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April 8, 2003

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# Defense Infrastructure

## Document Automation and Production Service Public/Private Competition (D-2003-076)

This special version of the report has been revised to omit data considered Government commercial privileged or personal privacy.

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Department of Defense  
Office of the Inspector General

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### **Acronyms**

C.F.R.	Code of Federal Regulations
DAPS	Document Automation and Production Service
DLA	Defense Logistics Agency
DRMS	Defense Reutilization and Marketing Service
FAR	Federal Acquisition Regulation
GPO	Government Printing Office
IRO	Independent Review Officer
MEO	Most Efficient Organization
NIB/NISH	National Industries for the Blind / NISH (formerly National Industries for the Severely Handicapped)
OMB	Office of Management and Budget
PWS	Performance Work Statement
SSAC	Source Selection Advisory Council



INSPECTOR GENERAL  
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April 8, 2003

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE  
(INSTALLATIONS AND ENVIRONMENT)  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, DEFENSE LOGISTICS AGENCY

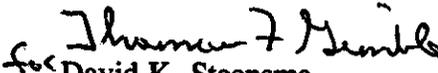
SUBJECT: Report on Document Automation and Production Service Public/Private  
Competition (Report No. D-2003-076)

We are providing this report for review and comment. We considered management comments when preparing the final report. We conducted the audit in response to requests from Representative Joel Hefley, Chairman of the House of Representatives Subcommittee for Military Readiness, and Senator George Allen.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The office of the Deputy Under Secretary of Defense (Installations and Environment) comments were responsive; therefore, additional comments are not required. The Defense Logistics Agency comments were partially responsive. As a result of office of Deputy Under Secretary comments, we renumbered draft report Recommendation A.1.c. as Recommendation A.2. and redirected it to the Director for Administration and Management. We renumbered draft report Recommendations A.2.a. and A.2.b. as A.3.a. and A.3.b. We request that the Director, Administration and Management provide comments on Recommendation A.2. and that the Defense Logistics Agency provide additional comments on Recommendation B.2.b. by June 10, 2003.

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

We appreciate the courtesies extended to the staff. For additional information on this report, please contact Mr. William C. Gallagher, at (703) 604-9270 (DSN 664-9270) or Mr. Benjamin A. Mehlman, at (703) 604-9291 (DSN 664-9291). See Appendix F for the report distribution. The team members are listed on the back cover.

*for*   
David K. Steensma  
Deputy Assistant Inspector General  
for Auditing

This special version of the report has been revised to omit data considered Government commercial privileged or personal privacy.

## Office of the Inspector General of the Department of Defense

Report No. D-2003-076

April 8, 2003

(Project No. D2002CB-0088.000)

### Document Automation and Production Service Public/Private Competition

#### Executive Summary

**Who Should Read This Report and Why?** Anyone in the Federal Government and the general public concerned with competitive sourcing issues would benefit from the lessons learned in this application of the Office of Management and Budget (OMB) Circular No. A-76 (OMB Circular A-76).

**Background.** This report discusses our assessment of the OMB Circular A-76 public/private competition of the Document Automation and Production Service (DAPS), a field activity of the Defense Logistics Agency (DLA). The OMB Circular A-76 competition covered approximately \$164 million per year of electronic output and document automation services performed at 260 continental U.S. locations. A total of 1,400 full-time equivalent personnel positions performed the functions included in the OMB Circular A-76 competition. This audit was initiated in response to a request from Representative Joel Hefley, Chairman of the House of Representatives Subcommittee for Military Readiness, Committee on Armed Services, that we review the DAPS public/private competition solicitation to determine why no private firms submitted offers and why offset printing work was not included in the solicitation (see Appendix B). Subsequently, Senator George Allen requested that we examine various concerns a DAPS employee raised regarding implementation of the Government's most efficient organization (MEO).

**Results.** The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government MEO. DLA withheld specific workload and staffing information from prospective contract offerors; offered to guarantee only 10 percent of yearly estimated work; did not provide specific historical information related to maintenance costs and did not offer leased equipment to private offerors; and excluded from the solicitation offset printing work forwarded to the Government Printing Office (GPO). As a result, private firms considered the competition high risk and did not submit proposals.

The same private sector consultant personnel developed the performance work statement (PWS) and prepared the MEO proposal for the DAPS public/private competition, which was a potential conflict. \* . As a result, the potential conflicts and noncompliance compromised the appearance of integrity and fairness for the OMB Circular A-76 competition.

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\*Government commercial privileged or personal privacy information omitted.

DAPS modified the certified MEO structure before implementation. DAPS did not prepare revised management plans or cost estimates that supported the modifications. Guidance regarding MEO implementation was inadequate. As a result, the MEO management plan was not implemented as proposed; and DLA cannot demonstrate that actual MEO costs will fall within the in-house cost estimate.

DLA should consider the results of this audit and decide a future course of action, which includes the following options.

- Continue implementation of the MEO structure; reannounce the OMB Circular A-76 competition within 2 years and include reliable staffing and workload information and potential conflict of interest safeguards.
- Include offset printing functions in the above alternative or separately solicit such functions at some future time.

**Management Comments and Audit Response.** The DLA Chief Information Officer partially concurred with the recommendations, stating that DLA would decide by June 30, 2004, after completion of a DLA post-MEO review of the DAPS function, on a future course of action. DLA stated that it would consider the offset printing alternative if the Federal Acquisition Regulation is modified to allow work currently procured through the GPO to be purchased directly from commercial sources. DLA concurred with recommendations: to develop oversight procedures that assure certified MEO management plan revisions are justified, costed, and approved and allow a sufficient audit trail; to develop controls and oversight that assure PWS and MEO development team constituency complies with DoD guidance; and to issue guidance on the firewall development, noting its present guidance included such safeguards. DLA comments to the recommendations were generally responsive. However, we do not agree that the present DLA guidance adequately describes OMB Circular A-76 firewall development. Thus, we request additional DLA comments to the final report on the firewall development recommendation. The office of the Deputy Under Secretary of Defense (Installations and Environment) concurred with report recommendations noting that DoD would ensure issues would be resolved either through the planned revised OMB Circular A-76 or in DoD guidance to implement the revised circular. The office of the Deputy Under Secretary stated that a recommendation to issue policy and guidance that clarifies the applicability of subjecting DoD printing provided to the GPO should be addressed to the Director, Administration and Management. We therefore redirect the recommendation and request comments from the Directors, Administration and Management and DLA by June 10, 2003. See the finding sections of the report for a discussion of the management comments to the recommendations, Appendix E for a discussion of management comments on the findings, and the Management Comments section of the report for the complete text of the DoD and DLA comments.

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## Background

**Document Automation and Production Service.** The Defense Logistics Agency (DLA), which is headquartered at Fort Belvoir, Virginia, provides supply support and technical and logistics services to the Services, other DoD Components, and Federal agencies. A field activity of DLA, the Document Automation and Production Service (DAPS), provides automated information products and services to DoD and designated Federal activities, including imaging and conversion of documents to electronic media, digital warehousing, distribution of digital and hard copy information, and DoD-wide procurement of printing and duplicating. From 1992 to 1996, the Navy served as the designated single manager for DoD printing services. In 1996, the Navy Publication and Printing Service was re-designated the Defense Printing Service, transferred to DLA, and was subsequently renamed DAPS. DAPS employed 1,674 personnel at 298 worldwide facilities as of October 1, 1999. The workforce represented a 50-percent reduction of the 3,347 personnel at 342 facilities in-place on October 1, 1992.

**Office of Management and Budget Circular No. A-76, DoD, and Defense Logistics Agency Guidance.** The Office of Management and Budget (OMB) Circular No. A-76 (OMB Circular A-76) and the OMB Circular A-76 Revised Supplemental Handbook establish policy and provide guidance on the process for conducting competitions between the Government and the private sector to perform support functions. The process includes: developing the performance work statement (PWS); issuing a solicitation that includes the PWS; developing a Government most efficient organization (MEO); submitting in-house and private sector proposals; conducting a source selection evaluation; and culminating in a cost comparison and decision to perform the function with Government employees or by contract. OMB Circular A-76 competitions usually generate savings through a reduction in personnel, whether the Government MEO or a private sector contractor wins. DoD guidance on commercial activities is contained in DoD Directive 4100.15, "Commercial Activities Program," March 10, 1989; DoD Instruction 4100.33, "Commercial Activities Program Procedures," September 9, 1985; and "Department of Defense Strategic and Competitive Sourcing Programs Interim Guidance," April 3, 2000. The guidance provides DoD policy for seven selected areas of the DoD commercial activities program including strategic sourcing, issuing solicitations, potential conflicts of interest, source selection evaluation boards, OMB Circular A-76 costing, the administrative appeal process, and tracking of completed strategic and competitive sourcing programs. The DLA Commercial Activities (A-76) Competition Guidebook is intended to provide additional guidance for all DLA field activities performing OMB Circular A-76 studies to help DLA reduce infrastructure costs while improving support services. The guidebook organizes the OMB Circular A-76 process into 10 steps.

**DAPS A-76 Competition.** Section 350 of the Strom Thurman National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) (the Act) mandated that DLA independently review all DAPS functions for commercial competition or outsourcing. The review requirements included a determination of customer requirements, best business practices, options to provide the most cost-effective

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services, and an appropriate DAPS management structure. On April 30, 1999, the DLA Director submitted a Klynveld Peat Marwick Goerdeler (KPMG) independent functional review of DAPS to Congress in response to the Act. The functional review concluded that no DAPS functions were inherently national security and all functions should be considered for transfer to other entities. As part of the submission, the DLA Director notified Congress of plans to subject DAPS functions to public/private competition under OMB Circular A-76 guidelines. DLA formally announced the start of the OMB Circular A-76 competition on August 3, 1999. DAPS documents indicated the scope of the OMB Circular A-76 competition included approximately \$164 million per year of electronic output and document automation services performed at 260 continental U.S. locations. A total of 1,400 full-time equivalent personnel positions performed the functions included in the OMB Circular A-76 competition. The electronic output and document automation services represented approximately 43 percent of DAPS workload. The competition did not include DAPS offset printing workload performed by the Government Printing Office (GPO) and GPO contractors at an annual cost of about \$106 million. DAPS indicated that the study cost approximately \$5.4 million to conduct. The initial competition timeline was 24 months from announcement to tentative decision. The competition was 1 of 19 OMB Circular A-76 competitions announced by DLA since 1998.<sup>1</sup> See Appendix C for a chronology of the DAPS competition.

**Source Selection Advisory Council.** A source selection advisory council (SSAC) monitored the progress of the OMB Circular A-76 competition. The council was formed pursuant to the direction of the source selection authority, the Vice Director, DLA. The SSAC was tasked to determine the best value contractor offer in terms of technical feasibility and cost and forward its recommendation to the source selection authority. The SSAC consisted of seven members including two customer representatives of DAPS services. Seven additional personnel including the DAPS Director, the DAPS commercial activity study manager, and the contracting officer; and DLA headquarters legal advisor, public affairs official, human resources official, and information technology advisor served the SSAC in an advisory role.

**Source Selection Evaluation Board.** The source selection authority assigned the Defense Reutilization and Marketing Service (DRMS) contracting office responsibility for the procurement. In addition, the source selection authority created a source selection evaluation board located at DRMS to review the technical aspects and management structure of contractor proposals. The full source selection evaluation board was tasked to receive and evaluate panel recommendations and forward the final recommendation to the SSAC.

**Contract Solicitation for the DAPS A-76 Competition.** The DRMS contracting office issued solicitation SP4410-01-R-4000 on March 30, 2001. The solicitation called for one award covering all DAPS production functions and specified an indefinite delivery, indefinite quantity contract containing fixed-price line items, and some cost-reimbursable items. The solicitation called for a base performance period of 3 years with two 12-month option periods and two 12-month incentive

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<sup>1</sup>As of June 30, 2002, DLA had completed 10 of the competitions.

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award terms. The solicitation specified a total performance period of 7 years and 9 months, which included a 9-month transition period. DRMS and DAPS conducted a pre-proposal conference on April 27, 2001, and site visits of representative DAPS locations on April 28, 2001.

**Source Selection Decision for Document Automation and Production Service.** On January 18, 2002, DLA announced that it planned to implement the MEO, as no contractors submitted proposals in response to the solicitation. The MEO proposed \* personnel at 119 facilities<sup>2</sup> to be implemented by October 2002. The MEO cost was estimated at \$ \* over 7 years.

**Congressional and DoD Employee Concerns About the DAPS A-76 Competition.** On January 31, 2002, Representative Joel Hefley, Chairman of the House of Representatives Subcommittee for Military Readiness, Committee on Armed Services, requested that the Office of the Inspector General of the Department of Defense review the DAPS A-76 solicitation to determine why no contractors submitted proposals. Representative Hefley also asked why the solicitation did not include offset printing work (see Appendix B). On April 22, 2002, Senator George Allen requested that the Office of the Inspector General of the Department of Defense examine various issues a DAPS employee raised regarding the OMB Circular A-76 competition. The employee believed that the competition was having an adverse effect on DAPS employees, that DAPS management did not keep employees informed of the MEO development, and that the MEO could not provide adequate services to DoD Components.

## Objectives

The overall objective was to determine whether DLA fairly and impartially conducted the OMB Circular A-76 process for the DAPS public/private competition. We also determined the reasons for the private sector non-responsiveness to the public/private competition solicitation. We also reviewed the management control program as it related to the overall objective. See Appendix A for a discussion of the audit scope and methodology and the review of the management control program.

## Other Matters of Interest

We commend the contracting officer for the extensive documentation in the contract file. The contracting officer wrote numerous memorandums for the record that provide an excellent summary of the contracting officer's review of the solicitation and analysis of contractor concerns with the solicitation.

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\*Government commercial privileged or personal privacy information omitted.

<sup>2</sup>DAPS announced that the certified MEO would be implemented at 119 locations. The certified MEO management plan listed 120 staffed locations.

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## A. Adequacy of the Solicitation for Competition

The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government's MEO. The condition occurred because DLA:

- withheld specific workload and staffing information from prospective contract offerors;
- offered to guarantee only 10 percent of yearly estimated work;
- did not provide specific historical information related to maintenance costs, and did not offer leased equipment to private offerors; and
- excluded from the solicitation offset printing work presently forwarded to the GPO.

As a result, private firms considered the competition high risk and did not submit proposals.

### Solicitation Issuance and Review

The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government's MEO.

**DLA Industry Days.** On September 30, 1999, and June 13, 2000, DLA held industry days to provide potential offerors an overview of the background and functions of DAPS as well as the OMB Circular A-76 process. At the first industry day, 30 individuals representing 16 public and private organizations attended, while 56 individuals representing 30 public and private organizations attended the second industry day. At both industry days, potential offerors were encouraged to submit questions and complete questionnaires that would serve as the basis of the solicitation market research. Contractor-submitted questions requested details regarding volume/workload and staffing information, inclusion of offset printing in the competition, and inclusion of Government-furnished equipment in the solicitation. The DRMS responses stated that pertinent data would be included in the solicitation; noted that DAPS would continue to manage GPO work; and advised that Government-furnished equipment decisions had not been made. The DRMS response made no specific comment regarding staffing information.

**OMB Review of Solicitation.** On September 1, 2000, the OMB Office of Federal Procurement Policy notified DLA that it reviewed the draft DAPS solicitation PWS and concluded that the PWS did not meet performance-based service contracting requirements. In response to the review, DLA revised the draft solicitation to address OMB concerns. However, DAPS study managers

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stated that many solicitation requirements could not be revised because of DAPS memorandums of understanding with various bases and commands that detailed how work was to be performed at those locations.

**Source Selection Organization.** On March 8, 2001, the source selection authority approved the source selection plan. The source selection plan called for a single, nationwide procurement for DAPS functions. The source selection organization, as described in the Source Selection Plan for the DAPS A-76 competition, consisted of the source selection authority, the SSAC situated at DLA headquarters, and a source selection evaluation board situated at DRMS. On March 30, 2001, the DRMS contracting office issued solicitation SP4410-01-R-4000.

**Other Changes to Solicitation.** During the draft solicitation process and after solicitation SP4410-01-R-4000 release, private sector companies, the MEO, and the Independent Review Officer (IRO) team asked 399 questions regarding the solicitation. Responses to questions were included in 9 of 15 solicitation amendments issued.

**IRO Review of Solicitation PWS.** The IRO team submitted 120 written questions from May through September 2001 to the contracting officer regarding the PWS.<sup>3</sup> The independent review concluded that the DAPS PWS was responsive to agency requirements and met the requirements of the DLA IRO Guide. However, the IRO discovered PWS weaknesses including inconsistencies between the workload technical exhibits and the solicitation schedule and lack of clarity regarding Government-furnished equipment. The DAPS PWS development team made corrections to the PWS in response to the IRO questions.

**Private Sector Interest in Solicitation.** During the draft solicitation process and after solicitation SP4410-01-R-4000 release, the contracting officer became aware of two potential private sector teams having serious interest in competing for the work: IKON/Cannon (IKON) and RR Donnelley/DynCorp (RR Donnelley). On May 21, 2001, the IKON team notified the contracting officer that it would not submit an offer. On August 31, 2001, RR Donnelley sent a memorandum to the contracting officer stating that it would not submit an offer. RR Donnelley identified seven primary areas of concern with the solicitation that significantly conflicted with printing industry commercial contracting principles. Those concerns were: inadequate volume/workload information, failure to include GPO offset printing work, lack of a sufficient guaranteed minimum range, DLA nondisclosure of detailed DAPS staffing information, lack of detailed site visits, nondisclosure of facility costs, and nondisclosure of DAPS leased equipment costs.

**Solicitation Closure.** On September 7, 2001, the contracting officer issued SP4410-01-R-4000 Amendment 15 after no private industry offers were received. Amendment 15 requested prospective offerors to contact the contracting officer and state why no offers were submitted. The contracting officer began an analysis

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<sup>3</sup>The DLA Chief of Internal Review served as IRO. The IRO team consisted of the IRO and four to five Arthur Andersen, LLP, support service contract personnel.

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of the areas of concern in the RR Donnelley memorandum to determine if the solicitation was unduly restrictive in accordance with title 32, part 169a, Code of Federal Regulations (C.F.R.).<sup>4</sup> The contracting officer subsequently discussed the solicitation with representatives of RR Donnelley and IKON on September 17 and 19, 2001. IKON representatives informed the contracting officer that the solicitation was too cumbersome and unreasonable. On October 1, 2001, RR Donnelley sent a second letter to the contracting officer identifying three areas of remaining concern: lack of adequate workload information in the solicitation, applicability of the Service Contract Act, and GPO offset printing.

**Solicitation Review Requirements.** “Commercial Activities Program Procedures,” 32 C.F.R. 169a, section 17, “Solicitation Considerations,” paragraph (i) and section 5.6.10., DoD Instruction 4100.33 both state:

If no bids or proposals, or no responsive or responsible bids or proposals are received in response to a solicitation, the in-house cost estimate shall remain unopened. The contracting officer shall examine the solicitation to ascertain why no responses were received. Depending on the results of this review, the contracting officer shall consider restructuring the requirement, if feasible, and reissue it under restricted or unrestricted solicitation procedures, as appropriate.

**Contracting Officer Briefings to SSAC.** On October 15, 2001, the contracting officer briefed the DLA SSAC on whether the solicitation should be reissued. The contracting officer agreed with the RR Donnelley concerns relating to inadequate volume/workload information, lack of a sufficient guaranteed minimum range, and DLA nondisclosure of detailed DAPS staffing information, facility costs, and leased equipment costs. The contracting officer concluded the solicitation was unduly restrictive and recommended reissue. The DAPS A-76 study manager opposed reissue, stating that a reissued solicitation would cost DAPS \$869,477 to collect updated workload data and submit a new MEO offer. However, the SSAC voted to reissue the solicitation. On October 16, 2001, the contracting officer issued a memorandum for the record of determination and finding to reissue the solicitation. On October 29, 2001, shortly after briefing the source selection authority, the contracting officer received a call from the DLA legal counsel, who requested that the contracting officer reconsider the determination that the solicitation was unduly restrictive. DLA legal counsel noted that 32 C.F.R. 169a does not give the contracting officer authority to make a determination on resolicitation, only to determine if it is feasible to reissue.<sup>5</sup> On November 5, 2001, the contracting officer met again with the SSAC and recommended DLA not resolicit. The SSAC voted to support the recommendation. Although still agreeing with many of the RR Donnelley concerns, the contracting officer concluded it was highly unlikely offers from private firms would be received even if the solicitation deficiencies were corrected and the workload was re-baselined. We believe that DoD should issue

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<sup>4</sup>The requirement is replicated in section 5.6.10., DoD Instruction 4100.33.

