Report No. D-2011-068 June 8, 2011

Inspector General
United States Department of Defense

Additional Actions Can Improve Naval Air Systems Command's Use of Undefinitized Contractual Actions

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Acronyms and Abbreviations

BCM	Business Clearance Memorandum
DFARS	Defense Federal Acquisition Regulation Supplement
DPAP	Defense Procurement and Acquisition Policy
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IG	Inspector General
NAVAIR	Naval Air Systems Command
NTE	Not-to-Exceed
UCA	Undefinitized Contractual Action
U.S.C.	United States Code

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

June 8, 2011

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER
NAVAL INSPECTOR GENERAL

SUBJECT: Additional Actions Can Improve Naval Air Systems Command's Use of Undefinitized Contractual Actions (Report No. D-2011-068)

We are providing this report for review and comment. Naval Air Systems Command officials did not consistently comply with statutory and DoD requirements for managing undefinitized contractual actions, resulting in the Navy assuming additional risk in the award and negotiation process and possibly paying more profit than necessary. This report is the fourth in a series of reports and is a part of a congressionally mandated periodic review of DoD use of undefinitized contractual actions. We considered management comments on a draft of the report in preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. The comments from the Deputy Assistant Commander for Contracts, Naval Air Systems Command, who responded for the Commander of Naval Air Systems Command, and the Assistant Commander for Contracts, were partially responsive. As a result, we request additional comments from the Assistant Commander for Contracts on Recommendation 2.d by August 8, 2011.

If possible, please send a .pdf file containing your comments to audacm@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management

Results in Brief: Additional Actions Can Improve Naval Air Systems Command's Use of Undefinitized Contractual Actions

What We Did

Public Law 99-591, section 908(b) requires the DoD Inspector General to periodically audit undefinitized contractual actions (UCAs) and submit a report to Congress. This is the fourth in a series of reports discussing DoD compliance with section 2326, title 10, United States Code.

We reviewed 52 UCAs with a total not-to-exceed value of about $1.6 billion awarded by the Naval Air Systems Command (NAVAIR) from FY 2004 through FY 2009 to determine whether NAVAIR personnel complied with the restrictions of the United States Code and whether they appropriately justified and definitized UCAs at reasonable prices.

What We Found

NAVAIR officials did not consistently comply with statutory and DoD requirements for managing 36 of the 52 UCAs we reviewed. NAVAIR personnel did not:

- adequately prepare authorization requests to issue 7 UCAs because NAVAIR Instructions did not clearly define UCA approval delegations and personnel did not adequately address requirements in the authorization requests;
- properly justify the issuance of 4 UCAs because they did not adequately describe the necessity of a UCA to meet requirements;
- definitize 29 UCAs within the 180-day time frame because the contractor submitted untimely or inadequate proposals, Government personnel changed requirements after UCA issuance, and additional contributing factors;
- adequately support all required elements of profit determination for 5 UCAs because they did not adequately document their consideration of reduced cost risk or the inputs used to create the profit objective;
- obligate funds within allowable limits for 3 UCAs because they miscalculated or inappropriately allocated funding; and
- obligate funds in accordance with the contractor's proposed requirements for 7 UCAs because they did not take steps to comply with Office of Defense Procurement and Acquisition Policy requirements for obligating funds.

However, NAVAIR contracting personnel adequately documented their determination of price reasonableness for all 51 definitized UCAs, with the exception of adequately documenting the determination of profit.

As a result, the Navy assumed increased cost risk in the award and negotiation process and may have paid excessive profit.

What We Recommend

Navy officials should develop procedures to prepare adequate requests, enforce regulations to reduce contractor payments for untimely proposals, require better coordination to identify changes in requirements, update guidance to document reduced cost risk consideration, document the amount of actual costs incurred, and avoid obligating funds to the maximum amount allowable.

Management Comments and Our Response

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, partially agreed with our recommendations. However, one management comment was not fully responsive. We request that the Assistant Commander for Contracts, Naval Air Systems Command, provide additional comments. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, Naval Air Systems Command		1.a and b
Assistant Commander for Contracts, Naval Air Systems Command	2.d	2.a - c

Please provide comments by August 8, 2011.

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Introduction

Audit Objectives

We determined Naval Air Systems Command (NAVAIR) compliance with restrictions imposed by section 2326, title 10, United States Code (10 U.S.C. § 2326 [2009]), "Undefinitized contractual actions: restrictions" when awarding and managing undefinitized contractual actions (UCAs). We also determined whether UCAs were appropriately justified and documented at fair and reasonable prices. This is the fourth in a series of reports discussing DoD compliance with 10 U.S.C. § 2326 (2009). See Appendix A for the scope and methodology and prior coverage related to the objectives.

Legislation and Congressional Report Requirement

The DoD Inspector General (IG) is required by Public Law 99-591, "Continuing Appropriations for Fiscal Year 1987," section 908(b), to periodically conduct audits of UCAs. DoD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004, was our last audit before beginning this series of UCA audits. Section 908 of Public Law 99-591, "Requirements Relating to Undefinitized Contractual Actions," states:

> (b) Oversight by Inspector General.—The Inspector General of the Department of Defense shall—
>
> (1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and
>
> (2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

Background

UCAs are agreements that allow a contractor to begin work and incur costs before the Government and the contractor have reached a final agreement on contract terms, specifications, or price. Contracting officers should use UCAs only when the negotiation of a definitive contractual action is not possible in sufficient time to meet the Government's requirement. The Government's requirement must also demand that the contractor be given a binding commitment so that contract performance can begin immediately.

UCA Restrictions

Section 2326, title 10, United States Code, requires that the authorization request to issue a UCA contain the anticipated impact on agency requirements if a UCA is not used and establishes limitations on the obligation of funds, on the definitization of terms, and on the allowable profit for UCAs. UCAs for foreign military sales, purchases that do

not exceed the simplified acquisition threshold, special access programs, and congressionally mandated long-lead procurement contracts are not subject to compliance with 10 U.S.C. § 2326. However, these UCAs must comply with the Defense Federal Acquisition Regulation Supplement (DFARS) 217.74, "Undefinitized Contract Actions," to the maximum extent practicable. Both 10 U.S.C. § 2326 and the DFARS provide additional restrictions for the approval, definitization, obligation of funds, and determination of allowable contractor profit.

Specifically, we reviewed the following four areas to determine whether UCAs issued by NAVAIR contracting personnel were in compliance.

- Authorization to Use a UCA: We evaluated whether contracting personnel issued UCAs only after obtaining proper authorization. Additionally, we reviewed the requests to issue a UCA to verify that the requests adequately explain the need to begin performance before definitization and address potential adverse impacts on agency requirements if a UCA was not issued.

- Contract Definitization: We evaluated whether NAVAIR personnel definitized UCAs within 180-day time limits.

- Allowable Profit: We evaluated whether NAVAIR contracting personnel's determination of contractor profit reflected the work performed during the undefinitized period.

- Compliance with Obligation Limitations: We evaluated whether NAVAIR contracting personnel obligated funding within allowable amounts.

We also reviewed UCAs to determine whether NAVAIR personnel appropriately justified the need to use a UCA and whether NAVAIR personnel adequately documented price reasonableness. In addition, we reviewed UCAs issued after August 2008 to determine whether NAVAIR personnel obligated funds in accordance with the Office of Defense Procurement and Acquisition Policy's (DPAP) August 29, 2008, memorandum, "Management Oversight of Undefinitized Contract Actions," (the August 2008 DPAP memorandum).

Enhanced Reporting Requirements

DPAP issued the August 2008 DPAP memorandum requiring semiannual reporting of DoD UCA usage for actions with an estimated value of more than $5 million. See Appendix B for a copy of the memorandum. DPAP introduced the enhanced reporting requirement in response to the Government Accountability Office (GAO) Report No. GAO-07-559, "Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met," June 2007, and Public Law 110-181, "The National Defense Authorization Act for Fiscal Year 2008," section 809, "Implementation and Enforcement of Requirements Applicable to Undefinitized Contractual Actions."

Naval Air Systems Command

The NAVAIR mission is to "provide full life-cycle support of naval aviation aircraft, weapons, and systems operated by Sailors and Marines." This support includes research, design, development, and systems engineering; acquisition; test and evaluation; training facilities and equipment; repair and modification; and in-service engineering and logistics support. NAVAIR delivers products and support to the operating forces including aircraft, avionics, air-launched weapons, electronic warfare systems, cruise missiles, unmanned aerial vehicles, launch and arresting gear, training equipment and facilities, and all other equipment related to Navy and Marine Corps air power. NAVAIR officials stated that contracting personnel obligated approximately $26.6 billion during FY 2009.

Contracting Departments at NAVAIR

NAVAIR's Contracting Directorate, NAVAIR 2.0, consisted of six departments. The Assistant Commander for Contracts, AIR-2.0, was responsible for overseeing NAVAIR 2.0 and was assisted by AIR-2.0A and AIR-2.0B, the Deputy Assistant Commanders for Contracts. Within NAVAIR 2.0, we reviewed UCAs from the following three departments.

- **AIR 2.2 Major Weapons Systems for Tactical Aircraft and Missiles -** Provided contract management and planning for Naval aviation programs assigned to the Program Executive Officer for Tactical Aircraft Programs, including major weapons systems for tactical aircraft, air assault, special missions, and missiles. AIR 2.2 managed and executed the contracting functions for tactical aircraft programs such as the F/A-18.

- **AIR 2.3 Major Weapons Systems for Air Antisubmarine Warfare, Assault, and Special Mission Programs -** Provided contract management and planning for Naval aviation programs assigned to the Program Executive Officer for Air Antisubmarine Warfare, Assault, and Special Mission Programs, including major weapons systems for Air Antisubmarine Warfare and rotary wing programs. AIR 2.3 managed and executed the contracting functions for programs such as the P-3, the V-22, and the Presidential Helicopter.

- **AIR 2.4 Strike Weapons and Unmanned Aviation -** Provided contract management and planning for Naval aviation programs assigned to the Program Executive Officer for Strike Weapons and Unmanned Aviation. AIR 2.4 managed and executed the contracting functions for strike weapons programs such as the Advanced Antiradiation Guided Missile as well as unmanned aviation vehicles such as the Vertical Takeoff and Landing Tactical Unmanned Aerial Vehicle.

NAVAIR UCA Usage (FY 2004–FY 2009)

We selected a nonstatistical sample[1] of 28 contracts that included 52 UCAs issued by NAVAIR contracting personnel from FY 2004 through FY 2009, with a total UCA not-to-exceed (NTE) dollar value of about $1.6 billion. We identified letter contracts[2] through queries of the Federal Procurement Data System-Next Generation (FPDS-NG) and UCAs from a listing provided by NAVAIR. We excluded letter contracts and UCAs related to foreign military sales, congressionally mandated long-lead procurements, and change orders. See Appendix C for a list of UCAs reviewed. Table 1 lists by NAVAIR department the number of contracts, the number of UCAs, and the total NTE dollar value of the UCAs that we reviewed.

Table 1. Nonstatistical Sample of NAVAIR UCAs by Department FY 2004–FY 2009

NAVAIR Department	Number of Contracts	Number of UCAs	Not-to-Exceed Dollar Value
AIR 2.2	10	13	$605,223,581
AIR 2.3	10	23	534,064,545
AIR 2.4	8	16	455,088,502
Totals	**28**	**52**	**$1,594,376,628**

Review of Internal Controls at NAVAIR

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for NAVAIR. NAVAIR did not consistently manage UCAs. Specifically, NAVAIR officials issued UCAs based on inadequate authorization requests, did not adequately justify UCAs, and did not definitize UCAs within allowable time frames. In addition, contracting officials inadequately documented how costs incurred during the undefinitized period impacted the contractor's profit. Moreover, delays in definitizing contracts may have weakened NAVAIR contracting officials' position in price negotiations and increased the cost to the Government. Additionally, NAVAIR's contracting officials did not adequately document their profit determination, which may have resulted in excess profit. We will provide a copy of the report to the senior officials responsible for internal controls at NAVAIR.

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[1] A nonstatistical sample does not generalize to universe; therefore, audit results should not be projected across all NAVAIR UCAs.

[2] A letter contract is a written preliminary contractual instrument that allows a contractor to start work before the finalization of the contract terms.

Finding. Inconsistent Management of Undefinitized Contractual Actions

NAVAIR contracting personnel did not consistently comply with statutory and DoD requirements for managing 36 of the 52 UCAs we reviewed. For the 36 UCAs, valued at about $1.2 billion, NAVAIR personnel did not:

- adequately prepare authorization requests to issue 7 UCAs because NAVAIR Instructions did not define UCA approval delegations in the absence of the authorized approving official and did not adequately describe the need to begin performance before definitization and the adverse impact on Navy requirements;
- properly justify the issuance of 4 UCAs because they did not adequately describe why a UCA was necessary to meet the Navy's requirements;
- definitize 29 UCAs within the 180-day time frame because of multiple contributing factors that included a lack of contracting personnel to complete definitization, contractors not submitting adequate proposals in a timely manner, or Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA. The contractors' proposal pricing updates and extended contract negotiations with Government personnel also impacted NAVAIR contracting personnel's ability to definitize UCAs within the required time frames;
- adequately support all required elements of profit determinations for 5 UCAs because the business clearance memorandum did not include sufficient support that would allow an independent party to determine if the contracting officer's consideration of reduced cost risk was reflected in profit objectives or the inputs used to develop the profit objective; and
- obligate funds within allowable limits for 3 UCAs because they miscalculated the allowable obligation amount and inappropriately allocated funding.

In addition, NAVAIR contracting personnel did not obligate funds in accordance with the contractor's proposed requirements for 7 of 22 UCAs issued after the August 2008 DPAP memorandum because they did not take steps to comply with the August 2008 DPAP memorandum. However, NAVAIR contracting personnel adequately documented their determination of price reasonableness for all 51 definitized UCAs,[3] but they did not always adequately document their determination of profit as discussed in the report.

As a result, NAVAIR officials' positions in price negotiation and award may have been weakened, and delays in definitizing contracts may have increased the cost to the Government. Additionally, the Government may have paid excess profit to the contractors because NAVAIR contracting officials did not adequately document allowable profit.

[3] One UCA was in the process of being terminated as of May 24, 2011.

UCA Deficiencies

Our review of 52 UCAs issued by NAVAIR contracting personnel identified 55 total deficiencies. Some UCAs had more than one deficiency. UCA deficiencies consisted of six types: inadequate authorization, inadequate justification, untimely definitization, insufficient documentation supporting profit determination, funds obligated in excess of allowable limits, and funds not obligated in accordance with requirements outlined in the 2008 DPAP memorandum. See Appendix D for further details of the deficiencies.

NAVAIR Needs to Improve Authorization Procedures

NAVAIR contracting personnel did not obtain proper authorization before issuing 7 of 52 UCAs. NAVAIR contracting personnel were unable to provide guidance confirming that the proper officials authorized the issuance of two UCAs. In addition, NAVAIR personnel prepared requests to issue five UCAs that did not include an adequate explanation of the impact on Navy requirements if they did not issue a UCA. Both 10 U.S.C. § 2326 and the DFARS provide guidance on issuing UCAs. Section 2326(a), title 10, United States Code, states:

> The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

DFARS 217.7404-1, "Authorization," requires that the contracting officer obtain approval from the head of the contracting activity before entering into a UCA and also requires that the request for UCA approval include a full explanation of the need to begin contract performance before contract definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

Obtaining Approval for UCA Issuance

The authorized NAVAIR official did not approve the issuance for 2 of the 52 UCAs reviewed. A department head for a different department approved the authorization request to issue each of these UCAs. Although contracting personnel stated that the approving officials had the authority to sign and approve the UCA authorization requests, contracting personnel did not provide documentation providing this authority or delegating authority in the absence of a department head. Both UCAs were issued under NAVAIR Instruction 4200.33C, "Undefinitized Contract Actions," April 14, 2000, which delegated to the cognizant contracts competency department head the authority to approve entering into a UCA.

NAVAIR Instruction 4200.33C did not contain procedures on UCA approval delegations when the cognizant contracts competency department head was unavailable. NAVAIR ltr 4200 Ser AIR-2.1.1.1/089, "Head of Contracting Activity (HCA) Delegation of Authority," July 17, 2003, and the Policy and Procedures Memorandum #181, May 18, 2006, the replacement of the same title, both delegated authority to AIR-2.0 Senior

Executive Service department heads without power of redelegation. This guidance also stated that the delegations were subject to all other applicable regulations and guidance. Consequently, the contracting officers had to follow NAVAIR Instruction 4200.33C, which further restricted the approval authority. We did not determine whether the department heads were in Senior Executive Service positions at the time of approval.

