firms are proposing commercial items at catalog prices that reflect excessive increases over the prices charged when the same items were previously bought using cost or pricing data of issues experienced with the pricing of commercial items. This memorandum provides guidance for contracting officers to understand the basis of catalog prices and encourages the use of market research, and provides guidance about the types of information that can be used to determine price reasonableness. This memorandum can be found at
http://www.abm.rda.hq.navy.mil/abm97%5F11.html
- The Assistant Secretary of the Navy (Research, Development and Acquisition), Acquisition Reform office developed a Market Research Tutorial. This tutorial was designed to assist members of the Navy acquisition community to understand market research and its importance in achieving acquisition reform goals of acquiring weapon and combat system capabilities better, cheaper, and faster. This tool has been prepared in two formats: a tutorial that steps through the principle elements of market research and a reference tool that permits users to access specific market research topics for review.
http://www.acq-ref.navy.mil/marketresearch/

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Office of the Secretary of Defense:

- The Office of the Deputy Under Secretary of Defense (Acquisition Reform) sponsored two Satellite Broadcasts to launch an aggressive educational program on commercial pricing and contracting in a sole-source environment. Information about satellite broadcasts can be found at:
  http://www.acq.osd.mil/ar
  - Contract Pricing One, held on February 25, 1998. This training addressed tools and techniques for determining fair market value and prices for commercial items.
  - Contract Pricing Two, held on June 25, 1998. This training addressed tools and commercial practices for obtaining fair and reasonable prices in both competitive and sole source environments.
- Contract Pricing Reference Guides (especially Volume 1, Price Analysis, Chapter 1 - Conducting Market Research for Price Analysis) are available at:
  http://www.acq.osd.mil/dp/cpf/
- The Office of the Deputy Under Secretary of Defense (Acquisition Reform) offers a Web-based market research tool, i-Mart. This is a simple, user-friendly tool that simultaneously searches the Web for market and product information that can be used to maximize the capabilities, technology, and competitive forces of the marketplace. The data generated by i-Mart includes prices for similar items in a related industry, and prices from current price lists or catalogs. The i-Mart market research tool enables online research on the basis of a product description and/or its Federal Supply Class/Federal Supply Group code. This research can be a valuable step in the comparative analysis that is at the heart of price reasonableness determinations. Additionally, the i-Mart offers a market research tutorial. i-Mart can be found at:
  http://www.imart.org/
- The Office of the Deputy Under Secretary of Defense (Acquisition Reform) offers the Commercial Advocates Forum Web site. This site promotes the acquisition of commercial items and the use of commercial practices by disseminating information to front-line buyers; enabling exchange of questions and answers; and sharing best practices and lessons learned. By visiting the Commercial Advocates Forum as part of the market research effort, contacts for similar acquisitions are made. The Forum offers extensive data focused on commercial item acquisition, including news and success stories, links to agency commercial advocates, and a library of resources and tools that can help to simplify the market research effort. Market research is a key method of determining whether a proposed price is fair and reasonable, and data from buyers and other experts are important data to

consider as part of your market research. The Commercial Advocates Forum Web site is:
http://www.cadv.org/

Other Known Sources:

- The National Association of Purchasing Management (NAPM) and the National Contract Management Association (NCMA) offer the Web-based course Integrating Commercial Practices with Government Business Practices, Program I: Managing Suppliers. This course includes three learning modules: 1) Concepts of Integrating Commercial Practices; 2) Managing Suppliers and Commercial Practices; and 3) Improving Supply Chain Performance. Under the second module, price and cost analyses are discussed as tools that help in the selection of good suppliers. Factors that affect supplier prices are covered in detail, with special recognition given to the need for analyzing prices that reflect commercial, market-driven, supply-demand situations, including prices affected by government-unique requirements. The course has been available since February 1999. More than 4,000 defense personnel have taken the course. Specific details on this course can be found at:
http://www.napm-ncma.org/
- The Federal Acquisition Institute (FAI) of the General Services Administration (GSA) offers an online course Market Research (currently in beta test). The course has a section on developing price estimates that strongly emphasizes awareness of 1) changes in quantity discounts that can affect prices, 2) current market conditions such as the extent to which increased competition can lower prices, and 3) effects resulting from changes from detailed design specifications to performance requirements that enables consideration of new sources that may lead to lower prices. The course is available at:
http://www.faionline.com/fai/register_new/fai_main.asp
- General Services Administrations Commercial Items Contracting Seminar - 2nd DFART Part 1, Student Text provides a good general description of commercial FAR coverage at Parts 10, 11, and 12. Designed to give a basic understanding of skills required to build a successful solicitation, make award, and administer a contract for commercial items. Market Research, Market Acceptance, Inspection/Acceptance and Warranty require careful consideration when applying them to your particular acquisition. It is available as a link through:
http://www.safaq.hq.af.mil/contracting/training/selfstudy.cfm
or can be accessed directly at:
http://www.gsa.gov/staff/v/homepages/fasa/part1com.pdf
- Haystack is a commercial service that allows you to access about 40 government databases, including the FLIS and procurement

history files containing contract numbers, prices, quantities, date purchased, etc.
http://www.ihserc.com/whatsnew/wnhay.html

Further, relevant new courses and guidebooks have been developed by or in conjunction with the OSD Acquisition Reform office. The courses and guidebooks are as follows:

Course	Source	Available Since
Managing Suppliers	NCMA/NAPM	Dec 00
Performance Based Service Acquisition	NCMA/NAPM	Dec 00
Commercial Business Environment	Multiple	Jun 00
Past Performance	DAU	May 01
Commercial Off-The-Shelf (COTS) & Commercial	DAU	Dec 00
Operational Requirements	DAU	Jan 01
Cost as an Independent Variable	DAU	Feb 01
Incentives	DAU	May 01
Market Research	FAI	Dec 00

Guidebooks	Source	Available Since
Performance Based Acquisition	AR	Nov 00
Commercial Acquisition	AR	Dec 00
COTS	AR	Aug 00

Relevant courses in development include:
Price Based Acquisition
Commercial Acquisition
Other Transaction Authority
Intellectual Property
R&D Acquisition
Knowledge Management

Relevant guidebooks in development include:
Supplier Vision
Past Performance (update)
Incentives

2. **Issue**: Page 23, 2nd paragraph. "We initially selected a judgmental sample of Army, Navy, Air Force and Defense agency contract activities that awarded total contract actions amounting to over $500 million. At these locations, we reviewed large dollar contract actions. After the survey phase was completed, we changed our threshold for selection to sole source and competitive with one-bid actions over $100,000 that were awarded at contracting sites with at least $25 million in activity."

Response: Since the IG redefined the audit scope, it should address why it significantly revised the criteria for its audit review from large buying activities and large purchases to the smallest DoD buying activities and the smallest DoD purchases. We believe that, because of effective DoD risk management practices at the larger activities and on the larger buys, DoD is doing an excellent job in ensuring that effective contract practices are followed. Several GAO best practice audit findings found the Department prudently expended more of its resources on high dollar acquisitions.

3. **Issue**: Page 1, 2nd paragraph, 1st sentence. The IG references 11 reports related to price reasonableness determinations issued since FY1998 where the audits determined that DLA did not negotiate the most economical price for spare parts.

Response: It is important to note that many of the cited audits' findings were disputed. Additionally, Report No. D-2000-192 "Results of the Defense Logistics Agency Strategic Supplier Alliance for Catalog Items," dated September 26, 2000, commended the Department's use and application of a strategic supplier alliance with Honeywell. This audit cited lower percentages of price increases for commercial items bought by DLA. The IG should acknowledge progress made by the Department.

4. **Issue**: Page 4, 3rd bullet. "Contracting Officer did not obtain cost data when other means were insufficient to determine price reasonableness. Acquisition reform has de-emphasized the need to obtain cost data and this has also limited the use of Defense Contract Audit Agency (DCAA) for price analysis support. This atmosphere generated by acquisition reform has also empowered contractors to refuse to provide cost or other data for 18 contracts when requested by contracting officers."

Response: 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. It is important to note FAR Part 15 includes escalation procedures through the HCA and/or MDA when a company refuses to provide certain requested pricing information. Further, another recourse provided under the auspices of acquisition reform is negative past performance evaluations for contractors that fail to negotiate in good faith.

5. **Issue**: Page 4, 1st paragraph after bullets, 3rd sentence. "Additional overpricing may have occurred on the remaining 73 actions, but we did not have enough information to quantify an amount."

Response: This unsubstantiated statement should be deleted.

6. **Issue**: Page 4, 3rd paragraph, 2nd sentence. "Contractors bolstered by changes in acquisition regulations, more readily refused to provide cost information requested and rather than aggressively challenging contractors to provide the information, contracting officials use faulty exceptions."

Response: This unsubstantiated statement should be deleted.

7. **Issue**: Page 5, 1st paragraph, 2nd sentence. "All of the 53 contract actions that had invalid exceptions or no exception at all had inadequate price reasonableness determinations."

Response: The IG makes an allegation regarding inadequate price reasonableness determinations but does not cite how the determinations were inadequate. Contracting officers are following FAR guidance in preparing post award clearance memoranda with which the IG finds fault. More specifics are needed to determine if they failed to follow due process. Without any specifics, the alleged overspending commentary should be dropped from the report.

8. **Issue**: Page 6, 1st paragraph, 2nd sentence. "The description of the night vision viewers, along with the purpose, indicates that they have military rather than commercial application."

Response: The IG overlooks a critical issue in this procurement and that is that the night vision viewers are not being procured, they are being *repaired*. There are commercial practices for the repair of night vision viewers. The IG needs to reexamine and revise the basis for its discussion. The alleged overspending cited by the audit should be dropped from the report.

9. **Issue**: Page 6, 5th paragraph. The IG asserts that competition was used as the exception from requiring certified cost or pricing data for an action valued at $174,675.

Response: There is no requirement to obtain certified cost or pricing data for actions below the $500,000 threshold, so no exception is needed. The IG should reexamine this discussion.

10. **Issue**: Numerous assertions by the IG throughout the audit where comparisons were made with respect to previous buys and the new prices were reflective as being poor decisions.

Response: The IG needs to establish a basis of comparison for the previous buys to ensure that a valid comparison was made. Under separate efforts, the Military Departments have attempted

this and find it is fraught with problems. Invalid comparisons can occur for many reasons including: differing quantities; long time frames elapsing between the previous buy and the current buy; differences in contractor add-ons between previous and current buys to include warranty, stocking, shipping, response time, product technology; potential for an item to no longer be manufactured making a current buy a "build to order" item; obsolescence; change in manufacturer; prime vendor support; plant closure; or any combination of the above. To ensure that the comparisons the IG made were valid, the IG needs to spell out the criteria it used and ensure consistency.

11. **Issue**: Page 8, 2nd paragraph, 1st sentence. "Contracting officers inadequately determined price reasonableness for the 16 actions, using catalog prices, prior history, and cost analyses."

Response: The IG makes an allegation regarding inadequate price reasonableness determinations but does not cite how the determinations were inadequate. More specifics are needed. The alleged overspending cited by the audit should be dropped from the report.

12. **Issue**: Page 15, 6th paragraph, 1st sentence. "The changes in definition of a commercial item and the limitations imposed on obtaining cost or pricing data has had the effect of limiting the contracting official's opportunities to determine price reasonableness."

Response: The IG's assertion is unsubstantiated. DoD must continue to get the best pricing possible. Commerciality determinations allow the contracting officer to seek additional sources while still reserving the right to require pricing information or cost data if necessary to ensure the government is receiving the best value and a reasonable price. Acquisition reform provides additional tools in the contracting officer's choices for obtaining the best value for the government.

13. **Issue**: Page 17, 2nd paragraph, 1st sentence. "There needs to be an integrated strategy for the Under Secretary of Defense for Acquisition, Technology and Logistics and from Senior Acquisition Executives to deal with contractors who refuse to provide data for determining fair prices. This should include listing the refusal in contractor past performance records, notifying program managers developing new systems of the contractor refusals, and requiring the Head of Contracting Activity, Commander of the Activity, and the Senior Acquisition Executive to become involved, as appropriate, with the contractor.

Response: The IG's comment misrepresents current guidance. The Past Performance System already has provisions that allow the

capture of data regarding contractors that are uncooperative in negotiations. Further, the FAR already contains provisions for escalating a situation where a contractor refuses to comply with certain contracting officer-specified requirements.

14. **Issue**: Page 17, 4th paragraph, 2nd sentence. "The senior leadership did not 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 officer's price reasonableness determinations."

Response: Acquisition reform practices are a means to deal with reduced staffing, time, and funding resources. Acquisition reform practices have saved the Department procurement resources, but the IG's findings ignore potential benefits from acquisition reform.

15. **Issue**: Page 19, paragraph 4, last sentence. "There are probably many more instances of unreasonably high prices."

Response: This unsubstantiated, subjective statement should be deleted from the report.

16. **Issue**: Page 20, 2nd paragraph, 4th sentence. "In addition, we use a 95 percent learning curve to further adjust the price for difference in quantities procured."

Response: This technique is not valid. Use of a learning curve is appropriate only if you also have data available on the number of labor hours to be used and where the manufacturer is on the learning curve.

Army Comments

REPLY TO ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

15 FEB 2001

SAAL-PC

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ATTENTION: DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, 400 ARMY NAVY DRIVE, ARLINGTON, VA 22202-4704

SUBJECT: Response to Draft DODIG Audit on Price Reasonableness

Reference:

a. Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Defense Procurement, Memorandum, December 21, 2000, subject: Draft Department of Defense Inspector General (DODIG) Audit Report on Adequacy of Price Contracting Officer Determination of Price Reasonableness When Cost Or Pricing Data Are Not Required.

b. Draft DODIG Audit Report on Adequacy of Price Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data Are Not Required.

Enclosures 1, 2, and 3 are provided in response to referenced audit report.

We performed a detailed review of each Army contract cited by the DODIG as having price reasonableness determination problems. Our results are summarized in the matrix at Enclosure 1 and a detailed summary of each contract is in Enclosure 2. We concur that seven (7) of the forty-five (45) contracts had price reasonableness determination problems and we agree that overpricing may have occurred on six (6) contracts. We have estimated the amount of the overpricing to be $851,237 versus the DODIG cited amount of $30,387,680. The Army's rationale for the alleged overpriced contracts is included in Enclosure 2.

Generally we found that the DODIG report used questionable methods to compute overpriced and overlooked factual information. For example, in several instances the audit cited that catalog or market prices were accepted without further review when, in fact, pricing information was obtained and discounts negotiated. In other cases, the audit cited that competitive prices were used when no competition existed. In fact, cost and/or other price analysis techniques were used. Enclosure 2 addresses the audit's shortcomings and the cognizant

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Army contracts mentioned within the text of the DODIG audit, in detail and by contract number.

In the most serious case, the auditor calculated overpricing of $24.2 million based on a quantity of 600 engines on a requirements type contract where only 239 engines have actually been ordered. The audit also suggested that the Army should have obtained a unit price discount based upon a quantity of 600 engines even though our estimated order quantity was only 120 per year and was not guaranteed. Based upon a review of the price analysis and the negotiation memorandum, we believe that a well-documented fair and reasonable price was obtained in this case.

The DODIG report alleges that program officers and contracting officers did not adequately plan for acquisitions, thus creating an unjustified state of urgency. The Army activities partially concur with this statement because they agree that urgent procurements should be avoided to the maximum extent possible; they cannot, however, be eliminated. Some of the Army contracts evaluated by the IG under urgent conditions were centered on the Gulf War, and others were due to shortcomings in requirements forecasting to reduce spare parts shortages.

Obtaining a well-documented, fair and reasonable price is critical for every contract action. However, when you have 12 of the 18 contracting activities concerned about the contracting officers' workloads being too heavy due to staffing shortages, there appears to be a problem. We strongly believe that the shortcomings with which we have concurred are the result of reducing our contracting workforce by more than 50 percent over the past ten years. Significant additional reductions are projected. Our remaining workforce is now faced with a more increasingly complex workload. We are now in the process of briefing senior Army leadership on what we believe is a contracting manpower crisis.

The audit report claims that the contracting officers did not obtain cost data when other means were insufficient to determine price reasonableness. Acquisition reform has de-emphasized the need to obtain the data and this has also limited the use of the Defense Contract Audit Agency (DCAA) for price analysis support. The atmosphere generated by acquisition reform has also empowered contractors to refuse to provide cost or data for contracts when requested by contracting officers.

The Army activities non-concur with this claim. Enclosure 2 gives detailed information about Army contracting officers requesting and receiving cost data, with little or no problem, when other means were insufficient to determine price reasonableness. Acquisition reform objectives include ensuring that contracting officers have more choices and discretion.

It is important to note that contracting officers are vanguards of the public trust, and as such, are charged with taking the actions necessary to ensure the public interests are preserved. Acquisition reform has not changed this; it has, however, added supplementary resources to ensure that the contracting officer obtains the best pricing. Furthermore, another recourse provided under the auspices of acquisition reform is negative past performance evaluations for contractors who fail to negotiate in good faith.