<sup>5</sup>Neither OMB Circular A-76 nor the OMB Circular A-76 Revised Supplemental Handbook mentions 32 C.F.R. 169a.

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guidance in accordance with 32 C.F.R. 169a, section 17, to clarify contracting officer and source selection authority actions in competitive sourcing solicitations where no proposal is received.

**Applicability of the Service Contract Act.** The contracting officer believed that RR Donnelley would submit a proposal only if a Service Contract Act waiver were granted. However, the contracting officer and the SSAC agreed that no basis for a Service Contract Act waiver existed and none should be issued. On November 28, 2001, the source selection authority met with representatives of the RR Donnelley team and informed them that the solicitation would not be reissued.

## Solicitation Information

Specific solicitation issues are summarized below. See Appendix D for details of the areas and for other issues the potential offerors and DAPS workforce noted.

**Workload and Staffing Information.** DLA withheld specific workload and staffing information from prospective contract offerors. Data regarding workload volume were not in a format that allowed firms to prepare a pricing proposal. DAPS objected to the release of Defense Working Capital Fund accounting system workload and pricing information that it claimed was proprietary. The MEO management plan stated that the MEO development team used the DAPS Defense Working Capital Fund data in conjunction with PWS technical exhibits and other MEO data to evaluate the DAPS operations. After solicitation closure, the contracting officer concluded that private sector offerors should have been allowed to obtain more up-to-date and detailed volume workload information to estimate costs from workload.

Potential offerors sought existing staffing information such as the number of personnel at a given site, type of work performed, skills possessed, and employee pay grade and classification. DAPS management determined that this was information proprietary to the MEO. An August 30, 2001, a DAPS Director memorandum to the contracting officer concluded that no personnel staffing information relative to individual DAPS locations should be released nor was DAPS legally required to release such information. The memorandum noted a May 1984 U.S. District Court for the District of Columbia case as justification supporting the Government's right to deny contract offerors such information.<sup>6</sup> The DRMS contracting officer deferred to the DAPS management decision. The contracting officer later concluded that staffing information is not subject to Freedom of Information Act protection and believed that the 1984 case was not a valid basis for denying information to the public regarding staffing because the information that offerors were seeking was not as detailed as the information denied release in the 1984 case. The DLA general counsel supported the DAPS determination, noting the contracting officer's conclusion had no legal basis. We believe that DoD should develop competitive sourcing guidance specifying requirements for inclusion of existing Government staffing information in OMB Circular A-76 competitive sourcing solicitations.

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<sup>6</sup>Morrison-Knudsen Company, Inc. v. Department of the Army, 595 F.Supp. 352 (D.D.C.1984).

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DAPS pursued a policy of voluntary retirements, incentive offers, and downsizing to decrease personnel positions, including positions subject to the OMB Circular A-76 competition. The downsizing process was ongoing during the term of the solicitation and the OMB Circular A-76 competition. DAPS documents indicated that 40 of the 260 study locations were closed and that the 1,400 in-place personnel at competition announcement were reduced to 918 personnel at competition conclusion. The solicitation was unclear about the total number and closure of locations,<sup>7</sup> and included no personnel information. Neither the contracting officer nor the IRO was aware of the scope of the personnel reductions, only that DAPS was implementing a downsizing policy. The contracting officer stated that DAPS location and personnel reductions were not communicated to the contracting office. The DAPS A-76 study manager stated that the downsizing did not change the scope of the solicitation requirement. An August 30, 2001, DAPS Director memorandum to the contracting officer stated that DAPS was in the process of downsizing its organization to reflect the current business levels, which could lead to similar staffing levels being projected in the MEO.

Potential offerors requesting staffing information may not have necessarily needed the information to make a proposal, but were seeking an alternative means to understand the volume of work that needed to be produced under the contract because of the Government's inability to provide detailed workload information. Subsequently, DAPS could have provided staffing information that did not give direct costing information but would be appropriate to determine the scope of work. We concluded that potential offerors should have been advised of the closed sites and the reduction of overall DAPS staffing.

**Guaranteed Minimum.** DLA offered to guarantee only 10 percent of yearly estimated work in the solicitation. The 10-percent minimum was included because indefinite delivery, indefinite quantity type contracts require a minimum and a maximum amount of compensation for any given performance period. The solicitation maximum was 150 percent. The minimum was low because of the uncertainty of expenditures because of changing technology in the printing industry. As the result of potential high initial outlays, RR Donnelley considered the 10-percent minimum insufficient. The contracting officer recommended that the minimum amount be increased to more than 10 percent if the solicitation was reissued. We agree that a contractor would likely need a higher revenue guarantee because of the uncertain nature of the DAPS workload of duplication and reproduction orders.

**Equipment and Maintenance Costing Information.** DLA did not provide specific historical information related to maintenance costs and did not offer leased equipment to private offerors. DAPS leased equipment was valued at \$<sup>\*</sup> from private suppliers and represented <sup>\*</sup> percent of existing equipment value at

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<sup>7</sup>Three solicitation technical exhibits listed, variously, between 239 to 262 total DAPS locations and between 5 to 39 of the total locations as being either "closed," "closing," "non active," "never opened," or "rolled-up" into other locations.

<sup>\*</sup>Government commercial privileged or personal privacy information omitted.

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DAPS locations. On June 8, 2000, the source selection authority approved an SSAC recommendation making leased equipment available to potential commercial offerors and the Government's MEO, with the service provider providing equipment maintenance. DAPS was instructed to verify all equipment information for inclusion as a technical exhibit in the second draft posting of the PWS. On November 15, 2000, the SSAC agreed with a DAPS recommendation not to offer the leased equipment to private firms and to cost the leases for the MEO offer. On January 10, 2001, DAPS provided the contracting officer a cost benefit analysis that concluded that offering the leased equipment would not provide offerors an incentive to reduce equipment usage. However, the analysis provided no documentation or methodology to support the estimated savings and provided no alternatives to allow offers on portions of the existing leased equipment. The March 30, 2001, solicitation did not offer the leased equipment and did not provide maintenance records for the existing leased equipment. Even though DLA was not legally required to disclose equipment leasing and maintenance costs, the contracting officer determined after solicitation closure that it was feasible to provide historical maintenance costs in a technical exhibit, and that contractors were to be responsible for maintenance of Government-owned equipment. The contracting officer also recommended after solicitation closure that the leased equipment be provided at no cost as Government furnished to all offerors.

**Exclusion of Offset Printing.** DLA did not include in the solicitation offset printing work presently forwarded to GPO. The exclusion of offset printing work discouraged potential offerors from competing.

**Statutory Requirements for Offset Printing.** Section 501, title 44, United States Code (44 U.S.C. 501), states:

All printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office (GPO), except (1) classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere; and (2) printing in field printing plants operated by an executive department, independent office or establishment, and the procurement of printing by an executive department, independent office or establishment from allotments for contract field printing, if approved by the Joint Committee on Printing. Printing or binding may be done at the Government Printing Office only when authorized by law.

Section 195, title 10, United States Code, (10 U.S.C. 195), states:

The Defense Automated Printing Service shall comply fully with the requirements of section 501 of title 44 relating to the production and procurement of printing, binding, and blank-book work.

Federal Acquisition Regulation (FAR) Subpart 8.8, which implements 44 U.S.C. 501 and 10 U.S.C. 195, states that Government printing must be done by or through GPO. FAR mandated exceptions include situations where GPO

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cannot provide the service, printing is done in field printing plants operated by Executive agencies, printing is acquired by an Executive agency from allotments for contract field printing, or printing is specifically authorized by statute to be done other than by GPO.

**DoD Guidance on Offset Printing.** DoD policy requires procurement of all printing and duplicating from private sector sources shall be through the GPO. A March 31, 1997, Secretary of Defense memorandum to the Director of DLA directed DLA to ensure that the operations of DAPS were in conformance with the law and with the guidance OMB issued regarding title 44 of the United States Code.

**Department of Justice Analysis.** An April 11, 1996, White House Chief of Staff memorandum to heads of Executive departments and agencies advised that OMB would assess the cost effectiveness of the current printing and duplicating arrangements and make recommendations for improvements. In May 1996, the Department of Justice Office of Legal Counsel issued the opinion that Congress could not constitutionally mandate that the agencies of the Executive branch use GPO. The FAR has not been modified to reflect the Department of Justice position. The opinion notes that congressional expansion of GPO that included nearly all the printing, binding, and copying the Executive branch required is unconstitutional in that it violates the separation of powers. The opinion states that:

To the extent that 44 U.S.C. Subsection 501 and 501 note require all executive branch printing and duplicating to be procured by or through the GPO, those statutes violate constitutional principles of separation of powers . . . we perceive little or no risk of liability or sanction to contracting officers who act consistently with this opinion.

**OMB Policy on GPO Offset Printing.** In a May 3, 2002, memorandum, the Director of OMB states that Executive branch agencies are no longer required to make use of GPO services and can outsource printing and duplicating needs. The Director concluded that Executive branch agencies could realize significant cost savings if they consider alternatives to GPO for printing and copying work and that Executive branch departments and agencies should comply with the memorandum upon publication of an implementing FAR rule. The memorandum affirmed the 1996 opinion of the Justice Department Office of Legal Counsel that Congress cannot require Executive branch agencies to use GPO facilities. While the OMB policy was not applicable at the time of the DAPS study, we believe DoD should develop guidance in conjunction with OMB policy on the applicability of subjecting DoD printing provided to GPO to competitive sourcing procedures.

**DLA Discussions and Determination on Offset Printing Inclusion.** The DAPS Director stated that DAPS and DLA always understood that traditional offset printing would not be included in the competitive sourcing initiative. The DAPS Director noted that an April 27, 1999, DLA briefing to the Under Secretary of Defense for Acquisition, Technology, and Logistics noted the results of the KPMG study of DAPS functions and sourcing options for DAPS, and that all options assumed traditional offset printing would continue to be provided to GPO.

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A May 3, 1999, memorandum from the DAPS Director to the Public Printer, GPO stated that while DAPS would comply with OMB Circular A-76, the DoD-GPO relationship would be unchanged with traditional printing requirements continuing to be placed through GPO.

DAPS and DLA personnel stated that while the offset printing issue was discussed in the SSAC, the SSAC decided not to include the GPO offset printing work as the work was already contracted out by GPO, and DAPS had no present in-house capacity to perform the offset work in the event that the DAPS MEO won the competition. DLA legal personnel stated that they concluded DLA could not legally include the GPO work, and solicitation inclusion of offset printing would require submission to GPO for approval and could result in a separate solicitation. DAPS at its own discretion maintained approximately \$3.18 million (3 percent of total) offset printing work in-house. The in-house offset printing was not included in the OMB Circular A-76 competition. Neither DLA nor DAPS had documented any of the reasons stated to us for not including in the solicitation offset printing work to GPO. The option of requesting GPO approval and the fact that some offset printing work is performed in-house indicates DLA did have at least limited discretion in the disposition of the offset printing work at the time of the solicitation. If the GPO work had been offered, private offerors may have been more likely to compete for DAPS work.

**Single Contract Decision.** DAPS contracted with consulting firms Booz-Allen-Hamilton and CAP Ventures to provide market research regarding the type, scope, and length of a DAPS contract. The DAPS consultants contacted nine potential contractors during the market research period. Of the nine potential contractors, four preferred a single nationwide contract, four preferred regionalized contracts, and one was undecided. Based on the market research, DLA concluded it was in the Government's best interest to structure the competition for one nationwide contract. On March 8, 2001, the source selection authority signed the DAPS acquisition plan calling for a single procurement of DAPS functions. Benefits of a single national contract included the following.

- Economies of scale would result in lower cost to the Government.
- It would allow transition to different workload functions.
- A single service provider would have more incentive to provide different services, be more adaptable to change, and would require less Government overhead.
- A single service provider using digitalized document technology would be able to distribute to end users over wide areas and coordinate the production of homogeneous operations.

## **Management Comments on Finding A and Audit Response**

Summaries of management comments on finding A and our audit response are in Appendix E.

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## Recommendations, Management Comments, and Audit Response

**Redirected and Renumbered Recommendations.** As a result of office of Deputy Under Secretary of Defense (Installations and Environment) comments, we renumbered draft report Recommendation A.1.c. as Recommendation A.2. and redirected it to the Director for Administration and Management. We renumbered draft report Recommendations A.2.a. and A.2.b. as A.3.a. and A.3.b.

**A.1. We recommend that the Deputy Under Secretary of Defense (Installations and Environment) issue policy and guidance that clarifies:**

**a. The extent that Government staffing and workload information should be included in Office of Management and Budget Circular A-76 competitive sourcing solicitations.**

**b. Title 32, Code of Federal Regulations, part 169a, section 17 and DoD Instruction 4100.33 guidance for contracting officer and source selection authority actions in competitive sourcing solicitations where no proposal is received.**

**Deputy Under Secretary of Defense (Installations and Environment) Comments.** Responding for the office of the Deputy Under Secretary of Defense (Installations and Environment), the Director, Competitive Sourcing and Privatization concurred with the recommendations stating that if information is available for use by the MEO team, in any manner, that information should be made available to all offerors. The Director stated that recent competitions where private sector offers were received but determined to be non-responsive combined with cases where no proposal is received requires additional guidance. The Director noted that DoD would ensure the recommendations would be resolved either through the revised OMB Circular A-76 or in DoD guidance that implements the revised circular.

**A.2. We recommend that the Director, Administration and Management issue policy and guidance that clarifies the applicability of subjecting DoD printing provided to the Government Printing Office to competitive sourcing procedures.**

**Deputy Under Secretary of Defense (Installations and Environment) Comments.** Responding for the office of the Deputy Under Secretary of Defense (Installations and Environment), the Director, Competitive Sourcing and Privatization partially concurred with a draft report recommendation made to his office but noted that the guidance should be the responsibility of the office of the Director for Administration and Management, who has functional determination of printing.

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**Audit Response.** Based on the comments of the office of the Deputy Under Secretary, we redirected the recommendation to the Director, Administration and Management and request comments from the Director, Administration and Management by June 10, 2003.

**A.3. We recommend that the Director, Defense Logistics Agency consider the results of this audit and decide a future course of action. The options include:**

**a. Continue implementation of the most efficient organization structure and reannounce the Office of Management and Budget Circular A-76 competition within 2 years and include reliable staffing and workload information and potential conflict of interest safeguards (see finding B).**

**b. Include offset printing functions in the alternative described in Recommendation A.3.a. or separately solicit such functions at some future time.**

**DLA Comments.** The DLA Chief Information Officer partially concurred with the recommendations. DLA stated that it would take into consideration the results of the Inspector General of the Department of Defense (IG DoD) audit, and decide by June 30, 2004, after completion of a DLA post-MEO review of the DAPS function, on a future course of action. The future action may include reannouncing the OMB Circular A-76 competition at an appropriate time. DLA also noted that that a future decision to resolicit will be contingent upon factors including technological advances and legal restraints. DLA stated that it will consider the offset printing alternative in conjunction with Recommendation A.3.a., should the FAR be modified to allow work currently procured through the GPO to be purchased directly from commercial sources.

**Audit Response.** Although the DLA only partially concurred, the DLA comments are responsive and no additional comments are required.

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## B. Potential Conflicts of Interest

The same private sector consultant personnel developed the PWS and prepared the MEO proposal for the DAPS public/private competition. This condition occurred because .

As a result, the potential conflicts and noncompliance compromised the appearance of integrity and fairness of the OMB Circular A-76 competition.

### Use of Support Service Contractor Personnel in PWS and MEO Development

The DAPS public/private competition violated DoD interim guidance to avoid potential conflicts of interest by allowing the same private sector consultant personnel to develop both the PWS and prepare the MEO proposal.

**DoD Interim Guidance.** The April 3, 2000, DoD interim guidance requires that private sector consultants assisting DoD Components in preparing both a PWS and a management plan take sufficient measures to avoid potential conflicts of interest in accordance with FAR Part 9 or the appearance of such conflicts. Those measures shall include, at a minimum, sufficient “firewalls” within the private sector consultant to prevent the same individuals from both developing the PWS and assisting in preparation of the MEO. The guidance does not require separate Government personnel teams for developing the PWS and the MEO.

**General Accounting Office Case Decisions.** On May 29, 2002, the General Accounting Office rejected a Department of the Navy request to reconsider General Accounting Office decision B-286194 of December 5, 2001. The General Accounting Office sustained a contractor protest challenging the Navy’s OMB Circular A-76 determination that it would be more economical to perform base operations and support services in-house at the Naval Air Station, Lemoore, California, than to contract for those services with the protestor. Further, the General Accounting Office sustained the protest on the basis of multiple procurement flaws, including the Navy’s failure to comply with the conflict of interest requirements of FAR Subpart 3.1. The General Accounting Office concluded that the Navy’s use of the same Government employees and consultants to develop both the PWS and the in-house management plan for

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\*Government commercial privileged or personal privacy information omitted.

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performance by the Government's MEO was contrary to the FAR 3.101-1 requirement that procuring agencies strictly avoid any conflict of interest or even the appearance of a conflict of interest.

The General Accounting Office ruling of May 29, 2002 (B-286194.7), states:

[W]e recognize that the DOD guidance, by its terms, applies only to individuals within a private-sector consultant firm, and not to government employees. Nonetheless, we fail to see how a reasonable argument can be made that preparation of both a PWS and MEO plan by consultant employees creates greater conflict of interest concerns than such actions by government employees. We therefore conclude that, just as FAR subpart 9.5 supports the prohibition set out in the DOD Guidance, FAR sect. 3.101-1 requires that this prohibition be applied to government employees. In summary, consistent with the DOD Guidance, we believe that the practice of generally precluding one competitor from establishing the ground rules applicable to all competitors reflects, to use the Navy's phrase, [a] common sense principle that should be observed by both government and private-sector competitors in A-76 procurements.

The General Accounting Office stated that application of corrective actions to other OMB Circular A-76 studies would apply prospectively. In cases where an OMB Circular A-76 study was in process prior to the public release of the December 2001 decision, and an agency had completed the PWS and invested substantial time and resources in preparing the MEO in-house plan, the General Accounting Office allowed for an agency's reasonable exercise of discretion alleging a conflict of interest. Because the DAPS MEO was completed and certified on September 4, 2001, the use of the same Government employees to develop both the PWS and the MEO management was done at the discretion of DLA.

**DLA A-76 Competitive Sourcing Office.** The DLA A-76 competitive sourcing chief stated that the office did not perform direct oversight of the DAPS A-76 competition as the office was formed only to support former Defense Logistics Support Command components within DLA, of which DAPS was not a part. With the dissolution of the support command in November 2001, the DLA competitive sourcing office acquired full cognizance for policy and oversight of all the DLA A-76 activities, including DAPS. Prior to November 2001, the DLA competitive sourcing office provided technical support to the DAPS A-76 competition manager on PWS and MEO development. The DLA competitive sourcing chief stated individual DLA activities are responsible for ensuring that adequate firewalls are in place.

An April 21, 1999, Defense Logistics Support Command memorandum established guidance to ensure the integrity of OMB Circular A-76 cost comparison studies. The memorandum required that safeguards ensure that the PWS and contracting officer support team members did not advise or convey acquisition-related information to personnel on MEO development teams including MEO support service contractors. MEO development team members that participated in creating a command-specific MEO were deemed ineligible to

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participate in the PWS and contracting officer support team. The guidance requires that safeguards be implemented early in the competitive sourcing process, but no later than the source selection authority ratification of the PWS. DAPS was not required to follow the guidance until November 2001, when the guidance was made applicable DLA-wide.

**Development of the PWS.** DAPS established a commercial activities team on August 3, 1999, headed by the DAPS A-76 study manager. DAPS reached agreement with DRMS in August 1999 to provide contracting officer support to guide the DAPS A-76 solicitation and contracting processes. Contractor support of the commercial activities team commenced on November 29, 1999. The first PWS draft was released on the DRMS Web site on June 7, 2000, with a second draft released on July 28, 2000. A third PWS draft was released on November 8, 2000, and a final PWS draft was provided to the contracting officer on March 29, 2001. The finalized PWS was released as part of solicitation SP4410-01-R-4000 on March 30, 2001. DAPS study officials noted that the PWS team consisted of 12 DAPS employees and 20 support service contractor consultants. With establishment of the DAPS MEO development team, the PWS team was reduced by March 2001 to three Government personnel.