NAVAIR Instruction 4200.33D, "Undefinitized Contract Actions," July 2, 2009, supersedes NAVAIR Instruction 4200.33C and states that approval authority is delegated to "AIR-2.0/2.0A, AIR-2.2, AIR-2.3, AIR-2.4, [and] AIR-2.5." NAVAIR Contracts Competency Instruction 4200.59, "Head of Contracting Activity (HCA) Delegation of Authority," February 12, 2010, supersedes Policy and Procedures Memorandum #181 and delegates the authority to approve entering into a UCA to the Senior Executive Service and non-Senior Executive Service department head. The authority provided by the NAVAIR Instruction 4200.59 cannot be redelegated. Both current Instructions delegate UCA approval authority to all contracting department heads as well as the head of the contracting activity. This delegation to all department heads provides approval alternatives in the absence of the department head; therefore, we are not making a recommendation on this issue.

Inadequate Description of Need to Begin Performance and Adverse Impact on Navy Requirements

NAVAIR contracting personnel issued five UCAs that did not fully describe the need to begin performance before definitization and the adverse impact on Navy requirements in the request for authorization to issue a UCA. NAVAIR program personnel prepared requests to issue three separate UCAs that lacked full explanations of why performance was needed to begin before definitization. In addition, NAVAIR program personnel did not adequately explain the adverse impact on agency requirements if a UCA was not issued for four UCAs. An authorization request may lack explanations for both requirements. NAVAIR should develop procedures in the contract review process to ensure contracting department heads approve authorization requests to issue UCAs only when program officials clearly state the need to begin performance before definitization and the adverse impact on Navy requirements.

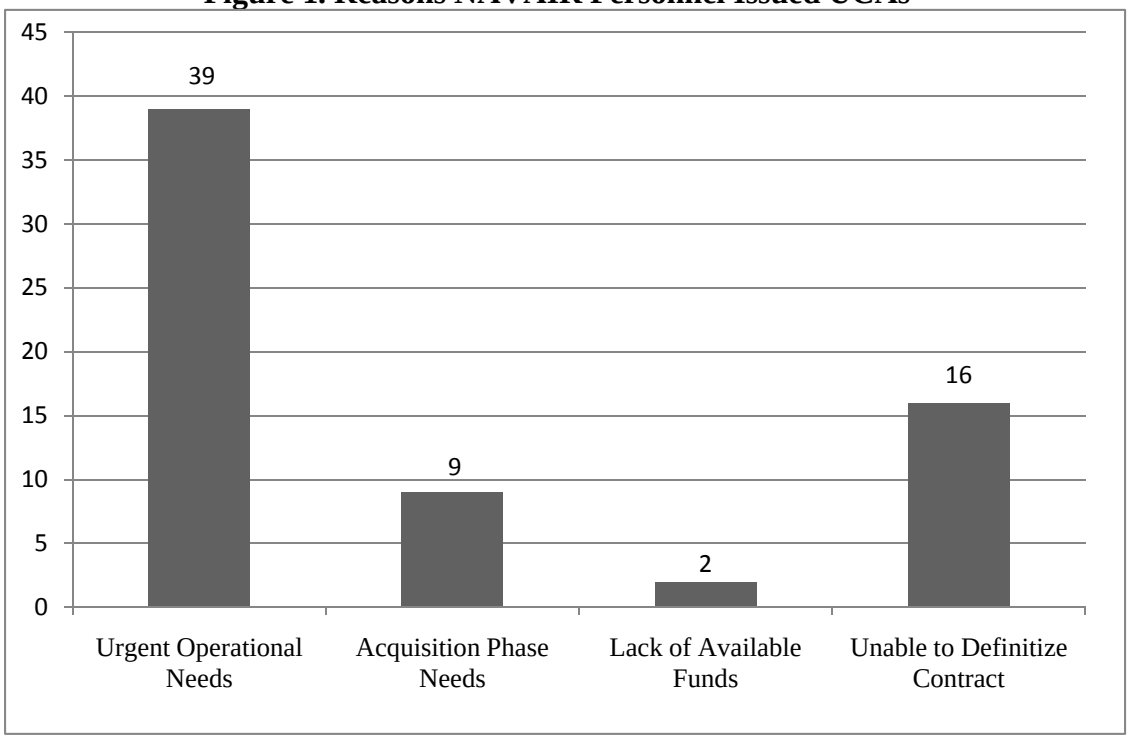
NAVAIR program personnel initiate the process by defining the requirements, then, according to NAVAIR policy officials, forward the request to issue a UCA to the contracting department head for approval. Initially, program personnel create and complete a request for the issuance of a UCA. The Program Executive Officer approves the portion of the form that identifies the urgent need for the requirement, the adverse impact of delaying performance, and other details pertaining to the UCA. According to policy officials, the program office then forwards the form to the contracting department head to obtain approval for the contracting department to enter into a UCA. The contracting department head reviews the authorization request to determine if a UCA is needed to meet the required delivery date and for compliance with DFARS 217.7404-1 documentation requirements. The contracting department head must approve and sign the request before a UCA is issued.

NAVAIR program personnel prepared and contracting department heads approved authorization requests for five UCAs with a combined NTE value of about $243.4 million that did not adequately describe the need to begin performance before definitization or did not adequately describe the adverse impact on Navy requirements. For example, NAVAIR personnel prepared and approved the authorization request for three separate UCAs on two contracts from FY 2004 to FY 2007 and stated that a delay in award of a UCA would result in a delay in the delivery of mission computers and displays, which would in turn cause a slip in the delivery of multiple F/A-18E/F aircraft lots. However, NAVAIR program personnel did not adequately explain in the request for authorization for all three UCAs the need to begin performance before definitization. NAVAIR personnel did not state the immediate need for the mission computers and displays or for the aircraft being procured. For two of the three UCAs, NAVAIR program personnel did not adequately describe the adverse impact on the Navy by not providing any of the consequences that a delay in delivery would cause.

Better Justification Needed Before Issuing UCAs

NAVAIR personnel did not adequately justify the use of 4 of 52 UCAs. DFARS 217.7403, "Policy," limits the use of a UCA to situations when negotiating a definitive contract is not possible and the Government's interest demands contract performance begin immediately. NAVAIR personnel cited several reasons in the contract documentation for the urgent need to issue UCAs. NAVAIR contracting personnel awarded UCAs to meet urgent operational or acquisition phase needs and because of a lack of available funds to meet needs. Contracting personnel also awarded UCAs because they were unable to definitize the action before the need for performance due to problems with proposals, lengthy negotiations, and restructuring within the contractor. Contracting personnel issued some UCAs for multiple reasons. From the contract file, we identified 30 UCAs with 1 reason and 18 UCAs with 2 reasons each. For four UCAs, we were unable to identify an adequate justification for the issuance of the UCA as described in the next two examples. Figure 1 shows the reasons for NAVAIR UCA usage.

Figure 1. Reasons NAVAIR Personnel Issued UCAs*



*NAVAIR contracting personnel may have issued a UCA for multiple reasons.

Contract N00019-07-C-0041

NAVAIR contracting personnel awarded three separate UCAs on contract N00019-07-C-0041 to procure long-lead parts for Low-Rate Initial Production I and to support the Low-Rate Initial Production II and III of the Vertical Takeoff and Landing Tactical Unmanned Aerial Vehicles. NAVAIR program personnel stated in all the authorization requests that a UCA was needed to prevent a break in the existing production line. According to contracting personnel, this program had an unstable budget and changing requirements, and until the requirements and funding are finalized, a contractor cannot provide a proposal. NAVAIR Instructions 4200.33C and 4200.33D state, "Use of UCAs will be kept to an absolute minimum, and will not be used for requirements that are not clearly defined." NAVAIR program personnel stated in the authorization requests that the UCA was needed to save the Government money by preventing a gap in production, but by issuing multiple UCAs for consecutive Low-Rate Initial Production lots without clearly defined requirements, NAVAIR personnel placed the Government at a higher risk.

Contract N00019-04-C-3146, Modification P00139

NAVAIR contracting personnel issued a UCA on August 26, 2009, on contract N00019-04-C-3146, modification P00139, to update Annex B to include additional Requirement Identifiers from the Interface Requirements Specification in support of the Advanced Airborne Sensor program. NAVAIR personnel met on July 30, 2009, for a procurement planning conference and decided that the action needed to be awarded on January 26, 2010. According to an August 26, 2009, memorandum to the file, the action

was then considered to be an urgent action. The procurement planning agreement, the memorandum to the file, and the August 20, 2009, Certificate of Urgency did not identify the need for the change in urgency or any new information or changing requirements received between July and August that would have created the need for a UCA instead of following the original plan. NAVAIR contracting personnel stated that the contracting plan agreed to during the procurement planning conference was determined to pose a high risk to the Advanced Airborne Sensor program. However, NAVAIR personnel were unable to provide an explanation for why this high risk was not identified during planning or any new information or changing requirements received between July and August that would have created the need for a UCA. NAVAIR program personnel should adequately justify the need for the UCA in the contract documentation to meet the Navy's requirements.

NAVAIR Lack of Compliance With Definitization Requirements

NAVAIR contracting personnel did not definitize 29 of 52 UCAs within the 180-day time frames specified by 10 U.S.C. § 2326. NAVAIR contracting personnel took less time to definitize UCAs after receiving the contractor's qualifying proposal than to definitize UCAs issued before receipt of a qualifying proposal. Contracting personnel did not document the need to issue UCAs before a qualifying proposal was received in accordance with NAVAIR policy for 3 of 29 UCAs. Contracting personnel were not able to definitize 29 UCAs within required time frames because of multiple contributing factors. The factors included a lack of NAVAIR contracting personnel to complete definitization, contractors not submitting adequate proposals in a timely manner, or Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA. The contractors' updated proposal pricing and extended contract negotiations with Government personnel also impacted NAVAIR contracting personnel's ability to definitize UCAs within the required time frames.

Section 2326(b), title 10, United States Code, states:

> A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—
>
> > (A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or
> >
> > (B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

Section 2326(g)(2) defines a "qualifying proposal" as:

> . . . a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of

> the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

NAVAIR personnel exceeded the statutory time limits for 29 of the 52 UCAs reviewed, and, on average, definitized those actions 114 days past the 180-day time frame. NAVAIR contracting personnel averaged 344 days from UCA issuance to definitization for the 29 UCAs. Of the 29 UCAs that exceeded the time limits, 1 was undefinitized[4] as of May 24, 2011. See Appendix E for elapsed days between UCA issuance and definitization.

Untimely Definitization Decreased When NAVAIR Issued UCAs After Receipt of Qualifying Proposal

NAVAIR contracting personnel took less time to definitize the late UCAs when awarded after receipt of the contractor's qualifying proposal. DFARS Subpart 217.74, "Undefinitized Contract Actions," requires definitization to occur 180 days after the UCA is issued, but may be extended an additional 180 days upon receipt of the contractor's qualifying proposal. NAVAIR contracting personnel did not definitize 10 UCAs issued after the contractors submitted qualifying proposals within time frames specified by 10 U.S.C. § 2326, averaging 263 days from UCA issuance to definitization. Contracting personnel did not definitize 19 UCAs issued before the contractors submitted qualifying proposals within required time frames. Contracting personnel took longer to definitize the UCAs when qualifying proposals were not received before award, averaging 310 days from proposal receipt to definitization and 387 days from UCA issuance to definitization.

NAVAIR personnel did not adequately document in the authorization request the need to issue the UCA before a qualifying proposal was received for 3 of 19 late UCAs. In total, we identified four deficiencies in the authorization requests for the three late UCAs. To help achieve timely definitization, NAVAIR Instruction 4200.33C and NAVAIR Instruction 4200.33D require the contracting officer to obtain a fully supportable, qualifying proposal before UCA award, unless the urgency of the requirement precludes delaying award for receipt of a contractor's qualifying proposal. The authorization request must address the need to award a UCA without a qualifying proposal. NAVAIR personnel did not document the urgency of the requirement in the authorization request to issue one UCA and did not document whether or not a qualifying proposal was received in the authorization request for two UCAs. In addition, contracting personnel erroneously listed the receipt of a qualifying proposal in one authorization request.

Contributing Factors for Untimely Definitization

NAVAIR contracting personnel did not definitize 29 UCAs within the required time frames due to various and multiple contributing factors. Contracting personnel were not able to definitize within the required time frames 10 UCAs issued after the contractors submitted a qualifying proposal and 19 UCAs issued before a contractor

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[4] One UCA was in the process of being terminated as of May 24, 2011.

submitted a qualifying proposal. The discussions on each factor that contributed to late definitization contain examples of UCAs issued either before or after the receipt of a qualifying proposal.

NAVAIR contracting personnel did not definitize, within required time frames, 10 of 21 UCAs issued after the contractors submitted qualifying proposals. Contracting personnel were not able to definitize the 10 UCAs within required time frames because of multiple contributing factors that included Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA, the contractor updating proposal pricing, and contractors extending contract negotiations with Government personnel. NAVAIR staffing shortages and administration delays[5] also contributed to NAVAIR contracting personnel not being able to definitize the 10 UCAs. Table 2 lists the contributing factors for the late definitizations of the 10 UCAs issued after receipt of a qualifying proposal. Some UCAs had more than one contributing factor for late definitization.

Table 2. Contributing Factors for Late Definitization for UCAs Issued After Receipt of Qualifying Proposal

Contract Number, Delivery Order/Modification	Change in Government Requirements	Pricing Delays	Extended Negotiations	Other*
N00019-07-C-0035 P00005			√	
N00019-04-C-0014 P00149		√	√	
N00019-05-C-0030 PU0001	√			
N00019-04-C-0028 P00036		√		
N00019-05-D-0013 0029-01				√
N00019-05-D-0013 0030-01				√
N00019-07-C-0041	√			
N00019-07-C-0041 P00008		√		
N00019-07-C-0041 P00013		√		
N00019-09-C-0004				√-
Totals	**2**	**4**	**2**	**3**

*Other reasons included NAVAIR administration delays and staffing shortages.
√- The UCA was late to definitize because of staffing shortages. It is listed in the "Other" category for the purposes of the table but will be discussed in the contributing factor section titled "Lack of NAVAIR Contracting Personnel."

NAVAIR contracting personnel did not definitize, within required time frames, 19 of 31 UCAs issued before a contractor submitted a qualifying proposal. Contracting personnel were not able to definitize the 19 UCAs within required time frames because of multiple contributing factors. The factors included a lack of NAVAIR contracting

[5]NAVAIR administration delays include the program office's delay in releasing a technical evaluation and the time required for the contracting office to prepare definitization documentation for multiple UCAs.

personnel, contractors not submitting adequate proposals in a timely manner, Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA, contractors updating proposal pricing, and contractors extending contract negotiations with Government personnel. Untimely Defense Contract Management Agency and Defense Contract Audit Agency response times, NAVAIR administration delays, and a contractor's sale of part of its business also contributed to NAVAIR contracting personnel not being able to definitize the 19 UCAs. Table 3 lists the contributing factors for the late definitizations of the 19 UCAs issued before receipt of a qualifying proposal. Some UCAs had more than one contributing factor for late definitization.

Table 3. Contributing Factors for Late Definitization for UCAs Issued Before Receipt of Qualifying Proposal

Contract Number, Delivery Order/Modification	Lack of Personnel	Proposal Issues	Change in Government Requirements	Pricing Delays	Extended Negotiations	Other*
N00019-09-C-0065			√			√
N00019-04-C-0005 P00012		√				
N00019-07-C-0057					√	√
N00019-06-G-0014 0010	√					
N00019-06-G-0014 0018	√	√				
N00019-08-C-0065						√+
N00019-08-C-0066		√				√
N00019-04-C-3146 P00139			√			
N00019-04-C-3146 P00146		√				
N00019-05-D-0013 0031	√				√	
N00019-05-D-0013 0039	√			√		
N00019-05-D-0013 0042						√
N00019-05-D-0008 0046	√			√		
N00019-05-D-0008 0056	√			√		
N00019-07-G-0008 0071				√		√
N00019-04-C-0015		√			√	
N00019-05-C-0045 P00005		√				
N00019-09-D-0015	√		√		√	
N00019-09-C-0026		√				
Totals	**7**	**7**	**3**	**4**	**4**	**6**

* Other reasons included untimely Defense Contract Management Agency/Defense Contract Audit Agency response times, NAVAIR administration delays, and a contractor's sale of part of its business.
√+ UCA was in the process of being terminated as of May 24, 2011.

