Report No. DODIG-2012-125 September 11, 2012

Inspector General
United States Department of Defense

Inappropriate Leasing for the General Fund Enterprise Business System Office Space

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Acronyms

ACA	Army Contracting Agency
ACC	Army Contracting Command
ACC-NCR	Army Contracting Command–National Capital Region Contracting Center
ADA	Antideficiency Act
ASA(ALT)	Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
COR	Contracting Officer's Representative
GFEBS	General Fund Enterprise Business System
GSA	General Services Administration
NCR	National Capital Region
O&M	Operation and Maintenance
OGC	Office of General Counsel
PEO EIS	Program Executive Office Enterprise Information Systems
RDT&E	Research, Development, Test, and Evaluation
U.S.C.	United States Code
WHS	Washington Headquarters Services

INSPECTOR GENERAL
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September 11, 2012

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Report No. DODIG-2012-125)

We are providing this report for your information and use. Program Executive Office Enterprise Information Systems personnel circumvented congressional and DoD oversight of leased space when the contracting officer inappropriately modified the General Fund Enterprise Business System contract to include leased office space. As a result, the Army incurred $23.6 million in improper lease payments, and inappropriately used at least $4.7 million in Research, Development, Test, and Evaluation funds for building modifications associated with the Kingstowne, VA office space. We considered management comments on a draft of this report when preparing the final report. The Army comments conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8938.

Richard B. Vasquez, CPA
Acting Assistant Inspector General
Financial Management and Reporting

Results in Brief: Inappropriate Leasing for the General Fund Enterprise Business System Office Space

What We Did

We performed this audit to determine whether the Army properly modified the General Fund Enterprise Business System (GFEBS) contract to include funding for leased space for the GFEBS Project Office. In addition, we determined whether the Army appropriately funded the modifications.

What We Found

The Army inappropriately modified the GFEBS contract to obtain and modify leased space for the Kingstowne, Virginia, office. Specifically, the GFEBS contracting officer improperly entered into an agreement with the contractor to lease office space in the National Capital Region for GFEBS program personnel.

This occurred because the GFEBS contracting officer approved the addition of the leased space to the GFEBS contract without first making sure that Program Executive Office Enterprise Information Systems (PEO EIS) personnel met all legal requirements.

As a result, PEO EIS personnel circumvented congressional and DoD oversight processes for leased office space, resulting in the authorization of $23.6 million in improper payments. Also, the U.S. Government potentially lost approximately $0.5 million in interest when the GFEBS contracting officer's representative authorized payments of the lease in advance.

In addition, GFEBS personnel inappropriately authorized $5.5 million in annual Operation and Maintenance funds for lease payments for the Kingstowne office. Further, PEO EIS personnel violated Section 2353 "Contracts: Acquisition, Construction, or Furnishing of Test Facilities and Equipment," Title 10, United States Code, when they used at least $4.7 million in Research, Development, Test, and Evaluation funds for building modifications to the Kingstowne office space. As a result of inappropriately authorizing Operation and Maintenance funds and using funding for purposes other than those authorized, GFEBS and PEO EIS personnel may have violated the Antideficiency Act (ADA).

What We Recommend

Army Acquisition and Logistics officials should coordinate with their General Counsel and DoD General Counsel to determine the legal effects of the inappropriate lease and determine whether any additional potential ADA violations have occurred.

PEO EIS officials should obtain ratification of the contract by the General Services Administration. If not ratified, the Secretary of the Army should take appropriate action to resolve the improper payments.

Army Contracting executives should require that contracting officers maintain documentation authorizing the lease before awarding DoD contracts for the leasing of office space in the National Capital Region.

Army Comptroller officials should report and initiate a review of the potential ADA violations.