**Development of MEO Management Plan.** The MEO team worked from August 2000 through May 2001 to develop the MEO and to complete management plan documents. The MEO development team consisted of 9 Government and 15 support service contractor personnel who came, through February 2001, in piecemeal fashion from the PWS development team. The MEO team chief stated the nine Government personnel included one employee union representative. The MEO development team initiated work on a first draft of the MEO management plan on September 7, 2000, and completed the first draft on January 26, 2001. The MEO team completed a second MEO management plan draft on February 9, 2001. A final MEO management plan draft was completed on July 13, 2001, certified by the DAPS Director and submitted to independent review on July 16, 2001. After completion of the independent review, the DAPS Director and the IRO certified the MEO on September 4, 2001. The sealed MEO management plan was submitted to the contracting officer the same day.

The MEO and PWS groups worked in spaces on the same office floor. Both PWS and MEO personnel stated that once separated, the MEO team personnel did not receive any PWS information not otherwise available on the DRMS solicitation Web site. However, contracting officer documentation notes several potential conflicts of interest regarding contacts between the MEO team and the residual PWS group.

**Booz-Allen-Hamilton Contract.** On November 29, 1999, DRMS contracted with Booz-Allen-Hamilton Corporation by issuing task order SP4410-00-F-3000 for \$\* under General Services Administration Federal Supply Schedule contract GS-23F-9755H. The period of performance was 30 months from the task order date. The task order required Booz-Allen-Hamilton to provide comprehensive support to DAPS in all phases of the OMB Circular A-76 study and contract

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\*Government commercial privileged or personal privacy information omitted.

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action, including providing professional guidance in: data gathering and analysis; strategic planning; performing research in the fields of document automation and document management; and creating required documents including the PWS, management plan, the MEO, in-house cost estimate, technical performance plan, and transition plan. Booz-Allen-Hamilton was to assist DAPS by providing personnel in the gathering and analysis of all information necessary to create a PWS and MEO. The contract also called for Booz-Allen-Hamilton to provide assistance with the creation of documentation required to complete the PWS phase of the competition, but did not require Booz-Allen-Hamilton to complete a final version of the PWS. The contract noted that at the time a firewall was established separating the DAPS development team members continuing work on the final PWS and those beginning work on the MEO, Booz-Allen-Hamilton would devote all available consulting assistance to MEO tasks, including assisting in the creation of a draft and final management plan. The contract also required Booz-Allen-Hamilton to provide guidance and assistance to the Government regarding: the role of the DAPS A-76 study manager and senior DAPS and DLA officials; MEO changes required in response to the independent review; and potential or actual conflicts of interest, or procurement integrity issues involved in the OMB Circular A-76 study including solutions regarding which Government employees could participate in PWS or MEO development and then participate in the proposal evaluation process. DAPS officials stated that Booz-Allen-Hamilton was required to raise procurement integrity issues and provide detailed solutions to possible conflicts because DAPS study personnel were not familiar with details of competitive sourcing firewall requirements.

**Appointment of Contracting Officer's Representatives.** On March 3, 2000, the DRMS contracting officer<sup>8</sup> issued a memorandum appointing a DAPS PWS team member as the contracting officer's representative for task order SP4410-00-F-3000. On October 30, 2000, the DRMS contracting officer appointed the DAPS MEO development team leader as the task order contracting officer's technical representative for SP4410-00-F-3000.

**Participation of Booz-Allen-Hamilton Personnel in PWS and MEO Development.** DAPS A-76 study managers identified 15 Booz-Allen-Hamilton personnel that supported the OMB Circular A-76 study on a full-time or part-time basis. DAPS and Booz-Allen-Hamilton personnel interviewed confirmed that most of the Booz-Allen-Hamilton personnel worked on both PWS and MEO development.<sup>9</sup>

**DAPS PWS-MEO Firewall.** DAPS study management initiated a firewall governing PWS and MEO development in March 2001. The firewall was based

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<sup>8</sup>The same contracting officer responsible for the DAPS cost competition also issued the task order for Booz-Allen-Hamilton support.

<sup>9</sup>An exception was the Booz-Allen-Hamilton lead analyst on the MEO team, who was not part of the PWS development but did aid in OMB Circular A-76 training of DAPS PWS and MEO team personnel.

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on prior direction of the SSAC and verbal guidance from DLA headquarters.<sup>10</sup> The primary aspect of the firewall was to remove access to PWS data and prohibit return to the PWS development team of any Government or support service contractor employee on the MEO development team. The firewall did not prohibit Government or support service contractor employees working on the MEO development from formally working on the PWS, as long as those employees transferred to the MEO development team by firewall commencement. The DRMS contracting officer stated that she was not aware of the DoD interim guidance. The DAPS contracting officer's representative for Booz-Allen-Hamilton stated that while aware of the DoD interim guidance, the representative was not aware of the details of the DoD interim guidance as it related to support services contractor participation. The contracting officer's representative believed that the DAPS firewall plan and SSAC review and approval of the plan took into account the DoD interim guidance.

**Booz-Allen-Hamilton Advice on Firewalls.** The Booz-Allen-Hamilton project managers stated that Booz-Allen-Hamilton was aware of the DoD interim guidance requirements and verbally recommended to the DAPS study manager that the PWS and MEO personnel be separated and that the MEO team not be composed of Booz-Allen-Hamilton personnel that had worked on the PWS. The Booz-Allen-Hamilton project managers stated that the DAPS study manager rejected the request. Booz-Allen-Hamilton claimed that while the DAPS decision may have contradicted the April 2000 DoD interim guidance, the decision did not contradict the contract terms and that Booz-Allen-Hamilton fully complied with the contract. The DAPS study manager stated that Booz-Allen-Hamilton managers advised him of the pending interim guidance but noted that it would not affect the DAPS study. The DAPS study manager claimed that Booz-Allen-Hamilton requested that its personnel continue to support DAPS on PWS requirements after firewall implementation at additional cost. The study manager decided not to modify the contract because of the potential cost to have new Booz-Allen-Hamilton personnel perform the MEO development, or alternatively, having to hire a new contractor to assist in MEO development. The contracting officer was not aware of the Booz-Allen-Hamilton discussion with the DAPS study manager. Instead, DAPS implemented a firewall to prevent any Government or contractor personnel from returning to the PWS group once they joined the MEO development group. The contracting officer's representative stated that Booz-Allen-Hamilton personnel advised the representative that the firewall was more stringent than those on previous OMB Circular A-76 engagements, and that development of the MEO by the people who developed the PWS was part of the Government's advantage in the OMB Circular A-76 process and consistent with past OMB Circular A-76 studies that Booz-Allen-Hamilton had performed. We found no documentation on either the DAPS or Booz-Allen-Hamilton explanations for not keeping personnel involved in PWS development from being involved in development of the MEO.

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<sup>10</sup>On August 22, 2000, the SSAC approved application of the firewall for implementation at Web site posting of the third PWS draft in November 2000. DLA legal personnel stated that the firewall became active in January 2001 when the MEO team moved into offices separate from the PWS team. However, Booz-Allen-Hamilton personnel statements and documentation indicated that the firewall did not become active until March 2001.

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**Other Support Service Contract Consultants.** DAPS used three other support service contract consultant firms in the development of the PWS and MEO through six contracts with a total value of \$134,048. One of the three consultant firms prepared both PWS and MEO documents. None of the contracts were modified to separate the personnel. The DAPS study manager noted that one RWD Associates employee participated in creation of both PWS and MEO documents. The contracting officer's representative noted that five total CAP Ventures, RWD Associates, and Strategic Staffing personnel performed PWS research.

**CAP Ventures.** DAPS acquired consulting services costing \$ \* from CAP Ventures, Incorporated for the DAPS A-76 study. On October 5, 2000, Fleet Industrial Supply Center Detachment Philadelphia-Mechanicsburg issued N00140-01-M-M122 to provide CAP Ventures consulting services support to DAPS from October 5 through November 30, 2000. The statement of work required CAP Ventures to perform a critical analysis of DAPS production standards and equipment, provide recommendations on automating DAPS, and provide DAPS a mock proposal on MEO methods to accomplish the PWS and the number of employees required to perform the work. DAPS contract SA4705-01-M-0001, January 8, 2001, provided \$ \* for CAP Ventures technical and specialist advice to the DAPS MEO team with regard to interpretation of production models described in the mock proposal. Defense Distribution Center New Cumberland, Pennsylvania, contract SP3100-01-M-3007, March 13, 2001, provided \$ \* for CAP Ventures personnel to attend meetings related to the DAPS competition. Defense Distribution Center New Cumberland contract SP3100-01-M-3012, April 19, 2001, provided \$ \* for CAPS Ventures DAPS MEO team tasks including reviewing of OMB Circular A-76 documentation, optimizing use of planned MEO equipment, and determining related costs. We concluded that CAP Ventures did not appear involved in development of the PWS or MEO, but rather provided advice, and thus would not be disqualified according to the DoD interim guidance.

**RWD Associates.** On September 15, 1999, DLA headquarters issued contract SP4700-99-M-0535 to RWD Associates. Contractual tasks included gathering and analyzing DAPS production and financial data, assisting with the development of the PWS, and providing data necessary for building the Government's MEO.

**Strategic Staffing.** Fleet Industrial Supply Center Detachment Philadelphia-Mechanicsburg issued delivery order N00140-00-F-M279 under General Services Administration Federal Supply Schedule contract GS-23-F-9721H, June 20, 2000, to Strategic Staffing to provide for clerical support to the DAPS A-76 development team. The clerical support would not be disqualified according to the DoD interim guidance.

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\*Government commercial privileged or personal privacy information omitted.

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## Potential DAPS Employee Conflicts of Interest in PWS and MEO Development

The MEO certifying official determined study scope and directed PWS development tasks. In addition, PWS development team contacts with MEO development team personnel may have violated application of a DAPS PWS-MEO firewall.

**MEO Certifying Official.** \*

On July 13 and September 4, 2001, the official, now the DAPS Director, signed the cost comparison form certifying that the proposed in-house organization was the most efficient and cost-effective organization and that it was capable of performing the PWS, and that the organization could be fully implemented. We believe DoD-level guidance is needed to adequately describe the roles and responsibilities of personnel in the PWS and MEO development groups and limitations regarding membership and exchange of information between the groups.

**DAPS Request for Information.** On March 14, 2001, DAPS issued a request for information to locate potential sources of solutions for document and records management including means to convert from paper to electronic document management. DAPS stated that it sought the information for planning purposes and that contractors interested in responding were encouraged to submit descriptive literature detailing their document and records management product lines and submit pricing. DAPS stated its intention was to conduct a May 9, 2001, meeting with the interested parties to discuss the proposed work effort. The DAPS Director/MEO certifying official stated that while aware of the request for information, he did not approve it before issuance by the DAPS contracting office.

DLA headquarters, DRMS contracting counsel, and the DRMS A-76 contracting officer considered issuance of the DAPS request for information to be incompatible with the ongoing DAPS competitive sourcing study. The DRMS counsel and the DRMS A-76 contracting officer noted that the request for information appeared to put the MEO certifying official in a potential conflict of

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\*Government commercial privileged or personal privacy information omitted.

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interest situation as it made the DAPS MEO appear to be looking for ways to enhance its own OMB Circular A-76 proposal position by getting ideas from industry through the request for information. On March 15, 2001, DAPS withdrew the request for information and cancelled the planned meeting at the direction of the SSAC Chair.

**Alleged PWS Development Team Conflict of Interest. \***

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\*Government commercial privileged or personal privacy information omitted.

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**DAPS Management Response to Potential Conflicts.** The MEO certifying official stated the DAPS study manager invited him and other DAPS managers to attend the April 2000 PWS meeting to provide input to the PWS. The MEO certifying official noted that the meeting included confusion about study requirements on document conversion. The MEO certifying official stated that in reaction to the contracting officer e-mails, he did not participate in any further meetings related to the developments of requirements in the PWS. The DAPS study manager stated no problem existed with the MEO certifying official attending the meeting, as it was prior to implementation of any firewall between PWS and MEO development teams and that any potential PWS changes resulting from the meeting needed approval by the SSAC.

In response to the potential conflicts in 2001, the DAPS study manager stated that he spoke with the MEO development team chief about MEO team logistics issues such as office relocation and accommodations for team members on travel status. The DAPS study manager also stated that the contracting officer representative did communicate with MEO development team members but stopped when told to do so by the contracting officer.

DLA counsel stated they received several e-mails from the contracting officer regarding the alleged MEO certifying official conflict of interest and the alleged PWS team violations of the DAPS firewall, but did not look into the allegations. The initial SSAC Chair stated in response to the July 2, 2001, contracting officer e-mail that the chair would speak with the DAPS study manager. The DAPS study manager did not recall the conversation. The replacement SSAC Chair stated the chair was unaware of the July 2, 2001, contracting officer e-mail. \* . We believe the DLA competitive sourcing office, DLA counsel, and both of the SSAC chairs had no procedures in place that provided oversight and guidance to DAPS regarding potential conflicts of interest and firewall violations.

**SSAC Review of Conflict of Interest Issues.** SSAC meeting minutes note an initial discussion in July 1999 of a potential DAPS firewall. On December 22, 1999, an SSAC member expressed concern that PWS team members who would transition to the MEO team should not visit commercial vendors during market research as it would, in effect, have a competitor visiting another competitor and result in corporate reluctance to divulge information. The SSAC prohibited Booz-Allen-Hamilton personnel from visiting potential DAPS offerors. The SSAC agreed on August 22, 2000, that once the third PWS draft was posted on the website, the firewall between the MEO team and the PWS team would be put in place. SSAC minutes included no discussion of potential conflict of interest issues regarding the MEO certifying official or the DAPS study manager in e-mail by the contracting officer. With the exception of the request for information issue, neither the SSAC Chair nor DLA counsel discussed the alleged conflicts of interest issue with either the DAPS Director or the DAPS A-76 study manager. We concluded that the DAPS study manager served the SSAC in an advisory role. The DAPS study manager should not have been advising the SSAC, as the study manager apparently provided advice to the MEO.

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\*Government commercial privileged or personal privacy information omitted.

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## Management Comments on the Finding B and Audit Response

Summaries of management comments on finding B and our audit response is in Appendix E.

### Recommendations, Management Comments, and Audit Response

**B.1. We recommend that the Deputy Under Secretary of Defense (Installations and Environment) issue additional competitive sourcing guidance specifying procedures that ensure proper constituency and firewall development and implementation separating, where required, source selection evaluation, contracting, performance work statement development, and most efficient organization development teams.**

**Deputy Under Secretary of Defense (Installations and Environment) Comments.** Responding for the office of the Deputy Under Secretary of Defense (Installations and Environment), the Director, Competitive Sourcing and Privatization partially concurred stating that the revised DoD guidance of April 3, 2000, was sufficient to preclude the use of the same consultant to develop both the MEO and PWS. The Director noted that DoD would ensure the issue would be resolved either through the revised OMB Circular A-76 or in DoD guidance to implement the revised circular.

**Audit Response.** Although the office of the Deputy Under Secretary only partially concurred, the comments are responsive and no additional comments are required.

**B.2. We recommend that the Director, Defense Logistics Agency require the Defense Logistics Agency competitive sourcing office to:**

**a. Develop management controls and oversight procedures that ensure the constituency of future agency performance work statement and most efficient organization development teams comply with DoD guidance.**

**b. Issue guidance on Office of Management and Budget Circular A-76 study firewall development and implementation separating, where required, source selection evaluation, contracting, performance work statement development, and most efficient organization development. The guidance should adequately describe the roles and responsibilities of personnel in the above groups and limitations regarding membership in those groups, and exchange of information among the groups.**

**DLA Comments.** The DLA Chief Information Officer concurred with the recommendations. DLA stated that the DLA competitive sourcing office would issue guidance by June 30, 2003, on management controls and oversight procedures to assure constituency of future DLA PWS and MEO development

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and to comply with DOD guidance. DLA stated its commercial activities (A-76) competition guidebook, issued in July 1999 (with subsequent revisions), addressed the issues in Recommendation B.2.b.

**Audit Response.** The DLA comments on Recommendation B.2.a. are responsive. The DLA comments on Recommendation B.2.b. are not responsive. The DLA competition guidebook discusses OMB Circular A-76 study roles, responsibilities, and communication between commercial activities teams and program offices, steering committees, employees, and stakeholder audiences. However, the guidebook does not address separation of duties for those roles or limitations on membership in and exchange of information among groups mentioned in Recommendation B.2.b. The guidebook also does not indicate any post-1999 revisions. We, therefore, request additional DLA comments to the final report regarding implementation of Recommendation B.2.b.

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## C. Implementation of a Most Efficient Organization

DAPS modified the previously certified MEO structure prior to implementation. DAPS did not prepare revised management plans or cost estimates that would support the modifications. The condition occurred because guidance regarding MEO implementation was inadequate. As a result, the MEO management plan was not implemented as proposed and DLA cannot demonstrate that actual MEO costs will fall within the in-house cost estimate.

### DAPS Modifications to Certified MEO

MEO staffing and location increases made during the transition period put into question whether the MEO would be able to perform the DAPS function within the proposed in-house cost estimate.

**MEO Implementation Requirements.** DoD Instruction 4100.33, section 5.3.3.6., provides that:

Implementation of the MEO shall be initiated no later than 1 month after cancellation of the solicitation and completed within 6 months. DoD Components shall take action, within 1 month, to schedule and conduct a subsequent cost comparison when the MEO is not initiated and completed as prescribed above. Subsequent cost comparisons may be delayed by the DoD Component's central point of contact office, when situations outside the control of the DoD Component prevent timely or full implementation of the MEO. This authority may not be redelegated.

**DAPS MEO Implementation.** DAPS was in technical violation of DoD Instruction 4100.33 MEO implementation time requirements. The DAPS solicitation was cancelled on September 7, 2001. DLA announced on January 18, 2002, that it planned to implement the MEO because no contractors had submitted proposals on the solicitation. The implementation announcement occurred more than 4 months after solicitation cancellation due in part to the time the contracting officer needed for examining the solicitation in accordance with DoD Instruction 4100.33 requirements to ascertain why no responses were received, and in part for a source selection authority-directed SSAC technical review of the MEO offer. The MEO management plan included a 270-day transition phase for the eventual service provider, while the solicitation provided for a 270-day to a 360-day service provider transition period. The 270-day transition phase did not appear to be in compliance with the DoD Instruction 4100.33 implementation time requirements. The MEO proposed \* personnel at 120 facilities located in

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\*Government commercial privileged or personal privacy information omitted.

9 DAPS regions and at the DAPS headquarters to be implemented by October 2002 as shown in Table 1. The MEO cost was estimated at \$ \* over 7 years.

**Table 1. Certified and Revised MEO Full-Time Equivalent Positions**

DAPS Region	MEO Positions		Revised MEO
	Certified MEO	Revised MEO	Gain (Loss)
Bangor	*	*	3.00
DAPS Headquarters	*	*	(0.04)
Great Lakes	*	*	(6.00)
Jacksonville	*	*	1.00
Norfolk	*	*	8.00
Oklahoma City	*	*	1.00
Pensacola	*	*	(3.00)
Philadelphia	*	*	(12.00)
San Diego	*	*	4.00
Washington	*	*	22.04
<b>Position Totals</b>	*	*	<b>18.00</b>

\*Government commercial privileged or personal privacy information omitted.

**DAPS Changes to MEO Structure.** DAPS modified the MEO structure during the MEO transition period without sufficient documentation. As of July 30, 2002, DAPS increased total MEO-designated strength by 18 full-time equivalent positions to a total of \* personnel as DAPS modifications included closing 12 production locations listed in the announced MEO and retaining 18 production locations to be closed in the MEO structure, as shown in Table 2.

\*Government commercial privileged or personal privacy information omitted.

**Table 2. Location Modifications in the Revised MEO Plan\***

DAPS Region	Revised MEO		Net Location Gain (Loss)
	Locations Retained	Locations Deleted	
Bangor	1	1	-
Great Lakes	0	2	(2)
Jacksonville	3	1	2
Norfolk	2	0	2
Oklahoma City	1	0	1
Pensacola	2	1	1
Philadelphia	2	0	2
San Diego	3	6	(3)
Washington	4	1	3
<b>Total Locations</b>	<b>18</b>	<b>12</b>	<b>6</b>

\* The table omitted three locations transferred between DAPS Regional Offices in the revised MEO structure.

DAPS also made changes to MEO production personnel grades and MEO equipment allocations. The DAPS A-76 study manager stated that the changes were limited to reallocation of resources based on shifting workload requirements not anticipated in the MEO. The manager stated that the DAPS policy was to retain the locations slated for closure in the MEO if the facility customer could document an expected annual production of at least 650,000 units and agree to reimburse DAPS for the operating costs.