Lack of NAVAIR Contracting Personnel

NAVAIR contracting personnel stated that limited contracting staff, staff reassignments, and limited personnel experience contributed to the late definitization of eight UCAs. In addition, contracting personnel had to manage other program needs and

requirements during the undefinitized period, such as end of fiscal year procurements and the award and definitization of additional UCAs. Contracting personnel stated that contract definitization was delayed in some instances to address higher priority requirements.

Contract N00019-05-D-0013, Delivery Order 0031

NAVAIR contracting personnel did not definitize contract N00019-05-D-0013, delivery order 0031, with a NTE value of $17.8 million, within required time frames. NAVAIR contracting personnel awarded the UCA on November 21, 2008, for Zone 5 sustainment efforts on the wings of four P-3 aircraft and received a qualifying proposal on December 19, 2008. The contracting officer stated that during the first 8.5 months of 2009, the review and negotiation of the UCA was impacted because of the analysis and negotiations of two restructure modifications. NAVAIR did not have enough contracting staff to support both the restructure modifications for the program and the UCA definitization. Contracting personnel also cited extended negotiations with the contractor as a contributing factor for late definitization. As a result, NAVAIR contracting personnel definitized the UCA 496 days after receiving a qualifying proposal.

Contract N00019-06-G-0014, Delivery Order 0010

NAVAIR contracting personnel did not definitize contract N00019-06-G-0014, delivery order 0010, with a NTE value of $38.1 million, within required time frames. NAVAIR contracting personnel awarded the UCA on February 1, 2007, to support an engineering study on the AAR-47 Missile Approach Warning System probability of detection improvement program and received a qualifying proposal on May 9, 2007. The contracting officer stated that NAVAIR contracting personnel had an extremely heavy workload and deferred work on the UCA until after the fiscal year to award expiring funds unrelated to the UCA. The contracting officer also stated that it took about 3 months to prepare the business clearance memorandum (BCM) for negotiations because of the contract specialist's heavy workload and the need to examine a major subcontractor's proposal for the UCA definitization. As a result, NAVAIR contracting personnel definitized the UCA 327 days after receiving a qualifying proposal.

Proposal Issues

NAVAIR contracting personnel did not receive adequate contractor proposals or timely submittals, which contributed to the late definitization of seven UCAs. The contractor proposals were inadequate because the contracting officers determined that they did not contain sufficient information to enable DoD personnel to conduct complete and meaningful audits or determined the proposals contained questionable costs. Contractors use of multiple subcontractors and proposal resubmissions also added time to the undefinitized period. Contractor proposal resubmissions sometimes required that Defense Contract Audit Agency personnel perform additional audit work. If the revised proposal is deemed inadequate then the revision process starts again. If the contractor does not submit a timely qualifying proposal, the contracting officer should suspend or reduce payments to the contractor in accordance with DFARS Subpart 217.74 and NAVAIR Instruction 4200.33D.

Contract N00019-08-C-0066

NAVAIR contracting personnel were unable to definitize the UCA awarded on contract N00019-08-C-0066, with an NTE value of $129.3 million, within required time frames. NAVAIR contracting personnel awarded the UCA on August 26, 2008, for the manufacture and delivery of outer wings for P-3 aircraft. The contractor submitted its qualifying proposal on January 22, 2009; however, two additional proposal updates were required before definitization. Overall, the contractor had to update rates to reflect changes caused by new rate agreements and accounting allocations as well as update its proposal to reflect the revised delivery schedule caused by the contractor's delay in outer wing delivery. Contracting personnel also cited slow Defense Contract Management Agency and Defense Contract Audit Agency response times as a contributing factor for late definitization. NAVAIR contracting personnel explained that the two Government agencies were slow to submit questions to the contractor and that the questions submitted were vague. In addition, NAVAIR contracting personnel stated that the contractor was even slower to respond to the information requests and, ultimately, NAVAIR contracting personnel had to act as an intermediary between the two parties. As a result, NAVAIR contracting personnel definitized the UCA 588 days after receipt of a qualifying proposal.

Contract N00019-09-C-0026

NAVAIR contracting personnel were unable to definitize contract N00019-09-C-0026, with a NTE value of $52.6 million, within required time frames. NAVAIR contracting personnel awarded the contract on December 23, 2008, for the Low-Rate Initial Production of Advanced Anti-Radiation Guided Missiles. NAVAIR personnel met with the contractor to conduct fact finding meetings and to agree on required proposal adjustments to address congressional budget cuts. According to contracting personnel, they received a qualifying proposal on March 10, 2009. The Defense Contract Audit Agency subsequently qualified its audit report on the contractor's March 2009 proposal because the proposal lacked subcontractor audit reports. The contracting officer stated that approximately five subcontractors were not audited due to proposal deficiencies. Seven of the nine subcontractor and interagency proposals were subject to field pricing assistance. According to the BCM, the Defense Contract Audit Agency completed audits or rate verifications on four subcontractor proposals. As a result, NAVAIR contracting personnel definitized the UCA 204 days after the receipt of a qualifying proposal.

Changes in Government Requirements

NAVAIR contracting personnel had to address Government personnel's updated requirements after UCA issuance, which contributed to the late definitization of five UCAs. After issuing a UCA, contracting personnel have little control over changing requirements. The contractor had to prepare or revise a proposal that contracting personnel had to review after each significant change to the requirements occurred. Personnel should better coordinate between NAVAIR departments to identify changes in Government requirements as soon as practicable and should document changes in the contract file.

Contract N00019-05-C-0030, Modification PU0001

NAVAIR contracting personnel were unable to definitize contract N00019-05-C-0030, modification PU0001, with a NTE value of $27.1 million, within required time frames. NAVAIR contracting personnel awarded the UCA on August 28, 2006, after receiving the contractor's qualifying proposal for the design, fabrication, delivery, installation, and testing of a systems integration laboratory for the VH-71 program. According to the BCM, NAVAIR personnel and the contractor met multiple times to revise the configuration of the laboratory that changed the scope of the UCA. On December 7, 2006, NAVAIR contracting personnel sent an updated request for proposal to the contractor who subsequently responded with a proposal on January 18, 2007. The contractor submitted a revised proposal on March 13, 2007, and the UCA was subsequently definitized on July 9, 2007. As a result, contracting personnel definitized the UCA 315 days after award.

Contract N00019-09-D-0015

NAVAIR contracting personnel were unable to definitize contract N00019-09-D-0015, with a NTE value of $18.7 million, within required time frames. NAVAIR contracting personnel awarded the contract on December 30, 2008, for services and support to maintain the C/KC-130 aircraft. NAVAIR personnel were refining requirements after award for contract N00019-09-D-0015 to modify the previous commercial contract to be a contract-by-negotiation contract, according to contracting personnel. NAVAIR legal and contracting personnel met several times to revise the contract, which resulted in two revisions to the request for proposal and performance work statements. Contracting personnel also cited extended negotiations with the contractor and staff turnover of both the contractor and Government contracting personnel as contributing factors for late definitization. As a result, NAVAIR contracting personnel definitized the UCA on April 1, 2010, 426 days after receiving the contractor's January 30, 2009, qualifying proposal.

Pricing Delays

NAVAIR contracting personnel experienced pricing delays, which contributed to the late definitization of eight UCAs. Contractors had to prepare and certify enormous amounts of cost or pricing data before definitization or altered the pricing of the proposal, which required additional Government review. Specifically, contractors updated or rescinded forward pricing rate agreements that were in place with the Defense Contract Management Agency during the undefinitized period or provided updated actual costs incurred that significantly changed the proposal price. NAVAIR contracting personnel also delayed negotiations to jointly definitize two UCAs that enabled the contractor to obtain better sub-vendor pricing for increased quantity.

Contract N00019-07-G-0008, Delivery Order 0071

NAVAIR contracting personnel were unable to definitize contract N00019-07-G-0008, delivery order 0071, with a NTE value of $61.6 million, within required time frames. NAVAIR contracting personnel awarded the UCA on March 31, 2009, to support the retrofit of fielded V-22 aircraft with upgraded Ice Protection Systems. The contractor used the current April 2009, forward pricing rate agreement and submitted a qualifying

proposal on June 17, 2009. The contracting officer stated that the contractor withdrew from the agreement due to changes in its cost accounting system and disclosure statements. The contracting officer stated that negotiations were impacted because contracting personnel not only had to negotiate differences in direct inputs, such as for hours and materials, but also significant differences in rates. NAVAIR contracting personnel were required to update the negotiation position to reflect the Defense Contract Management Agency's December 16, 2009, forward pricing rate recommendation. The contracting officer also attributed late definitization to the program office's delayed release of its technical evaluation. As a result, NAVAIR contracting personnel definitized the UCA 252 days after receiving a qualifying proposal.

Contract N00019-07-C-0041, Modifications P00008 and P00013

NAVAIR contracting personnel were unable to definitize the two UCAs established in modifications P00008 and P00013 on contract N00019-07-C-0041 within required time frames. Contracting personnel awarded the respective UCAs on September 11, 2008, with a NTE value of $32.9 million, and on February 4, 2009, with a NTE value of $40 million. Contracting personnel awarded both UCAs after receiving a qualifying proposal to procure critical components and ancillary equipment to support the production of Lot 2 and Lot 3 Vertical Takeoff and Landing Tactical Unmanned Aerial Vehicles. The contracting officer stated that pricing the procurement was difficult because historical costs were not available. An opportunity arose for contracting personnel to definitize Lot 2 and Lot 3 production efforts together, which enabled the contractor to obtain better pricing from sub-vendors for increased quantity. Defense Contract Audit Agency personnel provided updated rate verifications to account for the amount of time that had passed between their audits for Lot 2 and 3 and the updated proposals. As a result, NAVAIR contracting personnel definitized the Lot 2 UCA issued on modification P00008 376 days after award and definitized the Lot 3 UCA issued on modification P00013 230 days after award.

Extended Negotiations

NAVAIR contracting personnel extended negotiations with the contractor that contributed to the late definitization of six UCAs. Contractors were slow to submit counteroffers and disagreed with Government personnel on contract terms, cost reasonableness, and profit. In addition, NAVAIR contracting personnel and the contractor negotiated additional contract terms and prices beyond those included in the UCA.

Contract N00019-04-C-0015

NAVAIR contracting personnel were unable to definitize contract N00019-04-C-0015, with an initial NTE value of $25.8 million, within required time frames. NAVAIR contracting personnel awarded the UCA on February 17, 2004, for initial activities to support the build and delivery of advanced mission computers and multi-purpose displays for F/A-18E/F Lot 28 aircraft. The definitized contract included priced options for Lot 29. The contractor submitted a qualifying proposal for Lot 28 on May 28, 2004, and for Lot 29 on August 31, 2004. Approximately 2 months later, contracting personnel delayed the Lot 28 definitization to account for lengthy sub-vendor negotiations and

updated prime proposal pricing. Contracting personnel increased the UCA's scope on October 27, 2004, to include production at a revised NTE amount of $62.7 million. Government and contractor personnel began Lot 28 negotiations in November 2004, but did not conclude negotiations until February 2005. Contracting personnel subsequently issued a UCA for Lot 29 on January 31, 2005. Contracting personnel also cited contractor proposal issues as a contributing factor for late definitization. As a result, NAVAIR contracting personnel definitized the Lot 28 UCA 294 days after receiving a qualifying proposal and definitized the Lot 29 UCA 46 days after award.

Contract N00019-04-C-0014, Modification P00149

NAVAIR contracting personnel were unable to definitize contract N00019-04-C-0014, modification P00149, with a NTE value of $171.9 million, within required time frames. NAVAIR contracting personnel awarded the UCA after receipt of a qualifying proposal on September 26, 2007, for supplemental Lot 32 F/A-18F aircraft. The contractor analyzed its cost and pricing data before the start of negotiations, which resulted in several major changes to the proposal pricing. Government and contractor personnel began negotiations on February 25, 2008. The negotiations were for the definitization of the UCA and for requirements unrelated to the UCA being obtained under the contract. No significant changes to the contract terms or conditions occurred during negotiations; however, offers were exchanged until May 22, 2008, when the contractor accepted the Government's final offer. Contractor pricing delays were also a contributing factor for late definitization, according to contracting personnel. As a result, NAVAIR contracting personnel definitized the UCA on July 25, 2008, 303 days after award.

Other Impacts on Definitization Time Frames

NAVAIR contracting personnel were unable to definitize seven UCAs in a timely manner and cited issues with untimely Defense Contract Management Agency and Defense Contract Audit Agency response times, the partial sale of a contractor's business, and NAVAIR administration delays. Administration delays included the program office's delay in releasing a technical evaluation and the time required for the contracting office to prepare definitization documentation for multiple UCAs. Of the 29 UCAs that exceeded the time limits, 1 remains undefinitized[6] as of May 24, 2011.

Contract N00019-07-C-0057

NAVAIR contracting personnel were unable to definitize contract N00019-07-C-0057, with a NTE value of $52.5 million, within required time frames. NAVAIR contracting personnel awarded the UCA on August 22, 2007, to procure low-rate initial production of AN/ALQ Low-Band Transmitters, spare and repair parts, and nonrecurring engineering for the processor card upgrades on the EA-6B aircraft. Personnel from NAVAIR, Defense Contract Audit Agency, and the Defense Contract Management Agency began Alpha negotiation sessions with the contractor from late September 2007 through early March 2008. The Defense Contract Audit Agency issued its audit report on March 19, 2008, about 4 months after NAVAIR received the qualifying proposal. Additional Alpha

[6] One UCA was in the process of being terminated as of May 24, 2011.

negotiations were held in May 2008. The contracting officer stated that negotiations were extended because of a disagreement with the contractor about the use of one of the learning curves. In addition, the original contractor sold the part of its business that was awarded the UCA on February 22, 2008. The buying company submitted its rate proposal package on April 4, 2008, and submitted a revised forward pricing rate submission on June 3, 2008. As a result, NAVAIR contracting personnel definitized the UCA 229 days after receiving a qualifying proposal.

Contract N00019-05-D-0013, Delivery Order 0029, Modification 01 and Delivery Order 0030, Modification 01

NAVAIR contracting personnel were unable to definitize contract N00019-05-D-0013, delivery order 0029, modification 01, and delivery order 0030, modification 01, each with a NTE value of $2.4 million, within required time frames. In total, NAVAIR contracting personnel awarded five UCAs on contract N00019-05-D-0013 to revise the installation of Special Structural Inspections-Kits on P-3 aircraft. NAVAIR contracting personnel awarded the two respective UCAs on November 25, 2008, and December 5, 2008, as the first two of the five UCAs. Contracting personnel awarded the fifth UCA on February 13, 2009, and concluded negotiations for all five UCAs on May 1, 2009. Contracting personnel had to prepare the post-negotiation BCM documentation and approval, funding receipts, and draft and execute five separate delivery order modifications and a bilateral basic contract modification prior to the June 11, 2009, definitization. As a result, NAVAIR contracting personnel definitized the first UCA issued on delivery order 0029, modification 01, 198 days after award and definitized the second UCA issued on delivery order 0030, modification 01, 188 days after award.

NAVAIR Generally Complied With Requirements to Reflect the Undefinitized Period on Allowable Profit

NAVAIR contracting personnel did not include sufficient support in the BCM that would allow an independent party to determine the basis for their profit determination for 5 of 41 UCAs reviewed.[7] NAVAIR contracting personnel were required to use the weighted guidelines method to develop a profit objective for 41 of the UCAs and used a Web-based tool to apply the method for 38 of the UCAs. On October 8, 2008, NAVAIR contracting personnel were directed to use the Web-based weighted guidelines application to analyze profit. However, the Web-based tool's output, DD Form 1547, "Record of Weighted Guidelines Application," was inadequate as sole support for profit determination because it did not clearly document how the undefinitized period was reflected in the contractor's profit or fee.

[7] Ten of the UCAs were excluded from our review to determine if the contractor's possible reduced cost risk was reflected in the allowable profit because the contract type was cost-plus-award-fee (5) and obtaining cost and pricing data for commercial contracts is prohibited (5); therefore, use of the weighted guidelines was not required. In addition, one UCA was in the process of being terminated as of May 24, 2011.

The DD Form 1547 was inadequate because it did not clearly document the:

- extent to which costs were incurred before definitization,
- risk factors assigned to the incurred cost and the projected cost when the weighted guidelines application was used, and
- resulting impact on the contractor's profit or fee.

As a result, NAVAIR contracting personnel must document the risk assessment in the contract file. However, discussions in the BCMs on NAVAIR contracting personnel's profit determination were insufficient to adequately document the extent to which costs were incurred before definitization or did not contain adequate documentation that supported how the undefinitized period was reflected in the contractor's profit or fee for five UCAs. During the undefinitized period, the Government bears increased risk, and the contractor generally bears reduced risk. The Government could be paying too much profit to the contractor if the contractor's reduced risk is not reflected in the negotiated profit rate.