The DODIG report alleges that senior leadership oversight was inadequate. The Army non-concurs. The contracting community was able to obtain senior leadership when necessary to perform their acquisition duties. The Under Secretary of Defense (USD) for Acquisition, Technology, and Logistics (AT&L) has already initiated a major acquisition bottom-up workforce review. On October 11, 2000, the USDs for AT&L and for Personnel and Readiness (P&R) jointly issued the report, "Shaping the Civilian Acquisition Workforce of the Future", a roadmap for dealing with the human resource challenges of recruiting, retaining, and training the acquisition workforce of the future. Acquisition reform practices are a means of dealing with fewer staffing, time, and funding resources, and have indeed saved the Departments in many areas of procurement resources, but the DODIG findings ignore potential benefits as being irrelevant to the findings of the audit report.

Our comments for each recommendation made in the report are provided in Enclosure 3.

If additional information is needed please contact Ms. Zalerie Moore, (703) 617-8125 or Mr. James Gleason (703) 617-4437.

Robert Brown, COL
for Edward G. Elgart
Acting Deputy Assistant Secretary of the Army
(Procurement)

Enclosures

MATRIX OF CONTRACTS REVIEWED

	CONTRACT #	IG FINDINGS: Catalog Pricing W/O Additional Review	IG FINDINGS: Prior Prices Used Not Justified	IG FINDINGS: Competitive Pricing W/O Competition	IG FINDINGS: Accepted Unsupported Costs	REMARKS	OVERPRICING: DODIG	OVERPRICING: ARMY	COMMENTS
1	DAAA09-98-C-0070		X			Partial	1,928,083	483,531	Price analysis shows reduced overpricing amount.
2	DAAB07-97-C-J230		X			Non-Concur	*		Price analysis supports the award price.
3	DAAB07-97-C-J541			X		Non-Concur	*		Cost analysis supports award price.
4	DAAB07-97-C-J542			X		Non-Concur	*		Cost analysis supports award price.
5	DAAB07-98-C-6004	X				Non-Concur	*		Other sources checked-Discount negotiated
6	DAAB07-98-C-B263		X			Partial	395,417	23,532	Army calculation based on a detailed price analysis
7	DAAB07-98-C-D510		X			Concur	*		
8	DAAE07-00-P-S009				X	Non-Concur	483,540	0	Cost and pricing information obtained and analyzed
9	DAAE07-94-D-A013	X				Non-Concur	*		A 34.3% discount was negotiated from the catalog price.
10	DAAE07-96-C-X124	X				Non-Concur	*		Reduce price negotiated. Sales information provided.
11	DAAE07-96-D-T024	X				Non-Concur	114,570	0	Cost information was obtained and analyzed.
12	DAAE07-97-G-T003				X	Non-Concur	*		Cost analysis supports award price.
13	DAAE07-98-D-T041				X	Non-Concur	*		Cost analysis supports award price.
14	DAAE07-99-C-L038	X				Non-Concur	*		A 7.7% discount was negotiated from the catalog price.
15	DAAE07-99-C-N017		X			Concur	129,061	129,061	
16	DAAE07-99-C-N029		X			Non-Concur	218,887	0	Cost analysis supports award price.
17	DAAE07-99-C-N045		X			Partial	54,298	0	Initial qty cut to expedite award, but additional awards were not anticipated. PA supports price.
18	DAAE07-99-C-N049		X			Concur	63,033	63,033	
19	DAAE07-99-C-Q008				X	Non-Concur	*		Cost and price analyses support the award price.
20	DAAE07-99-C-Q011	X				Concur	*		
21	DAAE07-99-C-T023				X	Non-Concur	38,930	0	Cost analysis supports award price.
22	DAAE07-99-C-T067			X		Non-Concur	103,470	0	Competitive pricing not used. Two price analyses used to support the award price.
23	DAAE07-99-D-N021			X		Non-Concur	174,126	0	Competitive pricing not used. Price analysis supports price.
24	DAAE20-97-C-0242		X			Non-Concur	*		Cost analysis supports award price.
25	DAAE20-98-C-0017			X		Non-Concur	*		Competitive environment did exist. Cost data obtained and analyzed.
26	DAAE20-99-C-0022		X			Non-Concur	*		Prior price used for comparison was competitive.

MATRIX OF CONTRACTS REVIEWED

	CONTRACT #	IG FINDINGS: Catalog Pricing W/O Additional Review	IG FINDINGS: Prior Prices Used Not Justified	IG FINDINGS: Competitive Pricing W/O Competition	IG FINDINGS: Accepted Unsupported Costs	REMARKS	OVERPRICING DODIG	OVERPRICING ARMY	COMMENTS
27	DAAE20-99-C-0016				X	Concur	43,045	43,045	
28	DAAE20-99-C-0028		X			Non-Concur	*		Cost analysis supports award price.
29	DAAE20-99-C-0072				X	Non-Concur	191,343	0	Cost and price analyses support the award price.
30	DAAE20-99-C-0073	X				Non-Concur	*		Verified other sales at the same price for similar quantity.
31	DAAE20-99-C-0074			X		Non-Concur	106,704	0	Competitive environment existed. Price analysis supports the award price.
32	DAAE20-99-C-0082				X	Partial	143,583	0	Cost analysis should have been better. Price compared to competitive follow-on contract.
33	DAAE20-99-C-0110		X			Partial	60,489	0	Concur w/ prior price used improperly. Disagree w/ overpricing based on price analysis.
34	DAAE20-99-C-0113				X	Non-Concur	*		Cost analysis supports award price.
35	DAAE20-99-C-0123		X			Concur	109,035	109,035	
36	DAAE20-99-D-0026			X		Non-Concur	964,212	0	Competitive environment existed. Price analysis supports the award price.
37	DAAE20-99-D-0099			X		Partial	274,531	0	Cost/price data should have been done, but the price analysis supports award price.
38	DAAH01-98-C-0155		X			Concur	*		
39	DAAH01-99-D-0076		X			Non-Concur	610,003	0	Cost information supports the award price. Waiver properly executed.
40	DAAH23-98-C-0133	X				Non-Concur	*		Price analysis and DCAA audit support the award price.
41	DAAH23-98-D-0014		X			Non-Concur	*		Price history includes certified cost/price data, and cost analysis which support award price.
42	DAAH23-98-D-0117		X			Non-Concur	*		Previous price was compared to prices paid by other customers.
43	DAAJ09-96-C-0116				X	Non-Concur	*		DCAA audit done. Cost analysis and negotiation memorandum support award price.
44	DAAJ09-97-D-0196		X			Non-Concur	*		Price analysis supports the award price.
45	DAAJ09-97-D-0202	X				Non-Concur	24,181,320	0	Pre and Post BCM support price. Commerciality based upon similarity to another engine.
		9	18	8	10		30,387,680	851,237	

TOTAL CONCUR	7
TOTAL NONCONCURS	32
TOTAL PARTIALLY CONCURS	6

* DODIG did not calculate overpricing on these items.

ARMY'S RESPONSE TO THE DODIG AUDIT REPORT ON PRICE REASONABLENESS CONTRACT FINDINGS

1. DAAA09-98-C-0070

DODIG FINDING: a. "Prior Prices Used Were Not Justified as Reasonable"
b. Overpricing Calculated: $1,928,083
ARMY RESPONSE: Partially Concur.

Price Reasonableness Determination. The determination of a fair and reasonable price was based upon price history with an adjustment for additional costs. Further review revealed that the additional costs were non-recurring startup costs for the prime contractor to produce a major component (Body Assembly) due to the demise of the historical subcontractor. These additional costs were accepted without the normal level of analysis due to urgency. Therefore, we concur that the price was not fully supported.

Overpricing. The DODIG calculated the amount of overpricing by comparing a unit price of $5.49 to the award price of $8.14. We could not determine exactly how the price of $5.49 was calculated but have concluded that it is significantly understated. In FY97, the Army paid a unit price of $5.63 for a quantity of 2,195,403 to be produced in 1998. The contract in question was awarded for a quantity of 727,115 for production in 1999. The DODIG adjusted unit price is lower than the FY97 price paid for a larger quantity. We have performed a detailed price analysis that resulted in an acceptable price of $7.74 which is within five percent of the negotiated contract price.

2. DAAB07-97-C-J230

DODIG FINDINGS: a. "Prior Prices Used Were Not Justified As Reasonable"
b. Narrative assessment that the commercial item exception for not requiring certified cost and pricing data was improperly used.

ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. A price comparison was done on the basis of current prices for AN/VVS-2 viewers as stated in the (then) current production contract for the same item. The PCO's price reasonableness memo states, "The contractor proposed a maximum price of $4,153 to repair, this is 85% of $4,886 of the current price on the (production contract)." The Sacramento Air Logistics Center (SM-ALC) performed an additional price comparison utilizing a (then) current repair contract for the same item. The SM-ALC contract stated a maximum repair/conversion price of $4,216, versus the Litton $4,153.

Commercial Item Exception. Litton claimed an exemption to the requirement of submitting cost or pricing data, via a SF 1448. The determination was made by the PCO that the Driver's Night viewer adequately met the definition of a commercial item. The audit report stated that the AN/VVS-2 viewers are used on battle tanks and that *"the viewers enable a closed-hatch vehicle to be driven during nighttime conditions by amplifying ambient light. The description of the night vision viewers, along with the purpose, indicates that they have military rather than commercial applications."* The stated purpose, that being amplifications of ambient light is not unique to the military. Night Vision items have been and continue to be widely available commercially. It should be noted that items can be commercial as well as military—this distinction is not mutually exclusive. The IG overlooked a key critical issue in this procurement and that is that the night vision viewers are not being procured, they are being *repaired.*

3. DAAB07-97-C-J541 and 4. DAAB07-97-C-J542

DODIG FINDING: "Used Competitive Pricing When No Competition Existed"
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. Because only one proposal was submitted, the acquisition was treated as a sole source and a detailed cost analysis was performed. A review of indirect cost rates was initiated with the applicable DCAA offices. The DCAA recommended rates were applied to the technical evaluators recommended hours and to arrive at a total Government negotiation objective. This is all documented and approved in the Pre-business Clearance Memorandum. Negotiations were conducted face to face over a period of approximately two weeks. This is documented in the Post-Business Clearance memorandum and the total cost was determined fair and reasonable.

5. DAAB07-98-C-6004

DODIG FINDING: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Non-Concur.

Price Reasonableness Determination. The contracting officer did not accept the catalog price without additional review. The contracting officer checked several sources for price and product availability. The contractor's (Draeger) price was competitive with the other sources. In addition, the contracting officer negotiated a 1% prompt payment discount to the catalog price.

6. DAAB07-98-C-B263

DODIG FINDINGS: a. "Prior Prices Used Were Not Justified as Reasonable"
b. Overpricing Calculated: $395,417
ARMY RESPONSE: Partially Concur

Price Reasonableness Determination. This contract was closed out on September 28, 2000. A CECOM Contracting Officer researched the contract files to determine "why current prices are much higher than the IGCE (Independent Government Cost Estimate) prices and prior contract prices."
The IGCE used the wrong previous history unit prices and quantities, the wrong present contract quantities and the KO feels that they did not include sufficient inflation to develop the estimated unit prices. The unit prices on contract for the NSN numbered items 6869, 5089 and 5325 are fair and reasonable and fall within the acceptable range of Data Resources Inc. (DRI), which the KO utilized calculating the price analysis. NSN number 2574 was only **8% higher than the price suggested by price analysis and is thereby fair and reasonable.**

7. DAAB07-98-C-D510

DODIG FINDING: "Prior Prices Used Were Not Justified as Reasonable"
ARMY RESPONSE: Concur

Price Reasonableness Determination. This contract was completed and closed. A review of the file showed the DODIG finding was correct in this case.

8. DAAE07-00-P-S009

DODIG FINDING: a. "Accepted Costs That Were Not Supported or Warranted"
b. Overpricing Calculated: $483,540
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. Certified cost and pricing data was not required because the basis engine is commercial. Information other than cost and pricing data was obtained and cost analysis performed to determine a fair and reasonable price. AM General provided a price breakdown for both engines, including a complete material listing. The material portion of the unit price accounted for 70.4% of the total price. We also verified that the current Forward Pricing Rates were used by AM General. The Forward Pricing Rates accounted for $1,228.84 per engine, or 18.25% of the total price. Once the material costs and forward pricing rates were verified only the profit rate was left to analyze. The contracting officer accepted the proposed profit rate 12.9%.

Overpricing. We disagree that overpricing occurred based upon the analysis above.

9. DAAE07-94-D-A013

DODIG FINDING: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Non-Concur.

Price Reasonableness Determination. The price analysis report indicates that TACOM personnel reviewed the commercial pricing practices in a plant visit on 4 Dec 92 and found that the Government received a "most favored customer discount" of 34.4% off the published commercial price list. The items in question were determined to be commercial items under the FAR exemption 15.804-3 when at that time, the items had to be offered for commercial sale and sold in substantial quantities to the general public. The items met both conditions as it is documented in the PNM, Award Summary and the Exemption from submission of Certified Cost & Pricing Data. At the time of review, 97% of Detroit Diesel's sales of this series of engine were to commercial customers.

10. DAAE07-96-C-X124

DODIG FINDING: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Non-Concur.

Price Reasonableness Determination. This was a sole source acquisition of a commercial item. The contracting officer determined commerciality based on sales data. As of the date of this acquisition, 604 units were sold to the general public and 178 sold to the Government. In addition to a catalog price list, the contractor provided the sales history of this item from 1994-1996, including the quantity sold and unit price. The proposed price was compared to the catalog price and the price charged to other customers. The proposed price was 2% lower than the catalog price and about $2,000 less than the prices paid by commercial customers. .

11. DAAE07-96-D-T024

DODIG FINDINGS: a "Accepted Catalog Pricing Without Additional Review"
b. Overpricing Calculated: $114,570.
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. This item was determined to be commercial and, therefore, certified cost and pricing data was not obtained. Information other than cost and pricing data, including a complete cost breakdown with support, was obtained and analyzed.

Overpricing. We disagree that overpricing occurred based upon cost analysis.

12. DAAE07-97-G-T003

DODIG FINDING: "Accepted Costs That Were Not Supported or Warranted"
ARMY Response: Non-Concur

The original material pricing for the VCU was done by the TARDEC Rapid Design Team when they designed the prototype item. Some prices were commercial and some were from the depot stock system. This prototype Bill of Mateials was given to LAU as the basis for their proposal . LAU and TARDEC both made design changes before the production design was approved. ALL deviations to the TARDEC bill of materials.were discussed including the impact on overall price. Due to the uncertainty of the life cycle of this interim product all nonrecurring costs were front loaded into the pricing of the f irst 15,000 units. A second set of pricing was established for the follow on units. Both sets of pricing were audited. Our intent was to reprice every six months during the life of the Basic Ordering Agreement which we did during the first 18 months of the BOA. I can't remember if we audited this BOA one or two more times but LAU was just coming off of a Government audit of it's rates whether for this BOA or another contract each time we negotiated. The Government kept a very tight control of material costs, even reviewing design changes to lower the cost, through the entire active life of the BOA. T he product cost was one of the major points of discussion. The DCAA Auditor was a part of the team and assisted the contractor with their development of the unit price used on the orders. The Basic Contract folder contained all support documentation and was referenced to each and every order.

13. DAAE07-98-D-T041

DODIG FINDING: "Accepted Costs That Were Not Supported or Warranted"
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. A waiver of certified cost and pricing data was properly executed. Information other than cost and pricing data was obtained that included a breakdown of all costs. Apparently, the only reason that a waiver was required was because Goodyear would not certify to its Corporate General and Administrative Rate (5% of the total proposal) because it contains a small amount of unallowable costs. The Government business is a very small part of Goodyear's total business volume.

The Goodyear cost proposal was evaluated by a team of specialists from the Army, DCMA and DCAA. The contract file contains a pricing report that discusses the review and negotiation of each major cost element and profit.

14. DAAE07-99-C-L038

DODIG FINDING: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Non-Concur.

Price Reasonableness Determination. The Government negotiated a 7.7% discount off the commercial retail price. This was an Emergency Procurement for a fully armored vehicle for the Chairman of the Joint Chiefs of Staff (JCS). The level of protection required by the JCS was higher than typically offered by the contractor for the standard commercial retail price. In other words, the Government negotiated a lower price than the standard commercial retail price for a higher level of protection.

15. DAAE07-99-C-N017

DODIG FINDING: a. "Prior Prices Used Were Not Justified as Reasonable"
b. Overpricing Calculated: $129,061
ARMY RESPONSE: Concur

Before soliciting Electro Methods, TACOM Engineering required a material change, from AMS 5536 to AMS 5608. The failed parts at the Depot had AMS 5536. Engineering stated the material change definitely would cost the Government additional money for the part but it will be more durable and would benefit the Government.