**DAPS Consultations Regarding Changes.** On March 4, 2002, the Vice Director, DLA established a facilitating integrated process team to work with DAPS through the scheduled implementation. The team consisted of DLA headquarters personnel as well as the DAPS Director and the DAPS Director, Business Management (formerly the DAPS A-76 study manager), and DAPS legal counsel. The DLA Executive Director for Defense E-Business, who previously served as the SSAC Chair, chaired the team. On March 29, 2002, the DAPS Director, Business Management separately briefed the team chair that DAPS would add seven more domestic U.S. locations to the MEO structure and remove one. DAPS also noted that it was changing the location of the MEO customer information center from Fort Eustis, Virginia, to St. Louis, Missouri. DAPS stated that total MEO full-time equivalent personnel would not be increased and that no additional costs would be incurred. DAPS did not prepare a revised management plan or cost estimate to support either the MEO modifications disclosed to the team chair or further modifications made during the transition period.

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DAPS officials stated that the DAPS Director approved the changes and that the IRO was notified of the changes.<sup>11</sup> DLA competitive sourcing personnel stated DAPS had disclosed in periodic facilitating integrated process team meetings that the MEO was being revised but the details of the revisions were not discussed. Making changes to the MEO during its implementation, while not strictly prohibited, should be justified. Without a revised cost estimate with documentation to support the adjustments, DAPS cannot meet the requirements of the post-MEO performance review.

**Washington, D.C. Area MEO Revisions.** The announced MEO for the Washington, D.C. area included a general schedule grade \* area office manager and a general schedule grade \* MEO production manager, and associated staffs, and would be located at the DAPS National Institute of Health facility in Bethesda, Maryland.<sup>12</sup> DAPS officials stated that the area office manager, the production manager, and associated staffs would be relocated to the DAPS Fern Street Office in Arlington, Virginia and the DAPS Quantico, Virginia, production facility, respectively. DAPS officials stated that the production manager position was moved so that the manager could remain at his present duty station at Quantico. DAPS officials also stated that the Fern Street facility would be used in place of Bethesda, because the Fern Street facility offered a more centralized location for management of DAPS Washington, D.C. area facilities. The announced MEO did not include the Fern Street facility. DAPS did not estimate the cost impact to the certified MEO for moving the workforce to the Fern Street facility.

**DAPS Alterations to MEO Position Descriptions.** During the transition period, DAPS personnel altered MEO position descriptions previously approved by the DLA headquarters human resources office and included in the certified MEO management plan. DAPS personnel provided the altered position descriptions to the human resources office located at the Defense Distribution Center in New Cumberland, Pennsylvania. The Defense Distribution Center human resources office was charged with implementing the MEO and was supporting the DAPS reduction-in-force process to fill the MEO and the DAPS residual organization. The position descriptions were altered to show the positions as being applicable to “multiple locations” rather than specific locations previously approved by the DLA headquarters human resources office. DAPS personnel stated that the Defense Distribution Center human resources office was aware of and accepted the altered position descriptions, a claim denied by Defense Distribution Center

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<sup>11</sup>The IRO did not review the MEO revisions. DAPS officials noted that the IRO recommended DAPS document the changes for a future post-MEO implementation review to be conducted by the IRO but did not recommend the drafting of an MEO revision document. The IRO stated that he informally recommended the application of MEO revision documents and that all workload and business changes be documented in a revised PWS.

\*Government commercial privileged or personal privacy information omitted.

<sup>12</sup>The area office manager position included MEO and non-MEO duties. The area office supporting staff included approximately 20 full-time equivalents primarily devoted to non-MEO duties and not included in the MEO structure. The MEO production manager group included the manager, an office assistant, and a purchasing agent all fully devoted to the MEO.

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human resources office personnel. In addition, Defense Distribution Center human resources office personnel were not informed by DAPS or the DLA headquarters human resources office that \* general schedule grade \* production manager positions located nationwide would require position description redeterminations 6 months after implementation of the MEO.

**Requirements Regarding Post-Implementation Review of MEO Changes.**

Part I, chapter 3, paragraph L.2. of the OMB Circular A-76 Revised Supplemental Handbook requires a formal review and inspection of the MEO to determine if it has been implemented in accordance with the transition plan, is capable of performing and meeting performance requirements, and that actual costs are within the amounts in the cost comparison. The guidance is also reiterated in Attachment 7 to the DoD interim guidance. In accordance with OMB Circular A-76 Revised Supplemental Handbook, part I, chapter 3, paragraph L.1., the formal review is usually conducted after a full year of in-house performance.

We believe that the OMB Circular A-76 Revised Supplemental Handbook guidance implies that those responsible for the function being studied need to maintain adequate documentation that supports the post-MEO review. The review must confirm that the MEO was implemented in accordance with the transition plan, that the MEO was able to perform the PWS services, and that actual costs are within estimates contained in the in-house cost estimate. Adjustments may be made for changes in work or mission, but impliedly, those types of adjustments need to be documented. We did not perform a formal post-implementation review. However, we concluded that the undocumented DAPS MEO changes would not provide the audit trail necessary to effectively perform any future post-implementation review.

## **Management Comments on the Finding C and Audit Response**

Summaries of management comments on finding C and our audit response is in Appendix E.

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

**C.1. We recommend that the Deputy Under Secretary of Defense (Installations and Environment) develop competitive sourcing guidance that specifies documentation and approval requirements for revisions to Government most efficient organization structures made during the transition period after most efficient organization selection but before implementation.**

**Deputy Under Secretary of Defense (Installations and Environment) Comments.** Responding for the office of the Deputy Under Secretary of Defense

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\*Government commercial privileged or personal privacy information omitted.

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(Installations and Environment), the Director, Competitive Sourcing and Privatization concurred stating that policy is lacking with regard to implementing and revising MEOs. The Director noted that the proposed revised OMB Circular A-76 sufficiently addresses the concerns and makes the process more FAR like and establishes binding performance agreements for MEOs.

**Audit Response.** While the Deputy Under Secretary comments are responsive to the intent of the recommendation, if the revised OMB circular does not sufficiently address the issue then additional DoD guidance to implement the revised circular will be required.

**C.2. We recommend that the Director, Defense Logistics Agency require the Defense Logistics Agency competitive sourcing office to develop oversight procedures that ensure the revisions to the certified most efficient organization management plan are properly justified, costed, and approved in accordance with DoD guidance and allow a sufficient audit trail for future post-implementation review.**

**DLA Comments.** The DLA Chief Information Officer concurred with the recommendation and stated that it has established an appropriate procedure for revision of the DAPS certified MEO. The DLA also stated that its IRO, in accordance with OMB and DLA procedures, will conduct a post-MEO review of the DAPS MEO within 12 to 18 months of the October 2002 implementation of the MEO. In addition, DLA stated it was in the process of issuing DLA-wide a post-MEO review handbook that provides guidance on procedures for assuring that revisions to certified MEO plans are properly justified, costed, and approved in accordance with DoD guidance. The DLA competitive sourcing office would incorporate approval requirements for changes to the MEO in the DLA commercial activities competition guidebook.

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## Appendix A. Scope and Methodology

We performed the review at DLA headquarters and DLA Component organizations including DAPS, DRMS, and selected potential contractors to determine:

- why no offers were made to the solicitation,
- why offset printing was not included in the solicitation, and
- whether DAPS MEO implementation was consistent with study transition plans and DoD and DLA regulations.

We performed this audit from February through December 2002 in accordance with generally accepted government auditing standards. The audit examined DLA documents prepared between April 1999 and August 2002 to evaluate the DAPS public/private competition and the issues related to the congressional requests. We reviewed the solicitation including the PWS, the MEO, the source selection process, the independent review, actions by the contracting officer and DAPS management, and contract offeror correspondences. We did not attempt to verify or evaluate MEO costing or technical proposal methodology. We also reviewed applicable laws and regulations that address the OMB Circular A-76 process, interviewed DLA contracting and source selection officials responsible for the public/private competition, and reviewed ethics compliance for DLA and support service contractor personnel.

We analyzed existing Federal, DoD, and DLA OMB Circular A-76 policy and guidance and assessed DLA Component organization compliance with the OMB Circular A-76 competitive sourcing process governing guidance with regard to the DAPS A-76 public/private competition. We analyzed DAPS solicitation SP4410-01-R-4000 and the scope of DAPS OMB Circular A-76 competition requirements by gathering solicitation and acquisition planning documentation at DLA, DAPS, and DRMS. In addition, we identified and reviewed the complaints of the prospective contractors and employee workforce about the process and the extent DLA officials, including the contracting officer and the DAPS study management, analyzed and reviewed issues included in such complaints. We evaluated the independent review of the DAPS A-76 competition to determine if the independent review identified the issues in the congressional requests. We also evaluated management controls over the OMB Circular A-76 competitive sourcing process at the DLA Components that performed the DAPS A-76 competition.

**Use of Computer-Processed Data.** We relied on computer-processed cost comparison data calculated by the win.COMPARE<sup>2</sup> software program. The Air Force-developed program was released on March 13, 2001, for mandatory use on all FY 2001 and later OMB Circular A-76 cost comparison studies. The IG DoD performed a reliability assessment of win.COMPARE<sup>2</sup> and published IG DoD Report No. D-2001-127, "Data Reliability Assessment Review of win.COMPARE<sup>2</sup> Software," on May 23, 2001. The report concluded that general and application controls over the software were adequate. The report states that

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through software testing it was determined that computations and reports generated by win.COMPARE<sup>2</sup> were sufficiently reliable, accurate, and in accordance with the OMB Circular A-76 Revised Supplemental Handbook and the DoD A-76 Costing Manual. Nothing came to our attention in this review that caused us to doubt the reliability of the computer-processed data.

**Limitation to Auditor Independence.** The Office of the Inspector General of the Department of Defense is a customer of DAPS.

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

## **Prior Coverage**

The General Accounting Office and the IG DoD issued five reports that discuss relevant OMB Circular A-76 policy issues or public/private competitions performed by DLA. There was no prior audit coverage of the DAPS public/private competition during the last 5 years.

## **General Accounting Office**

“Commercial Activities Panel: Improving the Sourcing Decisions of the Government – Final Report,” April 30, 2002

GAO Report No. GAO-02-498T, “Competitive Sourcing: Challenges in Expanding A-76 Governmentwide,” March 6, 2002

## **IG DoD**

IG DoD Report No. D-2002-043, “Defense Reutilization and Marketing Service Public/Private Competition,” January 25, 2002

IG DoD Report No. D-2001-127, “Data Reliability Assessment Review of win.COMPARE<sup>2</sup> Software,” May 23, 2001

IG DoD Report No. D-2001-118, “Public/Private Competition at Lackland Air Force Base,” May 14, 2001

IG DoD Report No. 99-132, “Outsourcing of Defense Supply Service Center, Columbus, Bus and Taxi Service Operations,” April 13, 1999

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## Management Control Program Review

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

**Scope of the Review of the Management Control Program.** We reviewed the adequacy of DLA, DAPS, and DRMS management controls relating to public/private competitions. Specifically, we reviewed management controls over solicitation, performance, oversight, and independent review of public/private competitions; DAPS management controls over performance of public/private competitions and transition/implementation of MEOs; and DRMS management controls over public/private competition contract solicitations and support service contractor assistance. We reviewed management's self-evaluation applicable to those controls.

**Adequacy of Management Controls.** We identified material management control weaknesses for DLA as defined by DoD Instruction 5010.40. DLA, DAPS, and DRMS had not established management controls for oversight of competitive sourcing studies that ensure the constituency of PWS and MEO management plan teams met conflict of interest requirements found in DoD guidance regarding support service contractor employees. DLA and DAPS had not established management controls that would ensure that transition period revisions to previously certified MEO management plan documents were properly justified, costed, and certified. DLA and DRMS had not established management controls that would ensure that contracting officer and source selection authority actions in solicitations where no proposal received were in accordance with 32 C.F.R. 169a, section 17. Recommendation A.1.b., if implemented, will improve DLA and DRMS procedures over contracting officer and source selection authority actions in solicitations where no proposal is received. Recommendation B.2., if implemented, will improve DLA, DRMS, and DAPS procedures for avoiding potential conflicts of interest in PWS and MEO development. Recommendation C.2., if implemented, will improve DLA and DAPS procedures for documenting and approving changes to the certified MEO during the transition phase. A copy of this report will be provided to the senior official responsible for management controls at DLA.

**Adequacy of Management's Self-Evaluation.** DLA, DRMS, and DAPS did not identify procedures for avoiding potential conflicts of interest in PWS and MEO development as an assessable unit; DLA and DRMS did not identify procedures for contracting officer and source selection authority actions in competitive sourcing solicitations where no proposal is received; and DLA and DAPS did not identify procedures for documenting and approving changes to the certified MEO during the transition phase and, therefore, did not identify or report the material management control weaknesses identified by this audit.

# Appendix B. Congressional Request

BOB STUMP, ARIZONA, CHAIRMAN  
FLOYD D. SPENCE, SOUTH CAROLINA  
DUNCAN HARTZ, CALIFORNIA  
JAMES V. HANSEN, UTAH  
DUPT WELDON, PENNSYLVANIA  
JOEL HEFLEY, COLORADO  
JIM SAXTON, NEW JERSEY  
JOHN M. McMURCH, NEW YORK  
TERRY EVERETT, ALABAMA  
ROSSIE G. BARTLETT, MARYLAND  
HOWARD P. "BUCK" MCKEON, CALIFORNIA  
J.E. WATTS, JR., OREGON  
MARK THOMAS, TEXAS  
JOHN N. HOSTETLER, INDIANA  
SARKIS CHAMBLISS, GEORGIA  
MARK HILLARY, TENNESSEE  
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JIM RYUN, KANSAS  
BOB RILEY, ALABAMA  
JIM CHIRBOS, NEVADA  
ROBIN HAYES, NORTH CAROLINA  
DON SHERWOOD, PENNSYLVANIA  
HEATHER WILSON, NEW MEXICO  
KEN CALVERT, CALIFORNIA  
BOB SIMMONS, CONNECTICUT  
ANDER CHRISTIAN, FLORIDA  
MARK EYEVEN KIRK, ILLINOIS  
JO ANN DAVIS, VIRGINIA  
ED SCHROED, WISCONSIN  
W. TODD ARAK, MISSOURI

## COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED SEVENTH CONGRESS

January 31, 2002

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JAMES R. LANGFERN, RHODE ISLAND  
ROBERT S. RANGEL, STAFF DIRECTOR

Mr. Robert J. Lieberman  
Deputy Inspector General  
Department of Defense  
400 Army Navy Drive  
Arlington, VA 22202

Dear Mr. Lieberman:

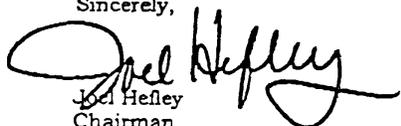
On January 18, 2002, the Defense Logistics Agency (DLA) notified Congress of the results of a recent public-private competition for production functions in the continental United States for the Document Automation and Production Service (DAPS), pursuant to an Office of Management Budget Circular A-76 study conducted by DLA. In this report, DLA announced that it will keep the work "in house" because no private sector entities submitted a bid in response to the solicitation.

Based on information made known to the House Armed Services Committee, I find this result quite surprising. It is my understanding that a report prepared for DLA by an audit firm, KPMG, concluded that all functions performed by DAPS are appropriate for transfer. Therefore, given this conclusion, I do not understand the reasons for the non-responsiveness of the private sector. I request that your organization review the process DLA followed in this study, including the decision to not include offset printing in the solicitation (copy enclosed).

If you have any questions, please contact Ms. Mary Ellen Fraser of the committee staff at 202-225-0641.

I appreciate your interest in this matter and look forward to your findings.

Sincerely,



Joel Hefley  
Chairman  
Military Readiness Subcommittee

JH:mef

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## Appendix C. Chronology of Document Automation and Production Service OMB Circular A-76 Competition

- 1999 Apr 27** DLA briefs Under Secretary of Defense for Acquisition, Technology, and Logistics on the results of KPMG study of DAPS functions and sourcing options for DAPS. Options assume that traditional offset printing would be provided to GPO.
- Apr 30** DLA provides KPMG review to Congress. KPMG review concludes that no DAPS functions are inherently national security. The DLA Director announces plans to subject DAPS functions to competitive sourcing process.
- Aug 3** DLA announces public/private OMB Circular A-76 competition. Study timeline is 24 months from study announcement to tentative decision.
- Sep 30** First Industry Day held; 30 attendees representing 16 public and private organizations. Attendees received questionnaires as part of Booz-Allen-Hamilton market research effort.
- Nov 29** DRMS contracts Booz-Allen-Hamilton to provide support services to DAPS in all phases of the OMB Circular A-76 competition.

### 2000

- Apr 3** DoD issues interim guidance that requires that the MEO team and PWS team be separated and bans individual private sector consultants from assisting in preparing both the PWS and Management Plan to avoid potential conflicts of interest.
- Apr 19** The contracting officer and the DRMS contracting counsel express concern about a potential conflict of interest involving the MEO certifying official (DAPS Deputy Director, later the DAPS Director) because the MEO certifying official was directing the preparation of the PWS and the MEO.
- Jun 7** First draft PWS posted to DRMS Web site. MEO study team established and expanded through February 2001, to include private sector consultants who developed PWS through third draft.
- Jun 13** Second Industry Day held; 56 attendees representing 30 public and private organizations.
- Jul 28** Second draft PWS posted to DRMS Web site.
- Sep 1** OMB concludes that draft DAPS solicitation did not meet performance-based service contracting requirements.
- Sep 7** MEO study team initiates work on first draft of MEO management plan.
- Oct 1** DLA revises draft solicitation to address OMB concerns. DAPS states that many solicitation requirements cannot be revised.

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**2001**

- Jan 26** MEO study team completes first draft of MEO management plan.
- Jan 29** PWS team provides third draft PWS to contracting officer.
- Feb 9** MEO study team completes the second draft of MEO management plan.
- March** DAPS study management initiates a firewall governing PWS and MEO development. Three DAPS employees remain on the PWS team; all other DAPS and support service contract employees are on the MEO study team.
- Mar 7** DAPS Director requests approval from the Office of the Deputy Under Secretary of Defense (Installations and Environment) to cancel the DAPS A-76 competition and to implement a strategic sourcing plan teaming the projected MEO with personnel of the National Industries for the Blind/NISH (formerly the National Industries for the Severely Handicapped). The Office of the Deputy Under Secretary recommends continuation of the DAPS A-76 competition.
- Mar 8** Source selection authority (DLA Vice Director) approves the source selection plan. The acquisition plan calls for a single procurement for DAPS functions.
- Mar 30** DRMS issues the solicitation that includes the finalized PWS.
- May 21** IKON notifies the contracting officer that it would not submit an offer.
- Jul 2** The contracting officer warns DAPS PWS team personnel, including the DAPS study manager, and informs SSAC Chair of potential conflict of interest in PWS team discussions with MEO team members regarding PWS or MEO proposal specifics.
- Jul 13-16** The MEO study team completes the third and final draft of MEO management plan and MEO is certified by the DAPS Director.
- Aug 30** The DAPS Director signs a memorandum to the contracting officer stating individual DAPS location staffing information should not be released to offerers.
- Aug 31** RR Donnelley notifies the contracting officer that it would not submit an offer. RR Donnelley lists multiple areas of concern.
- Sep 4** The IRO (DLA Chief of Internal Review) certifies the MEO management plan. The sealed MEO management plan is submitted to the contracting officer.
- Sep 7** The contracting officer issues an amendment to close the solicitation after no offers are received. The amendment requests prospective contractors to state reasons for not submitting offer.
- Sep 17** IKON representatives inform the contracting officer that the solicitation is too cumbersome and unreasonable.

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## 2001

- Sep 19** The contracting officer meets with the RR Donnelley team to discuss issues raised in the August 31, 2001, letter.
- Oct 1** RR Donnelley sends second letter to contracting officer, listing three remaining key areas of concern.
- Oct 15** The contracting officer briefs SSAC on viability of reissuing solicitation. The contracting officer concludes that the solicitation is unduly restrictive and recommends reissue.
- Oct 29** The DLA general counsel requests the contracting officer to reconsider recommendation to reissue solicitation.
- Nov 5** The contracting officer meets again with the SSAC and recommends that DLA not resolicit. The contracting officer doubts that corrected solicitation will produce any private sector offer.
- Nov 14** The source selection authority asks the SSAC to evaluate the MEO for compliance with solicitation and cost-effectiveness.
- Nov 28** The source selection authority meets with RR Donnelley team to inform them that the solicitation would not be re-issued.
- Dec 12-13** SSAC meets to perform separate technical review of MEO offer at source selection authority direction.