Management Comments and Our Response

Army management agreed with our recommendations. We considered their comments to be responsive. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Assistant Secretary of the Army (Acquisition, Logistics, and Technology)		A.1
Deputy Assistant Secretary of the Army (Financial Operations), Office of the Assistant Secretary of the Army (Financial Management and Comptroller)		B.1.a, B.1.b, B.2, B.3
Program Executive Officer, Enterprise Information Systems		A.2
Executive Director, Army Contracting Command–National Capital Region Contracting Center		A.3

Table of Contents

Introduction 1

Audit Objectives 1
Background 1
Review of Internal Controls 3

Finding A. Army Inappropriately Modified the GFEBS Contract to Include Leased Space 4

Improper Leasing of Office Space 4
Contracting Officer Did Not Ensure Compliance With Legal Requirements 6
Circumvention of Oversight and Improper Payments Made 6
Recommendations, Management Comments, and Our Response 9

Finding B. Potential ADA Violations for Lease Payments and Building Modifications for the Kingstowne Office 11

O&M Funds Not Available for Lease Expenses 11
Use of RDT&E Funds 12
Potential Antideficiency Act Violations 12
Recommendations, Management Comments, and Our Response 13

Appendix. Scope and Methodology 15

Prior Coverage on Inappropriate Leasing Arrangements 15

Management Comments
Assistant Secretary of the Army (Acquisition, Logistics, and Technology) 16
Deputy Assistant Secretary of the Army (Financial Operations) 18
Army Contracting Command – National Capital Region 20

Introduction

Audit Objectives

Our objective was to determine whether the Army properly modified the General Fund Enterprise Business System (GFEBS) contract to include funding for leased space for the GFEBS Project Office. In addition, we determined whether the Army appropriately funded the modifications. See the Appendix for a discussion of the scope and methodology and prior audit coverage on inappropriate leasing arrangements.

Background

GFEBS is a Web-based system that allows the Army to share financial and accounting data across the Service. With more than 50,000 end users at nearly 200 Army financial centers around the world, when fully implemented, GFEBS will be one of the world's largest enterprise financial systems. As GFEBS replaces many, largely incompatible, legacy accounting and financial management systems, it will eventually enable the Army to manage $140 billion in spending by the Active Army, Army National Guard, and Army Reserves.

The primary goal of GFEBS is to capture transactions and provide reliable data to enable Army leadership to make better decisions in support of the warfighting capability. According to the Army, GFEBS will bring significant change by providing new ways to collect business and financial information; providing enhanced ways to conduct financial analysis; and enabling improved capabilities for the delivery of financial services, accounting processes, asset management, budgeting, and cost management.

GFEBS Contract Requirements

On June 28, 2005, the Army Contracting Agency (ACA) awarded task order D001 under contract N00104-04-A-ZF12 (GFEBS contract) to Accenture, LLP (contractor) for the development, implementation, and operation of GFEBS. The GFEBS contract required the contractor, as the system integrator, to establish an office for the GFEBS program management within 10 miles of Fort Belvoir, Virginia. It required the facility to be able to accommodate 50 personnel (40 GFEBS Project Office personnel and 10 temporary working spaces). Personnel at this location would perform program management oversight efforts and development and test efforts for GFEBS.

The GFEBS contract also required the Army to provide a GFEBS project office at or near the Defense Finance and Accounting Service Indianapolis facility. The majority of the business process reengineering work was to be performed at this Indianapolis GFEBS project office. The Indianapolis GFEBS project office was to accommodate up to 150 GFEBS personnel (U.S. Government, U.S. Government support contractor, and system integrator personnel). According to Program Executive Office Enterprise Information Systems (PEO EIS) personnel, GFEBS personnel were notified in January 2006 that space for the Indianapolis GFEBS project office would no longer be

available as a result of the Base Realignment and Closure project. As a result, the Army attempted to consolidate 532 GFEBS personnel, which included an additional 332 system integrator personnel, into a facility on Fort Belvoir. However, Fort Belvoir Installation Management Command personnel stated that because of timeframes, cost, and environmental issues, the Deputy Assistant Secretary of the Army for Budget did not approve the relocation to Fort Belvoir.

GFEBS Contract Modification

After the Army's unsuccessful attempt to obtain space, the GFEBS contracting officer modified the GFEBS contract, on September 6, 2006, to require that the contractor provide space for the colocation of the 532 GFEBS personnel. The modification expanded the scope of the GFEBS contract to include a one-time $12 million "build out" of the leased space and $13.1 million[1] in lease payments. To meet the requirements, the contractor obtained three floors of general office use space, totaling 79,845 square feet, in a building in Kingstowne, Virginia (Kingstowne office). The business process reengineering work, originally to be performed at the Defense Finance and Accounting Service Indianapolis facility, would be performed at this location, along with program management oversight and development and test efforts.