Based on the material change, Electro-Methods offered a unit price of $622.00. The previous history price was $477.00 each for the inferior material, AMS 5536. As this material change was required by Engineering and considered a better value due to its durability, the award was made at a unit price of $622.00 each. The contract also contained an accelerated delivery schedule of 150 days.

16. DAAE07-99-C-N029

DODIG FINDINGS: a. "Prior prices Used Were Not Justified As Reasonable"
b. Overpricing Calculated: $218,887
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. Disagree with the finding that prior prices used were not justified as reasonable. The prior price was based upon competition. In addition, it was not the primary basis for the price reasonableness determination. The price paid to North American Molded Products on this contract, $235.00, was derived from an analysis of actual cost data provided by the contractor.

Overpricing. We disagree with the DODIG finding that overpricing occurred based upon cost analysis. The audit report did not provide the detailed calculation its adjusted price of $182.80. We believe the DODIG adjusted price is significantly understated. As evidence, consider that a material cost of $181.49 per unit was verified. This amount

does not include labor, overhead, or profit. Also, we do not believe that the previous price provides a good basis for comparison because it was from an Israeli company. Pricing is impacted by exchange rate differences, political considerations such as subsidies that may occur, and different accounting laws and regulations.

17. DAAE07-99-C-N045

DODIG FINDINGS: a. "Prior prices Used Were Not Justified As Reasonable"
b. Overpricing Calculated: $54,298
c. Narrative assessment that split procurement actions were undertaken to avoid the cost and pricing threshold of $500,000.
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. The price analysis compared the award prices to a prior award price that was based upon a complete cost analysis. Contract DAAE07-99-C-N013 had an annualized price increase of 5.5% with a quantity decreased 75%. An **8% reduction** was negotiated for the next award, contract DAAE07-99-C-N033. The third award, DAAE07-99-C-N045, was at the same price as the second. The contractor experienced a labor rate increase that offset additional savings that could be expected.

Overpricing. We disagree that overpricing occurred based upon the price analysis performed as discussed above. The audit report did not provide the detailed calculation that resulted in their adjusted price.

Split Procurement Actions: Three successive buys occurred because of the inability of the item manager to accurately predict requirements. They were not a deliberate attempt to stay below the threshold for obtaining certified cost and pricing data. The problem facing the item manager and contracting officials was that failures of radiators produced by Young Radiator Company for the BFVS were creating the need for quick replacement. The item manager was unable to predict with accuracy the ever-increasing amount of radiators needed. Since this information was coming sporadically, the item manager was unable to delay requirements in hope of bundling them with future requirements. As a result, a series of sole source awards to General Thermodynamics, the only approved source for the radiator.

18. DAAE07-99-C-N049.

DODIG FINDINGS: a. "Prior prices Used Were Not Justified As Reasonable"
b. Overpricing Calculated: $63,033
ARMY RESPONSE: Concur

Price Reasonableness Determination. The contract was awarded sole-source to Highland Engineering because of urgency. Certified cost and pricing data was not required because the total value of the award was $499,632. Information other than cost and pricing data including a cost breakdown was obtained and analyzed. A price analysis was conducted using a previous competitive price (5 bidders). The Contracting Officer determined the unit price of $41,636.00 to be fair and reasonable based on adjusting the competitive historical unit price for inflation and reduced quantity (63 versus 12).

Overpricing. We disagree that overpricing occurred based upon the price analysis conducted.

19. DAAE07-99-C-Q008.

DODIG FINDING: "Accepted Costs That Were Not Supported or Warranted"
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. The requirement was solicited competitively as a small business set-aside but only one proposal was received. A full cost/price analysis was performed and the price was determined to be fair and reasonable on the basis of comparison to (1) the previous price paid for the same services and (2) the independent Government estimate. The documentation is in the file. In addition, a DCAA audit was performed and contractor's rates were approved.

20. DAAE07-99-C-Q011

DODIG FINDINGS: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Concur

Price Reasonableness Determination. The contract was awarded on a sole source basis. Certified cost and pricing data was not required because the total value of the contract was $247,022. The contractor was reluctant to provide information other than cost and pricing data sufficient to determine price reasonableness. Prices for items ordered that were in production were determined fair and reasonable based upon discounts obtained from the contractor furnished price list. However, most of the items ordered were new or program unique. An attempt was made to compare prices for these items to prices offered for similar items (processor boards) procured under other programs but an adequate determination that they were fair and reasonable could not be reached.

21. DAAE07-99-C-T023

DODIG FINDINGS: a. "Accepted Costs That Were Not Supported Or Unwarranted"
b. Overpricing: $38,930
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. The PCO performed a cost analysis. Direct labor rates were compared to DOL data and were determined to be fair and reasonable for the types of skills proposed. Overhead rates were based on information obtained form DCMC Grand Rapids and were determined to be fair and reasonable based on historical rates. DCMC had no objection to the rates that were used. A profit rate of 10% was considered fair and reasonable based on what TACOM has historically paid for similar effort.

Certified Cost and Pricing Data. The total dollar value of this contract was $121,703, therefore, certified cost and pricing data was not required.

22. DAAE07-99-C-T067.

DODIG FINDINGS: a. "Used Competitive Pricing When No Competition Existed"
b. Overpricing: $103,470
c. Identified as a contractor that refused to provide additional Information in Appendix D.

ARMY RESPONSE: Non-Concur.

Price Reasonableness Determination. "Competitive pricing" was not the basis for the price reasonableness determination. Rather, two price analyses were performed as described below. The requirement, awarded 23 April 1999, is for a Vehicular Parts Kit. Minowitz Manufacturing was the sole bidder. They bid $6,987.00 each for 25 units. Certified cost and pricing data was not obtained because the total dollar value was $174,126.

Procurement history showed that the most recent award had been to L&S Industries, 27 Jun 1985, at a unit price of $1,638.00 for 272 units. The contractor is no longer in business. We concluded that the time period between contracts (14 years), the lack of any on-going production, and the quantity difference (252 versus 25) invalidates the use of the previous price as a comparison base.

Two price analyses were performed. The first involved the Item Manager pricing all the components individually in the kit, with the resulting price exceeding $8,000.00 each. The second was an IGCE prepared by an Industrial Price Analyst; the resulting figure was $6,620.00 each. The Minowitz price was determined to be fair and reasonable based upon these analyses. Other information was also obtained that supported this conclusion. Vendors were queried as to why they no bid. They stated that many parts were unavailable, the TDP is unclear/not complete, the required test is too stringent, and the set-up costs/production tooling would be excessive for the low quantity. The bottom line: the small production run was not profitable for them.

Overpricing. We disagree that overpricing occurred based upon our price analyses.

23. DAAE07-99-D-N021

DODIG FINDINGS: a. "Used Competitive Pricing When No Competition Existed"
b. Overpricing Calculated: $174,126
ARMY RESPONSE: Non-Concur

Price Reasonableness Determination. The contract price was determined to be reasonable using price analysis. The award price was compared to the previous negotiated award price adjusted for quantity and inflation. The award price reflected an Annualized Price Increase (API) of 3.2%. The unit prices awarded for each year reflect percentage increases ranging from .5% to 4.6% (average percentage increase: 3%).

The previous award price (DAAE07-95-C-0491) was negotiated with the assistance of a DCAA Audit (#2261095G21000032), a Technical Evaluation (#062-5-A1-0012) and cost and pricing data supplied and certified by the contractor.

The award was exempt from Cost and Pricing Data per FAR 15.403-1(b)(1), (c)(1)(ii)(A)(1)(2) and (B). We believe there was a reasonable expectation that two or more responsible offers would be received even though only one offer resulted. The contracting officer reviewed the proposed prices and, using sound business judgement, made a determination that it was likely that the offeror thought they were bidding in a competitive environment. In summary, given the information from the previous contract, an inflation rate slightly less than the national average, and inquiries made by another source concerning the manufacture of the item, the contracting officer concluded that the exemption for certified cost or pricing data applied. We believe this procurement was properly exempt from certified cost and pricing data requirements and that the determination of price reasonableness using price analysis techniques was adequate.

Overpricing. The Audit Report also cited this contract as an example of Overpricing (Appendix D), in which the auditor felt the unit price should have been $10,243.80 in lieu of $11,136.75. When multiplied by the estimated quantities, the amount of overpricing was identified as $174,126 (8.7%). The auditor did not provide any written or oral rationale for his position; therefore, it is impossible to understand the nature or basis of the overpricing estimate. As stated above, we believe price analysis adequately supports the award price as fair and reasonable in this case.

24. DAAE20-97-C-0242

DODIG FINDING: "Prior Prices Not Justified As Reasonable", there is also mention of the fact that the contractor refused to provide additional information on the service CLIN.
ARMY RESPONSE: Non-Concur

The auditors used an inappropriate comparison for this contract. This is a service contract for repair of the weapon (basic with 3 option years). Although it uses the same NSN as the weapon system, this is a service contract. Prices were determined to be fair and reasonable based on a comparison with the 1992 contract, which is still in use, and in conjunction with the commercial price list for repairs provided by the contractor.

25. DAAE20-98-C-0017

DODIG FINDING: "Using Competitive Pricing when No Competition Existed"
ARMY RESPONSE: Non-Concur

A review of the folder does indicate that a competitive environment existed. Although Graflex has historically provided this item, this was the 1st time a SOW/Performance Specification was used for the procurement – a step intended to promote competition. Written requests for solicitation from two other companies were included in the file. After the solicitation closed and only one bid was received, other than certified cost and pricing data was requested (and provided). This information, along with the assumption of competition, was used as the basis for determining the price fair and reasonable.

26. DAAE20-99-C-0022

DODIG FINDING: "Prior Prices Used Were Not Justified as Reasonable"
ARMY RESPONSE: Non-Concur

Although not documented in the file, discussions with contract specialist indicate that the previous contract was awarded as the result of competition, and that this fact was considered during review of the offered price. In addition, a review of the various cost elements was performed and this documentation is included in the file. We agree that contract file documentation with regard to the previous price basis used for comparison is inadequate.

27. DAAE20-99-C-0016

DODIG FINDING: "Accepted Costs That Were Not Supported or Warranted"
ARMY RESPONSE: Concur

The contract file folder does contain weak documentation. Although done under urgency, we agree that a cost analysis should have been performed to support the statements in the determination of fair and reasonable price that the previous buy was in conjunction with a larger production run and that start-up costs would be incurred. Further, the file does indicate that the contractor was contacted regarding his price and that he did provide some explanation of the price increase since the previous buy. This procurement was done at a time of changing business practices and downsizing resulting in miscommunications.

28. DAAE20-99-C-0028

DODIG FINDING: "Prior Prices Used Were Not Justified as Reasonable"
ARMY RESPONSE: Non-concur

A review of the contract folder indicates that the price was determined fair and reasonable based on a cost analysis. The price for the previous contract was also determined fair and reasonable based on a cost analysis. The documentation to support this was included in the contract folder.

29. DAAE20-99-C-0072

DODIG FINDING: a. "Accepted Costs That Were Not Supported or Warranted"
b. Overpricing Calculated: $191,343
ARMY RESPONSE: Non-Concur

Based on the dollar value for this contract, certified cost/price data was not required. Further, as documented in the file, the configuration for this item changed completely, resulting in a number of product improvements. A cost analysis was performed examining the various cost elements and was accepted. Additionally, a price analysis was conducted comparing the offered price and two similar items. This analysis found the offered price to be in line with the others.

The claim of overpricing for this item is inappropriate considering the change of configuration.

30. DAAE20-99-C-0073

DODIG FINDING: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Non- Concur

The contractor sells the components for the same price to all customers; therefore the Government did not pay a premium. The contract action was under $500,000 therefore, the commercial catalog price comparison was sufficient enough to determine price reasonableness.

31. DAAE20-99-C-0074

DODIG FINDING: a. "Using Competitive Pricing When No Competition Existed"
b. Overpricing Calculated: $106,704
ARMY RESPONSE: Non-Concur

A competitive environment does exist. There is a history of competition for this item within the small business arena, including the action preceding this one. The fact that only one offer is received does not negate the competitive nature of the action. We agree, however, that there was less than adequate documentation of the price analysis.

With regard to overpricing, the auditors used an incorrect historical price to calculate projected price. The historical prices were included in the award resume. Use of the correct historical price shows the current contract is below the projected price.
There were 1,268 each electrical solenoid on this contract. The auditors used an adjusted price of $86.93 per unit. The procurement history of this item is as follows:

DAAE20-98-P-0457	100 each @ $284.87
SPO930-95-M-0627	56 each @ $310.00
DAAA09-91-C-0192	2,632 each $112.00

Application of the learning curve from the last buy yields a unit price, for a quantity of 1,268 of $236.65. The awarded unit price was $222.00 each.

32. DAAE20-99-C-0082

DODIG FINDING: a. "Accepted Costs That Were Not Supported or Warranted"
b. Overpricing Calculated: $ 143,583
ARMY RESPONSE: Partially Concur

Although this was an urgent, sole-source procurement a more thorough cost/price analysis could have been done. It is noted that material costs were supported by vendor quotes, so acceptance of those costs without question is appropriate. Acceptance of other elements is judgmental and could have been the subject of more thorough analysis. However, the fact that the analysis was done the same day as the award for an urgent procurement < $500,000 negotiated in an alpha contracting environment should not in itself be a cause to question its validity.

Disagree with the claim of overpricing. On a follow-on solicitation, with competition, this item was awarded at a unit price of $3,155.00 for a quantity of 120 each. The award unit price was $3,187.00.

33. DAAE20-99-C-0110

DODIG FINDING: a. "Prior Prices Used Were Not Justified as Reasonable"
b. Overpricing Calculated: $60,489
ARMY RESPONSE: Partially Concur

While we agree with the findings (we should have escalated the $429 price, which is the wholesale catalog price, for our analysis) we disagree with the overpricing calculation. The wholesale catalog price at the time of award was $458 and this item required special pack. The market research demonstrated that catalog pricing is valid for this item, with similar items competing in the market place for similar quantities.

34. DAAE20-99-C-0113

DODIG FINDING: "Accepted Costs That Were Not Supported or Warranted"
ARMY RESPONSE: Non-concur

The contract file contains documentation to support the cost elements leading to the final price. However, the information is not in a BCM format, nor is all the information contained in one document.

35. DAAE20-99-C-0123

DODIG FINDING: a. "Prior Prices Used Were Not Justified as Reasonable"
b. Overpricing Calculated: $109,035
ARMY RESPONSE: Partially Concur

The database used shows only one previous buy for this item, a 1989 contract. A check of the records holding data indicates that the contract folder for the 1989 contract was destroyed. The comparison basis of the prior price is questionable since this is a component of the M60 Tank. In 1989, there was an active production base, rather than the extremely limited spare parts production environment of 1999.

The basis for the calculated overpricing is disputed. The auditors' site this contract for prior price not justified as reasonable, then the IG used the same price to calculate a projected price for overpricing purposes.

36. DAAE20-99-D-0026

DODIG FINDING: a. "Using Competitive Pricing When No Competition Existed"
b. Overpricing Calculated: $964,212
ARMY RESPONSE: Non-concur

Based on a generic SOW and multiple requests for the solicitation, the contracting officer made the assumption of a competitive environment. Previous procurements for this item were the result of a two-step process. First, the Government purchased the source-controlled resin. Then, the Government provided the resin to the low bidder (competitively determined) as GFM for blending and final packaging. The fact that only one offer is received does not negate the competitive nature of the action.

A price analysis indicates that no overpricing occurred. This was a 5-yr. requirement contract for decontaminating resin. The history for this item is a 1998 contract for 30,000 lbs @ $77.53/lb. Applying a 95% learning curve using the 30,000 lbs. as the history and the total for 5 years of 142,935 lbs. for the projected price still only yields a unit price of $69.07. Using the estimated annual quantity of 28,587 lbs. results in a unit price of $77.81, which was the award price for the first year.

37. DAAE20-99-D-0099

DODIG FINDING: a. "Using Competitive Pricing When No Competition Existed"
b. Overpricing Calculated: $274,531
ARMY RESPONSE: Non- Concur

The historical data on this item shows multiple producers. A copy of the procurement history was included in the contract folder. The TDP was determined to be competitive, therefore there was no basis for a restricted source solicitation. However, after the receipt of only one offer, cost/price data should have been requested in order to determine the price to be fair and reasonable.

Disagree that overpricing occurred. A review of the previous contract was made because of conflicts in the historical database and information provided by the offeror. The previous contract shows that the unit price increased from $183.00 to $265.00 per unit due to engineering changes (documented in the modification to the previous contract). The historical database still has not been corrected. The contract specialist performed a price analysis using an adjusted price of $265.67 as the basis for price comparison. Based on that comparison, the price was determined to be fair and reasonable

38. DAAH01-98-C-0155

DODIG FINDING: "Prior Prices Used Were Not Justified as Reasonable"
ARMY RESPONSE: Concur

The initial total small business set-aside solicitation resulted in three technically unacceptable offers. The requirement was re-solicited using the two step sealed biding procedure. Four (4) bids were received, and only one (1) was technically acceptable. It was determined by the technical evaluator and the contracting officer that these items were commercially available. The two step procurement was discontinued and the acquisition continued using the procedures of FAR Part 12. The one acceptable offeror was requested to provide a commercial price list. These prices were compared with prices obtained from the commercial price lists of four (4) other sources, and the price was determined fair and reasonable. The items acquired in this action were commercial items offered to the general public and the file was properly documented.