## 2002

- Jan 3** The contracting officer informs SSAC chair that the DAPS study manager remains in a potential conflict of interest.
- Jan 11** SSAC recommends that the Government-proposed MEO be implemented. The source selection authority approves the SSAC recommendation to implement the proposed MEO.
- Jan 18** DLA notifies Congress and announces that the MEO would be implemented. MEO proposed strength of \* personnel at 119 facilities to be implemented by October 2002 with an estimated cost of \$ \* million over 7 years. House Armed Services Committee staff subsequently requests and receives briefing of DAPS study results.
- Jan 31** Representative Joel Hefley, Chairman of House Military Readiness Subcommittee, requests that the IG DoD determine the reasons for the nonresponsiveness of the private sector and the decision not to include offset printing in the solicitation.
- February** DAPS management briefs employees on MEO of \* personnel and planned residual organization of 405 personnel to replace current DAPS domestic work force of 1,368 personnel.
- Apr 22** Senator George Allen requests the IG DoD to examine issues raised by a DAPS employee regarding the OMB Circular A-76 study.
- Jul 15** DAPS issues reduction-in-force letters in combined reduction of DAPS residual organization with MEO. MEO includes undocumented and unapproved changes made during transition phase.

\*Government commercial privileged or personal privacy information omitted.

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## Appendix D. Concerns and Audit Results

**Issues Reviewed.** We examined the 11 concerns noted in RR Donnelley and IKON responses to the September 7, 2001, solicitation closing. We also reviewed four MEO implementation concerns Senator Allen forwarded. We analyzed solicitation documentation and MEO proposal documentation. We also reviewed the SSAC and contracting office documentation related to the issues. We did not attempt to verify or evaluate the MEO costing or technical proposal methodology.

### Industry Concerns

**DAPS Workload Information.** RR Donnelley and IKON claimed that the lack of adequate data regarding the work to be performed, by whom, where, and using what equipment, made it all but impossible to offer a response that would ensure that an offeror would not suffer undue financial risks. RR Donnelley stated that most workload data were provided in the aggregate, and that there was no way to determine if a job calling for 10,000 impressions was actually a 1-page document duplicated 10,000 times, one 10-page document duplicated 1,000 times, or one 100-page document duplicated 100 times, and stated that such jobs may have been double-sided, collated, stapled, and/or bound. Offerors requested information on DAPS customers, including work quantities, servicing DAPS plants and subplants, and associated revenue in the Defense Working Capital Accounting System database. RR Donnelley believed that MEO access to the accounting system information and knowledge of DAPS revenue processes gave a proposal advantage to the MEO.

**Audit Results.** The concern was substantiated. DAPS objected to the release of accounting system workload and pricing information that it claimed to be proprietary. However, after solicitation closure, the contracting officer did not support the DAPS position and concluded that private sector offerors should have been allowed to obtain more up-to-date and detailed volume workload information to estimate costs. The contracting officer agreed after solicitation closure that data regarding workload volume were not in a format that allowed firms to prepare a pricing proposal and DLA needed to rebaseline the workload information to more recent historical data. The solicitation used 1998 and 1999 workload data for the historical baseline. The MEO management plan states that the MEO development team used DAPS Defense Working Capital Fund data in conjunction with PWS technical exhibit and other MEO data to evaluate current DAPS operations. The contracting officer concluded that in the event of a resolicitation the DAPS accounting system could provide to all offerors workload volume information by job order number. We believe that the Government is not required to eliminate all risks or provide all the information a contractor desires, but rather ensure that adequate information is provided in the PWS to allow offerors to compete intelligently (in order to anticipate costs), and on equal terms. We agree with the contracting officer's conclusion that additional information could have been provided.

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**DAPS Staffing Information.** The solicitation noted only that DAPS in-scope operations were presently performed at 260 sites with 1,400 personnel. DAPS did not provide detailed staffing information to potential offerors that would have provided insight into both the nature and scope of the work to be performed.

**Audit Results.** The concern was substantiated. Potential offerors sought existing staffing information such as number of personnel at a given site, type of work performed, skills possessed, and pay grade or classification. DAPS management determined that the information was proprietary to the MEO. An August 30, 2001, DAPS Director memorandum to the contracting officer concluded that no personnel information relative to individual DAPS locations should be released. The memorandum noted a May 1984 U.S. District Court for the District of Columbia case as justification supporting the Government's right to deny contract offerors such information. The DRMS contracting officer deferred to the DAPS management decision. The contracting officer later concluded that staffing information is not subject to Freedom of Information Act protection and believed that the 1984 case was not a valid basis for denying information to the public regarding staffing because the information that offerors were seeking was not as detailed as the information denied release in the 1984 case. The DLA general counsel supported the DAPS determination, noting the contracting officer's conclusion had no legal basis. After solicitation cancellation, the contracting officer reviewed other DoD OMB Circular A-76 cost competition studies and noted that detailed staffing information on the present Government organization was included in the DLA OMB Circular A-76 solicitation of DRMS functions and in Defense Finance and Accounting Service A-76 solicitations. The contracting officer concluded that if a resolicitation were initiated, private sector offerors should be allowed to obtain staffing information in order to allow contract offerors to understand the nature and scope of work. Potential offerors requesting staffing information may not have necessarily needed the staffing information to make a proposal, but were seeking an alternative means to understand the volume of work that needed to be produced under the contract because of the Government's inability to provide detailed workload information. Subsequently, DAPS could have provided additional staffing information.

During the course of the study, approximately 40 of the 260 initial DAPS locations were closed. In-place personnel subject to the study were reduced from 1,400 at study announcement to approximately 918 at study end through voluntary early retirement and voluntary incentive separation offers. The solicitation was unclear about the total number of locations, the closure of locations, and included no personnel information. The contracting officer stated that she was not aware that the number of DAPS locations had significantly decreased and that personnel reductions were not communicated to her. The contracting officer also stated that she knew only that DAPS was implementing a downsizing policy. The DAPS A-76 study manager stated that the downsizing did not change the scope of the solicitation requirement. The August 30, 2001, DAPS Director memorandum to the contracting officer states that DAPS was in the process of downsizing its organization to reflect current business levels, which could lead to similar staffing levels projected in the MEO. The DAPS Director was aware of the MEO staffing levels, as he was the MEO certifying official.

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DAPS management did not inform the IRO of the scope or number of personnel reductions. We concluded that potential offerors should have been advised of the closed sites and the reduction of overall DAPS staffing.

**Service Contract Act Application.** RR Donnelley expressed concern that the Service Contract Act would substantially decrease profit margins because of the cost of salaries and benefits. RR Donnelley was forced to remove a major subcontractor from its teaming arrangement because that subcontractor did not want to be subject to the Service Contract Act. RR Donnelley claimed the problem was magnified because contractors would be in competition with other duplication businesses because Defense customers are not forced to purchase from DAPS. Contractors also argued that the Service Contract Act should not apply to them because they provide “commercial supply end products” not subject to the Service Contract Act.

**Audit Results.** The concern was partially substantiated. The Service Contract Act was clearly a deterrent for RR Donnelley in submitting a proposal. However, the contracting officer concluded DAPS work is in the nature of a service and therefore subject to the Service Contract Act. Neither DRMS counsel nor the contracting officer supported preparing a justification for a waiver to Service Contract Act provisions. On October 1, 2001, the DRMS counsel provided the contracting officer a legal review stating that the Service Contract Act was applicable to the DAPS A-76 solicitation. We found no support that disputed the contracting officer’s decision not to request a waiver. The contracting officer believed that even if all other solicitation issues were resolved or corrected, RR Donnelley would not submit an offer because of the Service Contract Act issue.

**Government Printing Office Work (Offset Printing).** RR Donnelley contended that they should be given firm guidelines on which printing work should be submitted to GPO, have an opportunity to do some work performed by GPO, and be directly reimbursed for processing incoming work sent to GPO.

**Audit Results.** The concern was partially substantiated. According to a DAPS management decision and a verbal DLA legal opinion provided to the SSAC, the solicitation did not include \$106 million of yearly offset printing primarily performed by GPO, which represented about 30 percent of the DAPS business base.<sup>1</sup> The primary driver of the decision was that the GPO work was privately performed by GPO contractors and that DAPS did not have the in-house base to perform the work if the MEO won the competition. DLA and DAPS contend they could not legally include the GPO work, and any inclusion of such work would have to be submitted to GPO for approval, perhaps as a separate solicitation. However, a 1996 Department of Justice opinion states that Federal agencies are not obligated to continue mandatory use of GPO, because GPO is not a part of the Executive branch of the Government. The FAR has not been modified to reflect the Department of Justice position. According to RR Donnelley, they did not have enough information regarding the process of distributing incoming printing work to estimate their costs and resources. The contracting officer was concerned

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<sup>1</sup>DAPS at its own discretion maintains approximately \$3.18 million (3 percent of total) offset printing work in-house. The in-house offset printing was not included in the OMB Circular A-76 competition.

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that DAPS retained responsibility to determine and write GPO work job specifications. If the solicitation were reissued, the contracting officer believed that tasks for writing offset printing specifications and forwarding the appropriate work to GPO should be part of the solicitation.

**Contractual Minimum Guaranteed Amount.** Contractors were concerned that the solicitation, which guaranteed only 10 percent of the estimated dollar amount per contract period, was disproportionate to the contractor's degree of risk, as it would be too low to guarantee the contractor the recovery of the high initial startup costs.

**Audit Results.** The concern was substantiated. This issue gets to the key aspect that the DAPS business base was rapidly changing, and potentially decreasing, as a result of shifts in technology. The printing and photo reproduction industries are undergoing technological changes that are causing workforce requirement and workload unpredictability. The DAPS A-76 study manager stated that the low minimum was a direct result of changing technologies for printing services. The DAPS director agreed that the competition was undertaken in a technologically fluid environment and that neither the PWS, the DAPS MEO, nor the DAPS residual organization could establish a stable historical baseline to estimate potential future printing requirements. Because of high startup costs that included replacing leased equipment and setup of an automated financial system, the contracting officer recommended including a guarantee of more than 10 percent if the solicitation were reissued. The contract was a hybrid indefinite-quantity contract with the minimum and maximum amount for each period. The solicitation maximum was 150 percent.

**Information on Leased Equipment.** IKON expressed concern that nondisclosure of existing leased equipment would make it difficult to make a competitive offer. IKON claimed it was initially informed that leased equipment would be provided as Government-furnished equipment. The RR Donnelley team knew the equipment would not be offered to private firms. RR Donnelley's concern was that the Government was asking it to replace the leased equipment, but would not share information regarding what leased equipment was currently in place.

**Audit Results.** The concern was substantiated. The Government leased from private suppliers \* percent of the value of the existing equipment used at DAPS locations. Total lease value of the equipment was approximately \$ \*. On June 8, 2000, the source selection authority approved an SSAC recommendation making leased equipment available to both potential commercial offerors and the Government MEO, requiring the eventual service provider to provide for equipment maintenance. DAPS was instructed to verify all of the equipment information for inclusion as a technical exhibit in the second draft posting of the PWS. On November 15, 2000, the SSAC agreed with a DAPS recommendation not to offer the leased equipment to private firms and to cost the leases for the MEO offer. The March 30, 2001, solicitation was silent on the issue.

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\*Government commercial privileged or personal privacy information omitted.

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DoD Instruction 4100.33, section 5.3.2.3., provides that decisions to offer or not offer Government property shall be determined based upon a cost-benefit analysis that justifies the decision. The determination must be supported by current, accurate, and complete information, and be readily available for the independent review. The design of the analysis shall not give a decided advantage to either the in-house or contractor proposals. On January 10, 2001, DAPS provided the contracting officer a cost-benefit analysis that estimated DAPS FY 2000 leased equipment costs at \$ \* and concluded that the Government offering the leased equipment would not provide offerors an incentive to reduce equipment usage. DAPS management believed offerors should propose equipment utilized through only new lease agreements. In such a scenario, DAPS estimated that the MEO would reduce existing equipment between 25 and 50 percent, or \$ \* to \$ \* per year, and that contract offers would save 30 percent, or \$ \* per year. However, the analysis provided no documentation or methodology that supported the estimates and no alternatives that allowed offers on portions of the present leased equipment. The contracting officer recommended after solicitation closure that the leased equipment be provided as Government-furnished to all offerors at no cost. Not offering leased equipment to private firms made the solicitation unduly restrictive.

**Solicitation Reasonableness.** IKON complained that the solicitation was cumbersome and had too many requirements that made it difficult to sort out and required a tremendous amount of analysis before even beginning to prepare a proposal. For example, the solicitation called for a four-volume proposal, including six detailed plans, which contractors claimed would take an extensive amount of time and money to prepare.

**Audit Results.** The concern was partially substantiated. The DRMS contracting officer concluded after solicitation closure that the information needed to be represented in a more organized, beneficial, and complete manner. The solicitation consisted of seven 3-inch-thick volumes. While the Government is entitled to obtain the information it needs to assess the contractor's ability to perform, approach, price reasonableness, and past performance, deleting some proposal requirements (volumes and plans) could make the solicitation less cumbersome.

**Small Business Goals.** IKON expressed concern that socioeconomic goals stated in the solicitation were not clearly defined and unreasonable.

**Audit Results.** The concern was partially substantiated. The solicitation followed normal DLA procedures to require a small business subcontracting plan, a plan for subcontracting with the Javits-Wagner-O'Day Act entities such as National Industries for the Blind/NISH (formerly National Industries for the Severely Handicapped) (NIB/NISH), a plan for subcontracting with small disadvantaged businesses, and an optional DLA mentoring business agreement. The solicitation stated that the goal for subcontracting for small business was 15 percent, categorized into small disadvantaged businesses, small woman-owned businesses, Javits-Wagner-O'Day Act entities, and "Historically Underutilized

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\*Government commercial privileged or personal privacy information omitted.

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Business Zone” small businesses. IKON mistakenly believed that the solicitation called for 15 percent for small business and another 15 percent for the other categories. The contracting officer explained to IKON that the 15 percent represented all small business subcategories and that the percentage was a goal only, and that firms could submit proposals with other percentages if the goals could not be realistically met. IKON responded that it considered the minority obligations confusing and hampered its proposal. We concluded that while the solicitation small business goals were not clearly presented, they were reasonable.

NIB/NISH expressed interest in July 2000 to perform elements of the DAPS PWS requirement at seven NIB/NISH Midwestern facilities. The MEO team chief stated that the DLA SSAC later rejected the NIB/NISH proposal. The final MEO proposal did include NIB/NISH material resources.

On March 7, 2001, the DAPS Director requested that staff of the Office of the Deputy Under Secretary of Defense (Installations and Environment) cancel the DAPS A-76 process and implement a strategic sourcing initiative with a teaming of the projected MEO with personnel of NIB/NISH, Xerox Corporation, and other suppliers.<sup>2</sup> The DAPS Director noted that the prime driver of the strategic sourcing request was an unstable DAPS business base. The Office of the Deputy Under Secretary of Defense responded that the DAPS business situation might never be stable because of ongoing changes in the printing industry and recommended that DAPS continue with the OMB Circular A-76 process using the best possible business workload projections.

**Equipment Maintenance Costs.** The RR Donnelley team stated that not disclosing data on maintenance costs for Government-furnished equipment made the solicitation restrictive. Solicitation technical exhibit 23 included a list of Government-furnished equipment by facility including make/model number, serial number, and acquisition cost and date. The solicitation did not provide maintenance records and did not specifically require preventive and corrective equipment maintenance or an equipment replacement plan.

**Audit Results.** The concern was partially substantiated. The contracting officer initially determined it would not be necessary to provide maintenance costs to contract offerors. While the MEO had the use of the historical maintenance costs and the contract offerors did not, the information provided in the solicitation would appear to allow a qualified contractor to adequately estimate equipment maintenance costs for the Government-furnished equipment. However, RR Donnelley claimed it was hesitant to seek maintenance quotes from Xerox, as Xerox was partnering with the MEO team. Even though DLA was not legally required to disclose equipment maintenance costs, the contracting officer agreed with RR Donnelley and determined after solicitation closing that it was feasible to provide historical maintenance costs in a technical exhibit, and contractors were to be responsible for maintenance of Government-owned equipment.

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<sup>2</sup>NIB/NISH would receive roughly 200 personnel positions in the strategic sourcing arrangement. No NIB/NISH personnel were included in the final certified MEO.

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**Non-Mandated Facilities and Facility Cost in Cost Comparison.** The solicitation did not include a charge for DAPS facilities but did require the offeror to identify non-mandated DAPS facilities included in the contractor proposal. The solicitation stated that the cost to DAPS for the non-mandated DAPS facilities used by the offeror and the MEO would be included in the cost comparison as an addition to contractor cost. Solicitation technical exhibit 32 listed Government-furnished facility costs, while solicitation amendment 14, August 28, 2001, included the non-mandated facility costs as a contract line item with the proviso that the line item would be removed if a contract was implemented. The total annual cost of the facilities listed in technical exhibit 32 was \$5.4 million. Contractors stated that the Government providing facilities at no direct cost to either party would favor the MEO while the MEO believed including facility costs in the cost comparison would favor contractors. Contractors wanted a pro rata cost of facilities they intended to use charged to the cost comparison to account for cases where the contractor would use only a portion of a facility.

**Audit Results.** The concern was partially substantiated. The SSAC discussed whether to charge for the use of facilities. The SSAC believed the approach made better business sense because it would encourage all parties to maintain only facilities deemed necessary. DLA counsel suggested charging for the facilities only in the cost comparison. The IRO stated in subsequent teleconferences with the SSAC Chair, the contracting officer, and the DAPS study manager, that it was inappropriate to include facility costs in the MEO cost estimate because contract offerors would not be charged. The SSAC decided to keep the costs in the cost comparison. The contracting officer recommended the solicitation and cost comparison method remain unchanged.

**Contractor Site Visits to DAPS Locations.** RR Donnelley stated that contractor site visits of three DAPS facilities were held during off-peak hours, so contractors could not judge staffing and workload requirements. Because sites were devoid of staff and customers, contractors could not gauge the amount of walk-in customers a DAPS facility might service.

**Audit Results.** The concern was substantiated. The contracting officer stated that if the solicitation was reissued, additional site visits should be conducted, but not during peak hours. Reasons for holding site visits at non-peak hours included document sensitivity and morale of DAPS employees. The contracting officer also stated that site visits during peak hours would not guarantee the ability to judge walk-in customer workload. We believe site visits should be included in the competitive sourcing process. While the morale of those Government employees subject to the cost comparison study should be respected and any sensitive documents be secured, if all potential contractors want to observe customer walk-ins and general workload information, additional normal workday site visits should be scheduled to accommodate the requests.

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## Employee Concerns

**MEO Transition Personnel Actions.** DAPS employees were not informed as to who were actually losing their jobs while being given deadlines for applying for voluntary early retirement and voluntary incentive separation offers. In addition, not all DAPS employees were given the opportunity to register for priority placement and must wait until a reduction-in-force notice is received.

**Audit Results.** The concern was not substantiated. The MEO transition phase voluntary early retirement, voluntary incentive separation, reduction-in-force, and priority placement procedures were being implemented as called for in the MEO transition plan and DLA personnel procedures.

**MEO Structure and Job Descriptions.** The MEO was being modified during the transition phase and would not be able to provide adequate services to DoD Military Components. The MEO structure benefited senior DAPS management as jobs were created for senior people that were slated to lose jobs. Job descriptions were not changed even though job duties changed significantly and jobs were rated requiring direct supervision even though the closest supervision was hundreds of miles away. Changes were made in the announced Washington, D.C. area DAPS MEO organization, including changes of location of supervisory personnel and staff and revision to MEO listed personnel grades.

**Audit Results.** The concern was partially substantiated. We found no evidence that the MEO as certified and announced would not be able to provide adequate services to DoD Military Components or that the announced MEO structure benefited senior DAPS management. However, undocumented and unapproved MEO changes during the transition period discussed in finding C put those conclusions into question. Concerns regarding specific Washington, D.C. area revisions to the MEO were supported. While some MEO supervisory positions were not geographically close to remote production facilities, we concluded that was unavoidable in a nationwide MEO structure with 120 production locations.

**MEO Information Disclosure.** DAPS employees did not have access to the MEO documentation after announcement of the MEO implementation. DAPS headquarters failed to address employee concerns on implementation of the MEO.

**Audit Results.** The concern was partially substantiated. After the DLA January 2002 announcement of the MEO implementation, the Director, DAPS issued a January 25, 2002, memorandum to the DAPS workforce regarding methods for employee review of MEO plan documents. The memorandum noted that each DAPS area office would maintain a single hard copy of the MEO management plan and associated documents at each of the 11 DAPS area office headquarter domestic locations for review by the DAPS workforce. The workforce was not permitted to copy the documents. DAPS officials agreed that the procedure limited access to the MEO documentation for many DAPS employees who did not work in geographical proximity to an area office location. DAPS officials stated that they did not mass-reproduce or electronically transmit the MEO documents to DAPS personnel because of concern that wide distribution of the MEO contents would have a negative effect over MEO competitiveness should a

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future resolicitation be required. We found no DoD or DLA requirement over the distribution of MEO documentation after announcement of the final study decision and commencement of the MEO transition period.