Army Roles and Responsibilities

Army Contracting Command–National Capital Region Contracting Center

ACA originally awarded the GFEBS contract. However, in October 2008, the Army established the Army Contracting Command (ACC) and realigned the responsibilities and functions of the ACA under ACC. One element under ACC is the National Capital Region Contracting Center (ACC-NCR), which is responsible for establishing contracts to acquire information technology products and services for the Army. Accordingly, ACC-NCR is responsible for the administration of the GFEBS contract. Therefore, only the ACC-NCR-appointed contracting officer for GFEBS (GFEBS contracting officer) may modify the GFEBS contract.

Army Program Executive Office Enterprise Information Systems

The Army PEO EIS provides infrastructure and information management systems to the Army by developing, acquiring, and deploying tactical and management information technology systems and products and is a core customer of the ACC. PEO EIS personnel manage all technical and acquisition aspects of the GFEBS program, including oversight of this program.

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[1] The contractor proposed this amount for the first 5 years of the lease.

GFEBS Program Manager

The GFEBS Program Manager is responsible for the management of the GFEBS program. The GFEBS Program Manager has overall responsibility for planning, programming, budgeting, and execution of funds through the life of the GFEBS program.

Review of Internal Controls

DoD Instruction (DoDI) 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006,[2] 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 an internal control weakness within the Army. Specifically, the GFEBS contracting officer did not ensure that PEO EIS personnel met all legal requirements before approving the addition of the lease to the GFEBS contract. We will provide a copy of the report to the senior official responsible for internal controls in the Department of the Army.

[2] This guidance has been superseded by DoDI 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010; however the updated version was not in effect when the leasing arrangements were made.

Finding A. Army Inappropriately Modified the GFEBS Contract to Include Leased Space

The Army inappropriately modified the GFEBS contract to obtain and modify leased space for the Kingstowne office. Specifically, the GFEBS contracting officer improperly entered into an agreement with the contractor to lease office space in the NCR for GFEBS program personnel. This occurred because the GFEBS contracting officer approved the addition of the leased space to the GFEBS contract without first making sure that PEO EIS personnel met all legal requirements. As a result, PEO EIS personnel circumvented congressional and DoD oversight processes for leased space, resulting in the authorization of $23.6 million[3] in improper payments for the Kingstowne office. In addition, the U.S. Government potentially lost approximately $0.5 million in interest when the GFEBS contracting officer's representative (COR) authorized payments of the lease in advance.

Improper Leasing of Office Space

The Army did not have authority to modify the GFEBS contract to lease space in the NCR for the Kingstowne office. Specifically, the GFEBS contracting officer entered into an agreement with the contractor to lease office space for GFEBS program personnel. Federal Acquisition Regulation 1.602, "Contracting Officers," states that the contracting officer is responsible for ensuring that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met before entering into a contract. However, PEO EIS personnel did not get leasing authority, as required by DoDI 5305.5, "Space Management Procedures, National Capital Region," June 14, 1999, before the GFEBS contracting officer modified the contract to lease and modify the Kingstowne office.

PEO EIS personnel stated they took action to address the inappropriate lease arrangement after the Under Secretary of Defense for Acquisition, Technology, and Logistics issued the memorandum, "Leasing Office Space," March 21, 2007. This memorandum restated earlier guidance that only the General Services Administration (GSA) or the Washington Headquarters Services (WHS) has authority to lease office space in the NCR, unless otherwise authorized by statute or delegation. PEO EIS personnel stated they worked through the responsible offices to determine how to move the GFEBS personnel out of the leased space after the issuance of the memorandum. The GFEBS COR indicated that the U.S. Government personnel assigned to the GFEBS program would move into GSA-controlled office space in December 2012. PEO EIS personnel submitted a formal space request in September 2009. PEO EIS personnel stated the space request took longer than expected because of the significant coordination required to develop the final

[3] This amount represents $8.2 million in payments made for the building modifications, $12.7 million for the initial 5 years of the lease, and $2.7 million for an additional year of the lease. The amounts paid for the building modifications and the initial 5 years of the lease were less than the amounts originally proposed.

way forward. They indicated they did not receive approval for their space request until May 2011 because of a lengthy approval process. PEO EIS personnel also stated that they were not immediately authorized to occupy the approved space due to higher priority moves for other entities.