39. DAAH01-99-D-0076

DODIG FINDING: a. "Prior Prices Used Were Not Justified as Reasonable"
b. "Contractors That Refused To Provide Additional Information"
c. Overpricing Calculated: $610,003
d. Waiver
ARMY RESPONSE: Non-Concur

This is in response to page 7-8, paragraph "No-exception" of the IG report. There are internal control processes in effect at one of AMC's MSC requiring the preparation and staffing of waivers to Certified Cost and Pricing through the legal community at two levels. First, the system level attorney reviews the waiver, and subsequently the Chief Head Counsel, during staffing to the Head of the Contracting Activity (HCA) for approval, reviews the waiver. There is a specific comment in the waiver submission that requires a statement concerning no significant configuration changes from the previous procurement. Accordingly the waiver obtained for contract DAAH01-99-D-0076 was for the same item, from the same manufacturer. Not withstanding the contractor confirmation statement concerning their ability to certify, the CO elected to not resend the waiver.

The subsequent submission of the contractor's proposal with significantly increased prices, occurred due to the acquisition of the producer by another company, and newly imposed overhead rates. The supplemental data obtained and disclosed during the negotiations between the Contracting Officer (CO) and the contractor offered the CO with enough information to determine a fair and reasonable price.

40. DAAH23-98-C-0133

DODIG FINDING: "Accepted Catalog Pricing Without Additional Review"
ARMY RESPONSE: Non-concur

The determination of price reasonableness was based upon catalog pricing, previous history of same or comparable systems, and price analysis (in the form of a parametric estimate). DCAA was tasked with verifying the accuracy of the contractor's catalog prices, and did so via its Agreed Upon Procedures report number 3581-98A28000015 dated 22 Jul 98. In addition, the contractor provided extensive historical data for the fuel system, including a copy of the first Special Operations, Army contract awarded (utilizing competitive procedures) in 1988. The contractor established its initial catalog price based upon the price contained in that contract (DAAJ09-88-C-A100), and provided historical data which reflected the annual price increases to its catalog pricing through 1998, when we awarded this contract.

41. DAAH23-98-D-0014

DODIG FINDING: "Prior Prices Used Were Not Justified as Reasonable"
ARMY RESPONSE: Non-concur

The anti-icing value was a commercial item, which precluded the CO from obtaining cost and pricing data. However, the CO went a step further in this instance by reviewing the price history, which in fact resulted from certified cost, and pricing data, cost analysis and negotiations. This computation validated the contractors commercial price.

42. DAAH23-98-D-0117

DODIG FINDING: a. "Prior Prices Used Were Not Justified as Reasonable"
b. "Contractors That Refused To Provide Additional Information"
ARMY RESPONSE: Non-concur

The historical price utilized was established through comparative prices paid by other customers. The historical price was not determined through the obtaining of certified cost and pricing data nor was it determined through competition. Coordination through the cognizant DCAA with oversight of the contractor determined that the accounting and estimating systems had been reviewed and found adequate. The contracting officer did obtain additional information on the commercial application and shared it with the legal and requirements community before determining no certified cost or pricing data was required.

43. DAAJ09-96-C-0116

DODIG FINDING: "Accepted Costs That Were Not Supported or Warranted"
ARMY RESPONSE: Non-concur

There are several modifications to the contract that required DCAA audit and negotiations, however, as the DODIG audit was not specific as to which modification was reviewed, no specific comments can be offered. A DCAA Audit was performed, however, dated 23 Feb 96, which provided extensive analysis of the contractor's proposal. In addition, Modification PZ0017 to the contract has an extensive Negotiation Memorandum, which outlines the cost analysis, and negotiation that was performed for this action.

44. DAAJ09-97-D-0196

DODIG FINDING: " Prior Prices Used Were Not Justified as Reasonable"
ARMY RESPONSE: Non-concur

A cost analysis was not performed for this contract because it was determined that sufficient data existed on this mature engine program to arrive at a reasonable price utilizing price analysis techniques. On 17 April 1997, Emmitt E. Gibson, Major General executed a waiver of certified cost/pricing, for the procurement of up to 1,200 engines over a five year period.

In the PCO's Request for Authority to Waive Submission of Certified Cost and Pricing Data, the PCO determined that "based on the data from the last procurement when combined with updated information, a fair and reasonable price can be negotiated without the submission of certified cost and pricing data." Based upon the given information, the PCO determined that the prior prices used were justified as fair and reasonable.

45. DAAJ09-97-D-0202

DODIG FINDING: a. "Accepted Catalog Pricing Without Additional Review"
b. "Contractors That Refused To Provide Additional Information"
c. Overpricing Calculated: $24,181,320
ARMY RESPONSE: Non-concur

Concerning the DODIG assertion that there was not sufficient documentation to support a commercial application for the engine, a review of the Price Negotiation Objective Memorandum (POM) and the Price Negotiation Memorandum (PNM) indicated that a meeting was held at Allison on 18-19 August 1997 to discuss proposal concerns surfaced by the Contracting Officer, DCAA, and DCMC. DCAA and DCMC stated that their main concern was that no cost or pricing data was submitted to substantiate the price. According to the minutes of that meeting, Allison provided a copy of both the catalog list price and the Original Equipment Manufacturer (OEM) price for the previous year, the prices, which were included in the contractor's proposal, in order to substantiate the commerciality of the engine. Hard copies of purchase orders were provided at this meeting for viewing purposes only as these documents were considered proprietary information. Both DCAA and DCMA were in attendance at this meeting and were allowed to review these documents. These purchase orders were for Series C47 engines which are a close commercial engine counterpart to the C30 engine to be sold to the government. These purchase orders supported the contractor's contention that these engines (Series C47) were based on a commercial price and therefore were applicable to the engines that the government was purchasing as they were for the same family of engines. Based on this evidence of commercial sale, the contracting officer accepted these documents as proof of commerciality and therefore made a determination that no certified cost and pricing data was required. Neither the POM nor PNOM address the similarity of the C47 and C30 engines, even though this is a fact.

Regarding the DODIG assertion that the contractor did not offer a price break for a larger quantity of engines than those previously procured, the contractor stated that the reason that the commercial customers receive a better price is that they commit to and guarantee that they will order a certain number of engines per year, whereas the government cannot. In some instances, a substantial penalty was included in the terms and conditions of the commercial contracts if the agreed to number of engines were not purchased during that year. The Government could not guarantee the number of engines that it would purchase each year; therefore, the contractor based their pricing accordingly.

Regarding the DODIG comments about the escalation factors that were applied, according to the documentation available, both the Government and the Contractor agreed to escalation during negotiations. The review of the contract file indicates that the rates reviewed by DCAA were utilized as the basis, and that a risk factor of approximately 2 percent was added to account for the Government's inability to guarantee a set quantity per year. Based on this information, the contracting officer for this action determined that the negotiated price was fair and reasonable.

Based on the above information, the contractor did not refuse to provide data to the government concerning information used as the basis for award of this contract.

To date there have been 239 engines purchased. The ordering period follows fiscal year, so 27 Sept 97 - 30 Sept 98, 1 Oct 98 – 30 Sept 99, 1 Oct 99 – 30 Sept 2000, 1 Oct 00 – 30 Sept 01, 1 Oct 01 – 30 Sept 02. Deliveries Orders are placed against this contract, to date there are 11 orders. The estimated yearly amount is 120 units. We have not met this amount since the award date.

RESPONSES TO AUDIT RECOMMENDATIONS

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

a. Initiate a process to require the Senior Acquisition Executives in Defense components identify the number of acquisition personnel at contracting activities 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 process should result from a bottom-up review of workload and personnel and not from the budget allocation for the contracting activity.

Concur. We agree that staffing requirements at our contracting activities need review considering current and future workload. We are in the process of briefing senior Army leadership that a contracting manpower shortage crisis already exists. We agree that it would be beneficial if OSD could initiate a uniform process for the services to identify contracting manpower requirements based upon contracting workload.

b. Correct Army and Navy inaction on the price trend analyses of commercial items.

Partially Concur. We disagree that no action was taken for the fiscal year 2000 report. However, we agree that a better methodology needs to be used. For the fiscal year 2001 report, we intend to perform a price trend analysis for all high dollar sole-source (including competitive, one-bid received) contracts awarded using FAR Part 12 procedures. For comparison purposes, we will adjust historical contract prices for inflation, quantity discounts, and other differences that may be appropriate.

c. **Initiate price trend analyses at all major contracting activities for sole source and competitive one-bid noncommercial items.**

Non-concur. We believe price analysis needs to be performed for all contract actions to ensure fair and reasonable prices are obtained. We believe the price analysis technique used depends on the circumstances that exist for a particular action. Price trend analysis may not be appropriate for items where comparable price history does not exist.

d. **Establish procedures to identify contractors that refuse to provide data requested by contracting officials and institute corrective measures to include involving the Head of Contracting Activity, Major Commands as appropriate, and Senior Acquisition Executives, and annotating the information in contractor past performance files.**

Non-concur. These procedures already exist. Specifically, FAR 15.403-3(a)(4) specifically addresses the appropriate steps to take when the PCO is unable to obtain sufficient information. The FAR requires the HCA to make a determination that award is in the best interest of the Government. Also, a mechanism exists (Performance Assessment Reports) to annotate this information in the past performance files.

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); Director, Defense Logistics Agency; and the Director, Defense Information Systems Agency:

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

Concur. Urgent procurements should be avoided to the maximum extent possible. However, they cannot be eliminated. For example, one contract reviewed by the DODIG was for 50,000 gas masks urgently needed for Kuwait. The Army Materiel Command (AMC) 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 (IPT) 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 will dramatically improve forecasting accuracy.

b. Obtain cost or pricing data when other data is insufficient to determine reasonableness and use Defense Contract Audit Agency assistance when such cost data requires additional verification.

Concur. In accordance with FAR Part 15, Army contracting officers routinely obtain cost or pricing data when it is required and use DCAA assistance when appropriate. In many of the actions reviewed by the DODIG, information other than cost or pricing data was obtained and DCAA assistance was provided.

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

Concur. We believe that adequate tools are available to perform price reasonableness determinations. Furthermore, price history is available in the Army's logistics

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database and is routinely provided to contracting personnel on the Procurement Work Directive. To ensure that these tools are used, the Army will remind senior management, at our quarterly procurement conferences, that they exist and to remind their workforces to utilize them.

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.

Non-concur. This is already a part of the evaluation criteria for Contracting Officers. It is however, just one of the many factors that are considered.

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.

Non-concur. This requirement would create additional workload and little benefit at a time when we are facing a contracting manpower crisis.

Revised

f. Identify sole source and competitive one-bid commercial and noncommercial procurements at all major buying activities for fiscal year 2001 contracts issued with unreasonably priced items and institute corrective actions for future contracts with the same vendor.

Partially Concur. As noted below, future Procurement Management Reviews (PMRs) will include a review of contract pricing. If an unreasonably priced contract is found, we will take the appropriate action to ensure that future contracts for the items are awarded at a reasonable price.

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.**

Concur. These areas will be covered in all future PMRs. Our PMR procedures will be reviewed to ensure this occurs.

Navy Comments

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FEB 15 2001

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

Subj: RESPONSE TO DRAFT DODIG AUDIT ON PRICE REASONABLENESS (Project No. D2000CF-0059)

Ref: (a) DODIG memo of December 11,2000

Encl: (1) Navy Response to DODIG Audit Recommendations

Reference (a) requested management comments on subject audit. Enclosure (1) provides the final Department of the Navy comments.

Comments or questions should be addressed to Mr. Ronald G. Ostrom (703) 602-2798, fax (703) 602-2117, or by email (ostrom.ronald@hq.navy.mil).

Paul A. Schneider
Assistant Secretary of the Navy (RD&A)(Acting)

DEPARTMENT OF THE NAVY RESPONSE
TO
DODIG DRAFT REPORT ON ADEQUACY OF CONTRACTING OFFICER DETERMINATION OF PRICE REASONABLENESS WHEN COST OR PRICING DATA ARE NOT REQUIRED
(PROJECT NO. D20000CF-0059)

DODIG Audit Recommendation:

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

a. Initiate a process to require the Senior Acquisition Executives in Defense components identify the number of acquisition personnel at contracting activities 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 process should result from a bottom-up review of workload and personnel and not from the budget allocation for the contracting activity.

DON Response:

Do not concur. Navy contracting activities continuously review their requirement for manpower and believe that with all things considered, and in the current environment, they are manned at adequate levels. Budget concerns have forced the Department of the Navy (DoN) to prioritize all their requirements, which include manpower. In addition, DOD and the services have numerous ongoing programs to improve the effectiveness of the procurement process. Establishing tools and databases is a time consuming task and requires budget as well. As more and more of the tools come on line, additional improvements/efficiencies should be realized. The DoN has reduced manning in preparation for the implementation of various new tools and databases. It should also be noted that requirements change and thus, contracting workloads also change based upon emerging problems and funding availability.

Enclosure (1)

DODIG Audit Recommendation:

b. Correct Army and Navy inaction on the price trend analyses of commercial items.

DON Response:

Do not concur. DoN was not inactive. DoN conducted a commercial item price trend analysis for the April 1, 2000 report to Congress. This analysis, which focused on purchases by the DoN activity primarily responsible for spare parts acquisition resulted in the conclusion that there were no instances of unreasonable price escalation of commercial items.

In 2001, DoN is conducting another commercial item price trend analysis. This analysis includes selecting a statistically sound sample from all DoN contracting activities of commercial item procurements where only one offer was received. The same methodology used in DoD IG Draft Audit D2000CF-0059 will be used to adjust prior contract prices for inflation, quantity discounts and learning curve.

DODIG Audit Recommendation:

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); Director, Defense Logistics Agency; and the Director, Defense Information Systems Agency:

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

DON Response:

Concur in principle that urgent procurements should be avoided to the maximum extent practicable however, they usually arise from the occurrence of unplanned and unpredictable events, and thus cannot be eliminated.

DODIG Audit Recommendation:

b. Obtain cost or pricing data when other data is insufficient to determine reasonableness and use Defense Contract Audit Agency assistance when such cost data requires additional verification.

DON Response:

Concur with respect to other than commercial items. Obtaining cost and pricing data for commercial items is prohibited. For commercial items, information other than cost and pricing data may be obtained and reviewed by DCAA.

DODIG Audit Recommendation:

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

DON Response:

Concur.

DODIG Audit Recommendation:

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.

DON Response:

Do not concur. This is already a part of the evaluation criteria for Contracting Officers (CO). It is however, just one of the many factors that are considered when evaluating CO. DoN believes that to explicitly specify this as an evaluation factor would be inappropriate.

Final Report Reference

DODIG Audit Recommendation:

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

DON Response:

Do not concur. We agree that the Head of the Contracting Activity needs management controls that will qualitatively address use of the exceptions. In the DoN this is already being done during the review of the business clearance and systemically during the Procurement Performance Measurement and Assessment process.

DODIG Audit Recommendation:

Revised

f. Identify sole source and competitive one-bid commercial and noncommercial procurements at all major buying activities for fiscal year 2001 contracts issued with unreasonably priced items and institute corrective actions for future contracts with the same vendor.

DON Response:

Concur.

DODIG Audit 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.

DON Response:

Concur.

PRICE [illegible]NABLENESS AUDIT:

Unit Identification Code:

	Audit Results								
	Accept catalog w/o review	Prior Price Not Justified	Used Competitive Pricing w/o Competition	Accepted Cost not supported	Description of Item Procured	Contractor	Program	Total Price	[illegible]	PCO Comments
NAVAIRSYSCOM										
N00019-96-C-0220	X				Mark VII Warning Systems	Allied Signal Commercial Avionics Systems	GPWS Cat I	393,000	N	Business Clearance supported price analysis by Commercial Sales history, vendor quotes for subcomponents and comparison to GSA prices.
N00019-97-D-2008				X	Engineering Services	Gulfstream Aerospace		4,200,000	Y	Unable to locate Business Clearance to dispute findings.
N00019-98-C-0092				X	Repair of components for VH	Sikorsky	VH-60	700,000	N	The Time & Material labor rates were based upon a FPRA.
N00019-99-C-1059				X	Electronic Flight Instruments (EFI)	Avionics Display Corp.	S-3	28,993	N	PCO documented the business clearance with three quotes and past history to support reasonable price.
N00019-99-C-1252	X				ARC-210 Receiver/Transmitters and Ancillary equipments	Rockwell Collins Inc	ARC-210 Electronic Protection Radio Set	$50,500,000	N	Field pricing report was received from DCMA/DCAA and used in price analysis. Price analysis included historical price comparisons, commercial sales history and parametric price analysis ran by the cost/price group (AIR 4.2).
N00019-99-C-1330		X			Initial Maintenance	Fairchild A/C	C-26D	$1,200,000	Y	More time should have been spent on supporting the price reasonableness. Action was an urgent requirement and time did not allow a more detailed analysis. Better planning in the future should alleviate some of the urgency.
N00019-99-C-1598	X				Airframe Change Kit	Fatique Technology, Inc.	EA-6A	317,221	N	Pressed by shortage of time and people; reliance on KR published commercial price and price analysis of the proposal. PCO felt price was justified and reasonable. In the future, the RFP will require the Contractor to provide past purchase history.