Requirements to Reflect Reduced Cost Risk in the Contractor's Profit or Fee

Both 10 U.S.C. § 2326 and the DFARS provide guidance on profit determination. Section 2326(e), title 10, United States Code, states:

> The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—
>
> (1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and
>
> (2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

DFARS 215.404-4, "Profit," requires that contracting officers use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when the contractor provides cost or pricing data, except for cost-plus-award-fee contracts or contracts with Federally Funded Research and Development Centers. DFARS 215.404-4 further states that the weighted guidelines method is the structured approach that must be used, with certain limited exceptions. Federal Acquisition Regulation (FAR) 15.406-3, "Documenting the Negotiation," states that the contracting officer must document in the contract file the basis for the prenegotiation profit or fee objective and the profit or fee negotiated.

DD Form 1547 Provided Inadequate Support of Profit Determination

NAVAIR contracting personnel used DD Form 1547 as support for profit determinations. However, the form did not provide sufficient detail as sole support that the undefinitized period was a consideration in profit determination. The weighted

guidelines application considered incurred cost, the undefinitized period, and the remaining portion of the contract to develop a profit objective. The contracting officer entered the incurred and projected costs into the application and assigned values to the contract risk factors. The application then produced a composite contract type risk factor shown in box 24 of DD Form 1547. The contract type risk factor focuses on the degree of risk accepted by the contractor under varying contract types. The weighted guidelines application then generated a total profit objective for the contract based on different risk factors entered by the contracting officer and the composite contract type risk factor generated by the application. The contracting officer should have used the profit objective as the Government's basis for negotiations with the contractor.

However, DD Form 1547 did not display all of the factors entered by the contracting officer. The form identified the composite contract type risk factor, but did not state the extent to which costs were incurred before definitization, the different values assigned to the incurred cost and projected cost, or the resulting impact on the contractor's profit or fee. As a result, it was not possible for an independent party to determine how the contracting officer considered the contractor's possible reduced cost risk unless the contracting officer documented the risk assessment in the contract file. Furthermore, an independent party cannot determine that the level of reduction taken to address the undefinitized period accurately reflected the extent of actual costs incurred if contracting officers do not state the amount of actual costs incurred in the risk assessment. Contracting personnel should document the costs incurred before definitization and their impact on profit determination in the BCM. Both the GAO and DoD IG recommended in previous reports that DoD revise the DFARS to include instructions on how to perform an assessment of any reduced cost risk on profit or fee during the undefinitized period.[8]

Documented Consideration of Reduced Contractor Risk in the BCM

We could not determine compliance with 10 U.S.C. § 2326(e) for 5 of the 41 UCAs because NAVAIR contracting personnel did not adequately document their consideration of reduced contractor risk and the overall effect on the profit objective in the BCM. Contracting personnel acknowledged in four of the five BCMs the requirement to consider reduced cost risk to the contractor; however, contracting personnel did not document in any of the five BCMs that a reduction to the profit objective was taken to account for the decreased risk or provide other rationale as to why profit was not reduced. Contracting personnel used DD Form 1547 as support for the profit determination for four of the five UCAs. However, neither the four DD Form 1547s nor the five BCMs stated the amount of actual costs incurred before definitization, the risk factors the contracting officer assigned to the incurred cost and projected cost, or the resulting impact on the contractor's profit or fee. NAVAIR contracting personnel adequately documented compliance with 10 U.S.C. § 2326(e) in 36 of the 41 BCMs reviewed. Contracting personnel documented their overall consideration of reduced risk

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[8] GAO Report No. GAO-10-299, "DoD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvements," January 28, 2010; and DoD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004.

and the resulting reduction to the prenegotiation profit or fee objectives in the BCM for 29 UCAs. In the remaining seven BCMs, contracting personnel documented their overall consideration of reduced risk and provided their rationale why an adjustment to profit was not warranted.

NAVAIR contracting personnel used DD Form 1547 as support for the profit determination for 38 of the 41 UCAs that required the use of the weighted guidelines method to develop the profit objective. However, the form did not state the amount of actual costs incurred before definitization, the risk factors the contracting officer assigned to the incurred cost and projected cost, or the resulting impact on the contractor's profit or fee. Contracting personnel did not document the extent of costs incurred in the BCMs for 14 of the 38 UCAs analyzed with weighted guidelines. DFARS 215.404-71-3 requires contracting officers to assess the extent to which costs have been incurred before definitization and to regard the contract type risk to be in the low end of the designated range when costs have been incurred. Although contracting personnel did not state the extent to which costs were incurred, in 10 of these instances, we considered the discussions in the BCM sufficient to determine the overall effect the undefinitized period had on the profit objective. For example, NAVAIR contracting personnel prepared the BCM for contract N00019-05-C-0011 that adequately documented the contracting officer's consideration of the undefinitized period, but did not document the amount of actual costs incurred. We considered the documentation to be in compliance with 10 U.S.C. § 2326(e) because contracting personnel reduced the contract type risk used in the weighted guidelines application to reflect the reduced risk during the undefinitized period.

NAVAIR Contracts Competency Instruction 4200.30H, "Business Clearance Memorandum (BCM) Review and Approval Process," June 16, 2008, provides standardized policies and procedures for BCMs. The Instruction requires contracting personnel to attach the DD Form 1547 to the prenegotiation BCM and to document the structured approach used in developing the negotiation objective. The Instruction also requires contracting personnel to address the reduced cost risk associated with the cost incurred before negotiation of the final price and the reduced cost risk for the remainder of the contract when definitizing a UCA. NAVAIR Instruction 4200.33D states that when the final price of a UCA is negotiated after a substantial portion of the performance has been completed, the profit analysis in the BCM and the weighted guidelines must document reduced cost risk in the assignment of allowable profit factors in establishing negotiation objectives for the final price. NAVAIR officials should revise local Instructions to require contracting personnel to document within the profit section of the BCM their consideration of reduced risk on the contractor's profit or fee, the impact of the undefinitized period on the profit or fee, and the inputs used to develop the contract type risk.

Adequate and Inadequate Documentation of Profit Determination in the BCM

We reviewed the BCM for each of the 41 UCAs to determine whether the contracting officer's consideration of the undefinitized period and its effect on the

contractor's profit was adequately documented. The following two UCAs are examples of adequate and inadequate documentation of profit determination.

Contract N00019-05-D-0013, Delivery Order 0042

NAVAIR contracting personnel prepared the BCM for contract N00019-05-D-0013, delivery order 0042, that adequately documented the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit. Contracting personnel properly identified the amount of costs incurred before definitization, their effect on the contract type risk used in the weighted guidelines application, and the profit objective generated based on the incurred cost and the remaining portion of the contract. Specifically, NAVAIR contracting personnel stated in the BCM that the contract type risk value used in the weighted guidelines application was reduced because 29 percent of the effort was completed during the undefinitized period. The contracting officer assigned two separate contract type risk values — one for actual costs incurred (0 percent) and one for estimated costs to complete (0.5 percent). This resulted in a lower composite risk value of 0.35 percent and accounted for the reduced risk associated with the UCA.

Contract N00019-07-G-0008, Delivery Order 1000

NAVAIR contracting personnel prepared the BCM for contract N00019-07-G-0008, delivery order 1000, that did not adequately document the contracting officer's consideration of the undefinitized period's effect on the contractor's profit. Contracting personnel acknowledged that there was a requirement to consider reduced cost risk to the contractor during the undefinitized period, but did not document their consideration of reduced risk in the contract file. Contracting personnel stated in the BCM that the Government used the weighted guidelines to calculate the profit objective, but did not include a discussion of contract type risk in the BCM or provide any indication of actual costs incurred. Compliance with 10 U.S.C. § 2326(e) cannot be determined for this UCA because NAVAIR contracting personnel did not document their consideration of the undefinitized period and its effect on the contractor's profit.

Enhanced Reporting Requirement

In June 2007, GAO issued Report No. GAO-07-559, "Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met," which criticized DoD for inadequately documenting the impact of costs incurred before definitization on profit and fee rates. In response to the report, the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, issued a memorandum on August 29, 2008, that provided guidance to contracting officers regarding the requirements contained in DFARS 215.404-71, which advocates the lowering of contract type risk based on the amount of costs incurred before definitization. The August 2008 DPAP memorandum required contracting officers to document the risk assessment in the contract file. See Appendix B for a copy of the memorandum. Of the 41 UCAs that we reviewed for profit determination, 24 were definitized after the August 2008 DPAP memorandum. All 24 UCAs were in compliance with the August 2008 DPAP memorandum requirement to document the risk assessment in the contract file; therefore, we are not making a recommendation on this requirement.

NAVAIR Generally Funded UCAs Within Obligation Limitations

NAVAIR contracting personnel exceeded the limitations for obligating funds for 3 of the 51 definitized UCAs. Contracting officers are limited by 10 U.S.C. § 2326 in the amount of funds they may obligate for a UCA to 50 percent of the NTE value before receipt of a qualifying proposal and to 75 percent after receipt of a qualifying proposal. Exceeding the allowable obligation thresholds puts the Government in a weakened position to negotiate a contract at definitization because contractors are less inclined to submit a qualifying proposal when there is adequate funding available to continue the work.

Section 2326(b)(2) and (3), title 10, United States Code, states:

> (2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.
>
> (3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

Section 2326(g)(2), title 10, United States Code, states:

> The term "qualifying proposal" means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

NAVAIR contracting personnel obligated funds in excess of allowable amounts for three UCAs because they obligated too much funding at UCA issuance and did not adequately adjust the NTE amount to properly reflect the new obligation amount. In one of the three instances, contracting personnel obligated funding in excess of the allowable amount by less than one percent. The following two UCAs are examples of NAVAIR contracting personnel not adhering to the obligation limitations established by 10 U.S.C. § 2326. These instances are not indicative of a NAVAIR-wide problem with the obligation of funding for UCAs; therefore, we are not making a recommendation on this issue.

Contract N00019-09-C-0026

NAVAIR contracting personnel inappropriately obligated 67 percent of the NTE value before receipt of a qualified proposal for the UCA awarded on contract

N00019-09-C-0026. Contracting personnel issued the UCA on December 23, 2008, to obtain Low-Rate Initial Production of Advanced Anti-Radiation Guided Missiles. NAVAIR contracting personnel initially obligated funding for the UCA at 67 percent of the NTE value before receipt of the contractor's qualifying proposal, violating the 50 percent threshold limitation established in 10 U.S.C. § 2326.

Contract N00019-04-C-0028, Modification P00036

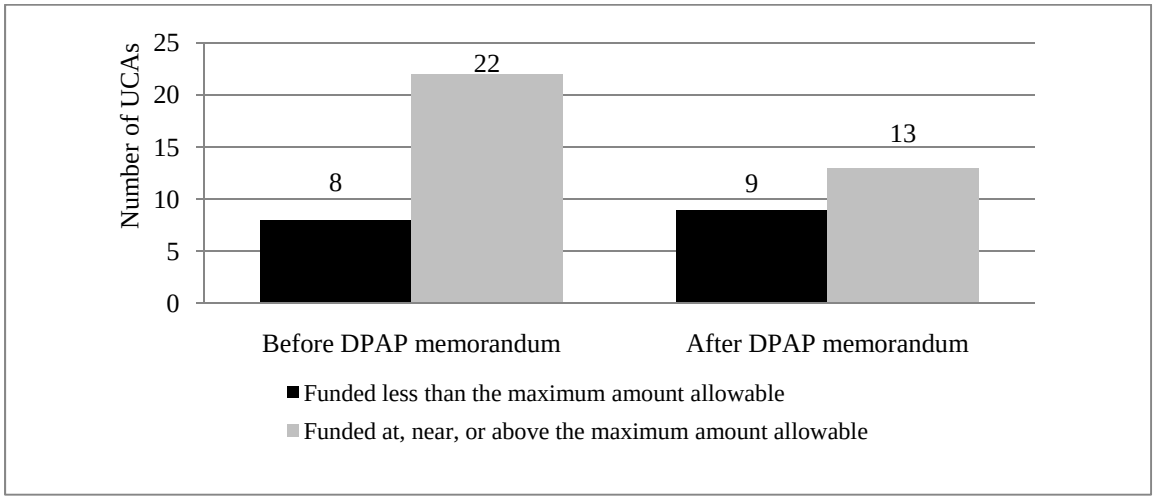
NAVAIR contracting personnel inappropriately obligated 84.75 percent of the $8.4 million NTE value before definitization for the UCA awarded on contract N00019-04-C-0028, modification P00036. Contracting personnel awarded the UCA on July 20, 2007, after receiving a qualifying proposal. This proposal included efforts beyond those executed under the subject UCA that were to be performed under three additional contracts. The subject action was to begin the procurement and installation of components that would provide improved capability for the MH-60R and MH-60S Common Cockpit. Contracting personnel inappropriately treated the subject UCA, and the three additional UCAs awarded on separate contracts as one action for obligation and tracking purposes for a procurement under the program. When funding the FY 2008 portion of the procurement, NAVAIR contracting personnel decreased the NTE value of the subject UCA to $8.3 million and increased the obligated funds to $7 million. Contracting personnel's FY 2008 modification resulted in obligations for the UCA 9.75 percent above the 75 percent limitation when properly calculated as an individual action. Funded obligations remained below the maximum amount allowable when contracting personnel improperly tracked obligations for the procurement as a whole.

Inconsistent Obligation of Funds for UCA Requirements

NAVAIR contracting personnel obligated funding at or near the maximum amount permissible[9] at issuance for 35 of 52 UCAs. The August 2008 DPAP memorandum instructed contracting officers to assess the contractor's spend plan for the undefinitized period and obligate funding in an amount consistent with the contractor's requirements for the undefinitized period. Both before and after DPAP issued the memorandum, NAVAIR contracting personnel commonly funded UCAs to the maximum amount allowable. NAVAIR contracting personnel obligated funds at or near the maximum amount allowable for 22 of 30 UCAs that were issued before the August 2008 DPAP memorandum and for 13 of 22 UCAs that were issued after the August 2008 DPAP memorandum. Figure 2 shows the number of UCAs obligated at the maximum amounts at issuance before and after the August 2008 DPAP memorandum.

[9] We considered funding obligated within 5 percent of the maximum amount permissible (50 percent or 75 percent) to be at or near the maximum amount.

Figure 2. UCAs Obligated at Maximum Allowable Amounts* Before Definitization Before and After the August 2008 DPAP Memorandum



* We considered funding obligated within 5 percent of the maximum permissible to be at or near the maximum amount. Although funding may have been obligated at or near the maximum amount allowable, funding may have been in accordance with the contractor's proposed requirements.

NAVAIR contracting personnel did not take steps to comply with the August 2008 DPAP memorandum requirement to avoid obligating the maximum permissible funding at contract award. Contracting personnel did not obligate funds in accordance with requirements outlined in the August 2008 DPAP memorandum for 7 of the 13 UCAs. Contracting personnel did not provide documentation to show that funding was in accordance with proposed requirements for five UCAs and funded two UCAs in an amount that was not consistent with the contractor's proposed requirements for the undefinitized period. However, contracting personnel obligated funds in accordance with the contractor's proposed requirements when issuing 6 of the 13 UCAs that were funded to the maximum amount allowable.

The contracting officer can strengthen the Government's negotiation position by limiting funding to incremental amounts to help obtain a timely definitization. NAVAIR contracting personnel should take steps to comply with the August 2008 DPAP memorandum requirement by obligating funding according to the contractor's requirements rather than to the maximum amount permissible. Further, contracting officers should avoid obligating the maximum allowable funding amount at the time of UCA award to discourage extended periods of performance before definitization.

NAVAIR Adequately Documented Fair and Reasonable Pricing

NAVAIR contracting personnel adequately documented their determination of price reasonableness for all 51 definitized UCAs, with the exception of documenting the determination of profit as discussed in the report. FAR 15.403-3, "Requiring information other than cost or pricing data," requires that the contracting officer obtain information

that is adequate for evaluating price reasonableness. Further, FAR 15.406-3, "Documenting the negotiation," states that the contracting officer must document fair and reasonable price in the contract file.

We reviewed the contract files for the 51 definitized UCAs and determined that the files contained adequate documentation to support the contracting officer's determination of a fair and reasonable price. NAVAIR contracting personnel prepared pre- and post-negotiation BCMs to document NAVAIR personnel's prenegotiation position and the result of negotiations with the contractor. Contractors submitted certificates of current cost or pricing data to NAVAIR contracting personnel, certifying that to the best of their knowledge the data were accurate and complete as of the date included in the certificate. NAVAIR contracting personnel also requested the assistance of the Defense Contract Audit Agency and the Defense Contract Management Agency to perform audits and reviews of contractor proposals and applicable rates.