**Travel Costs.** DAPS employees also felt senior management wasted resources by spending money on useless travel and conferences while the organization lacked funds for basic operations.

**Audit Results.** The concern was not substantiated. DAPS policy requires managers to attend annual document automation technology conferences. We found no indication DAPS senior management wasted resources on travel and conferences.

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## Appendix E. Management Comments on the Findings and Audit Response

### Management Comments on Finding A and Audit Response

**DLA Comments on DAPS Workload Information.** DLA disagreed with finding and discussion statements that DLA withheld specific workload information from prospective contract offerors and that data regarding workload volume were not in a format that allowed firms to prepare a pricing proposal. DLA asserted that it was as open and as forthcoming as possible in providing the information necessary for the development of competitive private sector proposals. DLA stated that solicitation technical exhibits 5, 6, 7, and 20 provided workload detail by specific location, and that solicitation technical exhibits 8, 9, 10, and 13 and solicitation Attachment 9 provide workload information DAPS-wide. DLA stated that DAPS-wide workload information was estimated and not historically tracked by individual DAPS location; and not available in any database or system. DLA stated that the combined use of the technical exhibits and attachments provided a true composite of DAPS workload sufficient to provide an accurate estimate for costing purposes. DLA stated that the MEO, as certified by the IRO, was able to develop a bona fide bid using only the information contained in the solicitation PWS, its attachments, and technical exhibits.

**Audit Response.** Of the technical exhibits noted in the DLA response, only solicitation technical exhibit 6 provided historical and projected workload for each DAPS location, including historical workload for FY 1998 through FY 2000 and subsequent 5-year projections.<sup>1</sup> Data in solicitation technical exhibit 6 did not provide bidders details such as information on DAPS customers, individual customer work quantities, servicing DAPS plants and subplants, and associated revenue. DAPS withheld such detailed job order data available in the DAPS Defense Working Capital Fund accounting system. We do not agree that the MEO was able to develop a bona fide bid using only the information contained in the solicitation PWS, its attachments, and technical exhibits. The MEO management plan stated that the MEO development team used existing DAPS Defense Working Capital Fund data in conjunction with PWS technical exhibits and other MEO data to evaluate current DAPS operations. We agree with the

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<sup>1</sup>Technical exhibit 5 provided a chart of PWS work functions that were performed at each DAPS location. Technical exhibit 7 showed levels of classified data handled at each DAPS facility. Technical exhibits 8 and 9 provided aggregate approximate work orders and average output units per work function or production process. Technical exhibit 10 contained DAPS-wide composite estimated sensitive and classified work by job order for FY 1999 through 2004. Technical exhibit 13 contained DAPS-wide composite projected re-work percentages for FY 2001 through 2005. Technical exhibit 20 contained top-level monthly workload data by unit for mandatory production at 50 locations. The historical period of the data in technical exhibit 20 was not identified. Attachment 9 provided projected DAPS-wide composite turnaround and timeliness requirements by work function.

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contractor contention that MEO access to the accounting system information and knowledge gave a proposal advantage to the MEO. We also agree with the contracting officer conclusion that withholding the accounting system could have been detrimental to private firms and created an unfair advantage for the MEO.

**DLA Comments on DAPS Staffing Information.** DLA disagreed with finding and discussion statements that DLA withheld specific staffing information from prospective contract offerors. DLA stated DLA/DAPS justifiably withheld staffing information. DLA noted the DAPS Director memorandum of August 30, 2001, provided the basis for withholding the staffing information, using the May 1984 U.S. District Court for the District of Columbia legal opinion. DLA stated that DLA/DAPS had three reasons for not releasing staffing information. First, releasing the then-current staffing information would provide potential harm to the MEO competitive position. Second, as a performance-based competition, DLA believed all bidders should have developed staffing based on workload requirements, not on Government staffing levels currently in place. Third, DLA did not agree with RR Donnelley claims that staffing information would provide another means to understand work volumes, because of the lack of detailed workload information. DLA believed that providing staffing information would not give potential offerors information to estimate work job orders per location. Instead, staffing information would have provided a competitor a means to determine DAPS staffing costs.

**Audit Response.** We do not believe that release of aggregate DAPS staffing and location reduction information would have unduly harmed the MEO competitive position. As noted in the report, approximately 40 of the 260 initial DAPS locations were closed during the course of the study, while in-place personnel subject to the study were reduced from 1,400 at study announcement to approximately 918 at study end through voluntary early retirement and voluntary incentive separation offers. The solicitation was unclear about the total number of locations, the closure of locations, and included no personnel information. DAPS withheld from the contracting officer and the IRO the scope and number of the personnel reductions. While solicitation technical exhibit 6 showed projected DAPS workload line items alternately decreasing or increasing for the 5-year period after FY 2000, the undisclosed DAPS location and staffing reductions indicated a potentially precipitous drop in the DAPS customer and workload base. Thus, DAPS aggregate and location staffing information would have provided private firms another means to understand work volumes. According to the contracting officer, at least one other DLA A-76 study of DRMS functions provided such location-related staffing information. We agree that in performance-based competitions all bidders should develop staffing based on workload requirements. However, the DAPS solicitation included several deficiencies including those noted by DLA to OMB where the performance-based requirements could not be rectified.

**DLA Comments on Guaranteed Minimum.** DLA partially agreed with finding and discussion statements that DLA offered to guarantee only 10 percent of yearly estimated work in the solicitation. DLA stated that the 10 percent yearly estimated workload minimum guarantee was arrived at to minimize DLA/DAPS liabilities. DLA stated that DAPS has no guarantee of workload levels from DoD

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components, and should the workload have fallen below a minimum level, sufficient funds to pay a contractor would not have existed. DLA stated that no contract bidder questioned the minimum guarantee amount until RR Donnelley expressed concern 6 days before solicitation closure. DLA stated that if the issue had been raised earlier during the 5-month solicitation period, a possible solution could have been reached.

**Audit Response.** The use of a 10-percent minimum guarantee was indicative of a declining DAPS workload and by inference put into question the reliability of the historical workload data included in the solicitation technical exhibits. As noted in the report, the DAPS business base was rapidly changing, and potentially decreasing, as a result of shifts in technology. The DAPS A-76 study manager stated that the low minimum was a direct result of changing technologies of printing services. The DAPS director agreed that the competition was undertaken in a technologically fluid environment and that the PWS could not establish a stable historical baseline to estimate potential future printing requirements. We noted in the report that the contracting officer recommended including a guarantee of more than 10 percent if the solicitation were reissued to cover potential contractor startup costs including replacing leased equipment and setup of an automated financial system. While we agree that the firm should have raised the issue earlier in the process, we consider the minimum guarantee issue one of the direct causes as to why the DAPS public/private competition discouraged private firms from submitting offers.

**DLA Comments on Equipment and Maintenance Costing Information.** DLA disagreed with draft report finding and discussion statements that DLA did not provide specific historical information related to equipment leasing and maintenance costs to private offerors. DLA noted that solicitation technical exhibit 23 provided equipment locations, descriptions, serial numbers, makes and models, acquired amounts, acquired dates, and conditions. DLA noted that at a April 2001 pre-proposal conference, vendors were informed that maintenance costs would not be available to non-Governmental entities and that it was incumbent on vendors to contact individual equipment manufacturers to determine what maintenance pricing would be available commercially. DLA did not consider that an undue hardship for experienced offerors. DLA agreed with report statements that DLA/DAPS was not legally required to disclose equipment and maintenance costs.

**Audit Response.** Based on the DLA comments, we revised the finding and discussion statements related to maintenance costing information. We agree that the information provided in the solicitation would appear to allow a qualified contractor to adequately estimate equipment maintenance costs for the Government-furnished equipment. DLA solicitation technical exhibit 23 did not provide detailed information on existing DAPS-leased equipment or maintenance costs for leased equipment. Rather, the technical exhibit 32 only provided information regarding DLA-owned equipment that was to be Government furnished. The DLA-owned equipment represented approximately \* percent of the value of the existing equipment used at DAPS locations. As indicated in the

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\*Government commercial privileged or personal privacy information omitted.

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MEO management plan, the MEO had use of both the DLA-owned and leased equipment inventory costs. Private offerors did not. We continue to believe that not offering leased equipment to private firms made the solicitation unduly restrictive. As noted in the report, a DAPS lease analysis provided no documentation or methodology that supported any estimated savings from not offering the leased equipment and no alternatives that allowed offers to bid on portions of the existing leased equipment.

**DLA Comments on Contracting Officer Recommendations.** DLA stated that contracting officer recommendations after solicitation closure concerning, workload, staffing, historical maintenance costs, and offering of leased equipment, should have no bearing on finding A.

**Audit Response.** The contracting officer findings are an integral part of the record and as such are detailed in the report. We reviewed the 11 industry concerns, including the four areas noted above, we analyzed solicitation, MEO proposal, and SSAC documentation related to the issues, as well as contracting officer analyses. In many, though not all cases, we agree with the contracting officer recommendations made after solicitation closure that individual solicitation information could have been improved or that additional information could have been provided by DLA.

**Deputy Under Secretary of Defense (Installations and Environment) Comments on Exclusion of Offset Printing.** Responding for the office of the Deputy Under Secretary of Defense (Installations and Environment), the Director, Competitive Sourcing and Privatization agreed with the finding statement that the exclusion of offset printing from the DAPS solicitation may have discouraged firms from submitting offers in the public-private competition. However, the Director noted that DLA exclusion of offset printing in the DAPS solicitation was consistent with DoD statutory obligation and that until the 10 U.S.C. 195 and the FAR can be revised through formal rule making process, DoD compliance with the updated OMB guidance will not be possible.

**DLA Comments on Exclusion of Offset Printing.** DLA disagreed with the finding and discussion statements that DLA did not include in the solicitation offset printing work forwarded to GPO and that the exclusion discouraged potential offerors from competing. DLA stated that no evidence existed that anyone in the Executive branch subsequently chose to act on the May 1996 Department of Justice opinion until the May 3, 2002, OMB memorandum was issued, which was after the DAPS public/private competition was completed. DLA noted that while the Department of Justice opinion committed to working with Congress to achieve a comprehensive reform of title 44, it maintained that, in the meantime, agencies were to continue to use the capabilities and expertise of GPO. DLA agreed with report statements that the FAR has not been modified to conform to the OMB memorandum and that the FAR requires Government printing to be done by or through GPO unless GPO cannot provide the service.

DLA stated that DoD written policy requires any procurement of printing and duplicating from private sector sources shall be through the GPO. DLA noted a March 31, 1997, Secretary of Defense memorandum to the Director, DLA,

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regarding the use of GPO by DAPS. The Secretary directed that DLA ensure that the operation of the DAPS are in conformance with the law and with the guidance issued by OMB regarding title 44 of the United States Code. DLA also noted that DoD Instruction 4100.33 requires that Government printing must be done by or through the GPO. DLA stated that the report should indicate DLA complied with a nondiscretionary regulation prohibiting the inclusion of GPO offset printing in the solicitation.

**Audit Response.** Based on the OSD and DLA comments, we revised our final report discussion including adding a section on DoD guidance regarding GPO. We agree with the DLA characterization that no evidence exists that any Executive branch agency acted on the May 1996 Department of Justice opinion regarding GPO printing until May 2002. We noted in the report that DLA legal personnel stated that they concluded DLA could not legally include the GPO work, and solicitation inclusion of offset printing would require submission to GPO for approval. The report also noted, uncontested by DLA, that DAPS at its own discretion maintains approximately \$3.18 million in offset printing work in-house. The in-house offset printing was not included in the OMB Circular A-76 competition. While the exclusion of offset printing in the DAPS solicitation was likely consistent with DoD statutory obligation, the option of requesting GPO approval and the fact that some offset printing work is performed in-house suggests that DLA did have at least limited discretion in the disposition of the offset printing work at the time of the solicitation. DAPS and DLA personnel stated the SSAC decided not to include the GPO offset printing work as the work was already contracted out by GPO, and DAPS had no in-house capacity to perform the offset work in the event that the DAPS MEO won the competition. Neither DLA nor DAPS had documented any of the reasons stated to us for not including in the solicitation offset printing work to GPO. We believe that the DLA comments provide the type of detailed justification for not soliciting the GPO work that was missing from the DAPS public/private competition and solicitation records.

## **Management Comments on Finding B and Audit Response**

**DLA Comments on Use of Support Service Contractor Personnel in PWS and MEO Development.** While partially concurring with the finding, DLA disagreed with the discussion statement that the DAPS public/private competition violated DOD interim guidance to avoid potential conflicts of interest by allowing the same private sector consultant personnel to develop both the PWS and prepare the MEO proposal. DLA stated that DAPS PWS and MEO development and source selection processes were similar to those used by DLA for its Defense depot OMB Circular A-76 studies. DLA stated that DAPS complied with study procedures by transferring consultant contractors to the MEO side of the firewall and moving to other offices three remaining DAPS personnel working on the PWS. DLA believed the integrity of the process was ensured keeping MEO team personnel and support consultants away from further PWS and solicitation development, as well as the source selection process. DLA stated that the DoD interim guidance was not exclusively followed because of timing and cost factors as well as because the SSAC legal advisor felt no substantial benefit existed for “starting over.” DLA believed that the commitment of senior DLA leaders for

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maintaining a level playing field and measures put in place provided adequate protection against conflicts of interest. DLA noted that our report did not show or discuss any evidence that the Government MEO received any advantage or partiality as a result of the DLA firewall process.

**Audit Response.** The Defense Logistics Support Command performed the DLA Defense depot studies. DAPS was not required to follow competitive sourcing guidance of or oversight from the Defense Logistics Support Command, of which DAPS was not a part. DLA compliance with the DoD interim guidance requirements would not have required the DAPS public/private competition to start over. Rather, compliance would have required that DLA not transfer to the MEO development team up to 15 contractor consultants who had worked on the preparation of the PWS. While DLA may have incurred additional study costs to replace the consultants, by not doing so, the MEO proposal development received an intangible benefit of consultants who were experts in the competition PWS documents they had developed. Thus, DLA actions gave the MEO proposal at least the appearance of a competitive advantage and put into question the integrity of the study process.

**DLA Comments on Potential DAPS Employee Conflicts of Interest in PWS and MEO Development.** DLA disagreed with finding and discussion statements that the MEO certifying official determined the study scope and directed PWS development tasks. DLA also disagreed that the MEO certifying official and PWS development team personnel may have violated application of a DAPS PWS-MEO firewall. DLA asserted that adequate and substantial safeguards were in place to ensure the integrity of the process, and as soon as the perception of conflict was identified, actions were taken to ameliorate the situation. Regarding the MEO certifying official potential conflict, DLA noted that the audit report failed to show how “this one instance” compromised the appearance of the integrity and fairness of the OMB Circular A-76 competition. DLA also noted that it was difficult to understand how the attendance of the MEO certifying officials’ at a meeting so early in the PWS process, prior to the release of PWS drafts and the solicitation, could have had an affect on the integrity of the competition. Regarding the alleged PWS development team conflicts of interest, DLA stated that the deputy study manager, one of the three DAPS personnel on the PWS team, routinely discussed issues of logistics with MEO team personnel and did not discuss issues relative to the PWS or acquisition, nor did MEO team members discuss anything MEO related. DLA also discussed a contracting officer e-mail regarding a DAPS study manager discussion with the MEO team leader, noting the discussion related to delays in the release of software used in developing MEO bid costs. DLA stated no discussion on how the MEO was to cost its bid, or what it contained took place. DLA also noted that after the contracting officer expressed concern, no further discussions on the subject between the DAPS study manager and the MEO team took place and the DAPS study manager did not counsel or provide guidance to the MEO. Therefore, DLA noted no basis existed for the report conclusion that the DAPS study manager should not have been advising the SSAC as he apparently provided advice to the MEO.

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**Audit Response.** The actions of the DAPS director and the DAPS study manager as documented by the contracting officer, as well as the other instances noted in the finding, gave at least the appearance of providing the MEO with a competitive advantage and put into question the integrity of the study process. \* We continue to believe the DLA competitive sourcing office, DLA counsel, and the SSAC chairs had no procedures in place to provide oversight and guidance to DAPS regarding potential conflicts of interest and firewall violations.

## Management Comments on Finding C and Audit Response

**DLA Comments on DAPS Modifications to the Certified MEO.** While partially concurring with the finding, DLA disagreed with discussion statements that MEO staffing and location increases made during the transition period put into question whether the MEO would be able to perform the DAPS function within the proposed in-house cost estimate and that DAPS modified the MEO structure without sufficient documentation. DLA stated that the MEO announced in January 2002 were based on FY 1999 and FY 2000 workload data and requirements. DLA believed localized workload increases required reversing the status of facilities originally targeted for closure in the MEO, or in other cases, workload decreases necessitated closure of an MEO location. DLA stated that the Army, Navy, Air Force, and Marine Corps each designated a representative to review DAPS site closures related to the MEO implementation. DAPS agreements were reached with the Services to keep particular DAPS facilities open on a cost reimbursement basis if the Service representative decided that the facility had an impact on military readiness or mobilization.

The DLA stated that DLA/DAPS developed an internal procedure for change approvals, and that MEO transition period revisions were approved by the DAPS Director and briefed to DLA officials. DLA stated that DAPS personnel met with the DLA IRO in March 2002 to discuss the methodology required for MEO revisions. DLA comments stated that the IRO requested MEO revisions be fully documented, demonstrate the workload or business reasons for the changes, and contain formal approvals of appropriate DAPS officials. DLA stated that at the time of this audit, DAPS MEO revision documentation had not been developed. DLA stated revision documentation has now been developed and approved, confirms that actual MEO costs will fall within the in-house cost estimate as modified by changed PWS requirements, and provides the necessary audit trail for an MEO post-implementation review.

**Audit Response.** While we agree that localized workload increases and decreases will occur during the life of the MEO, we do not agree that expressions of the Services as to a revised DAPS MEO structure should in themselves result in changes to the certified MEO during the transition phase. DAPS transition phase actions appear to violate the spirit and intent of the OMB Circular A-76 process to implement an MEO organizational structure determined by the study process and public/private competition.

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\*Government commercial privileged or personal privacy information omitted.

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We found no evidence of a written DLA or DAPS internal procedure for MEO change approvals, or a written change to PWS requirements to support changes made to the certified MEO during the transition period. We found no written approvals of DAPS MEO changes at either the DAPS or DLA and no IRO request for documentation. As noted in the report, the IRO made informal recommendations regarding MEO revision documentation, and a DAPS March 2002 briefing of MEO revisions to a DLA official erroneously stated that total MEO full-time equivalent personnel would not be increased and no additional costs incurred. DAPS did not prepare a revised management plan or cost estimate to support either the MEO modifications disclosed to the DLA official or further modifications made during the transition period. On December 6, 2002, DAPS provided us with four draft MEO modifications that summarized the changes to the certified MEO. Because none of the draft modifications was dated or approved by DAPS or DLA officials, we did not review them for sufficiency. As noted in Recommendation C.1., we believe that guidance is needed at the DoD level specifying documentation and approval requirements for revisions to MEO structures made during the transition period after MEO selection but before implementation.

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## **Appendix F. Report Distribution**

### **Office of the Secretary of Defense**

Under Secretary of Defense for Acquisition, Technology and Logistics  
Deputy Under Secretary of Defense (Installations and Environment)  
Director, Defense Procurement and Acquisition Policy  
Under Secretary of Defense (Comptroller)/Chief Financial Officer  
Deputy Chief Financial Officer  
Deputy Comptroller (Program/Budget)  
Director, Administration and Management

### **Department of the Army**

Auditor General, Department of the Army

### **Department of the Navy**

Auditor General, Department of the Navy

### **Department of the Air Force**

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

### **Other Organizations**

Director, Defense Logistics Agency  
Director, Defense Reutilization and Marketing Service  
Director, Document Automation and Production Service

### **Non-Defense Federal Organizations**

Office of Management and Budget\*

\*Copies with government commercial privileged or personal privacy information omitted.

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## **Congressional Committees and Subcommittees, Chairman and Ranking Minority Member**

Senate Committee on Appropriations  
Senate Subcommittee on Defense, Committee on Appropriations  
Senate Committee on Armed Services  
Senate Committee on Governmental Affairs  
House Committee on Appropriations  
House Subcommittee on Defense, Committee on Appropriations  
House Committee on Armed Services  
House Subcommittee on Readiness, House Committee on Armed Services  
House Committee on Government Reform  
House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform  
House Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform  
House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform  
Senator George Allen\*

\*Copies with government commercial privileged or personal privacy information omitted.