PRICE NABLENESS AUDIT:

Unit Identification Code:

	Audit Results									
	Accept catalog w/o review	Prior Price Not Justified	Used Competitive Pricing w/o Competition	Accepted Cost not supported	Description of Item Procured	Contractor	Program	Total Price	[illegible]	PCO Comments
N00019-99-C-1648			X		Laser Guided Training Round BDU-59/60	Lockheed Martin NSS	LTGRs	$56.1M w/options	N	PCO believed that the Contractor did not know that only one proposal was received and therefore adequate competition existed. Price was compared to prior purchases for similar and like items.
N00019-99-C-1681				X	Tactical Tomahawk Weap. Ctrl. Sys.	Raytheon Systems Co.	TTWCS Q70	$ 490,359	N	Price reasonableness supported based upon element by element examination of Contractor's cost.
NAVSEASYSCOM										
N00024-98-D-4028			X		Generic Navy Simulators/Stimulators	AAI Corp.	BFTT	17,945,711	N	Circumstances allowed by FAR meant competition existed even though only one offer was received.

PRICE NABLENESS AUDIT:

Unit Identification Code:

	Audit Results									
	Accept catalog w/o review	Prior Price Not Justified	Used Competitive Pricing w/o Competition	Accepted Cost not supported	Description of Item Procured	Contractor	Program	Total Price	Agree with Audit Report	PCO Comments
FISC Det - Phil										
N00140-97-D-1756	X				Software Licenses/Maintenance	Cybersource		49,459,907	N	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.
N00140-98-A-D309	X				IT Services	Lockheed Martin	NSIPS	2,750,000	N	Pricing not based on a "catalog". Prices were in a competitively established BPA under Lockheed's GSA schedule.
N00140-98-C-1071	X				Ruggedized RAIDs	Ciprico	Tomahawk	1,691,550	Y	Although this acquisition was made under 10 USC 2304 (c)(2) - Unusual and Compelling Urgency, it is understood that more documentation was needed to support reasonableness of the price.
N00140-98-D-0341	X				Software Licenses	Template Software		9,702,493	N	Analysis was performed. Negotiator confirmed that prices paid by commercial customers was consistent with price list, and negotiated discount from price list of up to 23% which was consistent with equivalent volume discounts.
N00140-98-D-4551	X				Computer Hardware	United Computer Products		4,999,924	N	8(a) contract with contractor providing Optia hardware. Price analysis conducted. Contract prices were discounted 20% from Optia GSA Schedule and 28.8% from Optia published price list.
N00140-99-D-E220	X				Ruggedized RAIDs	Ciprico	Tomahawk	50,485,500	N	Substantial review performed. Pricing at greatest available qty discount plus non-commercial pricing for ruggedization. File did not contain specifc SF 1412 data (no longer applicable).

PRICE NABLENESS AUDIT:

Unit Identification Code:

	Audit Results								
	Accept catalog w/o review	Prior Price Not Justified	Used Competitive Pricing w/o Competition	Accepted Cost not supported	Description of Item Procured	Contractor	Program	Total Price	[illegible]	PCO Comments
NAVICP - Phil										
N00383-97-G-005B				X	Special Cable Assembly	Grumman	EA-6B	203,000	N	Unwarranted costs not specified in the audit report. Cost analysis was used to establish the price based on DCMC cost element recommendations.
N00383-98-C-019F		X			Drop Cloth Thread for assembly repair	Burke Industries	F-14	Not provided	Y	Contract was for repair of F-14 assemblies. Drop cloth thread was subcontracted material. Review of prime contractor cost proposal by industrial engineer took no exception to material price. Original mfg of thread and original repair contractor had gone out of business -- succeeded by Burke Industries. Urgent contract to support F-14 aircraft non-mission capable until repairs completed. DOD stated overstated by $971,276 or 959.5% increase for 106 thread and $536,761 or 925.6% increase for 107 thread.
N00383-98-D-003G		X			Aircraft Tires	Dunlop	Mulitple A/C	2,100,000	N	PCO states "Prices based on competition." DODIG stated overpriced by $191,227.
N00383-99-C-D010		X			Heat Exchanger	Allied Signal - Grimes	F/A-18	237,725	N	Price was established through use of cost analysis. DODIG stated over priced $15,043 which 6.8% increase. PCO disagreed with DODIG audit and still believes the price was reasonable.
N00383-99-C-P014		X			Test Set Sub-Assembly	Lockheed Martin	CASS	109,722	N	Price established via cost analysis and DCMC FPRR recommendations.

Air Force Comments

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

Office Of The Assistant Secretary

06 FEB 2001

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

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

SUBJECT: DoDIG Draft Audit Report, "Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data are Not Required" (Project No. D2000CF-0059), dated 11 Dec 00.

This is in reply to your memorandum dated 14 Dec 00 requesting a response to subject report. We have reviewed the findings and recommendations of the report and provide our response in Atch 1.

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

TIMOTHY A. BEYLAND
Associate Deputy Assistant
Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachment:
AF Response

ATCH 4

AIR FORCE RESPONSE

to

DoDIG Draft Audit Report D2000CF-0059, "Adequacy of Contracting Officer Determination of Price Reasonableness when Cost or Pricing Data Are Not Required"

1. The DoDIG reviewed 145 contract actions across the entire DoD. They alleged that 126 of those actions had inadequate price justifications – 36 in the AF – all from one MAJCOM, HQ AFMC. This attachment provides a summarization of the extensive AF analysis of the DoDIG findings and subsequent recommendations. In our opinion, given the vast size and population of data across both the DoD and services, the sample observed by the DoDIG review did not examine a sufficiently large enough sample, nor diversity of sample actions, to accurately represent the entire DoD or Service contractual action population. As such, the validity of the DoDIG's findings and alleged systemic problems across the AF and DoD are suspect.

2. Further, we believe the findings of the DoDIG review do not represent the true health of AF contracting as a whole. Nor does it provide a sound basis to discredit the subjective decisions of AF contracting officers in the field and their ability to make appropriate fair and reasonable price determinations IAW regulatory and statutory requirements.

3. In consideration of the potential need to clarify FAR requirements in certain areas, SAF/AQC has taken an immediate proactive step to ensure accuracy of procedures in the field. A "fast response" guidance memorandum entitled "Commercial Item and Price Reasonableness Determinations", dated 24 Jan 01 (Atch 5), has been issued. This memorandum is geared to reinforce the overarching responsibility of the CO, and to ensure that all contract actions are IAW FAR requirements. Further, it clarifies the fact that the commercial item determination must be treated separately from the price reasonableness determination. In short, the mere fact that an item has been determined to meet the definition of a commercial item does not, by itself, determine that its associated price is fair and reasonable.

Atch 1

4. The AF response to the findings and recommendations made by the DoDIG are contained herein. For each set of findings and recommendations, the AF provides its feedback on whether it concurs/non-concurs, partially concurs or acknowledges; any comments with respect to the same; any action already accomplished; the date accomplished; planned actions and the anticipated close date for any planned actions. This section is segregated into four parts:

- **Part 1**: Recommendations to USD(AT&L) -- No AF response required -- Page 5
- **Part 2**: Response to recommendations to SAF/AQ (Acquisition) -- Page 6
- **Part 3**: Response to other findings respective of 36 specific AF contract actions cited in the report -- Page 14
- **Part 4**: Response to 16 AF contract actions specifically cited as overpriced -- 23

Response Legend:

- ***Concur = Agreement with recommendation/finding of report***
- ***Non-concur = Disagreement with recommendation/finding of report***
- ***Partially concur = Agreement with partial recommendation/finding of the report***
- ***Acknowledged = Agreement with content of recommendation/finding of the report; however, AF has already implemented action in this regard.***

5. AF Recommended Actions: Though we challenge many of the findings and recommendations contained in this report, we view this as an opportunity to highlight some of the tools and guidance developed or scheduled to support the field. The list below considers an array of proactive measures the AF proposes to meet, "head-on", many of the problems alleged in this report:

- **SAF/AQC guidance memorandum to field organizations entitled "Commercial Item and Price Reasonableness Determinations, dated 24 Jan 01** – This memo highlights the distinctions between the two and emphasizes that each determination fulfills a critical, but different, requirement within the acquisition process.

- **SAF/AQC sponsored "Capt Commercial" On-line Tutorial** – http://www.safaq.hq.af.mil/contracting/captcommercial/index.htm. This guidance tutorial builds on the Air Force's positive commercial item pricing experiences and is the first official AF specific guidance to the field buyers on how to approach the pricing of commercial items. It provides four specific units: Regulations & Definitions; Market Research; Commercial Pricing Methods; and Commercial Item Financing. The tutorial consolidates the best practice advice from leading texts in commercial pricing practices and also integrates this advice with selected government acquisition cases. Combined, this information begins to form the knowledge base for approaching the task of pricing commercial items.

- **SAF/AQC sponsored "Fair & Reasonable Price Information Tool (FRPIT)** – Currently under development (launch scheduled for May 01), this tool will guides the buyer through the decision process of identifying the type of information necessary to make a fair and reasonable price determination. It also provides direction when there's a challenge in getting sufficient information.

- **HQ AFMC/PK Commercial Acquisition Course** – Already delivered to all AFMC activities in FY 00, this course provided training and guidance on all aspects of commercial acquisition. Some of the specific topics focused on: Market Research (surveillance, analysis, centers of excellence, available web sites, MRPoST -- an AFMC-

developed market research tool; commercial definition; commercial item financing; information other than cost or pricing data to support a fair and reasonable price; price analysis; competitive and sole source acquisitions; use of prior history, 25% rule, catalog, market price, parametrics, value analysis, other; negotiation/leveraging; documentation; and success stories. We recommend that this training be made available for on-line referencing throughout the AF. Additionally, this course is being considered by the Systems Acquisition School (SAS), Air Force Institute of Technology (AFIT), Wright-Patterson AFB OH, for incorporation into its acquisition curriculum which is offered to students throughout the DoD.

- **FY 2001 HQ AFMC Pricing Chiefs' Conference** – We will also recommend that HQ AFMC use this conference as an opportunity to provide specific discussions to Pricing Division Heads of their various activities for dissemination to their organizations. The topics should coincide with the concerns, findings and recommendations expressed in this report.

- **AF Price Trends Analysis (PTA) Model** – This model, currently under development, was originally envisioned to support the FY 99 Sec 803 Congressional Price Trend Analysis Report requirements. The model will consider the unit price of an item being considered for acquisition and automatically flag prices over a certain percentage (e.g. 25% or more), using HQ AFMC J001, J014, and J018 databases. Initially, the model will be tested on sole source commercial actions. Expected deployment for field testing, May 01.

PART 2

DoDIG Recommendations Summary to SAEs

Item	DoDIG	AF Response
2a	Initiate action to alleviate conditions leading to urgent procurements.	Acknowledged
2b	Obtain cost or pricing data when needed and use DCAA assistance when additional verification is required.	Partially concur
2c	Provide necessary tools for contracting officers to determine price reasonableness.	Acknowledged
2d	Include in the appraisal process of contracting officers whether cost or pricing data was obtained when needed and whether price analysis was properly performed.	Acknowledged
2e	Establish controls regarding the use of exceptions.	Acknowledged
2f	Identify all FY 2001 contracts with unreasonably high priced items and institute corrective actions.	Acknowledged
2g	Include in PMRs whether cost or pricing data was 1) obtained as needed, 2) price analysis was properly performed, and 3) whether price reasonableness was adequately established.	Acknowledged

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#2a: ***The DoDIG recommends that the SAEs*** *establish procedures that identify situations in the past leading to urgent procurements and initiate action to alleviate these conditions from future procurements.*

AF Response	Acknowledged
AF Comment	There are no findings in the report, which provide sufficient evidence that indicates a systemic problem throughout the AF. Though the AF notes no major problems in this area, this is likely due to the fact that we already have processes and procedures in place early in the acquisition planning process to alleviate such problems. For example, in the operational environment, COs are required to communicate on-going needs or requirements as the current contract vehicle is nearing closure. This prompts the requirements manager to take the appropriate measures to secure necessary funding and initiate the package to preempt an urgent need. This does not mean that urgent requirements don't exist in the AF; however, it must be fully recognized that appropriate processes and procedures exist to preempt conditions that may cause this type of acquisition. Also, as a means of review, this is an aspect of the AF Procurement Management Review (PMR) process.
HQ AFMC/PK Comment	This is, of course, an ongoing issue in DoD where urgent requirements are a necessary part of our processes. The few cases in the responses that involved urgent requirements from the field do not indicate serious overpricing that resulted from urgent procurements.
Actions Taken	None.
Completion	N/A
Actions Planned	None
Planned Completion	N/A

*# 2b: **The DoDIG recommends SAEs** obtain cost or pricing data when other data is insufficient to determine reasonableness and use Defense Contract Audit Agency assistance when such cost data requires additional verification.*

AF Response	Partially concur
AF Comment	We take no exception to securing cost or pricing data, as necessary, and in accordance with FAR provisions. However, based upon findings by HQ AFMC and SAF/AQC, there are no indications of a systemic problem within the AF. Moreover, this is a matter of using the applicable exceptions per FAR 15.403-1. It is our opinion that the field understands and appropriately uses correct procedures in applying these exceptions. Additionally, we take exception to a DCAA mandate. The field duly recognizes and utilizes the support of DCAA, when necessary.
HQ AFMC/PK Comment	The FAR is clear on when to require cost or pricing data. The contracting officer has sufficient discretion to determine when to request cost or pricing data. Of course, if the item is commercial or awarded under adequate price competition, cost or pricing data may not be requested. DCAA is routinely consulted when cost or pricing data is requested.
Actions Taken	The SAF/AQC and HQ AFMC/PK have instituted extensive guidance in this area. • In FY 2000, HQ AFMC/PK developed and conducted training to its field activities which specifically addressed this issue. • SAF/AQCP launched "Captain Commercial," a web based tutorial, which provides examples of the type of information that may be necessary, and guidance on how to use the information when received. • DAU also revised the contracting curriculum to address the new environment and tools available to assist buying activities. • This is a major aspect of the AF Procurement Management Review process.
Completion	N/A
Actions Planned	None
Planned Completion	N/A

 # 2c: ***The DoDIG recommends that the SAEs*** *provide necessary tools for COs to determine price reasonableness including complete price history databases.*

AF Response	Acknowledged
AF Comment	The AF has an extensive array of tools currently in place to adequately support the field. The AF need only to continue its efforts to develop its professional workforce by ensuring they receive the proper education, training and awareness of available support tools.
HQ AFMC/PK Comment	The J041 database provides price history for spare parts to ALC buying personnel. This database provides enough detail to support most buyers. The report states that the lack of complete history caused overpricing but responses from the field do not support this conclusion.
Actions Taken	In addition to those noted previously in Recommendation #b, such as SAF/AQCP-developed "Captain Commercial", updated training material is also offered by DAU, where the AF is a major player. Additionally, HQ AFMC/PK has also developed and made available various databases. These databases contain a price history, by NSN, for a number of commodity types and non-commodity items. HQ AFMC maintains the databases, entitled J001, J018, and J041.
Completion	N/A
Actions Planned	None
Planned Completion	N/A

 # 2d: ***The DoDIG recommends that the SAEs*** *consider in the performance appraisal process of COs, whether cost or pricing data were obtained when needed and whether price analysis was properly performed.*

AF Response	Acknowledged
AF Comment	We consider this as a measurement of the CO's ability to perform their jobs in a professional and accurate manner. In our opinion, the aspect of securing cost or pricing data and the performance of a proper price analysis is well prescribed in the current performance appraisal process. This is considered in line with their performance of duty in accordance with AF Form 2620, specifically used for employee appraisals. Any annual appraisal in which feedback suggests shortcoming must be properly documented and provided to the individual to improve performance. Some specific actions of this process include: • **Negotiation of complex contract types**: Effectively negotiates unusual contractual arrangements for products and services. Capable of negotiating contracts for research, development, and production of specialized supplies, systems or services, or for pure or applied research where thee is little meaningful experience or precedent data available. • **Development of pricing objectives**: Is fully capable of independently developing complete pricing objectives for negotiated procurements, involving the use of data from a variety of diverse sources. • **Pricing technique**: Exhibits a sound understanding of pricing techniques and is fully capable of evaluating price proposals submitted by offerors or contractors. • **Cost analysis**: Performs cost analysis on procurements that have little precedent or involve complex corporate structures. Notwithstanding the comments, the AF, as a standard practice, regularly reviews job performance and responsibilities of its 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.
HQ AFMC/PK Comment	The performance appraisals of contracting officers already include assessment of the ability to negotiate reasonable prices, which is a key part of their job. No changes are needed.
Action Taken	None
Completion	N/A
Actions Planned	None
Planned Completion	N/A