NAVAIR contracting personnel adequately documented their determination of fair and reasonable prices. FAR 15.404-4, "Profit," states that the contracting officer's signature on the BCM documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded. Contracting officers provided signed BCMs for all but 1 of 51 UCAs.

According to the BCMs, contracting officers evaluated contractor proposals to determine that negotiated amounts were fair and reasonable. Table 4 lists the types of support contracting officers relied on when determining price reasonableness.

Table 4. Documentation to Support Determination of Price Reasonableness

Contractor Proposal Evaluated Against	Number of BCMs That Identified Evaluation
Defense Contract Audit Agency audits or Defense Contract Management Agency reviews	**44**
Technical evaluations	**49**
Forward pricing rate agreements or forward pricing rate recommendations	**47**
Certificate of current cost or pricing data	**43**

NAVAIR contracting personnel referenced compliance with FAR 15.403-4, "Requiring Cost or Pricing Data," which outlines requirements for obtaining current cost or pricing data in the BCMs for the 51 definitized UCAs. For 43 of 51 UCAs, the BCMs state that the contractors provided a certificate of current cost or pricing data. FAR 15.403-1 (b)(3) prohibits cost and pricing data when a commercial item is being acquired. Of the 51 definitized UCAs, 5 were identified as commercial items and did not require certificates of current cost or pricing data. The final three UCAs did not require certificates of current cost or pricing data because the definitized prices were lower than the $650,000 cost or pricing data threshold.

Conclusion

NAVAIR contracting personnel adhered to the limitations on the obligations of funds with three exceptions and adequately documented their determination of price reasonableness. However, we identified 55 deficiencies in the 52 UCAs we reviewed in which NAVAIR personnel did not fully comply with 10 U.S.C. § 2326 UCA restrictions and DoD requirements. NAVAIR personnel prepared inadequate authorization requests to issue UCAs, inadequately justified the issuance of UCAs, did not definitize UCAs in a timely manner, inadequately supported all required elements of profit determination in the BCM, and did not obligate funds in accordance with requirements outlined in the DPAP memorandum. As a result, the Navy assumed increased risk in the price negotiation process, and delays in definitizing contracts may have increased the cost risk to the Government. Incorporating the following recommendations should reduce the number of noncompliant actions.

Management Comments on the Finding

The Deputy Assistant Commander for Contracts, NAVAIR, partially agreed with the Finding. See Appendix F for a summary of the comments and our response.

Recommendations, Management Comments, and Our Response

1. We recommend that the Commander, Naval Air Systems Command:

a. Require that Naval Air System Command personnel better coordinate between departments to identify changes in Government requirements as soon as practicable and document changes in the contract file.

Naval Air Systems Command Comments

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, commented for the Commander. The Deputy Assistant Commander for Contracts partially agreed and stated that Naval Air Systems Command currently has instructions that require careful planning and requirements identification during the procurement initiation process, as well as policies and procedures for urgent issues that cannot be anticipated in advance. He stated that Naval Air Systems Command will issue a "communiqué" by June 30, 2011, to remind personnel of the importance of planning, identifying changing requirements as quickly as possible, and documenting changes in the contract file. In addition, the Deputy Assistant Commander for Contracts stated that Naval Air Systems Command will complete its draft of an update to Naval Air Systems Command Instruction 4200.33D, "Undefinitized Contractual Actions," to include a requirement to clearly document changes to undefinitized contractual action requirements in the contract file by July 30, 2011, with the goal of having the update approved and finalized by October 30, 2011.

Our Response

The comments from the Deputy Assistant Commander for Contracts, Naval Air Systems Command, are responsive, and no additional comments are required.

b. Update Naval Air Systems Command's Instruction 4200.33D, "Undefinitized Contract Actions," to include guidance on how contracting personnel can document their consideration of reduced risk to the contractor's profit or fee when definitizing undefinitized contractual actions.

Naval Air Systems Command Comments

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, commented for the Commander. The Deputy Assistant Commander for Contracts partially agreed and stated that Naval Air Systems Command currently has instructions that require documentation of the consideration of reduced risk to the contractor's profit or fee when definitizing undefinitized contractual actions. He stated that Naval Air Systems Command will issue a "communiqué" by June 30, 2011, detailing the requirements for contracting personnel to document their consideration of reduced risk.

Our Response

The comments from the Deputy Assistant Commander for Contracts, Naval Air Systems Command, are responsive. The actions planned by the Deputy Assistant Commander for Contracts to issue a "communiqué" detailing the requirements for contracting personnel to document their consideration of reduced risk satisfy the intent of the recommendation. Incorporating the guidance in the "communiqué" into future updates of the Naval Air Systems Command's Instruction 4200.33D will further improve contracting personnel's understanding of how to document their consideration. No additional comments are required.

2. We recommend that the Assistant Commander for Contracts, Naval Air Systems Command:

a. Develop procedures to avoid issuing undefinitized contractual actions with authorization requests that do not clearly:

(1) State the need to begin performance before definitization and the adverse impact on Navy requirements.

(2) Justify why an undefinitized contractual action is necessary to meet the Navy's requirements.

Naval Air Systems Command Comments

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, commented for the Assistant Commander for Contracts. The Deputy Assistant Commander for Contracts partially agreed and stated that the responsibility for adequately documenting the urgency on the authorization request is with the program

office personnel and is approved by the Program Executive Office. He stated that the contracts competency department head provides the final approval to begin processing an undefinitized contractual action as the contractual vehicle. He also stated that Naval Air Systems Command will issue a "communiqué" by June 30, 2011, outlining the process and substantive requirements for undefinitized contractual action authorization requests. In addition, the Deputy Assistant Commander for Contracts stated that Naval Air Systems Command will update the authorization request form to more clearly articulate requirements. He added that Naval Air Systems Command will complete a draft by July 30, 2011, with the goal of having the update approved and finalized by October 30, 2011.

Our Comments

The comments from the Deputy Assistant Commander for Contracts, Naval Air Systems Command, are responsive, and no additional comments are required.

b. Enforce Defense Federal Acquisition Regulation Supplement Subpart 217.74, "Undefinitized Contract Actions," and Naval Air Systems Command's Instruction 4200.33D, "Undefinitized Contract Actions," to suspend or reduce payments to the contractor for untimely proposals.

Naval Air Systems Command Comments

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, commented for the Assistant Commander for Contracts. The Deputy Assistant Commander for Contracts partially agreed and stated that although the recommendation constitutes a valid means of incentivizing timely receipt of contractor proposals, the decision is ultimately at the discretion of the contracting officer. He stated that Naval Air Systems Command will issue a "communiqué" by June 30, 2011, as a reminder of this possible measure.

Our Comments

The comments from the Deputy Assistant Commander for Contracts, Naval Air Systems Command, are responsive, and no additional comments are required.

c. Update Naval Air Systems Command Instruction 4200.30H, "Business Clearance Memorandum (BCM) Review and Approval Process," with requirements for contracting personnel to include in the profit section of the business clearance memorandum: incurred costs, contract type risk used for both the undefinitized period and the remainder of the contract, and the impact of the undefinitized period on the contractor's profit or fee. In addition, include guidance for contracting personnel to document and discuss the inputs made to the contract type risk portion of the DD Form 1547, "Record of Weighted Guidelines Application."

Naval Air Systems Command Comments

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, commented for the Assistant Commander for Contracts. The Deputy Assistant

Commander for Contracts agreed and stated that by September 30, 2011, Naval Air Systems Command personnel will update the template in Contracts Competency Instruction 4200.30H with requirements for contracting personnel to include in the profit section of the business clearance memorandum. The requirements include incurred costs, contract type risk used for both the undefinitized period and the remainder of the contract, and the impact of the undefinitized period on the contractor's profit or fee. In addition, the Deputy Assistant Commander for Contracts stated that the October 2009 changes to the weighted guidelines tool will ensure that contractor risk and profit are adequately considered and documented.

Our Response

The comments from the Deputy Assistant Commander for Contracts, Naval Air Systems Command, are responsive. The actions planned by the Deputy Assistant Commander for Contracts to update the template in Contracts Competency Instruction 4200.30H satisfy the intent of the recommendation. Incorporating the estimated costs to complete as an additional requirement will ensure inputs to the DD Form 1547 that are used to determine the composite contract type risk are thoroughly considered in the profit determination. No additional comments are required.

d. Require contracting personnel to avoid obligating funds to the maximum amount allowable for all undefinitized contractual actions so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

Naval Air Systems Command Comments

The Deputy Assistant Commander for Contracts, Naval Air Systems Command, commented for the Assistant Commander for Contracts. The Deputy Assistant Commander for Contracts agreed and stated that by June 30, 2011, Naval Air Systems Command officials will re-emphasize existing guidance requiring supporting data, such as spend plans, to justify the funds obligated on undefinitized contractual actions.

Our Response

Although the Deputy Assistant Commander for Contracts, Naval Air Systems Command, agreed, the comments are not responsive. Existing local guidance permits obligating funds to the maximum permissible at the issuance of an undefinitized contractual action and does not encourage or require contracting personnel to consider the contractor's requirements during the undefinitized period when obligating funds. The August 2008 Defense Procurement Acquisition Policy memorandum requires contracting officers to assess the contractor's spend plan for the undefinitized period and to obligate funds only in the amount needed for contractor's requirements during that period, rather than to obligate to the maximum permissible at issuance on an undefinitized contractual action. Therefore, we ask that the Assistant Commander for Contracts provide additional comments in response to the final report identifying specific actions that will require contracting officers to consider the contractor's spend plan for the undefinitized period when obligating funds at issuance of an undefinitized contractual action.

Appendix A. Scope and Methodology

We conducted this performance audit from March 2010 through March 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We initially planned to review NAVAIR's use of UCAs as part of a tri-Service audit beginning in July 2009. In September 2009, we decided to conduct a separate audit for each of the six contracting activities that we had initially identified to be included in the tri-Service audit. In March 2011, DoD IG management decided not to conduct the review of U.S. Army Communications-Electronics Command UCA use because of staffing considerations and higher priority work. As a result, the summary report will summarize five audit reports in the audit series.

GAO was conducting a review on the use of UCAs when our audit began. We limited our site selection to contracting offices that were not included in the GAO engagement.

Universe and Sample Information

We used the FPDS-NG database to identify a universe of UCAs to review. We identified action obligations coded as letter contracts that the Navy issued during calendar years 2004 through 2008. In addition, we classified the action obligations by contract number and contracting office code to identify the contracting offices that issued the 15 largest aggregate UCA dollar values. We excluded two Navy contracting organizations from consideration because GAO had an ongoing engagement with similar objectives at the sites. We identified NAVAIR and the Marine Corps Systems Command for review. We then conducted another search in FPDS-NG to identify "C" type letter contracts that NAVAIR contracting personnel issued from the beginning of FY 2004 to the end of FY 2009. The FPDS-NG universe consisted of 47 contracts. Contracting personnel obligated approximately $1.1 billion during the fiscal year the 47 contracts were issued. We downloaded 20 of the 47 contracts that were valued over $10 million in the Electronic Document Access database to verify that the 20 contracts contained at least one UCA and we eliminated contracts incorrectly coded as letter contracts or those that were for Foreign Military Sales or congressionally mandated long-lead procurements.

NAVAIR personnel provided a list of all UCAs issued from FY 2004 through FY 2009 with a total NTE value of $5.1 billion. NAVAIR identified 74 contracts on its UCA listing, which included contracts for foreign military sales or congressionally mandated long-lead procurements not subject to 10 U.S.C. § 2326. We verified the list NAVAIR provided against our list from FPDS-NG and found that 21 contracts we previously identified were not on the NAVAIR listing. We previously downloaded 6 of the 21 contracts in the Electronic Document Access database and determined that the contracts were required to comply with 10 U.S.C. § 2326.

NAVAIR personnel subsequently explained how NAVAIR's monthly UCA data submissions and reporting ultimately affected the creation of their UCA listing provided to us. Until mid 2008, NAVAIR tracked UCAs by the description of the UCA rather than by contract number. In addition, NAVAIR does not have a comprehensive list of UCAs. Instead, NAVAIR tracked UCAs on a month-by-month basis. As a result, NAVAIR personnel reviewed each monthly UCA report from FY 2004 through FY 2009 and extracted data to create the UCA list provided to us. When personnel compressed data into a single entry for the UCA listing, contracts may have been inadvertently left out or miscoded as a different contract or part of another contract. Based upon the FPDS-NG data and the multiple NAVAIR UCA listings, we selected a nonstatistical sample of 30 contracts that included 62 UCAs for review. We selected higher dollar value contracts within AIR-2.2, AIR-2.3, and AIR-2.4 while giving consideration to UCAs from each FY within our scope and to the contracts we identified that were not on the NAVAIR UCA listing.

Our audit universe was limited to the contracts identified in FPDS-NG as letter contracts. Within FPDS-NG, we were unable to distinctively identify three types of UCAs: "provisioned item orders," "indefinite-delivery, indefinite-quantity," and "basic ordering agreements." These types of UCAs are identified in a field the user or input staff modifies and are subject to individual manipulations of the field that makes searching across the database unreliable. We chose additional UCAs from incomplete lists provided by NAVAIR personnel. Our final nonstatistical sample consisted of 52 UCAs: 24 UCAs on 16 letter contracts and 28 UCAs issued as modifications to 12 definitized contracts.

Review of Documentation and Interviews

We downloaded and reviewed selected contracts and modifications from the Electronic Document Access database and obtained and reviewed contract documentation from NAVAIR. We then combined all of the data to perform an analysis to determine compliance with 10 U.S.C. § 2326 and DoD requirements. We determined through analyzing documentation and attending meetings whether the contracts underwent price reasonableness determinations before their definitization. We also determined whether NAVAIR personnel complied with August 2008 DPAP memorandum requirements that contracting officers should avoid obligating the maximum permissible funding at the time of UCA award.

We relied on interviews performed at the Office of Defense Procurement and Acquisition Policy and the Office of the Deputy Assistant Secretary of the Navy (Research, Development, and Acquisition) with audit team members for the main UCA project. We interviewed contracting and procurement officials, covering award and definitization of letter contracts and related management control programs from Naval Air Systems Command Headquarters contracting offices.

We reviewed documentation maintained by NAVAIR contracting personnel to support UCAs awarded or definitized from FY 2004 through FY 2009.

We reviewed:

- UCA request and approval documentation,
- justification and approvals,
- statements of work,
- contractor proposals,
- contract modifications,
- business clearance memoranda, and
- Defense Contract Audit Agency reports or other audit support.

We evaluated documentation maintained by NAVAIR against applicable criteria including:

- Statutes and Public Laws: Public Law 99-591, "Continuing Appropriations for Fiscal Year 1987"; Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008"; 10 U.S.C. § 2304, "Contracts: Competition Requirements"; 10 U.S.C. § 2326, "Undefinitized Contractual Actions: Restrictions";

- Federal Acquisition Regulation Requirements: FAR Subpart 6.3, "Other than Full and Open Competition"; FAR Subpart 15.4, "Contract Pricing"; FAR Subpart 16.6, "Time-and-Materials, Labor-Hour, and Letter Contracts"; FAR Subpart 52.2, "Text of Provisions and Clauses";

- Defense Federal Acquisition Regulation Supplement: DFARS 215.404, "Proposal Analysis"; DFARS Subpart 216.6, "Time-and-Materials, Labor Hour, and Letter Contracts"; DFARS Subpart 217.74, "Undefinitized Contract Actions";

- Navy Marine Corps Federal Acquisition Regulation Supplement: Navy Marine Corps Federal Acquisition Regulation Supplement Subpart 5217.74, "Undefinitized Contract Actions";

- Memoranda: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Management Oversight of Undefinitized Contract Actions," August 29, 2008; the Department of the Navy Office of the Assistant Secretary Navy (Research, Development, and Acquisition) Memorandum, "Management Oversight of Undefinitized Contract Actions," October 20, 2008; and

- Local Guidance: NAVAIR Instruction 4200.33C, "Undefinitized Contract Actions," April 14, 2000; NAVAIR ltr 4200 Ser AIR-2.1.1.1/089 "Head of Contracting Activity (HCA) Delegation of Authority," July 17, 2003; Policy and Procedures Memorandum, "Head of Contracting Activity (HCA) Delegation of Authority," May 18, 2006; Contracts Competency Instruction 4200.30G, "Business Clearance Memorandum (BCM) Review and Approval Process," August 23, 2006; Contracts Competency Instruction 4200.30H, "Business Clearance Memorandum (BCM) Review and Approval Process," June 16, 2008; NAVAIR Instruction 4200.33D, "Undefinitized Contract Actions," July 2, 2009;

Contracts Competency Instruction (CCI) 4200.59, "Head of Contracting Activity (HCA) Delegation of Authority," February 12, 2010.