# Deputy Under Secretary of Defense (Installation and Environment) Comments



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

March 25, 2003

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Draft of Proposed Report of the Inspector General, DoD, on Document Automation and Production Service (DAPS) Public/Private Competition (Project No. D2002CB-0088.000)

We are responding to the subject report, specifically the Inspector General's recommendations to DUSD(I&E) and one finding. As mentioned below and in our recent responses to other audit reports, we continue to provide competitive sourcing advice to OMB until OMB publishes their revision to OMB Circular A-76. Therefore, we do not plan to issue any DoD competitive sourcing interim guidance until after OMB publishes the revised Circular. Our comments on the finding and recommendations follow.

**1. FINDING A, Adequacy of the Solicitation for Competition:** The draft report states that, "the solicitation for the DAPS public/private competition discourages private firms from submitting offers in competition with the Government's MEO. The condition occurred because DLA . . . excluded from the solicitation offset printing work presently forward to the Government Printing Office."

**DUSD(I&E) COMMENTS:** We concur with the comments provided by the OSD Office of the Director, Administration and Management regarding this finding. While we concur that the exclusion of offset printing from the DAPS solicitation may have discouraged private firms from submitting offers in the public-private competition, DLA's exclusion of offset printing in their March 30, 2001 solicitation was consistent with DoD's statutory obligation. 10 U.S.C. Section 195 requires that all offset printing, with few exceptions, be performed through the Government Printing Office (GPO). In May, OMB issued a memorandum stating that executive branch agencies "are no longer required to make use of the GPO services and can outsource printing and duplicating needs." Until both 10 U.S.C. Section 195 and the Federal Acquisition Regulation (FAR) are revised, DoD compliance with the updated OMB guidance will not be possible.

**2. RECOMMENDATION A.1.** DoD(IG) recommends that DUSD(I&E) issue policy and guidance that clarifies:

- a. The extent that Government staffing and workload information should be included in Office of Management and Budget Circular competitive sourcing solicitations.
- b. Title 32, Code of Federal Regulations, part 169a, section 17, and DoD Instruction 4100.33 guidance for contracting officer and source selection authority actions in competitive sourcing solicitations where no proposal is received.



c. The applicability of subjecting DoD printing provided to the Government Printing Office to competitive sourcing procedures.

**ODUSD(I&E) COMMENTS.**

**Recommendation A.1.a.** Concur. We will ensure that this issue is resolved either through recommendations to OMB to include in their proposed Circular. If the published Circular does not sufficiently address this guidance, DoD guidance will address sharing information will all offerors equally, including incumbent organization staffing and existing or historical information. If information is available for use by the MEO team, in any manner, it should be made available to all offerors with the appropriate caveats that incumbent staffing, methods, and historical workload data may differ based on the new organization (the MEO).

**Recommendation A.1.b.** Concur. We agree that the guidance for “no satisfactory sources” in the OMB Circular A-76 needs to be updated. The current policy has been in place for over 20 years. This coupled with our recent competitions where private sector offers were received but determined to be non-responsive indicates that updated and more detailed guidance is necessary within the Federal Government and the Department. We will ensure that this issue is resolved either through our recommendations to OMB or in DoD guidance to implement the new Circular.

**Recommendation A.1.c.** Partially concur. We agree that guidance is desirable to clarify competitive sourcing applicability for specific functions such as printing. Such guidance, however, should be provided by the appropriate functional manager, which in the case of printing is the Director for Administration and Management, not DUSD(I&E). Therefore, this action is passed to the Director for Administration and Management.

**3. RECOMMENDATION B.1.** We recommend that the Deputy Under Secretary of Defense (Installations and Environment) issue additional competitive sourcing guidance specifying procedures to assure proper constituency and firewall development and implementation separating, where required, source selection evaluation, contracting, performance work statement development, and most efficient organization development teams.

**DUSD(I&E) Comments.** Partially concur. We believe that sufficient guidance was in place for DoD Components on April 3, 2000 to preclude the use of the same consultant to develop both the MEO and PWS. OMB’s proposed revision to OMB Circular A-76, provides specific guidance prohibiting individuals to be members of both the PWS and MEO Team. We will ensure that this issue will be resolved either through the revised Circular or in our guidance to implement the new Circular.

**DUSD(I&E) Comments.** Concur. While we agree that policy is lacking with regard to implementing and revising MEOs, we believe that OMB's proposed Circular sufficiently addresses the Inspector General's concerns. These concerns are similar to those addressed in the Commercial Activities Panel Report to Congress to make the process more FAR-like and establish binding performance agreements for MEOs.

Point of contact for subject audit report is Mrs. Annie L. Andrews, ODUSD(I&E)CS&P, (703) 602-2608.



Joseph K. Sikes  
Director, Competitive Sourcing  
and Privatization

cc:  
OSD(AT&L)ARA  
OSD Director, Administration and Management

# Defense Logistics Agency Comments



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

MAR 10 2003

J-65  
IN REPLY  
REFER TO

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Document Automation & Production Service Public/Private Competition (Project No. D2002CB-0088.000)

The Defense Logistics Agency (DLA) has reviewed the subject draft audit, dated December 27, 2002, and appreciates the opportunity to provide comments.

DLA finds it necessary to nonconcur with a number of the findings documented within this report. These non-concurrences are due to a basic difference of opinion on two points. The first point has to do with the information that DLA provided to prospective bidders. The audit states that DLA withheld vital information from prospective bidders. DLA asserts that it was as open and forthcoming as possible in providing the information necessary for the development of sound, competitive, private sector proposals. The second point has to do with the impartiality with which DLA conducted the solicitation. The audit states that the solicitation was tainted through several instances of conflict of interest. DLA asserts that adequate and substantial safeguards were put in place to assure the integrity of the process, and as soon as the perception of a conflict was identified, actions were taken to ameliorate the situation and remove even the hint of impropriety.

DLA partially concurs with the recommendation that we consider a resolicitation including the heretofore excluded Government Printing Office offset work. This future decision to resolicit will be contingent upon factors including technological advances and legal constraints. Regarding the remaining recommendations to develop management controls and guidance for the DLA community involved in A-76 efforts, DLA concurs and has, in fact, already completed one of the actions and is scheduled to complete the other by June 30, 2003.

Attached is the full text of our response.

The point of contact for this effort is Mr. Geoffrey Berntsen, 703-767-2164 or [Geoffrey.Berntsen@dla.mil](mailto:Geoffrey.Berntsen@dla.mil).

  
MAE DE VINCENTIS  
Director, Information Operations  
Chief Information Officer

Attachment

Federal Recycling Program



Printed on Recycled Paper

Subject: DLA's response to the Document Automation & Production Service Public/Private Competition, December 27, 2002, Project No. D2002CB-0088.000

**Findings:**

**A: Adequacy of the Solicitation for Competition.** (See page 4 of the Draft Report for details.) The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government's MEO. The conditions occurred because DLA:

- **Withheld specific workload and staffing information from prospective contract offerors.**
- Offered to guarantee only 10 percent of yearly estimated work.
- Did not provide historical information related to equipment leasing and maintenance costs to private sector offerors
- Excluded from the solicitation offset printing work presently forwarded to the Government Printing Office.

Revised

Workload:

**Issue:** DOD IG Draft Report states that "DLA withheld specific workload... information from prospective contract offerors. Data regarding workload volume were not in a format that allowed firms to prepare a pricing proposal. DAPS objected to the release of accounting system workload and pricing information that it claimed to be proprietary. After solicitation closure, the contracting officer concluded that private sector offerors should have been allowed to obtain more up-to-date and detailed volume workload information to estimate costs from workload."<sup>1</sup>

**DLA Comments:** Nonconcur with finding. DLA/DAPS provided the following workload information:

*Attachment 9: Turnaround and Timeliness.* Provides turnaround and timeliness requirements by cost center (work function). This information was to be used in estimating time requirements for producing work at each DAPS location.

*Technical Exhibit 5: Function by Location.* Provides the work functions that were performed at each DAPS location.

*Technical Exhibit 6: Workload Detail by Location.* Provides historical and projected workload for each DAPS location.

*Technical Exhibit 7: Highest Level of Classified Data Currently Handled.* Provides information on highest levels of classified data handled at each DAPS facility.

*Technical Exhibit 8: Average Number of Units per Job.* Provides the total number of units per cost center (work function) in a year, approximate number of jobs per cost center (work function) in a year, and approximate average units per job per cost center (work function) in a year.

*Technical Exhibit 9: Estimate Yearly Total Jobs.* Provides the number of total jobs by cost center (work function) broken down by offline, online, and traditional production processes.

<sup>1</sup> Draft Report, Page 7, paragraph 4.

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Subject: DLA's response to the Document Automation & Production Service Public/Private Competition, December 27, 2002, Project No. D2002CB-0088.000

*Technical Exhibit 10: Estimated Sensitive and Classified Work by Jobs.* Provides total historical and projected number of sensitive, confidential, secret, and top secret jobs.

*Technical Exhibit 13: Rework Percentages.* Provides total historical and projected rework percentages by year.

*Technical Exhibit 19: DAPS Process and CLIN Relationship.* Provides table of contract CLIN items and its equivalent DAPS cost center (work process).

*Technical Exhibit 20: Mandatory Production Facilities.* Provides listing of all mandatory production facilities, required work functions, monthly workload for those work functions, and turnaround requirements.

DLA/DAPS did not withhold workload data. Technical Exhibits 5, 6, 7 and 20 provide workload detail by specific location. Technical Exhibits 8, 9, 10, 13 and Attachment 9 provide information DAPS-wide. This information contained in these four exhibits and one attachment historically was not tracked by individual DAPS location, was not available in any database or system, and was therefore estimated across all DAPS locations. The combined use of these Technical Exhibits and attachments provided a true composite of DAPS workload sufficient enough to provide an accurate estimate for costing purposes. One offeror, the MEO, was able to build a bid on the basis of the information contained in the PWS. As certified by the Internal Review Official (IRO), that bid was built strictly on the basis of the workload and historical information contained in the PWS, its attachments and technical exhibits. Also, it should be noted that contracting officer conclusions after solicitation closure should have no bearing on this finding.

Staffing:

**Issue:** DOD IG Draft Report states that "DLA withheld specific ....staffing information from prospective contract offerors.<sup>2</sup> Potential offerors requesting staffing information may not have necessarily needed the information to make a proposal, but were seeking an alternative means to understand the volume of work that needed to be produced under the contract because of the Government's inability to provide detailed workload information. Subsequently, DAPS could have provided staffing information that did not give direct costing information but would be appropriate to determine scope of work."<sup>3</sup>

**DLA Comments:** Nonconcur with finding. DLA/DAPS justifiably withheld staffing information. Director of DAPS memorandum of August 30, 2001, provided the basis for withholding this information, based on a May 1984 U.S. District Court for the District of Columbia legal opinion. In this opinion, the U.S. District Court "accepts the Army's view that in this instance release may not only chill competition and place the Army at a 'competitive disadvantage' in 'bidding' to continue doing the work in-house, but might also discourage commercial firms from taking the initiative to come forward with more innovative techniques for cutting costs in the hope of underbidding a more uncertain Army 'bid.'" The Army documents included, "'Schedule' X reflecting manpower distribution by staffing and workload; 'Table of Distribution and Allowance (TDA)' reflecting staffing of functions and

<sup>2</sup> Draft Report, Page 7, Paragraph 4.

<sup>3</sup> Draft Report, Page 8, Paragraph 2.

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Subject: DLA's response to the Document Automation & Production Service Public/Private Competition, December 27, 2002, Project No. D2002CB-0088.000

salary costs.”<sup>4</sup> DLA/DAPS had three issues for not releasing staffing information. First, it was felt that releasing staffing information would provide potential harm to the MEO's competitive position by releasing the then current staffing information. Second, since this was a performance based competition, all bidders should have developed their own staffing requirements based on workload requirements, not on the staffing levels the Government currently had in place. As in the Army case, the releasing of staffing information would have reduced the benefits of competition by limiting the incentive for innovation in providing current DAPS services. Third, claims from one potential offeror that staffing information would provide another means to understand work volumes, because of the lack of detailed workload information, does not make sense. In a conversation with the Contracting Officer, Mr. Paul Masterton of RR Donnelley made it clear that they were concerned about the lack of information concerning the number of jobs produced per location.<sup>5</sup> DAPS historically did not track numbers of jobs, just aggregate units per location. Technical Exhibit 8 provided a formula to use for estimating numbers of jobs per location. Providing numbers of personnel and their job title, series, and grade would not have given potential offerors any information by which the numbers of jobs per location could have been estimated. Instead it would have provided a means to determine staffing costs by equating grades of personnel to available public data on base salaries and locality pay. As pointed out previously, the MEO, as certified by the IRO, was able to develop a bona fide bid using only the information contained in the PWS, and its attachments and technical exhibits.

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<sup>4</sup> Morrison-Knudsen Company, Inc., vs. Department of the Army, 595 F. Supp. 353 (D.D.C.1984)

<sup>5</sup> Email from Contracting Officer to DAPS CA Program Manager dtd April 3, 2002

Subject: DLA's response to the Document Automation & Production Service Public/Private Competition, December 27, 2002, Project No. D2002CB-0088.000

**A.: Adequacy of the Solicitation for Competition.** (See page 4 of the Draft Report for details.) The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government's MEO. The conditions occurred because DLA:

- Withheld specific workload and staffing information from prospective contract offerors.
- **Offered to guarantee only 10 percent of yearly estimated work.**
- Did not provide historical information related to equipment leasing and maintenance costs to private sector offerors
- Excluded from the solicitation offset printing work presently forwarded to the Government Printing Office.

**Issue:** The DOD IG Draft Report states, "The minimum was low because of the uncertainty of expenditures due to the changing technology in the printing industry. Due to potential high initial outlays, RR Donnelley considered the 10 percent minimum insufficient. The contracting officer recommended that the minimum amount be increased to more than 10 percent if the solicitation was reissued. We agree that a contractor would likely need a higher revenue guarantee due to the uncertain nature of the DAPS workload duplication and reproduction orders."<sup>6</sup>

**DLA Comments:** Partially concur with finding. The minimum guarantee of 10 percent of the yearly estimated workload was arrived at in order to minimize DLA/DAPS liabilities. As a service bureau for document automation and related printing services, DAPS itself has no guarantee of workload levels from DOD components, receiving revenues only from services provided. Should the workload have fallen below a minimum level, there would not have been sufficient funds to pay a contractor. Therefore, a low minimum was determined to reduce the Government's liability. However, it should be noted that during the over 5 months the solicitation was open, there was not one question, concern, or comment expressed about the minimum of 10 percent, until the letter from RR Donnelley was received just 6 days before solicitation closure. Should this issue have been raised earlier during this over 5-month period, a possible solution could have been reached. Also, it should be noted that contracting officer conclusions concerning **reissuance of the solicitation** should have no bearing on this finding.

<sup>6</sup> Draft Report, Page 8, Paragraph 3.

Subject: DLA's response to the Document Automation & Production Service Public/Private Competition, December 27, 2002, Project No. D2002CB-0088.000

**A.: Adequacy of the Solicitation for Competition.** (See page 4 of the Draft Report for details.) The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government's MEO. The conditions occurred because DLA:

- Withheld specific workload and staffing information from prospective contract offerors.
- Offered to guarantee only 10 percent of yearly estimated work.
- **Did not provide historical information related to equipment leasing and maintenance costs to private sector offerors**
- Excluded from the solicitation offset printing work presently forwarded to the Government Printing Office.

Revised

**Issue:** The DOD IG Draft Report states, "Even though DLA was not legally required to disclose equipment leasing and maintenance costs, the contracting officer determined after solicitation closure that it was feasible to provide historical maintenance costs in a technical exhibit, and that contractors were to be responsible for maintenance of Government owned equipment. The contracting officer also recommended after solicitation closure that the leased equipment be provided as Government furnished to all offerors at no cost."<sup>7</sup>

**DLA Comments:** Nonconcur with finding. As stated in the DOD IG Draft Report, DLA/DAPS was not legally required to disclose equipment and maintenance costs.<sup>8</sup> Equipment locations, descriptions, serial numbers, makes and models, acquired amounts, acquired dates, and conditions were provided in Technical Exhibit 23. As explained to potential vendors at the Pre-Proposal Conference held on April 27 – 28, 2001, maintenance costs were under specially negotiated contracts and would not be available to non-Governmental entities. Instead, vendors were told that with the information provided, it was incumbent on them to contact individual equipment manufacturers to determine what maintenance pricing would be available commercially. This should not have been an undue hardship since it was expected that experienced offerors, with relationships or access to major printing equipment vendors, would bid on the sizeable workload offered under this solicitation. Also, it should be noted that contracting officer recommendations concerning historical maintenance costs, and the offering of leased equipment **after solicitation closure** should have no bearing on this finding.

<sup>7</sup> Draft Report, Page 9, Paragraph 1.

<sup>8</sup> Draft Report, Page 9, Paragraph 1.

Subject: DLA's response to the Document Automation & Production Service Public/Private Competition, December 27, 2002, Project No. D2002CB-0088.000

**A.: Adequacy of the Solicitation for Competition.** (See page 4 of the Draft Report for details.) The solicitation for the DAPS public/private competition discouraged private firms from submitting offers in competition with the Government's MEO. The conditions occurred because DLA:

- Withheld specific workload and staffing information from prospective contract offerors.
- Offered to guarantee only 10 percent of yearly estimated work.
- Did not provide historical information related to equipment leasing and maintenance costs to private sector offerors
- **Excluded from the solicitation offset printing work presently forwarded to the Government Printing Office.**

**Issue:** The DOD IG Draft Report states, "DLA did not include in the solicitation offset printing work forwarded to GPO. This discouraged potential offerors from competing."<sup>9</sup>

**DLA Comments:** Nonconcur with finding. DLA followed applicable policy and lacked any discretion whatsoever to include GPO offset printing work in the solicitation. In fact, the undisputed documentary evidence shows:

1. Executive Branch written policy requires all procurement of printing and duplicating from private sector sources shall be through the GPO. The applicable Executive Branch policy is found in OMB Memorandum M-96-37, which by its express words "clarifies Executive Branch printing and duplicating policy in light of [DOJ's May 31, 1996, opinion<sup>10</sup>]." *OMB Memorandum M-96-37 (September 12, 1996).* After noting the DOJ opinion "confirmed the long recognized Constitutional issues with respect to a legislative agency such as GPO prescribing policies and procedures for the Executive Branch[.]" OMB Memorandum M-96-37 states:

We have committed to working with Congress to achieve a comprehensive reform of Title 44, consistent with Constitutional principles. ***In the meantime, as a matter of policy, agencies are to continue to use the capabilities and expertise of GPO in accordance with [The White House Chief of Staff's April 11, 1996, Memorandum and OMB's September 19, 1994, Memorandum].***

The September 19, 1994, memorandum specifically incorporated in OMB's Memorandum, as setting forth administrative policy with respect to the use of the GPO, states:

<sup>9</sup> Draft Report, Page 10, Paragraph 2.

<sup>10</sup> The DOD Draft IG Report states, "In May 1996, the Department of Justice Office of Legal Counsel (DOJ OLC) issued an opinion that Congress could not constitutionally mandate the agencies of the Executive Branch use the GPO." The draft report (p. 10, paragraphs 1,2) notes the DOJ opinion that provides a rationale for the Executive Branch to liberate its agencies from the requirement to procure printing and duplicating needs through the GPO. There is no evidence that anyone in the Executive Branch subsequently choose to act upon this opinion until – at the earliest – May 3, 2002, when OMB Memorandum M-02-07 was issued, which was well after the public/private competition had been completed.

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**All procurement of printing and duplicating from private sector sources shall be through the Government Printing Office**, except for individual printing and duplicating orders costing not more than \$1,000, if such orders are not of a continuing or repetitive nature and cannot be provided more economically through the Government Printing Office.

The DOD IG Draft reports states that "In a May 2002 memorandum, the Director of OMB announced that Executive branch agencies are **no longer required** to make use of GPO services and can outsource printing and duplicating needs."<sup>11</sup> This is further proof that prior to the issuance of the OMB Memorandum, executive agencies were prohibited from outsourcing GPO offset printing work. In addition, the end result of the DLA competition was announced to Congress a full 105 days before its issuance.