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 # 2e: ***The DoDIG recommends that the SAEs*** *quantitatively identify use of claimed exceptions to TINA at all major contracting offices and require the HCA to establish management controls that will qualitatively address use of the exceptions.*

AF Response	Acknowledged
AF Comment	The findings of this report do not indicate a systemic problem within the AF. There are already procedures in place which address this. Additionally, DoDIG Draft Report #2000CH-0106, "Waivers of Requirement for Contractors to Provide Cost or Pricing Data, dated 4 Dec 00, contradicts the findings of this report and indicates that the DoD has excellent processes and procedures to adequately manage its waivers, when required. Specifically, it states: *"Results. Contracting officials properly justified, and used in appropriate circumstances, waivers of the TINA requirement to obtain cost or pricing data in all 189 of the reviewed contract actions where waivers were used. Contracting Officers also ensured fair and reasonable prices for those 189 contract actions. The procedures that DoD contracting organizations used to process the waivers and to determine fair and reasonable prices were effective and not burdensome."*
HQ AFMC/PK Comment	Information on the use of exceptions based on Adequate Price Competition, commercial determinations and TINA waivers should be available on the DD350 system. It is not clear what use the HCA would make of this data. The Report and field responses do not support the conclusion that the numbers of exceptions were excessive or that controls are needed.
Actions Taken	The SAF/AQCK uses the Regulatory Contracting Approvals Tracking System (RCATS) to track and monitor TINA waiver cases of major programs approved at the HCA level. This tool maintains information on requesting organization, denials, as well as approvals, and the reasons for the conclusions reached.
Completion	N/A
Actions Planned	None
Planned Completion	N/A

Final Report
Reference

Revised

 # 2f: ***The DoDIG recommends that the SAEs*** *identify sole source and competitive one-bid commercial and noncommercial procurements at all major buying activities for FY 01 contracts issued with unreasonably priced items and institute corrective actions for future contracts with the same vendor.*

AF Response	Acknowledged
AF Comment	As a matter of practice, COs must consider the last price paid in their fair and reasonableness price determination. In the event that the current price variance exceeds the prior index adjusted price by more than 25%, DFARS 215.404-1(a) requires that further analysis must be accomplished and documented. Additionally, SAF/AQ and HQ AFMC/PKPC are in the process of developing a program that will alert the CO of any action which fits this situation. The program will support both the analysis called for by Congress in the commercial price trend analysis (PTA) and other acquisitions. Additionally, if suitable, it may serve as the DoD model to be used across the services.
HQ AFMC/PK Comment	We do not concur that the contracts listed in the audit were overpriced. Clearly the goal is to obtain more than one offer if possible. To support that goal we have encouraged market research and actively seeking additional sources whenever possible as a general policy and in our training.
Actions Taken	HQ AFMC/PK and SAF/AQCP created a price trend model in FY 00 which focuses on specific Federal Stock Classes (FSCs) which have appeared to have significant activity (e.g., greater than 500 actions) and have warranted further analysis for potential price trend changes. In addition, the model takes into account specific criteria for selection of these FSCs. The FSCs are of overall importance to the AF mission and the warfighter (e.g., aircraft, airframes, engines, turbines, etc). Primary focus is centered on HQ AFMC which has nearly 100% of the actions carried by those FSCs currently selected. Also, an automated database is being used to track activity patterns of these FSCs for reporting and monitoring. This process and information was used to formulate the AF portion of the FY 2000 Congressional Price Trends Data Report, submitted to OSD for inclusion in the final report to Congress. No additional action required.
Completion	Final conclusions and analysis results will be incorporated into the FY 01 report.
Actions Planned	None
Planned Completion	N/A

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 # 2g: ***The DoDIG recommends that the SAEs*** *include in PMRs whether: cost or price data was obtained as needed, price analysis was properly performed, price reasonableness was adequately established, and urgent awards were necessary.*

AF Response	Acknowledged
AF Comment	This is already a key aspect of the AF Procurement Management Review Guide, dated Apr 96.
Actions Taken	None
Completion	N/A
Actions Planned	None
Planned Completion	N/A

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Summary of Changes to Air Force Response, *dated 6 Feb 01*
re:
DoDIG Draft Audit Report D2000CF-0059,
"Adequacy of Contracting Officer Determination of Price Reasonableness when Cost or Pricing Data are not Required"

Summary of changes: DoDIG Recommendations to SAEs	
DoDIG Recommendation	**Summary of response**
a. Initiate action to alleviate conditions leading to urgent procurement.	Change "Acknowledged" to "**Partially concur**"; narrative remains unchanged.
b. Obtain cost or pricing data when needed and use DCAA assistance when additional verification is required.	No change -- **Partially concur**.
c. Provide necessary tools for contracting officers to determine price reasonableness.	Change "Acknowledged" to "**Concur**"; narrative remains unchanged.
d. Include in the appraisal process of contracting officers whether cost or pricing data was obtained when needed and whether price analysis was properly performed.	Change "Acknowledged" to "**Partially concur**"; narrative remains unchanged.
e. Establish controls regarding the use of exceptions.	Change "Acknowledged" to "**Partially concur**"; narrative remains unchanged.
f. Identify all FY 01 contracts with unreasonably high priced items and institute corrective actions.	Change "Acknowledged" to "**Partially concur**"; narrative remains unchanged.
g. Include in PMRs whether cost or pricing data was (1) obtained as needed, (2) price analysis was properly performed, and (3) whether price reasonableness was adequately established.	Change "Acknowledged" to "**Concur**"; narrative remains unchanged.

Attachment 1

Summary of changes: Appendix C -- DoDIG Summary of Price Reasonableness Determination Problems and Alleged Overpricing on 16 AF Contract Actions			
Contract # / Item	**Office**	**Previous Response**	**AF Final Response**
F33657-98-0014 Altitude Alerters	ASC, Wright-Patterson AFB	Non-concur	**Non-concur**
F42630-99-C-0062 Rocket Canopy Removers	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F42630-99-C-0161 Yoke Assembly	OO-ALC, Hill AFB	Non-concur	**Partially concur**
F42630-99-C-0074 Manifold Assembly	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F42630-99-C-0178 Torque Tube Assembly	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F42630-99-C-0022 Heat Stacks	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F42630-99-C-0084 Cylinder Assembly	OO-ALC, Hill AFB	Non-concur	**Partially concur**
F42630-99-C-0139 Aircraft Tires	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F41608-97-A-0001 #152 and #159 Turbine Inlet Case	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F41608-99-C-0237 Carriage Bleeds	OO-ALC, Hill AFB	Partially concur	**Partially concur**
F421608-99-D-0185 Shroud	OO-ALC, Hill AFB	Non-concur	**Partially concur**
F41608-98-D-0338 Outer Vane Fan Stator	OO-ALC, Hill AFB	Non-concur	**Concur**
F41608-99-C-0530 Synchronizing Rings	OO-ALC, Hill AFB	Non-concur	**Non-concur**
F41608-98-C-0698 Connecting Links	OO-ALC, Hill AFB	Unable to locate file	**Non-concur**
F09603-98-C-0303 Guided Missile Fin	Warner-Robins AFB	Partially concur	**Concur**