Use of Computer-Processed Data

We relied on computer-processed data from FDPS-NG to determine the contracting organizations to visit and to perform the audit nonstatistical sample selection. We also used the Electronic Document Access database to obtain contract documentation. The data were not a basis for our conclusions or finding. To assess the accuracy of computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at visited contracting activities. We determined that data obtained through FPDS-NG and the Electronic Document Access database were sufficiently reliable to accomplish our audit objectives when compared with contract records.

Use of Technical Assistance

We relied on interviews conducted by our team members for the main UCA project. We interviewed personnel from the DoD IG Quantitative Methods and Analysis Division. We determined that we would use FPDS-NG data to select a nonstatistical sample of contracting activities and then we would use FPDS-NG data in combination with contract data provided by the contracting activity to select a nonstatistical sample of UCAs to review. Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other NAVAIR-issued contracts or Navy-issued contracts.

Prior Coverage

During the last 7 years, GAO has issued two reports discussing DoD use of UCAs and two reports discussing audit issues within Defense Contract Audit Agency. During the last 7 years, the DoD IG has issued four reports discussing DoD use of UCAs and one report discussing audit issues within Defense Contract Audit Agency. Unrestricted GAO reports can be accessed over the Internet at http://www.gao.gov. Unrestricted DoD IG reports can be accessed at http://www.dodig.mil/audit/reports.

GAO

GAO Report No. GAO-10-299, "Defense Contracting: DoD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvements," January 28, 2010

GAO Report No. GAO-09-468, "DCAA Audits: Widespread Problems with Audit Quality Require Significant Reform," September 23, 2009

GAO Report No. GAO-08-857, "DCAA Audits: Allegations That Certain Audits at Three Locations Did Not Meet Professional Standards Were Substantiated," July 22, 2008

GAO Report No. GAO-07-559, "Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met," June 19, 2007

DoD IG

DoD IG Report No. D-2011-024, “Air Force Space and Missile Systems Center’s Use of Undefinitized Contractual Actions,” December 16, 2010

DoD IG Report No. D-2011-001, “Marine Corps Systems Command’s Use of Undefinitized Contractual Actions,” October 27, 2010

DoD IG Report No. D-2010-080, “Air Force Electronic Systems Center’s Use of Undefinitized Contractual Actions,” August 18, 2010

DoD IG Report No. D-2009-6-009, “Defense Contract Audit Agency Audit Work Deficiencies and Abusive Work Environment Identified by the Government Accountability Office,” August 31, 2009

DoD IG Report No. D-2004-112, “Undefinitized Contractual Actions,” August 30, 2004

Appendix B. August 29, 2008, Office of Defense Procurement and Acquisition Policy Memorandum*

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION, TECHNOLOGY AND LOGISTICS

AUG 29 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND LOGISTICS MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Management Oversight of Undefinitized Contract Actions

An undefinitized contract action (UCA) is one for which the contract terms, specifications, or price are not agreed upon before performance is begun. Examples include letter contracts or undefinitized orders issued against basic ordering agreements or task/delivery order contracts. A UCA is a valuable tool for meeting urgent requirements. However, without appropriate management and controls, these instruments can lead to increased cost risks for the Department.

A recent Government Accountability Office (GAO) review of DoD UCAs (GAO-07-559) identified a need for enhanced oversight. In addition, section 809 of the FY 2008 National Defense Authorization Act requires issuance of detailed instructions to ensure oversight of UCAs. Specific issues include appropriate use of UCAs; timely definitization; obligation amounts prior to definitization; and appropriate recognition in profit or fee of the contractor's reduced risk during the undefinitized period.

DFARS 217.74, Undefinitized Contract Actions, provides DoD policies and procedures for the appropriate use of UCAs and related approval requirements. When possible, to discourage extended periods of performance prior to definitization, contracting officers should avoid obligating the maximum permissible funding at the time of UCA award. Contracting officers should assess the contractor's spend plan for the undefinitized period, and obligate funds only in an amount consistent with the

contractor's requirements for the undefinitized period. In general, when negotiating profit or fee, it is appropriate to apply the contract risk factor for cost reimbursement contracts to the actual cost of performance prior to definitization (DD Form 1547, Record of Weighted Guidelines Application, Block 24, Contract Type Risk). Contracting officers should note the guidance at DFARS 215.404-71-3(d)(2) which indicates that, when costs have been incurred prior to definitization, generally the contract type risk should be regarded to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, contracting officers may assign a value as low as 0 percent, regardless of contract type. Contracting officers must document the risk assessment in the contract file.

To provide enhanced management insight and oversight of UCAs, we have established the attached templates for UCA Management Plans and semi-annual Consolidated UCA Reports for UCAs with an estimated value of more than $5 million. Together, the plans and reports provide information on key aspects of UCA use and management, including actions taken to ensure timely and effective definitization. Initial UCA Management Plans are due no later than 30 days after the date of this policy memorandum. The initial Consolidated UCA Reports are due on 31 October 2008. Plan Updates and Consolidated UCA Reports are due semi-annually thereafter.

Please provide your UCA management point of contact as soon as possible to Mr. John Tenaglia who can be reached at john.tenaglia@osd.mil or 703-697-8334.

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachments:
As stated

* Attachments to the memorandum have been removed from the report.

Appendix C. Undefinitized Contractual Actions Reviewed

NAVAIR's Use of UCAs for FY 2004–FY 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Issuance Date	NTE Amount (millions)
1	N00019-09-C-0065	N/A	ALE-47 Dual Dispenser Pod Shipsets and Associated Hardware for the CH-53D/E A/C	FFP	7/2/2009	$13.2
2	N00019-07-C-0035	P00005	Airborne Electronic Attack Kit for the EA-18G A/C	CPIF	8/31/2007	16.0
3	N00019-04-C-0005	P00012	Additional ALQ 218 WRA, Channelizer Receiver Testability, and ALQ 218 WRA 1-4 Testability	CPAF	9/27/2004	7.0
4	N00019-04-C-0005	P00099	Incorporate Phase 1 EA-18G Extended Low-Band Radome requirements and procure materials for the GELBRs, and incorporate Phase 2 GELBR requirements to procure materials for additional GELBRs, fabricate/assemble the GELBRs, and perform full-scale development testing	CPFF	8/6/2007	10.0
5	N00019-06-C-0096	N/A	Fabricate, test and deliver AN/ALQ-99 Low Band Transmitters, V-Pol Antennas, Band 2 Antenna Interface, and deliver spare and repair parts for the EA-6B A/C	FFP	3/22/20	24.3
6	N00019-09-C-0086	N/A	Time Critical Parts to support Lot 33 Airborne Electronic Attack Kits for the EA-18G Aircraft	FFP	12/23/2008	50.3
7	N00019-07-C-0057	N/A	Fabricate, test, and deliver the AN/ALQ-99 Low-Band Transmitters, antennas, Band 2 Adapter Interface Assemblies; deliver spare and repair parts; and conduct nonrecurring engineering for the processor card upgrade for the EA-6B A/C	FFP	8/22/2007	52.5
8	N00019-08-C-0046	N/A	Fabricate, test, and deliver the AN/ALQ-99 Low-Band Transmitters, antennas, Band 2 Adapter Interface Assemblies, spare and repair parts, test equipment, and non-recurring engineering for the Circuit Card Assembly for the EA-6B A/C	FFP	6/30/2008	76.7
9	N00019-08-C-0067	N/A	Procure Full-Rate Production ALQ-218 Tactical Jamming System Receivers and associated spares for the EA-6B A/C	FFP	8/28/2008	125.6
10	N00019-06-G-0014	0010	Engineering Study of the AN/AAR-47A (V) 2 Missile Approach Warning System	CPFF	2/1/2007	38.1

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

NAVAIR's Use of UCAs for FY 2004–FY 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Issuance Date	NTE Amount (millions)
11	N00019-06-G-0014	0018	Retrofit Labor and Material for the AAR-47 Missile Approach Warning System	CPFF	9/27/2007	18.8
12	N00019-04-C-0014	P00149	Supplemental F/A-18F A/C for Lot 32	FFP	9/26/2007	171.9
13	N00019-04-C-0014	P00150	Incorporate ECP 6251 to convert a F/A-18F A/C to an EA-18G A/C	FFP	9/26/2007	.76
14	N00019-05-C-0030	PU0001	Test, fabricate, design, and deliver the Presidential Fleet helicopter (VH-71) Systems Integration Laboratory	CPAF	8/28/2006	27.1
15	N00019-07-C-0040	P00002	Block C Weather Radar System upgrade for the MV-22 A/C	CPAF	1/30/2008	32.0
16	N00019-08-C-0065	N/A	Production of outer wing assemblies for P-3 A/C	FFP	8/19/2008	60.6
17	N00019-06-C-0086	P00026	Procure time-critical parts in support of UH-1Y and AH-1Z A/C	FFP	1/3/2008	60.0
18	N00019-08-C-0066	N/A	Production of outer wing assemblies for P-3 A/C	FFP	8/26/2008	129.3
19	N00019-04-C-3146	P00139	Update Annex B to include additional Requirement Identifiers from the IRS	CPAF	8/26/2009	25.0
20	N00019-04-C-3146	P00146	Incorporate and update the Stage II SOW to include Full Organic Maintenance	CPAF	12/4/2009	12.5
21	N00019-04-C-0028	P00036	Common Cockpits for the MH-60S and MH-60R Helicopters	FFP	7/20/2007	8.4
22	N00019-05-D-0013	0031	Zone 5 material structure replacement efforts on P-3 A/C	CPFF	11/21/2008	17.8*
23	N00019-05-D-0013	0029-01	SOW Change 7 delta requirements for P-3 A/C SSI-K installations	FFP	11/25/2008	2.4
24	N00019-05-D-0013	0030-01	SOW Change 7 delta requirements for P-3 A/C SSI-K installations	FFP	12/5/2008	2.4
25	N00019-05-D-0013	0032-02	SOW Change 7 delta requirements for P-3 A/C SSI-K installations	FFP	1/14/2009	2.4

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

NAVAIR's Use of UCAs for FY 2004–FY 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Issuance Date	NTE Amount (millions)
26	N00019-05-D-0013	0033	SOW Change 7 delta requirements for P-3 A/C SSI-K installations	FFP	1/16/2009	2.4
27	N00019-05-D-0013	0034	SOW Change 7 delta requirements for P-3 A/C SSI-K installations	FFP	2/13/2009	2.4
28	N00019-05-D-0013	0039	Zone 5 material structure replacement efforts on P-3 A/C	CPFF	6/11/2009	18.2*
29	N00019-05-D-0013	0042	Zone 5 material structure replacement efforts on P-3 A/C	CPFF	10/15/2009	6.8
30	N00019-05-D-0008	0045-01	SOW Change 7 delta requirements for P-3 A/C SSI-K installations	FFP	5/28/2009	2.2
31	N00019-05-D-0008	0046	Zone 5 material structure replacement efforts on P-3 A/C	CPFF	5/1/2009	13.5
32	N00019-05-D-0008	0056	Zone 5 material structure replacement efforts on P-3 A/C	CPFF	9/23/2009	6.2
33	N00019-05-D-0008	0060	Zone 5 material structure replacement efforts on P-3 A/C	CPFF & FFP	12/30/2009	14.2
34	N00019-07-G-0008	0071	Recurring and nonrecurring engineering to support retro-fitting fielded V-22 A/C with upgraded Ice Protection Systems	CPFF & FFP	3/31/2009	61.6
35	N00019-07-G-0008	1000	Implementation of a V-22 EAPS design solution via retrofit kit and installation into (24) previously delivered aircraft	CPIF & FFP	3/27/2007	24.5
36	N00019-07-G-0008	1000-05	Support for the acceleration of kits, installations, and tooling to support an expedited incorporation of the EAPS kit ECP	CPIF & FFP	12/7/2007	2.5
37	N00019-04-C-0015	N/A	Initial activities in support of the build/delivery of AMC and multi-purpose displays for the F/A-18E/F A/C	FFP	2/17/2004	62.7
38	N00019-04-C-0015	P00008	FRP build and delivery of AMCs for Lot 29 A/C	FFP	1/31/2005	44.9

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

NAVAIR's Use of UCAs for FY 2004–FY 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Issuance Date	NTE Amount (millions)
39	N00019-05-C-0045	N/A	Establish ISR UAV services for a Naval ESG deployment and GOPLAT security	FFP	4/18/2005	14.5
40	N00019-05-C-0045	P00005	Procure mission critical UAV ISR services in support of the USS Oakhill deployment effort	FFP	12/14/2005	5.5
41	N00019-05-C-0045	P00008	Procure additional mission critical UAV ISR services in support of the GOPLAT security effort	FFP	3/15/2006	5.0
42	N00019-05-C-0045	P00009	Procure UAV ISR services in support of the USS Trenton deployment effort	FFP	4/6/2006	6.9
43	N00019-05-C-0045	P00011	Procure UAV ISR services in support of the USS Saipan deployment effort	FFP	7/19/2006	7.1
44	N00019-05-C-0011	N/A	Upgrade of ALQ-157 IR Countermeasure systems and associated efforts	FFP	10/20/2004	6.6
45	N00019-05-C-0011	P00014	Depot-Level Test/support equipment related to the upgraded ALQ-157A IR Countermeasure system	FFP	4/4/2006	.9
46	N00019-07-C-0030	N/A	FRP build and delivery of AMCs for F/A-18E/F/G A/C	FFP	2/5/2007	56.2
47	N00019-07-C-0041	N/A	To procure VTUAV long lead items and LRIP units	FFP	6/21/2007	35.7
48	N00019-07-C-0041	P00008	To procure VTUAV LRIP II systems	FFP	9/11/2008	32.9
49	N00019-07-C-0041	P00013	To procure VTUAV LRIP III systems	FFP	2/4/2009	40.0

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

NAVAIR's Use of UCAs for FY 2004–FY 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Issuance Date	NTE Amount (millions)
50	N00019-09-D-0015	N/A	Logistics, field service, software, technical publication, and engineering support for the C/KC-130 A/C	ID/IQ	12/30/2008	18.7
51	N00019-09-C-0026	N/A	LRIP I for the Advanced Antiradiation Guided Missile	FPI	12/23/2008	52.6*
52	N00019-09-C-0004	N/A	To procure Gasoline Micro Air Vehicle systems and 2 years of associated logistics support	FFP	11/3/2008	65.0*

*Initial spares and over and above work requests within the scope and terms of the contract are not subject to the UCA restrictions imposed by DFARS 217.74. As a result, we excluded the portion of the UCA and the NTE value related to those efforts.