2. Department of Defense (DOD) written policy requires all procurement of printing and duplicating from private sector sources shall be through the GPO. The DOD IG Draft Report also ignores the existing DOD policy that mandates all procurement of printing and duplicating from private sector sources shall be through the GPO. Written evidence of the Department's policy is found in the March 31, 1997, letter from the Secretary of Defense to Senator Warner.<sup>12</sup> In this letter the Secretary of Defense stated:

In your letter of March 17, 1997, you describe the committee's efforts to reform Title 44, United States Code, in order to make the law more flexible in light of emerging technologies. I applaud your initiative and assure you that the department will cooperate fully. In this regard, **I am directing that the Director of the Defense Logistics Agency ensure that the operation of the Defense Automated Printing Service (DAPS) are in conformance with the law and guidance promulgated by the Office of Management and Budget (OMB) regarding Title 44.**

The Department's policy is also found in a March 31, 1997, Memorandum from the Secretary of Defense to the Director, Defense Logistics Agency subject "Defense Automated Printing Service (DAPS)" that directs the DLA Director to:

**[E]nsure that the operations of the DAPS are in conformance with the law and with the guidance issued by the Office of Management and Budget regarding Title 44 of the United States Code.**

Thus, it is clear that the DOD's own policy also mandates all procurement of printing and duplicating from private sector sources **shall** be through the GPO. Therefore, the DOD IG Draft Report should have indicated DLA complied with the non-discretionary DOD policy prohibiting the inclusion of GPO offset printing in the solicitation.

<sup>11</sup> Draft Report, Page 10, Paragraph 3.

<sup>12</sup> DLA notes the Secretary of Defense's letter is written *well after* the DoJ issued its May 1996 opinion that Congress could not constitutionally mandate the agencies of the Executive Branch use the GPO.

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3. *Federal Acquisition Regulation (FAR) Subpart 8.8 requires that Government printing must be done by or through the GPO.* In addition to OMB policy and DOD policy, the Federal Acquisition Regulation (FAR) also requires that Government printing must be done by or through the GPO. See FAR Subpart 8.8 (codified at 48 C.F.R. § 1 Part 8.802). Indeed, the DOD IG Draft Report recognizes this fact stating:

Federal Acquisition Regulation (FAR) Subpart 8.8, which implements 44 U.S.C. 501 and 10 U.S.C. 195, states **Government printing must be done by or through GPO unless GPO cannot provide the service.**<sup>13</sup>

Furthermore, the DOD IG Draft Report states, "**The FAR has not been modified...**"<sup>14</sup> The Director of OMB (Mr. Mitchell E. Daniels, Jr.<sup>15</sup>), further confirmed this when, on October 28, 2002, he personally issued an "Individual Waiver" from the FAR's prohibition against outsourcing GPO offset printing work and expressly found:

FAR Subpart 8.8, which addresses the acquisition of printing, **currently requires that agencies, including OMB, acquire printing services by or through the GPO.**

Thus, there can be no doubt that—even today—the FAR prohibits DLA from including GPO offset printing work in the solicitation. Therefore, the DOD IG Draft Report should have indicated DLA complied with this non-discretionary regulation prohibiting the inclusion of GPO offset printing in the solicitation.

4. *DOD Instruction 4100.33 (codified at 32 C.F.R. § 169a) requires that Government printing must be done by or through the GPO.* As recognized in the DOD IG Draft Report, DLA must comply with DOD Instruction 4100.33 (codified at 32 C.F.R. § 169a).<sup>16</sup> DLA notes that section 5.6.4 of Department of Defense Instruction 4100.33 (codified at 32 C.F.R. § 169a) compels compliance with the FAR. Since FAR Subpart 8.8 requires that Government printing must be done by or through the GPO, it follows that DOD Instruction 4100.33 reiterates this requirement. Therefore, the DOD IG Draft Report should have also indicated DLA complied with this non-discretionary regulation prohibiting the inclusion of GPO offset printing in the solicitation.

Therefore, DLA submits it must comply with all of these non-discretionary policies unless proven illegal,<sup>17</sup> officially changed,<sup>18</sup> or cancelled. Since the Draft Report concludes DLA

<sup>13</sup> Draft Report, Page 9, Paragraph 4

<sup>14</sup> Draft Report, Page 36, Paragraph 5.

<sup>15</sup> As noted above, Mr. Daniels also signed OMB Memorandum M-02-07 of May 3, 2002. Thus, the inescapable conclusion is that OMB Memorandum M-02-07 did NOT alter the FAR. As such, the DoD IG draft report is incorrect when it contends on page 9 that, "The memorandum effectively ended the preference GPO enjoyed on printing and copying services for the Executive Branch."

<sup>16</sup> Draft Report, Page 6, Paragraph 2.

<sup>17</sup> The DOD IG Draft Report does not contend OMB's non-discretionary policy prohibiting the outsourcing of GPO offset printing work—that the DOD IG Draft Report admits was in effect throughout the entire study—was in any way illegal. Similarly, the DOD IG Draft Report does not contend DOD's policy enunciated by Secretary of Defense Cohen or the FAR Subpart 8.8 are illegal.

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did just that, the finding boils-down to, **DLA complied with the non-discretionary policies of the Department.** DLA contends its compliance is not only mandatory but also wholly appropriate.

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<sup>18</sup>The only changed identified by the DOD IG Draft Report was that "announced" by OMB on May 3, 2002. *Draft Report at p. 10.* Even if this constituted an official change –which OMB's own documents clearly refute– the DOD IG Draft Report admits this "was not applicable at the time of the solicitation." *Draft Report at p. 10.* Furthermore, the DOD IG Draft Report admits, "the FAR has not been modified." *Draft Report at p. 36.*

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**B. (Part 1): Potential Conflicts of Interest. (See page 13 of draft report for details.)  
The same private sector consultant personnel developed the performance work statement and prepared the MEO proposal for the DAPS public/private competition. This occurred because**

As a result, the potential conflicts and noncompliance compromised the appearance of the integrity and fairness of the OMB Circular A-76 competition.

**Issue:** The DOD Draft IG Report states, "The DAPS public/private competition violated DOD interim guidance to avoid potential conflicts of interest by allowing the same private sector consultant personnel to develop both the PWS and prepare the MEO proposal."<sup>19</sup>

**DLA Comments:** Partially concur with finding. DLA announced the public/private competition for DAPS CONUS production functions in August, 1999. Similar to the study process used for DLA's Defense Depot studies, formal source selection procedures were used. This provided for several layers of independent review, with a Source Selection Advisory Council (SSAC), made of up senior DLA, DOD, and customer representatives, and a Source Selection Authority (SSA) which was the Vice Director of DLA having final approval authority. A Commercial Activities (CA) Team was appointed, consisting of DAPS and consultant personnel that would conduct research, collect data, and ultimately develop the Performance Work Statement, which the MEO and private offerors would use as a basis for developing their individual bids. Once the PWS was developed in final form, some members of the CA Team would work on the development of the MEO, while others would continue work on the PWS and solicitation. DLA used a more stringent approach than the other military services used at the time. DLA insisted that a firewall be set up between personnel working on the MEO, and those continuing to work on the PWS, "no later than the ratification of the Performance Work Specifications [Statement] (PWS) by the Source Selection Authority."<sup>20</sup> DAPS complied with this firewall process by moving the three DAPS personnel continuing work on the PWS, first to other offices in the same Alexandria, Virginia building in October, 2000, then to a different facility in Arlington, Virginia in February, 2001.

In April 2000, DOD published its interim guidance that required measures to avoid appearances of conflicts of interest by making sure that the same private sector consultants did not develop the PWS and assist in MEO preparation. DLA was made aware of the interim guidance but the SSAC legal advisor felt the study was so far along that there was no substantial benefit to starting over, and incurring additional delays and cost. It was felt

\* Personal privacy information omitted.

<sup>19</sup> Draft Report, Page 13, Paragraph 2.

<sup>20</sup> DLSC-LP Memorandum dtd April 21, 1999

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that the measures put in place provided adequate protection against conflicts of interest, and followed the spirit and intent of the interim guidance:

- Several layers of independent review
- Senior DLA leaders committed to maintaining a level playing field
  - SSA – Vice Director, DLA
  - SSAC – senior DLA, DOD, and customer representatives
  - MEO Certifying Official – Deputy Director, DAPS
- Industry input sought and had equal input into PWS
  - Drafts of PWS posted on web
  - Same input and comment opportunities as eventual MEO members
- Absolute firewall on source selection from beginning
  - No eventual MEO team members or consultants ever participated in development or review of:
    - Acquisition plan
    - Source selection plan
    - Other sensitive acquisition documents
- Consultant contractors moved to MEO side of firewall
  - PWS side of firewall staffed only by three Governmental employees

The DLA firewall process assured the integrity of the process, by keeping MEO team personnel and support consultants away from further PWS and solicitation development, as well as the source selection processes. Although, because of timing and cost, the interim guidance was not exclusively followed procedurally, the same impartial, level playing field for this competition was the result. In addition, the DOD IG Draft Report does not show or discuss any evidence that the Government's MEO received any advantage or partiality as a result of implementation of the DLA firewall process.

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**B (Part 2): Potential Conflicts of Interest.** (See page 13 of the draft report for details.)

The same private sector consultant personnel developed the performance work statement and prepared the MEO proposal for the DAPS public/private competition. This occurred because .

**As a result, the potential conflicts and noncompliance compromised the appearance of the integrity and fairness of the OMB Circular A-76 competition.**

**Issue:** The DOD IG Draft Report states, "The MEO certifying official determined study scope and directed PWS tasks. We believe his contacts with MEO development team personnel may have violated application of a DAPS PWS-MEO firewall."<sup>21</sup>

**DLA Comments:** Nonconcur with finding. The DOD IG Draft Report raises the issue of concern by the contracting officer about the participation of the DAPS Deputy Director, who was also the MEO Certifying Official, at an April 2000 meeting, "providing specific direction to DAPS, DRMS, and Booz-Allen-Hamilton staff regarding: mandating the use of DAPS information technology systems; and setting up a solicitation pricing structure. \*<sup>22</sup>. The meeting in question was called by the DAPS CA Program Manager on April 18, 2000, in response to several outstanding issues. In attendance were the DAPS CA Team, the DAPS Deputy Director (MEO Certifying Official), and the DAPS HQ Division Directors. This was an all day event where multiple issues were discussed. Having the DAPS Deputy Director attend the meeting was not perceived as an issue, since the official firewall was not to be put in place for another 6 months, and this was prior to the posting of even the first PWS draft. The Deputy Director took part in the discussions, as did the other 18 attendees. During the course of the meeting, the contracting officer expressed concerns that the Deputy Director's involvement in discussion of these issues could be viewed as a potential conflict of interest. Therefore, at the request of the contracting officer, the Deputy Director made it clear to all attendees that this is a discussion of issues, and that the Deputy Director's opinions and comments weigh the same as any other attendee. At the conclusion of the meeting, taskings were assigned to gather information to be brought back to the group for later discussions. In reaction to alarms raised by a series of emails by the contracting officer, the Deputy Director did not participate in future meetings and discussions, nor did he participate at any time whatsoever in the development, drafting, or

\* Personal privacy information omitted.

<sup>21</sup> Draft Report, Page 19, Paragraph 1.

<sup>22</sup> Draft Report, Page 19, Paragraph 2.

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review of PWS requirements. This was done even though the DAPS firewall was not yet in place, and OSD guidance on using different Governmental personnel for PWS and MEO development had not yet been released. In addition, the DOD IG Draft Report fails to show how this one instance "compromised the appearance of the integrity and fairness of the OMB Circular A-76 competition."<sup>23</sup> In one of the referenced e-mails from the contracting officer to a DLA Office of General Council Attorney on April 19, 2000, the contracting officer is quoted, "I don't believe Mr. Sherman has any intent to make the PWS so it's an advantage to the MEO. . ." It is also difficult to understand how attendance at a meeting so early in the process, prior to the release of three PWS drafts, the solicitation and its 15 amendments, all reviewed by the SSAC, SSA, and IRO, could have had an affect on the integrity of the competition.

The DOD IG Draft Report also discusses further concerns expressed by the contracting officer about interaction between DAPS PWS personnel and MEO personnel. The Deputy CA Program Manager, one of the three DAPS personnel on the PWS side of the firewall, routinely discussed issues of logistics with all CA Team personnel (including MEO). The Deputy CA Program Manager was responsible for arranging lodging, furniture, travel, rental cars, and claim reimbursements. The Deputy CA Program Manager did not discuss issues relative to the PWS or the acquisition, nor did MEO Team members discuss anything related to the MEO with her. In addition, the DOD IG Draft Report details a July 2, 2001, e-mail from the contracting officer to the SSAC chair which states, " . ." <sup>24</sup> As explained at the time to the contracting officer, and the SSAC chair, the information the MEO Team Leader discussed with the DAPS CA Program Manager (study manager) had to do with the continued delay in the release of the WinCompare program, the software program mandated for use by the DOD in developing MEO bid costs. The MEO Team leader was concerned that it would take much longer to determine MEO bid costs using the current DOS version of Compare, and wanted to know if they should continue waiting for release of the new Window's version of Compare, which was WinCompare. There was no discussion on how the MEO was to cost its bid, or what it contained. The DAPS CA Program Manager referred the question to the contracting officer for her response directly back to the MEO Team leader. After the concern expressed by the contracting officer, no further discussions on the subject between the DAPS CA Program Manager and any MEO team member took place. At no time during the entire process did the DAPS study manager counsel or provide guidance to the MEO. Therefore, there is no basis for the DOD IG Draft Report conclusion that "the DAPS study manager should not have been advising the SSAC as he apparently provided advice to the MEO."<sup>25</sup>

<sup>23</sup> Draft Report, Page 13, Paragraph 1.

\* Personal privacy information omitted.

<sup>24</sup> Draft Report, Page 20, Paragraph 2.

<sup>25</sup> Draft Report, Page 22, Paragraph 1.

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**C.: Implementation of Most Efficient Organization.** (See page 23 of the draft report for details.) DAPS modified the previously certified MEO structure prior to implementation. DAPS did not prepare revised management plans or cost estimates to support the modification. The condition occurred because guidance regarding MEO implementation was inadequate. As a result, the MEO management plan was not implemented as proposed and DLA cannot demonstrate that actual MEO costs will fall within the in-house cost estimate.

Issue. The DOD IG Draft Report states, "MEO staffing and location increases made during the transition period put into question whether the MEO would be able to perform the DAPS function within the proposed in-house cost estimate." <sup>26</sup> In addition, the report states, "DAPS modified the MEO structure during the MEO transition period without sufficient documentation." <sup>27</sup>

**DLA Comments:** Partially concur with finding. The PWS, on which the Government's MEO bid is based, contained workload data and requirements from fiscal years 1999 – 2000. Once the decision to implement the MEO was announced in January 2002, the first order of business was to determine what workload and requirements changes were necessary under current conditions. In some cases, facilities originally targeted for closure would remain open. This was due to workload increasing beyond the minimum levels set by the MEO in determining whether a facility would remain staffed, or supported through a self-service and/or delivery option. In other cases, workload had decreased, necessitating a facility closure, where originally the MEO had planned to keep it open. Although the SSAC had DAPS customer representation (Army and Navy), a process was set up in order to accommodate the more recent military services' concerns on facility closures. The Army, Navy, Air Force, and Marine Corps each designated a representative to review individual military installation concerns on facility closures. If these representatives decided that certain military installation concerns about the DAPS facility closures had an impact on military readiness or mobilization, an agreement would be reached with DAPS to keep a particular facility open, on a total cost reimbursement basis.

DLA/DAPS developed an internal procedure for change approvals. All changes were researched and documented by the MEO Program Manager and provided to the DAPS Director for approval. The changes were then briefed to the Director, DLA J-67, and to the DLA Corporate Board. In addition, DLA organized a Facilitating Integrated Process Team (IPT), chaired by the Director, DLA J-67, and consisting of senior managers from DLA codes J-1, J-3, J-6, and J-8. The Facilitating IPT, that met monthly, was charged with facilitating the implementation, and the efficient and effective rollout of the MEO plan. All changes to the MEO were briefed to this group as well.

On March 26, 2002, DAPS personnel met with the DLA Internal Review Official (IRO) to discuss the methodology required for changes to the MEO. At that meeting, the IRO stated that not only should MEO revisions be fully documented, but that the documentation supporting such revisions should demonstrate the workload or business reasons for the

<sup>26</sup> Draft Report, Page 23, Paragraph 2.

<sup>27</sup> Draft Report, Page 24, Paragraph 1.

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changes, and should contain formal approvals of appropriate DAPS officials. This included documenting all workload and business changes in a revised PWS. At the time of the review by the DOD IG, which was during the 9-month MEO implementation process, DAPS had taken the steps for change approvals, as outlined in the paragraph above, but did not have the extensive documentation required by the IRO developed at that time. That extensive documentation has since been developed, with the appropriate approvals. This documentation conforms to all IRO requirements, provides the necessary audit trail for post implementation reviews, and confirms that actual MEO costs will fall within the in-house cost estimate, as modified by changed PWS requirements.

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**RECOMMENDATIONS:**

**A.2.** The DOD IG recommends that the Director, Defense Logistics Agency, consider the results of this audit and decide a future course of action. The options include:

a. Continue implementation of the most efficient organization structure and reannounce the Office of Management and Budget Circular A-76 competition within 2 years and include reliable staffing and workload information and potential conflict of interest safeguards.

**DLA Comments:** Partially concur. DLA does not feel that reissuance of this competition now or in 2 years will result in serious offers due to changing technology, and the applicability of the Service Contract Act. As the DOD IG Draft Report states, "The Service Contract Act clearly was a deterrent for RR Donnelley in submitting a proposal... We found no support to dispute the contracting officer's decision not to issue a waiver [to the Service Contract Act].<sup>28</sup> DLA will take into consideration the results of the DOD IG audit, and decide by 6/30/04 (following the Post-MEO Review) on a future course of action, which may include re-announcing the Office of Management and Budget Circular A-76 competition at an appropriate time.

**Disposition:**

(X) Action is ongoing. ECD: 6/30/04, (at which time a decision will be made as to a future course of action)

( ) Action is considered complete.

b. Include offset printing functions in the alternative described in Recommendation A.2.a. or separately solicit such functions at some future time.

**DLA Comments:** Partially concur. DLA will consider this alternative in conjunction with A.2.a., should the Federal Acquisition Regulations be modified to allow work currently procured through the Government Printing Office to be purchased directly from commercial sources.

**Disposition:**

(X) Action is ongoing. ECD: 6/30/04, (at which time a decision will be made as to a future course of action)

( ) Action is considered complete.

**B.2.** The DOD IG recommends that the Director, Defense Logistics Agency, require the Defense Logistics Agency competitive sourcing office to:

a. Develop management controls and oversight procedures to assure that the constituency of future Agency performance work statement and most efficient organization development comply with DOD guidance.

<sup>28</sup> Draft Report, Page 26, Paragraph 3.

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**DLA Comments:** Concur. The DLA Competitive Sourcing Office (DLA Code J374) will issue guidance on management controls and oversight procedures assuring the constituency of future DLA performance work statement and most efficient organization development comply with DOD guidance.

**Disposition:**

( X ) Action is ongoing. ECD: June 30, 2003  
( ) Action is considered complete.

b. Issue guidance on Office of Management and Budget Circular A-76 study firewall development and implementation separating, where required, source selection evaluation, contracting, performance work statement development, and most efficient organization development. The guidance should adequately describe the roles and responsibilities of personnel in the above groups and limitations regarding membership in those groups, and exchange of information among the groups.

**DLA Comments:** Concur. DLA Commercial Activities (A-76) Competition Guidebook, which was issued in July 1999 (with subsequent revisions), addresses these issues.

**Disposition:**

( ) Action is ongoing. ECD:  
(X) Action is considered complete.

**C.2.** The DOD IG recommends that the Director, Defense Logistics Agency, require the Defense Logistics Agency competitive sourcing office to develop oversight procedures to assure that the revisions to the certified most efficient organization plan are properly justified, costed, and approved in accordance with DOD guidance and allow a sufficient audit trail for future post-implementation review.

**DLA Comments:** Concur. DLA has established the appropriate procedure for revision of the DAPS certified Most Efficient Organization (MEO). The DLA Internal Review Official (DLA Code J308), in accordance with OMB and DLA procedures, will conduct a Post-MEO Review of the DAPS MEO implementation within 12 -18 months of its October 2002 completion. In addition, DLA is in the process of issuing a Post-MEO Review Handbook for use DLA-wide which will provide guidance on procedures for assuring that revisions to certified MEO plans are properly justified, costed, and approved in accordance with DOD guidance. The DLA Competitive Sourcing Office (DLA Code J374) plans on incorporating approval requirements for changes to the MEO in the DLA Commercial Activities (A-76) Competition Guidebook.

**Disposition:**

(X) Action is ongoing. ECD: June 2003

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( ) Action is considered complete.

Attachment

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## **Team Members**

The Contract Management Directorate, Office of the Assistant Inspector General for Auditing of the Department of Defense prepared this report. Personnel of the Office of the Inspector General of the Department of Defense who contributed to the report are listed below.

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