AIR FORCE FINAL RESPONSE TO ALLEGED OVERPRICING ACTIONS

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ -0 -
F33657-98-0014 Altitude Alerters KC-135 Aircraft **ASC/WPAFB**	**Alleged Overpricing = $73,218** **Basis of Overpricing: Accepted Catalog Price without Additional Review** The unit price of $1,800 was for a purchase of 30 units in May 1998. This purchase was for 169 units in September 1999. Prudence would have dictated the pursuit of discounts for this significantly higher quantity involved. The Air Force did not negotiate with this contractor after its initial proposed price for both parts. The largest quantity on the catalog price list was 250 alerters, overall the Government bought 624 units. Therefore, there was no data to show what discount the Government would have been entitled to, even if the Air Force had been able to support that any customers actually paid the catalog price. There was no prior history available. The Air Force accepted contractors price and stated that it was substantially less than the price list and concluded that it was reasonable, even though the price list did not include similar quantities. Of note, Boeing selected IS&S (IS&S was under Boeing) to be contractor for alerters, IS&S then turned around and made Boeing its subcontractor for the kits. We stand with our original conclusions.	**The alerter kit is a commercial item that is purchased as a total package that consists of Group A (installation) and Group B (the alerter kit).** It is not prudent to focus specifically on the purchase of one Group B without consideration of Group A. It appears that the auditor only considered an adjusted price for Group A (Installation). Group A: **Purchased in May 98 @ $1,800;** **Proposed in Sep 99 @ $2,150;** **Negotiated in Sep 99 @ $2,070** Additional information was requested and secured from the contractor and to **negotiate the unit price of $2,070.** The increase is due to the prime contractor (ISS) mark-up; we are able reduce cost and schedule risk by no longer having the requirement to provide GFE, which now resides with one source. Additional information is provided from ASC/GRK which provides further details. Group B: Purchased in May 98 @ $7,500; Proposed in Sep 99 @ $7,275; Negotiated in Sep 99 @ $4,900 TOTAL KIT: Purchased in May 98 @ $9,390; Proposed in Sep 99 @ $9,425; Negotiated in Sep 99 @ $6,970 This contract action for 169 units estimates savings = $39,280; however, our ability to exercise Options A & B will result in additional savings, equating to total estimated savings of $1.4M. **Based upon our analysis, we conclude no overpricing on this action.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F42630-99-C-0062 Rocket Canopy Removers F-16 Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $69,592** **Basis of Overpricing: Prior Prices Used were not Justified as Reasonable** We concluded that the unit price of $1,596 was not adequate to justify the price to be fair and reasonable, because the contracting officer did not show that he knew with sufficient detail the basis for reasonableness of the prior prices. In Sept. 1998 when the contracting officials prepared the justification and approval for other than full and open competition, they were fully aware of historical data and in fact, estimated a unit pricing of $1,806 based on the buy competition, history and inflator factor. In addition, the file was lacking documentation to support details of the conclusions reached to support reasonableness on the prior buys. However, we do agree that if the supporting data that could not be found was accurate, price reasonableness for this buy would be adequate. It should be noted on a 1996 contract for a smaller quantity the Air Force did pay only $1,342.00. Based on the FY 1996 unit price, we computed an adjusted unit price ($1,317.45) using an inflator, which resulted in an overpricing amount of $69,592. We stand by our determination of overpricing on this contract.	The contractor submitted a sole source proposal: ➢ Unit price: $2,145.28 The buyer used prior unit pricing information: ➢ Purchased 510 each @ $1,596.00; ➢ This price was normalized and escalated to calculate an adjusted price of $2,050; ➢ A unit price of $2,049 negotiated for a quantity of 95 ➢ Total awarded amount $194,750. The IG report states overpricing was based on the use of "prior prices used were not justified as reasonable." However, it appears the IG used an adjusted unit price of $1,317.45, which is lower than the Nov 98 unit price of $1,596. Additionally, the buyer requested and received contractor cost information to perform a cost analysis for this item purchased in Nov 98. Thereby, we are able to ascertain the fair and reasonableness of the price. On this basis, it is appropriate to use the prior price to determine the price reasonableness of the 1999 purchase. **Based upon our analysis, we conclude there is no overpricing on this contract.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Partially concur OVERPRICING ESTIMATE: $ - 0 -
F42630-99-C-0161 Yoke Assembly C-5 Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $156,619** **Basis of Overpricing: Prior Prices Used were not Justified as Reasonable** The report did not assume the PCO relied on 1990 pricing as the Air Force has stated. Air Force documents show that PCO relied on that data. In fact, the price negotiation memorandum cite historical comparison to the 1990 contract and used the amount from the contract in their own computer generated formula to develop a current price. No where in the file is competition cited as a basis for reasonableness. The Air Force added additional comments that were not privy to the PCO at the time of her decision and appear to try to reconstruct events. However, the point still stands that the PCO was not aware of all current information at the time of her decision and made a price reasonableness decision based on incomplete and outdated information. Even had this other information not been added, the PCO did not know whether the 1990 prices were reasonable before being used as the basis for reasonableness. As a note, we did interview the PCO at the time because of the large difference in unit prices between award price and the other available history. She was unaware of the other awards. We stand by our determination of overpricing on this contract.	➢ Awarded as a SBSA to approved sources - 1 offer received. ➢ Price was determined fair & reasonable considering: -- Adequate price competition; and -- Consideration of previous proposed prices. ➢ Negotiated unit price of $3,744; Total contract price of $217,152. Prior contract and proposed prices: ➢ 1990 -- contract awarded 26 units @ $3,362.40 ➢ 1996: Contract F4230-96-C-0029 awarded to Sean Air Machine Corp. @ $1,026 a unit; Hydro Mill bid $3,497 for this contract ➢ 1998 -- Sean Air award for 34 units @ 1,825 ➢ 1999 -- Hydro Mill (contract F42630-99-C-016) bid $4,308 ➢ Contracts F42630-98-M-0027 and F42630-96-C-0029 with Sean Air Machine Corp have since been terminated for default We concur that it appears the buyer had no knowledge of the termination of Sear Air or the consistent pricing history of Hydro Mill; this should have been a consideration in her 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. Though the buyer did not use the most recent pricing history, we do not agree that this resulted in overpricing. Sean Air was unable to perform the two contracts they were awarded at the prices of $1,825 and $1,026 per unit. On the other hand, Hydro Mill was consistent in their bidding of both contracts at $4,308 and $3,497 per unit. As a side note the IG 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.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F42630-99-C-0074 Manifold Assembly C-5 Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $185,227** **Basis of Overpricing: Prior Prices Used were not Justified as Reasonable** The Air Force stated that an "air of competition" existed for this procurement in the negotiation memorandum, however the Air Force admitted that the only other known source could not bid on the item. There was no evidence of market research to show the capability of others to provide meaningful bids. The contracting officer stated in the negotiation memorandum that additional cost analysis and price analysis was conducted on the price. However, after determining that a should cost estimate based on price analysis would yield a price of $2,263 instead of the proposed price the $5,512, the contracting officer surmised that difference was due to rates since the selected contractor was small business and the prior contractor was a large business. The $5,512 price was, in fact, distorted because it did not include indirect costs and profit. The actual proposed price was $7,103 per unit. Therefore, the $2,636 should have been compared to the $7,103. In addition, the contracting officer's conclusion is without basis. Individual burden rate structure has nothing to do with the size of a business. Also, the cost breakdown involved lump sums with no detail to support reasonableness. For example, material was proposed at $4,700 per unit. The contracting officer acknowledged during our visit that costs were deemed reasonable based on verbal feedback. No supporting detail was contained in the file and the contracting officer could provide nothing beyond the file. Costs were accepted as proposed; only profit was reduced. Certainly, with such a large unit price difference from the last buy, prudence would have dictated more effort and detail to document price reasonableness. We stand with our original conclusions.	Procurement was for 40 each Manifold Assembly for the C-5 Aircraft, Sole Source, awarded 7 Jan 1999; ➢ Proposed total price was $319,718. Note: The contractor did not perform to par on the previous contract and subsequently was removed as an approved source. Therefore, it's inappropriate to use their price as a basis to determine price reasonableness. ➢ Negotiated total price was $311,600; of the $7,790 unit price, $867 per unit was attributable to non-recurring costs for the new dies. ➢ Prior price: The previous contract was competitively awarded in 1992 to Kaiser Fluid Tech for 25 each @ $2,844; however, Kaiser, now Ronson Hydraulics, had poor performance and was removed as an approved bidder. Initial solicitation to SBSA to approved sources -- no responses rec'd. Four contractors on the approved source list were then solicited; award was made to a large business, Coltec Industries (now BF Goodrich Aerospace) 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 I.G. report 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 IAW FAR 15.403-1 and the use of additional cost information to make an appropriate price determination. The IG uses 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. **Based upon our analysis, we conclude there is no overpricing on this contract.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F42630-99-C-0178 Torque Tube Assembly B-1B Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $412,067** **Basis of Overpricing: Accepted Catalog Price without Additional Review** The comparison to the pricing (catalog) for a DC10 does not show that any sales were actually made at these prices. Also, the DC10 pricing is for one (1) unit and does not consider quantity discounts. Government is buying 166 units on this contract. It would be more appropriate to adjust previous government pricing for the same item rather than use similar item. The prior history, which we used to come up with overpricing, was for a similar quantity as this contract. One-hundred-fifty-nine (159) units purchased 6/27/96 @ $10,150. This appears to be a more accurate amount to work with in coming up with an adjusted price. We stand by our original conclusions.	Procurement was for 166 B-1B Torque Tube Assembly, Sole Source, awarded 19 Apr 1999 @ $13,200 per unit. Prior price: 51 units @ $13,002.15, awarded 29 Sep 1997 based on commercial item; The contractor also stated its prior unit price error of $10,150 per unit in 1996. This price failed to consider a necessary process that would have increased man-minutes by 23.4%. Contractor submitted information other than cost or pricing data such as item description of a similar item, the DC-10 Torque Tube Assembly, a commercial item. The commercial price of this item was $9,108.46. Using the price of the DC-10 item, the increased AF price of $13,200 was based on the increased costs for machining of "splines", an additional center plate, the difference in metals used (titanium versus metal), and a reduction made to the item due to no backing plate on B-1B item. Proposed unit price: $15,150. Prior unit price: $13,002 Prior unit price adjusted with normal escalation: $13,794 Negotiated unit price: $13,200 The I.G. report stated that the contract was awarded based on accepting a catalog price without additional review. However, the PNM illustrates that the Price Analyst used additional information to adjust the comparison price of the DC-10 commercial item. This, in consideration of the prior price of $13,002 adjusted using normal escalation equating to $13,794, we disagree that the negotiated price of $13,200 is overpriced. Additionally, we take exception to the IG using an adjusted unit price of $10,717.67, which is even lower than the previous 1997 buy for 51 units @13,002.15. **Based upon our analysis, we conclude there is no overpricing on this contract.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F42630-99-C-0022 Heat Stacks F-15 Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $1,201,088** **Basis of Overpricing: Prior Prices Used were not Justified as Reasonable** Market research indicated that this is not a commercial item. As opposed to the AF statement that DCAA disagreed with the classification of this item as commercial, the Air Forces' own justification and approval prepared by the contracting officer stated this is not commercial. The Government indicated that we do not own data info and that Allied Signal is the only one that can provide part. A cost breakdown was performed, but only lump sums were provided in an informal email. No evidence of any analysis was performed. Allied Signal has made this item since 1987 and has been the sole source. There was no evidence of any sales to anyone, but the Government. It appears Allied may have designated this item as commercial in 1993 when the price increased significantly. Nothing was available to show how price reasonableness was established at that time. Based on the above information, DoDIG stands by our original conclusion.	Procurement was for 367 each Heat Stack Brake (P/N 2607437 for the F-15, Commercial, @ $11.445 per unit, awarded 2 Dec 1998. Prior price: 34 each @ $11,267.07, awarded 29 Mar 1998. Initially, the engineer noted that the item was not commercial on the Form 761 and the J&A stated it was not commercial, However, the PCO did further review the analysis of contractor submittals and documented the conclusion that the item was commercial. The contractor also submitted a cost breakdown to supporting their proposed price. The cost breakdown showed material (based on competitive quotes), direct labor (based on actuals), along with proposed profit. 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 (qty 34) from the 29 May 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, per the following: Proposed: $11,794.97 Prior price in 1998: $11,267.07 **Prior price in 1998 adjusted to 3% escalation: $11,605** **Negotiated price: $11,445 using cost breakdown information and historical prices with an appropriate price reasonableness determination.** Comparable price of similar item: $26,542 **Based upon our analysis, we conclude there is no overpricing on this contract.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Partially concur OVERPRICING ESTIMATE: $93,015
F42630-99-C-0084 Cylinder Assembly C-5 Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $151,066** **Basis of Overpricing: Used Competitive Pricing When No Competition Existed** The contracting officials did not provide evidence that there was a reasonable expectation that other bids would be received. The contractor was the incumbent and the awardee in the last 10 years. There was no evidence of market research to indicate other sources were capable of providing meaningful bids. Contracting officer had stated that price reasonableness was solely based on competition and that no analysis was performed. No other price analysis had been performed for this acquisition. In fact, there was no price negotiation memorandum. The price was 58 percent higher than the last buy. We stand by our original conclusions.	Procurement was for 13 each Cylinder Assembly C-5, Competitive, awarded 27 Jan 1999. Prior price: 2 each @ $22,982.00, awarded 8 Jan 1990. Solicitation issued competitively to four approved sources. One response was received from All Toll Inc @ a proposed unit price of $36,342.00; a total price of $472,446. The use of FAR 15.403-1 as a basic for price reasonableness on this 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. We agree 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 & 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 doesn't validate a fair and reasonableness price. **We estimate the overpricing on this contract to be approximately $93,015 which applies 3% escalation to the previously negotiated price from 1990 of $22,982.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F42630-99-C-0139 Aircraft Tires F-15 Aircraft **OO-ALC/Hill**	**Alleged Overpricing = $306,042** **Basis of Overpricing: Accepted Costs that were not Supported or Warranted** The $358.63 unit price that the Air Force cites as developed by us, was in fact developed by the contracting activity based on their price analysis. There was no documentation in the file showing that the Government used this price as their basis for negotiation or why it was ignored in arriving at a final price. We used this price to determine overpricing. The Air Force did not explain why they ignored their own evaluation in determining price reasonableness. DoDIG stands by its original conclusion that overpricing exists and costs were accepted that were not supported or warranted.	➢ Oct 99 contract award: 6,600 aircraft tires, @ $405, Commercial/Sole Source ➢ Feb 99 prior price: 4,292 aircraft tires @ $382.00, awarded under competition. ➢ These items normally bought competitively and commercial. ➢ The 5 previous buys were bought under competition and awards were usually split between two commercial contractors, Goodyear and Michelin. ➢ This procurement was deemed "urgent" due to a high failure rate on the Goodyear tire being used in the Saudi Desert ➢ Michelin was experiencing no such failure; to purchase any other tire jeopardizes both the aircraft and crew. ➢ An award was made to Michelin for 6,600 units at $405 each, for a total price of $2,673,000. The proposed amount was the same as the negotiated. Considering the mission critical circumstances of this acquisition, an immediate contract was awarded to the second source. However, we are in the process of reengineering the specifications of this requirement to expand the realm of potential sources in support of future requirements. The IG 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 his item. **We, therefore, non-concur with this finding of any alleged overpricing.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F41608-97-A-0001 **Two actions:** **#152 / #159** Turbine Inlet Case T-56 Aircraft **OO-ALC/Hill-Kelly**	**Alleged Overpricing = $1,384,807** **Basis of Overpricing: Accepted Catalog Pricing Without Additional Review** The two items that we reviewed were not included at the time the pricing and blanket purchase agreement was established. In addition, price reasonableness was supposed to be established through comparison to previous procurements, military priced proposals in-house and the existence of DCAA recommended rates. However, the use of the "existence of DCAA recommended rates" had little meaning since the parts reviewed were not broken out by element. Therefore, there was no visibility on what rates were used. Military in-house proposals were not in the contracting files and the contracting officer could provide none. Also, the comparison of previous procurements was based on a sample of 119 sole source items included in the catalog. The contracting officer states that these were the only sole source items that they expected to buy under this contract. However, the items we reviewed were added later and were not subject to this review. The sample analysis gave no indication of which price history went with which price analysis. In some cases, history could not be matched to the analysis and in other cases, information was incorrect. As for their catalog, even with the discounts provided off the catalog prices, there was no evidence to show that any customers actually paid catalog prices. We stand by our original conclusions.	The key information on this action is located in the PNM of the BPA file; it appears the auditors relied only on the order file. The file provides the order schedule submitted by the contractor showing the catalog price and the discounted unit price offered to their 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. The actual catalog price for order 0152 was $40,611.77 (contractor's discounted unit price was $25,884.65) versus the award price of $17,206.57. (Note: Price is based upon the delivery date and since both orders were scheduled over more than one CY they had more than one delivery price. For simplification, the audit report inappropriately uses an average unit price.) As the IG correctly states in their report, a sample of 119 sole source parts was used to negotiate a price discount for all parts, including these two. Thereby, the BPA was negotiated and documented in the PNM. This PNM provides support for the negotiated discounts from the commercial catalog price of 59% for CY 99. While the normal discount was 35%. The PNM provides an appropriate determination of a fair and reasonable price, considering an analysis and comparison of previous procurements, evaluation of military priced proposals in-house, and the existence of DCAA recommended rates. Historical price reasonableness was based on cost and pricing data provided by Allison. **Based upon our analysis, we conclude no overpricing exits on this contract.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Partially concur OVERPRICING ESTIMATE: $18,020
F41608-99-C-0237 Carriage Bleeds **OO-ALC/Hill-Kelly**	**Alleged Overpricing = $94,758** **Basis of Overpricing: Used Competitive Pricing When No Competition Existed** Contract procurement history shows that **the same contractor has been awarded the last three contracts for this item and has been the only contractor used for the last 11 years**, including a contract in August 1994 for 403 units @ $246.00. Market research was insufficient to indicate the threat of competition existed. The price negotiation memorandum determined the negotiated price of $553.00 per unit (340 units) to be fair and reasonable. The price of $553.00 was the amount offered by the contractor. This was 16 percent higher than the objective of $475.00 set by the Air Force. The Government compared the previous purchase (F41608-98-M-0549) for 86 units at $596.00 to the bid ($564.00) received from the contractor and determine that there was a cost savings of $32.00 per unit. However, the prior price used for comparison was also competitive one bid to the same contractor with price reasonableness established through competition. Price increased 125 percent in 5 years. Based on the above information, we stand by our original conclusion of overpricing and using competitive pricing when no competition existed.	Prior unit price = $596 Proposed unit price = $564 Negotiated unit price = $553 A review of the contract file indicates four contractors were solicited--only one submitted a proposal. Historical prices and the use of 88-92% learning curve were used to develop a price range of $459 - $500 per unit. The use of such a steep learning curve is questionable and may have resulted in an unreasonably low estimate. However, an AF objective of $475 per unit was established. We agree that additional market research may have provided further insight on potential sources and better prices. While this will not necessarily result in overpricing, the extra step of performing market research or price analysis is very important. We, therefore, partly concur with the IG finding. **We estimate that a 95% slope is more appropriate to ascertain an approximated price for this contract. This equates to $500 per unit. Therefore, overpricing on this effort is estimated @ $18,020.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Partially concur OVERPRICING ESTIMATE: $146,677
F421608-99-D-0185 Shroud C-5 Aircraft **OO-ALC/Hill-Kelly**	**Alleged Overpricing = $598,856** **Basis of Overpricing: Accepted Catalog Pricing Without Additional Review** The Air Force did not agree with this contract, but did not provide specific details other than to say other information was reviewed to support price reasonableness. Price reasonableness was based on comparing the proposed price from this contractor, the actual manufacturer, to a prime contractor catalog that would include the material cost from this contract and all additional markups that the prime contractor applied. They stated that the price was reasonable based on the catalog and the engineer's cost estimate. The engineer's estimate consisted of two sentences. "GE spare parts catalog dated Nov. 1, 1997, prices at $2,030.00. Therefore, the price quote from Ferrotherm seems reasonable." There was no evidence in the file that items had been sold at the catalog price. Purchase price was $575 per unit. Even the Air Force's own price analysis indicated the item should have been bought at between $248 and $284 per unit. DoDIG stands by its original conclusions.	Prior unit price in 1993 = $345, quantity 39 Proposed unit price = $575, quantity 759 Negotiated unit price = $590 The AF objective was developed using an 88-92% learning curve slope establishing a price range of $248 - 284 per unit. Again, the use of such a steep learning curve is questionable and may have resulted in an unreasonably low estimate. Additionally, it appears the buy used an inappropriate comparison of $2,030 for this item. Though the price is not based upon the acceptance of the proposed catalog price, our review of the contract concludes that the documentation was inadequate and does not support the determination of a fair and reasonable price. **We agree that there is overpricing on this contract. To ascertain an estimated amount, we consider the historical price of $345, escalated 3% for five years to equate an approximate adjusted unit price of $396.75. This amounts to $146,677 in overpricing.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Concur OVERPRICING ESTIMATE: Unable to estimate
F41608-98-D-0338 Outer Vane Fan Stator C-5 Aircraft **OO-ALC/Hill-Kelly**	**Alleged Overpricing = $288,624** **Basis of Overpricing: Used Competitive Pricing When No Competition Existed** We continue to disagree with the Air Force. The price negotiation memorandum stated that the contracting officer could reasonably conclude that the offer was submitted with the expectation of competition and that the contractor had no reason to believe that other contractors did not intend to submit proposals. Price history shows that only two contractors have been awarded contracts for this item. This contractor and one other contractor were the only awardees. The other contractor stated in February, five months before price negotiation that they were not bidding. In fact, this procurement was solicited more than once and this contractor was the only one to provide a proposal, but their offer had expired. In a memorandum from the contractor to the Air Force they indicated that at as early as October 1996 they had submitted a proposal for the emergency procurement and anticipated an award within a short period. Notes in the file indicated that when this contractor withdrew their bid because of capacity demands, Air Force contracting officials "offered ideas to the contractor to mitigate their capacity concerns." The contracting staff in other notes stated that they were waiting to see if the contractor could take the order. The extent and nature of the communications between the Air Force and the contractor left little doubt that the award would be made to this contractor and there was no threat of competition. In fact, it appeared more like we were at the mercy of the contractor to decide if he could take the award.	We concur with the IG finding on this acquisition based upon further analysis and input received from the field. Had the award been made on the initial offer received to the competitive solicitation, the use of adequate price competition may have been an appropriate consideration. However, the actual contract award was not made until 1.5 years later to the original offeror. On this basis, and upon review of the contract file, we conclude that adequate documentation is lacking and that additional market research and analysis does not provide adequate evidence in the final determination of price and subsequent award. **However, due to the lack of documentation, it is difficult to ascertain the level of overpricing on this contract.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F41608-99-C-0530 Synchronizing Rings F-15/16 Aircraft **OO-ALC/Hill-Kelly**	**Alleged Overpricing = $60,571** **Basis of Overpricing: Prior Prices Used were not Justified as Reasonable** The only other potential source appears to have been from the prime contractor whose price would not have been competitive with the sub since cost included item and add ons. PNM says reasonableness determination based on price analysis by comparison to previous buy. However, the prior award was to the prime contractor. The price of $6,169 was 55 percent higher than the prior award to Purdy. The contracting officer could provide no evidence for the basis of reasonableness of the $6,169 price and there was no evidence in the file of a review of reasonableness of the prior price. Purdy Corp. was the sole provider in 89-90 and produced this part for prices ranging from $3,975 to $3,994 per unit. In 1991, the prime contractor offered parts at $6,169 a unit. To further illustrate the lack of control, the unit price increased to $10,658 in 1998 and $14,294 in 2000. A J&A was prepared in May 1999 stating that only one source was available. We stand by our original conclusions.	This was a competitive contract that was previously purchased at a quantity of 53 ea at a unit price of $6,169.40. The unit purchase price for this contract @ $5,839.13 for 67 ea is considered fair and reasonable. The PNM stipulates that this requirement is for the same item and the market research suggests a reasonable expectation and assessment that two or more responsible offers would submit priced offers. Furthermore, the buyer conducted a price analysis using the previous price, adjusted to current month values using the BLS commodity index, and using 88% and 92% logarithmic curves to obtain a range of acceptable prices of $6,658.28 - $6,752.72. We, therefore, concluded the price of 67 ea at a unit price of $5,839.13 as acceptable and reasonable. The following provides a summary of the price ranges: 1989: $3,994 1991: $6,169 1998: $10,658 1999: $5,839 -- Buyer used BLS to normalize the 1991 price to current year dollars and application of 88-92% learning curve; this established a price range of $6,658-$6,753 2000: $14,294 -- We question the reasonableness of this price and are investigating. **We non-concur with the IG finding that prior prices used were not justified as reasonable and that this negated the appropriate determination of a fair and reasonable price.**

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Non-concur OVERPRICING ESTIMATE: $ - 0 -
F41608-98-C-0698 Connecting Links F-15/16 Aircraft **OO-ALC/Hill-Kelly**	**Alleged Overpricing = $134,100** **Basis of Overpricing: Prior Prices Used were not Justified as Reasonable** We disagree, since the contracting officer is unable to provide any new information to support the reasonableness decision. We stand by our original conclusion.	Prior unit price in 1998: $87.50 for quantity of 11,000 Proposed/Negotiated unit price in 1998: $87.50 for quantity of 5,000 This acquisition was considered a 2nd emergency acquisition. The 1st acquisition should have been followed by a routine buy. However, two contractors were solicited --1 response received. The IG contends that this contract was priced based upon the fact that "Prior Prices Used Were Not Justified as Reasonable". However, our review of this action demonstrates the use of DCAA audit support to establish the price reasonableness of the prior price. The buyer for this action used price history to establish a price range of $101-$96.34 per unit. Based upon this analysis, the $87.50 unit price was accepted as fair and reasonable. Therefore, we non-concur with the IG finding.