A/C	Aircraft
AMC	Advanced Mission Computers
CPAF	Cost-Plus-Award-Fee
CPFF	Cost-Plus-Fixed-Fee
EAPS	Engine Air Particle Separator
ECP	Engineering Change Proposal
ESG	Expeditionary Strike Group
FFP	Firm-Fixed-Price
FPI	Fixed-Price-Incentive
FRP	Full-Rate Production
GELBR	EA-18G Extended Low Band Radome
GOPLAT	Gulf Oil Platform
ID/IQ	Indefinite-Delivery, Indefinite-Quantity
IR	Infrared
IRS	Interface Requirements Specification
ISR	Intelligence, Surveillance, Reconnaissance
LRIP	Low-Rate Initial Production
SOW	Statement of Work
SSI-K	Special Structural Inspection-Kit
UAV	Unmanned Aerial Vehicle
VTUAV	Vertical Takeoff and Landing Tactical Unmanned Aerial Vehicle
WRA	Weapons Replaceable Assembly

Appendix D. Deficiencies Identified

Detailed Results of UCAs Reviewed

				Deficiencies in NAVAIR Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Issuance Date**	**Inadequate Request to Issue a UCA**	**Inadequate Justification to Use a UCA**	**Definitization Untimely**	**Obligation Limits Exceeded or not Aligned with the 2008 DPAP Memorandum**	**Inadequate Profit Support**
1	N00019-09-C-0065	N/A	7/2/2009			√	√[1]	
2	N00019-07-C-0035	P00005	8/31/2007			√		
3	N00019-04-C-0005	P00012	9/27/2004			√	-√[2]	N/A
4	N00019-04-C-0005	P00099	8/6/2007					
5	N00019-06-C-0096	N/A	3/22/2006					
6	N00019-09-C-0086	N/A	12/23/2008					
7	N00019-07-C-0057	N/A	8/22/2007			√		
8	N00019-08-C-0046	N/A	6/30/2008					
9	N00019-08-C-0067	N/A	8/28/2008					
10	N00019-06-G-0014	0010	2/1/2007	√[3]		√		
11	N00019-06-G-0014	0018	9/27/2007			√		
12	N00019-04-C-0014	P00149	9/26/2007			√		
13	N00019-04-C-0014	P00150	9/26/2007					
14	N00019-05-C-0030	PU0001	8/28/2006	√[6]		√		N/A
15	N00019-07-C-0040	P00002	1/30/2008					N/A
16	N00019-08-C-0065	N/A	8/19/2008			√+		
17	N00019-06-C-0086	P00026	1/3/2008					√
18	N00019-08-C-0066	N/A	8/26/2008			√		
19	N00019-04-C-3146	P00139	8/26/2009		√	√		N/A

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of UCAs Reviewed

				Deficiencies in NAVAIR Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Issuance Date**	**Inadequate Request to Issue a UCA**	**Inadequate Justification to Use a UCA**	**Definitization Untimely**	**Obligation Limits Exceeded or not Aligned with the 2008 DPAP Memorandum**	**Inadequate Profit Support**
20	N00019-04-C-3146	P00146	12/4/2009			√		N/A
21	N00019-04-C-0028	P00036	7/20/2007			√	√[2]	
22	N00019-05-D-0013	0031	11/21/2008			√		
23	N00019-05-D-0013	0029-01	11/25/2008			√		
24	N00019-05-D-0013	0030-01	12/5/2008			√		
25	N00019-05-D-0013	0032-02	1/14/2009					
26	N00019-05-D-0013	0033	1/16/2009					
27	N00019-05-D-0013	0034	2/13/2009					
28	N00019-05-D-0013	0039	6/11/2009			√		
29	N00019-05-D-0013	0042	10/15/2009			√		
30	N00019-05-D-0008	0045-01	5/28/2009				√[1]	
31	N00019-05-D-0008	0046	5/1/2009			√	√[1]	
32	N00019-05-D-0008	0056	9/23/2009			√		
33	N00019-05-D-0008	0060	12/30/2009					
34	N00019-07-G-0008	0071	3/31/2009			√	√[1]	
35	N00019-07-G-0008	1000	3/27/2007					√
36	N00019-07-G-0008	1000-05	12/7/2007					√
37	N00019-04-C-0015	N/A	2/17/2004	√[4]		√		√

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of UCAs Reviewed

				Deficiencies in NAVAIR Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Issuance Date**	**Inadequate Request to Issue a UCA**	**Inadequate Justification to Use a UCA**	**Definitization Untimely**	**Obligation Limits Exceeded or not Aligned with the 2008 DPAP Memorandum**	**Inadequate Profit Support**
38	N00019-04-C-0015	P00008	1/31/2005	√[4]				√
39	N00019-05-C-0045	N/A	4/18/2005					N/A
40	N00019-05-C-0045	P00005	12/14/2005			√		N/A
41	N00019-05-C-0045	P00008	3/15/2006					N/A
42	N00019-05-C-0045	P00009	4/6/2006	√[3]				N/A
43	N00019-05-C-0045	P00011	7/19/2006					N/A
44	N00019-05-C-0011	N/A	10/20/2004					
45	N00019-05-C-0011	P00014	4/4/2006					
46	N00019-07-C-0030	N/A	2/5/2007	√[5]				
47	N00019-07-C-0041	N/A	6/21/2007		√	√		
48	N00019-07-C-0041	P00008	9/11/2008		√	√	√[1]	
49	N00019-07-C-0041	P00013	2/4/2009		√	√		

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of UCAs Reviewed

				Deficiencies in NAVAIR Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Issuance Date**	**Inadequate Request to Issue a UCA**	**Inadequate Justification to Use a UCA**	**Definitization Untimely**	**Obligation Limits Exceeded or not Aligned with the 2008 DPAP Memorandum**	**Inadequate Profit Support**
50	N00019-09-D-0015	N/A	12/30/2008			√		
51	N00019-09-C-0026	N/A	12/23/2008	√[6]		√	√[1,2]	
52	N00019-09-C-0004	N/A	11/3/2008			√	√[1]	
Total				**7**	**4**	**29**	**10**	**5**

√ Discrepancy noted.
+ In the process of being terminated as of May 24, 2011.
- Obligations were in excess of the allowable amount by less than one percent.
[1] Not in compliance with the August 2008 DPAP memorandum because funds were not obligated in accordance with the contractor's proposed requirements for UCAs funded at or near the maximum amount allowable at issuance. We considered funding obligated within 5 percent of the maximum permissible to be at or near the maximum amount.
[2] Exceeded 10 U.S.C. § 2326(b) obligation limitations.
[3] The authorized official did not approve the authorization request to issue a UCA.
[4] UCA request did not adequately address the need to begin performance before definitization and the adverse impacts on Navy requirements if a UCA was not issued.
[5] UCA request did not adequately address the need to begin performance before definitization if a UCA was not issued.
[6] UCA request did not adequately address the adverse impacts on Navy requirements if a UCA was not issued.

Appendix E. Definitization Elapsed Days for NAVAIR UCAs

NAVAIR Definitization Details for FY 2004─FY 2009

Contract Number, Delivery Order/Modification	Issuance Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
N00019-09-C-0065	7/2/2009	12/10/2009	6/16/2010	161	188	349
N00019-07-C-0035 - P00005	8/31/2007	7/17/2007	2/28/2008	Received before UCA award date	N/A	181
N00019-04-C-0005 - P00012	9/27/2004	1/28/2005	9/26/2005	123	241	364
N00019-04-C-0005 - P00099	8/6/2007	10/15/2007	3/21/2008	70	158	228
N00019-06-C-0096	3/22/2006	4/25/2006	6/14/2006	34	50	84
N00019-09-C-0086	12/23/2008	2/27/2009	5/11/2009	66	73	139
N00019-07-C-0057	8/22/2007	11/14/2007	6/30/2008	84	229	313
N00019-08-C-0046	6/30/2008	10/7/2008	3/18/2009	99	162	261
N00019-08-C-0067	8/28/2008	7/24/2008	12/18/2008	Received before UCA award date	N/A	112
N00019-06-G-0014 - 0010	2/1/2007	5/9/2007	3/31/2008	97	327	424
N00019-06-G-0014 - 0018	9/27/2007	10/26/07	7/2/2008	29	250	279
N00019-04-C-0014 - P00149	9/26/2007	6/15/2007	7/25/2008	Received before UCA award date	N/A	303
N00019-04-C-0014 - P00150	9/26/2007	7/19/2007	3/24/2008	Received before UCA award date	N/A	180
N00019-05-C-0030 - PU001	8/28/2006	7/19/2006	7/9/2007	Received before UCA award date	N/A	315
N00019-07-C-0040 - P00002	1/30/2008	4/10/2008	7/24/2008	71	105	176
N00019-08-C-0065	8/19/2008	12/5/2008	8/6/2010*	108	609	717
N00019-06-C-0086 - P00026	1/3/2008	4/2/2008	9/12/2008	90	163	253
N00019-08-C-0066	8/26/2008	1/22/2009	9/2/2010	149	588	737
N00019-04-C-3146 - P00139	8/26/2009	2/25/2010	8/13/2010	183	169	352
N00019-04-C-3146 - P00146	12/4/2009	1/26/2010	3/17/2011	53	415	468
N00019-04-C-0028 - P00036	7/20/2007	5/24/2007	2/8/2008	Received before UCA award date	N/A	203
N00019-05-D-0013 - 0031	11/21/2008	12/19/2008	4/29/2010	28	496	524

Appendix E. Definitization Elapsed Days for NAVAIR UCAs (cont'd)

NAVAIR Definitization Details for FY 2004─FY 2009

Contract Number, Delivery Order/Modification	Issuance Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
N00019-05-D-0013 - 0029-01	11/25/2008	9/16/2008	6/11/2009	Received before UCA award date	N/A	198
N00019-05-D-0013 - 0030-01	12/5/2008	9/16/2008	6/11/2009	Received before UCA award date	N/A	188
N00019-05-D-0013 - 0032-02	1/14/2009	9/16/2008	6/11/2009	Received before UCA award date	N/A	148
N00019-05-D-0013 - 0033	1/16/2009	9/16/2008	6/11/2009	Received before UCA award date	N/A	146
N00019-05-D-0013 - 0034	2/13/2009	9/16/2008	6/11/2009	Received before UCA award date	N/A	118
N00019-05-D-0013 - 0039	6/11/2009	7/23/2009	5/27/2010	42	308	350
N00019-05-D-0013 - 0042	10/15/2009	11/24/2009	6/4/2010	40	192	232
N00019-05-D-0008 - 0045-01	5/28/2009	6/18/2009	9/17/2009	21	91	112
N00019-05-D-0008 - 0046	5/1/2009	6/15/2009	3/3/2010	45	261	306
N00019-05-D-0008 - 0056	9/23/2009	10/5/2009	5/18/2010	12	225	237
N00019-05-D-0008 - 0060	12/30/2009	1/14/2010	6/15/2010	15	152	167
N00019-07-G-0008 - 0071	3/31/2009	6/17/2009	2/24/2010	78	252	330
N00019-07-G-0008 - 1000	3/27/2007	5/24/2007	9/14/2007	58	113	171
N00019-07-G-0008 - 1000-05	12/7/2007	1/16/2008	4/29/2008	40	104	144
N00019-04-C-0015	2/17/2004	5/28/2004	3/18/2005	101	294	395
N00019-04-C-0015 - P00008	1/31/2005	8/31/2004	3/18/2005	Received before UCA award date	N/A	46
N00019-05-C-0045	4/18/2005	6/2/2005	9/15/2005	45	105	150
N00019-05-C-0045 - P00005	12/14/2005	1/6/2006	8/8/2006	23	214	237
N00019-05-C-0045 - P00008	3/15/2006	3/15/2006	8/8/2006	Received before UCA award date	N/A	146
N00019-05-C-0045 - P00009	4/6/2006	4/3/2006	8/17/2006	Received before UCA award date	N/A	133

Appendix E. Definitization Elapsed Days for NAVAIR UCAs (cont'd)

NAVAIR Definitization Details for FY 2004─FY 2009

Contract Number, Delivery Order/Modification	Issuance Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
N00019-05-C-0045 - P00011	7/19/2006	7/12/2006	8/17/2006	Received before UCA award date	N/A	29
N00019-05-C-0011	10/20/2004	11/22/2004	4/27/2005	33	156	189
N00019-05-C-0011 - P00014	4/4/2006	3/30/2006	7/18/2006	Received before UCA award date	N/A	105
N00019-07-C-0030	2/5/2007	1/10/2007	5/16/2007	Received before UCA award date	N/A	100
N00019-07-C-0041	6/21/2007	4/13/2007	4/24/2008	Received before UCA award date	N/A	308
N00019-07-C-0041 - P00008	9/11/2008	5/28/2008	9/22/2009	Received before UCA award date	N/A	376
N00019-07-C-0041 - P00013	2/4/2009	12/19/2008	9/22/2009	Received before UCA award date	N/A	230
N00019-09-D-0015	12/30/2008	1/30/2009	4/1/2010	31	426	457
N00019-09-C-0026	12/23/2008	3/10/2009	9/30/2009	77	204	281
N00019-09-C-0004	11/3/2008	9/19/2008	9/24/2009	Received before UCA award date	N/A	325

[*] The UCA is undefinitized as of May 24, 2011, and is currently in the process of being terminated. We are using the date NAVAIR officially notified the contractor that the contract was going to be terminated as the definitization date to calculate the number of elapsed days since NAVAIR personnel are no longer trying to definitize the contract but rather terminate it.

Appendix F. Summary of Management Comments on the Finding and Our Response

The Deputy Assistant Commander for Contracts, NAVAIR, provided the following comments on the Finding. For the full text of the comments, see the Management Comments section of this report.

Naval Air Systems Command Comments on Authorization Deficiencies

The Deputy Assistant Commander for Contracts, NAVAIR, agreed that NAVAIR's policy and guidance were inconsistent, but stated that the current guidance has corrected the inconsistency.

Our Response

As stated in the report, we agree that current guidance now provides approval alternatives in the absence of the department head and did not consider a recommendation to be necessary.

Naval Air Systems Command Comments on Justification Deficiencies

The Deputy Assistant Commander for Contracts, NAVAIR, disagreed with our position on inadequate justifications. For the UCA issued on contract N00019-05-C-0030, the Deputy Assistant Commander for Contracts, stated that a delay in performance for the systems integration laboratory would result in the "President, Vice President, members of the President's Cabinet, and other dignitaries having to continue to fly in legacy aircraft with reduced performance and communications capability." The Deputy Assistant Commander for Contracts disagreed with our analysis that "seems to separate this DFARS language" into two requirements: (1) justification addressing why a UCA is necessary to meet the Navy's requirement and (2) addressing the need to begin performance before definitization and the potential adverse impacts to Navy requirements if a UCA is not issued. The Deputy Assistant Commander for Contracts stated that the distinction between these discrete requirements was unclear without a basis in regulatory language.

Our Response

For the UCA issued on contract N00019-05-C-0030, modification PU0001, we determined that this UCA was adequately justified as other documents in the contract file provided the justification for the need to issue a UCA to meet the Navy's requirement. However, we determined that this UCA was improperly authorized because the authorization request did not adequately state an adverse impact on the Government. NAVAIR personnel cited reduced capabilities in the authorization request, but did not explain why the current aircraft was inadequate. If the current aircraft could not provide the protection needed and upgrades were necessary, this adverse impact should have been

stated in the authorization request. Although we believe technology should be upgraded and improved continuously, we do not believe a UCA should be used unless the current technology can no longer meet the Government's needs.

DFARS Subpart 217.74, "Undefinitized Contractual Actions," contains two sets of requirements for issuing UCAs. DFARS Subpart 217.7403, "Policy," states that a UCA may be used only when the negotiation of a definitive contract is not possible to meet the Government's requirements and when the Government's interests demands that a binding commitment be in place for a contractor to begin performance immediately. We considered contract documentation in addition to the UCA authorization request to determine whether NAVAIR adequately justified why a UCA was necessary to meet the Navy's requirements. DFARS Subpart 217.7404-1, "Authorization," requires, as stated in the NAVAIR's comments, that the request for approval explain the need to begin performance, including addressing the adverse impacts from delays in beginning performance. We used this regulation to determine whether the authorization request fully addressed DFARS Subpart 217.7404-1 requirements.

Naval Air Systems Command Comments on Late Definitization and Profit Determination Deficiencies

The Deputy Assistant Commander for Contracts, NAVAIR, agreed with the late definization and profit determination statements.

Our Response

The Deputy Assistant Commander for Contracts' statement is in agreement with our late definitization and profit determination portions of the Finding.

Naval Air Systems Command Comments on Obligation Deficiencies

The Deputy Assistant Commander for Contracts, NAVAIR, disagreed with our position on some of the obligation deficiencies and stated that one UCA had excess obligations of 0.06 percent. He stated that for another UCA, the qualifying proposal was received in November 2008, and the contractor updated its proposal in March 2009. According to the Deputy Assistant Commander for Contracts, the November 2008 proposal was received before the award of the UCA, consequently the UCA would not have violated the 50 percent threshold established in 10 U.S.C. § 2326. He stated that NAVAIR provided documentation for contract N00019-05-D-0008, delivery orders 0045 and 0046, that showed obligations were aligned with the contractors' spend plans. He also provided a table for these two UCAs showing the amount obligated and the approximate date on which the funds obligated at award would be fully expended by the contractor.

Our Response

The draft report contained footnotes in Appendix D for contract N00019-04-C-0005 and the body of the report stated that obligations for that UCA were in excess of the allowable amount by less than one percent. For contract N00019-09-C-0026, we stated in the discussion draft report provided to NAVAIR that the November 2008 proposal was the

qualifying proposal. We received comments during the discussion draft phase from NAVAIR personnel stating that the March 2009 proposal was the qualifying proposal, not the November proposal. Because this conflicted with our information, we requested confirmation, and NAVAIR personnel again stated that the qualifying proposal was the March 10, 2009, proposal. Section 2326, Title 10, United States Code states:

> The term "qualifying proposal" means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

We accepted the March 10, 2009, proposal to be the qualifying proposal as stated by NAVAIR contracting personnel. In addition, contracting personnel provided contract documentation that stated that the March 2009 proposal was the proposal used for audits and negotiations.