CONTRACT / LOCATION	DoDIG REBUTTAL	FINAL AF RESPONSE: Concur OVERPRICING ESTIMATE: Unable to estimate
F09603-98-C-0303 Guided Missile Fin AV-8 / F-15/16 Aircraft WR ALC	**Alleged Overpricing = $66,922** **Basis of Overpricing: Used Competitive Pricing When No Competition Existed** Marvin Engineering Company has had the three previous contracts and has been the only contractor providing this item. There was no evidence of market research to indicate that other contractors were capable of providing meaningful bids. Based on the above information, DoDIG stands by its original conclusions.	In reviewing the circumstances surrounding this determination, it appears additional price analysis should have been performed to substantiate price reasonableness as required under FAR 15.403-1(c)(ii)(b). **However, it is difficult to ascertain the appropriate amount of overpricing on this effort.** The Space & Special Systems Contracting Division is now performing quarterly file reviews to ensure compliance with FAR and local guidelines and prevent any further situations from occurring.

Defense Information Systems Agency Comments

DEFENSE INFORMATION SYSTEMS AGENCY
701 S. COURTHOUSE ROAD
ARLINGTON, VIRGINIA 22204-2199

IN REPLY REFER TO: Inspector General (IG)

February 2, 2001

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE
(ATTN: ACQUISITION, TECHNOLOGY AND LOGISTICS)

SUBJECT: Response to DoD IG Draft Report, "Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data are Not Required, (Project D2000CF-0059)

1. The following comments are provided from the Defense Information Systems Agency on the above referenced DoD IG Draft Report.

2. Subject draft report has been reviewed and comments to recommendations 2a-2g follow:

a. 2.a. RECOMMENDATION: Establish procedures that identify situations in the past leading to urgent procurements and initiate action to alleviate these conditions from future procurements.

COMMENT: Concur. DISA has implemented a spend plan process in which the details of every procurement action (such as award date, contractor, amount, large/small business, 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. Changes are controlled through Integrated Product Team (IPT) review. Each quarter the progress is briefed to the Chief of Staff and the Vice Director and variations to the baseline are highlighted. Through this process the contracting officers know when to expect procurement packages and the program managers are tracked on their performance (including schedule). This process was the recipient of the Value Engineering Award in FY 2000. This award is presented by the USD(A&T) to teams who develop new and/or unique processes for improving the effectiveness and efficiency of the acquisition process in DoD.

b. 2.b. RECOMMENDATION: Obtain cost or pricing data when other data is insufficient to determine reasonableness and use Defense Contract Audit Agency assistance when such cost data requires additional verification.

COMMENT: Concur, will ensure compliance with FAR 15.403. A reminder will be issued via the bulletin board system.

c. 2.c. RECOMMENDATION: Provide necessary tools for contracting officers to determine price reasonableness including complete price history databases.

Quality Information for a Strong Defense

Final Report
Reference

DISA IG M, DOD IG Draft Report, Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data are Not Required (Project D2000CF-0059), 02 Feb 01

COMMENT: Concur, a price history database is maintained in our Pricing Division. A reminder will be issued via the bulletin board system.

d. 2.d. RECOMMENDATION: 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.

COMMENT: Concur. Because DISA uses a pass/fail civilian appraisal system, 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 (these awards are decoupled from the appraisal system).

e. 2.e. RECOMMENDATION: 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.

COMMENT: Concur. There is currently no activity level quantitative process in place to track exceptions to Truth in Negotiations Act (TINA), other than through Departmental level, DD Form 350 reporting. However, DISA requires contracting officers to develop Pre and Post Negotiation Business Clearance Memorandums (BCM) which will contain information regarding cost and pricing data and the applicability of exceptions. DITCO will use the BCM to collect the data and determine appropriate use of exceptions to TINA. Additionally, compliance reviews will start monitoring all actions listing an exception to TINA in the pricing memorandums and maintain this data for trend analysis.

Revised

f. 2.f. RECOMMENDATION: Identify sole source and competitive one-bid commercial and noncommercial procurements at all major buying activities for Fiscal Year 2001 contracts issued with unreasonably priced items and institute corrective actions for future contracts with the same vendor.

COMMENT: Concur. Although none of DITCO's contracts were cited in the report as containing unreasonably priced items, we recognize the potential for such a problem. Therefore, the HCA is implementing preventive action whereby pricing for any solicitations that receive only one response will be reviewed by the price analysts in our Pricing Division. Historical pricing data is maintained for the products and services that DITCO purchases, and these will be the basis for analytical review. Our Pricing Division's review will be annotated in the Business Clearance Memorandum in accordance with DISA DITCOOI 260-70-1 part 15.4.

g. 2.g. RECOMMENDATION: 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.

DISA IG M, DOD IG Draft Report, Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data are Not Required (Project D2000CF-0059), 02 Feb 01

COMMENT: The scope of Procurement Management Reviews is not under the purview of the Director, DISA, but rather the Director of Defense Procurement. However, we will conduct internal compliance reviews to ensure this occurs.

2. If you have any questions, please call Ms Teddie Lou Steiner, Audit Liaison, at (703) 607-6316 or Jason Bakker, Assistant Audit Liaison, at (703-607-6607).

For the Director:

RICHARD T. RACE
Inspector General

Defense Logistics Agency Comments

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY REFER TO J-33

FEB 9 2001

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

SUBJECT: Draft Audit Report on the Adequacy of Contracting Officer Determinations of Price Reasonableness Determinations When Cost or Pricing Data are Not Required (Project No. D2000CF-0059)

Attached is the Defense Logistics Agency's (DLA) response to the subject audit for your consideration. We agree that 9 of the 13 DSCR procurements cited in your report were overpriced (but in some cases not to the extent cited). The reasons for the overpricing vary from contract to contract. However, there is some commonality because the contracts selected for review (i.e., sole source items in a precarious supply position, many with high priority backorders, some of which had not been purchased in many years) are representative of the situations where we would be most likely to find overpricing. There are situations where it is in the Government's best interest to award a contract at a price that cannot be determined to be fair and reasonable, rather than to delay the award (e.g., costs associated with non-operational equipment or maintenance line delays). The contracts reviewed are not representative of the over 1 million contracts awarded by DLA every year.

In Fiscal Year 2000, DLA completed Procurement Management Reviews specifically focused on spare parts pricing. The contracts reviewed were awarded during the same period as those included in your audit. Our findings were similar. As a result of those findings, we issued additional guidance to target the causes of the overpricing. We created a pricing homepage to give our buyers access to all available pricing tools and guidance. We currently have an Integrated Product Team looking more closely at price increases for sole source commercial items.

We continue to aggressively develop our workforce and provide them with every tool necessary to ensure that we achieve fair and reasonable prices on every DLA contract.

FRANK B. LOTTS
Deputy Director
Logistics Operations

Attachment

Federal Recycling Program Printed on Recycled Paper

ATCH 5

Subject: Adequacy of Contracting Officer Determination of Price Reasonableness When Cost or Pricing Data are not Required, Project No. D2000CF-0059

Finding: Contracting officers did not comply with FAR requirements and used invalid exceptions as a basis for not obtaining certified cost or pricing data in 53 of the 145 contract actions reviewed. Contracting officials also relied on incomplete information and did not adequately determine price reasonableness in 126 of the 145 actions.

This occurred because:

- Program offices and contracting officers did not adequately plan for acquisitions, thus creating an unjustified state of urgency.
- Contracting officer workloads were too heavy due to staffing shortages at 12 of 18 activities.
- Contracting officers did not obtain cost data when other means were insufficient to determine price reasonableness. Acquisition reform has de-emphasized the need to obtain cost data and this has also limited the use of Defense Contract Audit Agency (DCAA) for price analysis support. This atmosphere generated by acquisition reform has also empowered contractors to refuse to provide cost or other data for 18 contracts when requested by contracting officers.
- Senior leadership oversight was inadequate.

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 53 of the 126 contract actions, valued at $241.6 million, in which price reasonableness was not adequately supported DoD paid at least $40.5 million too much. Additional overpricing may have occurred on the remaining 73 actions, but we did not have enough information to quantify an amount.

DLA Comments: Partially concur.

Nonconcur in applicability of the first sentence of the finding to DLA. DLA contracting officers at Defense Supply Center Richmond (DSCR), the only DLA activity reviewed by the DoD Inspector General (IG) as part of this audit, complied with the Truth in Negotiation Act (TINA) requirements as implemented in the Federal Acquisition Regulation (FAR) and used valid exemptions. Of the 17 DSCR awards reviewed by the IG, only 3 met the TINA threshold for obtaining cost or pricing data. Specifics supporting our position are as follows:

Contract Number	Comments
N00383-95-G-054M-TY45	Cost and Pricing data was obtained.
SP0440-99-D-0547	TINA Exemption - provided a commercial item (FAR 15.403-1(b)(3)), so cost or pricing data was prohibited.
SP0441-99-C-5736	TINA Exemption - contracting officer determined that the prices agreed upon were based on the likelihood of adequate price competition. Adequate competition exists, when based on market research, there was a reasonable expectation that two or more offers would be submitted, even though only one offer was received, and the offer was submitted with the expectation of competition (FAR 15.403-1(c)(ii)). Although cost or pricing data was prohibited, the offeror did provide information other than cost or pricing data to support its prices.

Partially concur in the applicability of the second sentence of the finding referencing price reasonableness. In the 17 DLA procurements covered in this audit, and specifically 3 of the 14 procurements below the TINA threshold, the offeror refused to furnish "other than cost or pricing data." DSCR concluded that contracting officials were able to rely on sufficient other data to make one of these awards; in the other two, they had to rely on incomplete information. Details are as follows:

Contract Number	Comments
SP0440-99-D-0547	This item was solicited under FAR Part 12, Acquisition of Commercial Items, which prohibits requesting cost and pricing data. The contractor provided its published catalog, but refused to provide invoices of sales.
SP0441-99-C-5324	Contract did not meet the TINA threshold. The contractor would not provide "adequate" information other than cost or pricing data. However, adequate procurement history was available to make a price reasonableness determination.
SP0451-99-C-5526	Contract did not meet the TINA threshold. The contracting officer requested information other than cost or pricing data and the contractor refused. The contracting officer concluded that the price could not be determined reasonable.

Our position regarding the four causes of the aforementioned purported deficiencies listed in the draft report finding are as follows:

1. Partially concur that lack of adequately planning created an unjustified state of urgency. In many instances, requirements are received in the contracting office with backorders pending. It might be possible to improve demand forecasting tools but infrequent, sporadic demand patterns for many items preclude forecasting.

2. Partially concur regarding the finding on workload. DLA has various initiatives in place or underway to mitigate the problem. These include improvements in our automated procurement systems and efforts to maximize use of long term contracts.

3. Partially concur that contracting officers did not obtain cost data when other means were insufficient to determine price reasonableness. In such situations, buyers seek to obtain information other than cost or pricing data, e.g., cost breakdowns or commercial sales support for a catalog, a cost breakdown, etc., when necessary to make a price reasonableness determination.

4. Nonconcur that senior leadership oversight was inadequate. DLA has prescribed varying levels of management oversight of the procurement process as well as direct involvement at certain points where the specifics of individual procurements dictate such involvement. Similarly, DSCR and other Centers have supplemented higher level regulations with local procedures to more effectively deal with the pricing issues and to help assure adequate oversight and control of the procurement mission. In addition, procurement integrity and pricing are major focuses of local and DLA Procurement Management Reviews (PMRs). The results of these reviews are forwarded through senior management to the organization involved for a correction action plan.

Partially concur in the conclusions reached in the final paragraph of the finding. Of the 17 DLA awards included in the audit, we feel that only 9 (not 13 as stated) appear to have been overpriced. However, we nonconcur in the IG's overpricing calculations, which we believe are inflated. This is especially true in the most egregious instances, which the IG apparently calculated based on buys occurring 13 or 18 years prior to the 1999 buys in question. Our experience continues to demonstrate that much of apparent price growth over long periods is in fact attributable to various justifiable differences between circumstances of older buys that preclude comparability. This notwithstanding, actions are currently being taken to correct any substantiated amounts of overpricing, and to prevent a recurrence in any future buys of these items.

Recommendation No. 1: Under Secretary of Defense, Acquisition, Technology and Logistics:

a. Initiate a process to require the Senior Acquisition Executives in the Defense components identify the number of acquisition personnel at contracting activities 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 process should result from a bottom-up review of workload and personnel and not from the budget allocation for the contracting activity.

DLA Comments: No response is required inasmuch as this recommendation is directed to OSD.

b. Correct Army and Navy inaction on the price trend analyses of commercial items.

DLA Comments: No response is required inasmuch as this recommendation is directed to OSD.

c. Initiate price trend analyses at all major contracting activities for sole-source and competitive one-bid noncommercial items.

DLA Comments: Although no response is required inasmuch as this recommendation is directed to OSD, the following comment is offered. Price trend analysis is a form of price comparison (one of a number of techniques recognized in the FAR for use as appropriate in assessing price reasonableness). In most procurements where price history exists, our procurement personnel make price comparisons (FAR 15.404-1(b)(2)(ii)). The existence of prior price comparability is generally apparent without the need for a regression-based calculation as recommended. Mandating use of this form or price comparison would needlessly increase procurement administrative cost and logistics response time to the extent such calculations are unnecessary. Only in the exceptional instances where price comparability is not evident through a visual comparison of the offered price(s) and terms to those of prior buys of the item, should a price trend analysis calculation be considered.

d. Establish procedures to identify contractors that refuse to provide data requested by contracting officials and institute corrective measures to include involving the Head of contracting Activity, Major commands as appropriate, and Senior Acquisition Executives, and annotating the information in contractor past performance files.

DLA Comments: No response is required inasmuch as this recommendation is directed to OSD.

Recommendation No. 2: 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.

DLA Comments: Partially Concur. DLA is continually looking for ways to improve logistics response in support of our Military customers. However, we 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.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.

b. Obtain cost or pricing data when other data is insufficient to determine reasonableness and use Defense Contract Audit Agency assistance when such cost data requires additional verification.

DLA Comments: Partially Concur. When required and no statutory or regulatory prohibition exists, DLA contracting personnel do request cost or pricing data. The need for such action is addressed in HQ DLA and field guidance. Conformance is scrutinized through our normal prenegotiation review process as well as on a postaward sampling basis via local and HQ DLA contract and procurement management reviews. Nevertheless, we will address this recommendation and existing guidance in a memorandum to our Centers.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.

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

DLA Comments: Concur. For many years, our Standard Automated Material Management System (SAMMS), which is utilized by contracting personnel at our Centers, has included a "pricing assistant." It enables a regression analysis of the substantial price history available in SAMMS, plus the supplemental procurement history of Military buying offices available in commercial logistics data products used by our Centers. Other pricing tools have been developed and/or used locally over the years. These past accomplishments substantially satisfy the objectives of this recommendation. However, in light of the evolution in Government business practices in recent years, DLA has been developing new and enhanced tools to further assist contracting in the execution of the procurement function. Accordingly, we will issue a field memorandum addressing this audit recommendation, existing policies and these new tools that will support the procurement function in the foreseeable future.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.

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.

Final Report
Reference

DLA Comments: Partially Concur. These factors are implicitly considered in our contracting officer performance appraisals. Nonetheless, we will include a discussion of this matter in our field memorandum addressing the audit results and recommendations.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.

e. Quantitatively identify use of claimed exceptions to the Truth in Negotiations Act (TINA) 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.

DLA Comments: Partially Concur. TINA and implementing regulations have long-identified commonly occurring instances where cost or pricing data are not warranted (competition, prices set by law or regulation, and more recently, commercial items). The bases for these exceptions were explicitly defined therein, but contained no management oversight process. The statute and regulatory implementation have also provided for a high-level "waiver" process in very exceptional additional instances, when approved by high level management---the Head of a Contracting Activity (HCA), at present. The justification and propriety of granting a waiver is carefully scrutinized up to and by the HCA, for these very exceptional actions. Reviews of procurement actions involving all types of TINA exception are accomplished via our normal preaward clearance reviews, and via various local and HQ DLA reviews of the procurement function. This should substantially meet the objectives of this IG recommendation. However, we will also send the field a memorandum to underscore the importance of continuing to adequately document and monitor this matter, to continue to assure the validity of *all* TINA exceptions.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.

Revised

f. Identify sole source and competitive one-bid commercial and noncommercial procurements at all major buying activities for Fiscal Year 2001 contracts issued with unreasonably priced items and institute corrective actions for future contracts with the same vendor.

DLA Comments: Partially Concur. DoD and DLA have longstanding programs for seeking to secure "breakout" or competition and improved prices on such non-competitive items. Resource constraints, difficulty in predicting continued demand patterns and a shrinking industrial base are among the most significant factors that mitigate against totally overcoming overpricing on such items. However, we will send field memorandum addressing audit results and require feedback on local actions and results achieved.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.

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

DLA Comments: Concur. These elements are examined during DLA and local Procurement Management Reviews. Nonetheless, we will include a discussion of this matter in our field memorandum.

Disposition:
(X) Action is ongoing. ECD: July 31, 2001.
( ) Action is considered complete.