For contract N00019-05-D-0008, delivery order 0046, the provided spend plan showed planned work to begin on April 1, 2009, which was before the issuance of the UCA. Because the UCA was issued after the planned beginning of work, we used the first 6 months (180 days) from the spend plan to determine whether NAVAIR obligated funds in excess of the contractor's needs. According to the spend plan, the contractor would have needed $5,599,744, within the first 6 months of performance. Contracting personnel obligated $6,607,555 at issuance. According to the spend plan provided by NAVAIR for contract N00019-05-D-0008, delivery order 0045; the contractor would have needed $958,849 for work during the first 6 months of performance. Contracting personnel obligated $1,106,381 at issuance. The contractor's needs for the planned undefinitized period for both UCAs were lower than the funds obligated at issuance of the UCAs.

Naval Air Systems Command Comments

THE ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

MAY 2 2011

MEMORANDUM FOR DEPARTMENT OF DEFENSE - INSPECTOR GENERAL
ARLINGTON, VIRGINIA

SUBJECT: Response to Department of Defense Inspector General (DoDIG) Draft Report Regarding Naval Air Systems Command Use of Undefinitized Contract Actions

Reference: (a) DoDIG Report, D-2009-D000CG-0248.003, "Additional Actions Can Improve Naval Air Systems Command's Use of Undefinitized Contractual Actions", dated 23 March 2011

Reference (a) is the draft audit report forwarded for Department of the Navy (DoN) review and comment. The attached document provides the DoN response to the draft report.

If you have any questions pertaining to this memo or its attachment, please refer them to [redacted]

Sean J. Stackley

Attachment:
1. Response to the Subject Draft Report

Naval Air Systems Command Comments

DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
RADM WILLIAM A. MOFFETT BUILDING
47123 BUSE ROAD, BLDG 2272
PATUXENT RIVER, MARYLAND 20670-1547

IN REPLY REFER TO

4200
Ser AIR-2.1.1.3/021-11

APR 18 2011

MEMORANDUM

From: AIR-2.0
To: AIR-00G

Subj: RESPONSE TO DODIG DRAFT REPORT ON USE OF UNDEFINITIZED CONTRACTUAL ACTIONS (D2009-D000CG-0248.003)

Ref: (a) AIR-00G4 email of 30 Mar 11 forwarding draft report for review and comment

Encl: (1) NAVAIR response to DODIG Draft Report on Use of Undefinitized Contractual Actions

1. As requested by reference (a), AIR 2.0 has reviewed the draft audit report. Enclosure (1) contains the comments which resulted from this review.

J. T. PALMER
Deputy Assistant Commander
for Contracts

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT ON
"ADDITIONAL ACTIONS CAN IMPROVE NAVAL AIR SYSTEMS COMMAND'S USE OF UNDEFINITIZED CONTRACTUAL ACTIONS"
D2009-D000CG-0248.003, DATED 23 MARCH 2011

Finding 1: Inconsistent Management of Undefinitized Contractual Actions

NAVAIR contracting personnel did not consistently comply with statutory and DoD requirements for managing 36 of the 52 UCAs we reviewed. For the 36 UCAs, valued at about $1.2 billion, NAVAIR personnel did not:

- adequately prepare authorization requests to issue 7 UCAs because NAVAIR Instructions did not define UCA approval delegations in the absence of the authorized approving official and did not adequately describe the need to begin performance before definitization and the adverse impact on Navy requirements;
- properly justify the issuance of 4 UCAs because they did not adequately describe why a UCA was necessary to meet the Navy's requirements;
- definitize 29 UCAs within the 180-day time frame because of multiple contributing factors that included a lack of contracting personnel to complete definitization, contractors not submitting adequate proposals in a timely manner, or Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA. The contractors' proposal pricing updates and extended contract negotiations with Government personnel also impacted NAVAIR contracting personnel's ability to definitize UCAs within the required time frames;
- adequately support all required elements of profit determinations for 5 UCAs because the business clearance memorandum did not include sufficient support that would allow an independent party to determine if the contracting officer's consideration of reduced cost risk was reflected in profit objectives or the inputs used to develop the profit objective; and
- obligate funds within allowable limits for 3 UCAs because they miscalculated the allowable obligation amount and did not obligate funds in accordance with the contractor's proposed requirements for 7 of 22 UCAs issued after the August 2008 DPAP memorandum because they did not take steps to comply with the August 2008 DPAP memorandum.

However, NAVAIR contracting personnel adequately documented their determination of price reasonableness for all 50 definitized UCAs, but they did not always adequately document their determination of profit as discussed in the report.

As a result, NAVAIR officials' positions in price negotiation and award may have been weakened, and delays in definitizing contracts may have increased the cost to the Government. Additionally, the Government may have paid excess profit to the contractors because NAVAIR contracting officials did not adequately document allowable profit.

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NAVAIR Response: *Partially Concur. NAVAIR's commitment to the effective and adequate management of UCAs remains strong. Each DoDIG bullet related to finding 1 follows with NAVAIR's rationale for partial concurrence.*

- ***DoDIG: NAVAIR did not adequately prepare authorization requests to issue 7 UCAs because NAVAIR Instructions did not define UCA approval delegations in the absence of the authorized approving official and did not adequately describe the need to begin performance before definitization and the adverse impact on Navy requirements***

NAVAIR Response: *It is factual that previous NAVAIR policy and guidance identifying authorized UCA approving officials was inconsistent. However, this inconsistency has been formally corrected. All current NAVAIR guidance consistently states that any SES within the contracts competency (versus only the "cognizant" SES) has authority to approve UCA requests.*

- ***DoDIG: NAVAIR did not properly justify the issuance of 4 UCAs because they did not adequately describe why a UCA was necessary to meet the Navy's requirements***

NAVAIR Response: *With regard to the UCAs identified as either having insufficient documentation or insufficient justification, in many of these cases, the Certificate of Urgency (COU) and/or information in the contract file adequately justified the decision to issue a UCA. For example, the draft report cites UCA number 14 (N00019-05-C-0030) as one in which the UCA request did not adequately address the adverse impacts on Navy requirements if a UCA was not issued. NAVAIR believes that the COU did address the adverse impacts of delaying performance. The COU clearly states that the need for the systems integration laboratory ("SIL") was critical to the VH-71 flight test program and that without the SIL, significant delays would be realized in the program's schedule and most notably, to the program's Initial Operational Capability (IOC) milestone date. Such a delay would result in the President, Vice-President, members of the President's Cabinet, and other dignitaries having to continue to fly in legacy aircraft with reduced performance and communications capability. NAVAIR views this as adequate justification to address the adverse impact statement of the COU. Moreover, DoD IG's assessments in these areas discount the somewhat subjective nature of the relevant DFARS language (217.7404-1(a)), which states: "[t]he request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance." The term "adverse impact" is not further defined. Finally, DODIG's analysis seems to separate this DFARS language into two separate requirements: (1) that a UCA authorization request must include justification addressing why a UCA is necessary to meet the Navy's requirement(s); and (2) a statement addressing the need to begin performance before definitization and the potential adverse impacts to Navy requirements if a UCA is not issued. Without a basis in DFARS or other regulatory language, the distinction between these discrete requirements remains unclear.*

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- ***DoDIG:*** ***NAVAIR did not definitize 29 UCAs within the 180-day time frame because of multiple contributing factors that included a lack of contracting personnel to complete definitization, contractors not submitting adequate proposals in a timely manner, or Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA. The contractors' proposal pricing updates and extended contract negotiations with Government personnel also impacted NAVAIR contracting personnel's ability to definitize UCAs within the required time frames***

NAVAIR Response: *This statement is accurate.*

- ***DoDIG:*** ***NAVAIR did not adequately support all required elements of profit determinations for 5 UCAs because the business clearance memorandum did not include sufficient support that would allow an independent party to determine if the contracting officer's consideration of reduced cost risk was reflected in profit objectives or the inputs used to develop the profit objective***

NAVAIR Response: *This statement is accurate.*

- ***DoDIG :*** ***NAVAIR did not obligate funds within allowable limits for 3 UCAs because they miscalculated the allowable obligation amount and did not obligate funds in accordance with the contractor's proposed requirements for 7 of 22 UCAs issued after the August 2008 DPAP memorandum because they did not take steps to comply with the August 2008 DPAP memorandum***

NAVAIR Response: *In two cases (UCA Numbers 30 and 31), NAVAIR provided documentation clearly establishing that obligations aligned with the contractors' spend plans (see table below). In another case, (UCA 3), NAVAIR's actual "excess" obligation was 0.06%, or six one hundredths of a percent. Finally, in another case (UCA 51), the draft report states "NAVAIR contracting personnel initially obligated funding for the UCA at 67 percent of the NTE value prior to receipt of the contractor's qualifying proposal, violating the 50 percent threshold limitation established in 10 U.S.C. § 2326." However, a qualifying proposal was received prior to UCA award. Specifically, NAVAIR received the qualifying proposal in November 2008 and awarded the UCA on 23 December 2008. The contractor subsequently updated its proposal in March 2009, prior to definitization.*

UCA #	Contract	DO	Issue Date	UCA NTE	UCA Obligation (% of NTE)	Forecast Expenditure *	Forecast Definitization **
30	N00019-05-D-0008	45	5/28/09	$ 2,212,762	$1,106,381 (50%)	12/1/09	11/24/09
31	N00019-05-D-0008	46	5/1/09	$13,484,806	$6,607,555 (49%)	10/1/09	10/28/09

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* Per the contractor's pre-award spend plan, this is the approximate date on which the funds obligated at UCA award would be fully expended by the contractor, resulting in a stop-work.
** 180 days from date of UCA award.

Recommendation 1: Commander, Naval Air Systems Command:

a. Require that Naval Air System Command personnel better coordinate between departments to identify changes in Government requirements as soon as practicable and document changes in the contract file.

b. Update Naval Air Systems Command's Instruction 4200.33D, "Undefinitized Contract Actions," to include guidance on how contracting personnel can document their consideration of reduced risk to the contractor's profit or fee when definitizing undefinitized contractual actions.

NAVAIR Response:

Recommendation 1a: *Partially concur. NAVAIR's existing PID instruction NAVAIRINST 4200.37B ("Procurement Initiation Document (PID) Process") requires careful planning and requirements identification. Moreover, NAVARINST 4200.33D, "Undefinitized Contract Actions" addresses policy and procedures for urgent issues that cannot be anticipated in advance. While NAVAIR has the controls in place to effectively manage UCAs, our unique mission often involves unplanned changes due to budget constraints and other unforeseen variables. No later than 30 June 2011, AIR 2.0 will issue a communiqué to remind the workforce of the importance of planning and identifying changing requirements as soon as possible and documenting them in the contract file. In addition, no later than 30 July 2011, NAVAIR will complete its draft of the required update to NAVAIRINST 4200.33D to include a requirement to clearly document changes to UCA requirements in the contract file, with the goal of having the update to the instruction approved and finalized by 30 October 2011.*

Recommendation 1b: *Partially concur. Two current NAVAIR instructions provide the required guidance relative to profit. Collectively, NAVAIRINST 4200.33D, Undefinitized Contract Actions and the Contracts Competency Instruction (CCI) 4200.30H, Business Clearance Review and Approval Process emphasize the importance of documenting reduced cost risk in the profit/fee analysis for the pre-definitization performance and the post-definitization performance. NAVAIRINST 4200.33D, paragraph 4j, cites the DPAP memo of 29 Aug 2008 as reference (c), and requires "when the final price of a UCA is negotiated after a substantial portion of the performance has been completed, the profit analysis in the price negotiation memorandum (i.e., business clearance) and the weighted guidelines must document reduced cost risk in the assignment of allowable profit factors in establishing negotiation objectives for the*

final price." Consequently, the NAVAIR business clearance instruction, CCI 4200.30H, paragraph 8, Profit/Fee Analysis, stipulates "When definitizing a UCA, address the reduced cost risk associated with costs incurred prior to negotiation of the final price and the reduced cost risk for the remainder of the contract (DFARS 217.7404-6)."

While the instructions clearly state the requirements, as evidenced by the findings and recommendations included in this audit, this area needs reinforcement. No later than 30 June 2011, AIR 2.0 will issue a communiqué to the contracting workforce detailing the requirements for contracting personnel to document their consideration of reduced risk to the contractor's profit or fee when definitizing undefinitized contractual actions.

Recommendation 2: Assistant Commander for Contracts, Naval Air Systems Command:

a. Develop procedures to avoid issuing undefinitized contractual actions with authorization requests that do not clearly:

(1) State the need to begin performance before definitization and the adverse impact on Navy requirements.

(2) Justify why a undefinitized contractual action is necessary to meet the Navy's requirements.

b. Enforce Defense Federal Acquisition Regulation Supplement Subpart 217.74, "Undefinitized Contract Actions," and Naval Air Systems Command's Instruction 4200.33D, "Undefinitized Contract Actions," to suspend or reduce payments to the contractor for untimely proposals.

c. Update Naval Air Systems Command Instruction 4200.30H, "Business Clearance Memorandum (BCM) Review and Approval Process," with requirements for contracting personnel to include in the profit section of the business clearance memorandum: incurred costs, contract type risk used for both the undefinitized period and the remainder of the contract, and the impact of the undefinitized period on the contractor's profit or fee. In addition, include guidance for contracting personnel to document and discuss the inputs made to the contract type risk portion of the DD Form 1547, "Record of Weighted Guidelines Application."

d. Require contracting personnel to avoid obligating funds to the maximum amount allowable for all undefinitized contractual actions so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

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NAVAIR Response:

Recommendation 2a: *Partially Concur. NAVAIRINST 4200.33D requires, documentation of the rationale for the UCA, following DFARS 217.7404-1 if there is not time to fully price the contract action before award. The COU must: (a) fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance; (b) show that inclusion of non-urgent items, if applicable, is consistent with good business practices and in the best interest of the government when including a requirement for non-urgent spare parts and support equipment in a UCA; and,(c) show, if modifying the scope of a UCA when performance has already begun, that the modification is consistent with good business practices and in the best interest of the government. Responsibility for adequately documenting the urgency is with the program office personnel and is approved by the PEO.*

The COU portion of NAVAIR Form 4200/1 is reviewed by contracts competency personnel for compliance with documentation requirements of DFARS 217.7404-1 and to determine if a UCA is required to meet the required delivery date. Approval of a contracts competency department head (or a NAWC chief of the contracting office at field sites) to use a UCA to meet the required delivery date is documented on the bottom of NAVAIR Form 4200/1 and represents the final approval to begin processing a UCA as the contractual vehicle.

While the UCA instruction and associated enclosures address these areas, based on findings and recommendations it is evident that this area requires reinforcement. No later than 30 June 2011, AIR-2.0 will issue a communiqué outlining the process and substantive requirements for UCA authorization requests. In addition, no later than 30 July 2011, NAVAIR will complete its draft of the required update to the COU form to more clearly articulate requirements, with the goal of having the update to the form approved and finalized by 30 October 2011.

Recommendation 2b: *Partially concur. While this recommendation constitutes a valid means of incentivizing timely receipt of contractor proposals, federal regulations state that the decision whether to employ these methods is ultimately at the discretion of the PCO. Specifically, DFARS 217.7404-3(b) states: "[i]f the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action." NAVAIRINST 4200.33D also states that progress payments may be reduced or suspended as one possible means to elicit more timely submission of proposals. No later than 30 June 2011, AIR 2.0 will send a communiqué to the workforce as a reminder of this possible measure that may be taken by Contracting Officers.*

Recommendation 2c: *Concur. No later than 30 September 2011, AIR 2.0 will update the templates provided as enclosures to CCI 4200.30H, "Business Clearance Memorandum (BCM) Review and Approval Process," with requirements for contracting personnel to include in the profit section of the business clearance memorandum: incurred costs,*

contract type risk used for both the undefinitized period and the remainder of the contract, and the impact of the undefinitized period on the contractor's profit or fee. Please note that CCI 4200.30H, paragraph 8, states that "when definitizing a UCA, address the reduced cost risk associated with cost incurred prior to negotiation of the final price and the reduced cost risk for the remainder of the contract (DFARS 217.7404-6)." While this information is currently included in the instruction, AIR 2.0 will update the templates to clarify.

Moreover, October 2009 changes to the Weighted Guidelines Tool will also ensure that contractor risk and profit are adequately considered and documented. As of that date, the Weighted Guidelines "Help" feature provides information regarding UCAs. The on-line Weighted Guidelines Tool has been updated with a UCA Block, in accordance with DFARS 215.404-17-3(d)(2).

***Recommendation 2d**: Concur. NAVAIR will re-emphasize existing guidance requiring supporting data (e.g. spend plans) to justify the amounts obligated on UCAs no later than 30 JUN 2011.*

Inspector General
Department of Defense