Lack of Authority to Obtain Leased Space

The GFEBS contracting officer modified the GFEBS contract to include $13.1 million for leased space in the NCR, without PEO EIS personnel obtaining required statutory approval to initiate the lease.

> *The GFEBS contracting officer modified the GFEBS contract to include $13.1 million for leased space in the NCR, without PEO EIS personnel obtaining required statutory approval to initiate the lease.*

DoDI 5305.5 establishes policies and procedures for the acquisition and construction of leased space within the NCR and requires agencies to provide a request for space in the NCR to WHS. This Instruction implements DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001, in which the Secretary of Defense assigned WHS the responsibility for acquiring administrative space through GSA for all DoD Components seeking a location in the NCR. Under Section 301, "Establishment," Title 40, "Public Buildings, Property, and Works," United States Code (40 U.S.C. § 301), GSA assumed all functions related to acquiring leased space for Federal agencies. GSA may delegate the authority to lease space; however, PEO EIS personnel did not obtain a delegation of authority from GSA. Therefore, without the GSA delegation of authority, the GFEBS contracting officer should not have modified the contract to include the leased office space.

Lack of Authority to Modify Leased Space

The GFEBS contracting officer modified the GFEBS contract to include $12 million in building modifications, although PEO EIS personnel did not have authority to authorize building modifications for the leased space. The building modifications included facilities services operations, construction, construction operations, furniture, information technology installation, and information technology operations. DoDI 5305.5 states that agencies must submit requests for building modifications estimated to cost over $25,000 to WHS for review and approval. This Instruction also requires that these requests for building modifications in temporary or leased buildings be made on a strictly limited basis. In addition, 10 U.S.C. § 2353(b), "Contracts: Acquisition, Construction, or Furnishing of Test Facilities and Equipment," restricted the installation or construction of facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value on property not owned by the U.S. Government.

Support for the contract modification identified the acquired space for the Kingstowne office as being in "shell condition," with only the main air ducts and sprinkler lines completed. The lease agreement between the contractor and the property owner stated that at the end of the lease agreement, alterations of any kind to the premises would become part of the property and belong to the property owner. WHS personnel stated

that they did not recall speaking with PEO EIS personnel regarding GFEBS office space and had no records indicating that any discussions or requests for space occurred. Therefore, PEO EIS did not obtain authority for the building modifications, and the GFEBS contracting officer should not have modified the contract to include the building modifications.

Contracting Officer Did Not Ensure Compliance With Legal Requirements

The GFEBS contracting officer inappropriately modified the GFEBS contract because she did not ensure that PEO EIS personnel met all legal requirements before approving the addition of the leased space to the GFEBS contract. The Attorney Advisor for the ACA[4] legal office informed the GFEBS contracting officer that the Army

> may not lease, but [it] may pay a contractor for its cost of performance. Thus, to the extent that lease costs are a valid cost of performance and reasonable, [it] may pay them. In this case, there is the added circumstance that [it] need[s] to be co-located for effective performance with the contractor to have the cost of providing space be regarded as a valid cost of performance.

However, this opinion did not provide legal authority for the Army to lease through a third party. Under 40 U.S.C. § 301, GSA has the responsibility for acquiring leased space for Federal agencies. Without specific legal authority, the GFEBS contracting officer should not have modified the contract to include the Kingstowne office. To mitigate the risk of this happening again, ACC-NCR should require that the contracting officers maintain documentation authorizing the lease before awarding DoD contracts for the leasing of office space in the NCR. We are not making a recommendation to review actions taken by the GFEBS contracting officer because she has retired.

Without specific legal authority, the GFEBS contracting officer should not have modified the contract to include the Kingstowne office.

Circumvention of Oversight and Improper Payments Made

PEO EIS personnel circumvented congressional and DoD oversight processes for leased office space, resulting in the authorization of $23.6 million in improper payments for the Kingstowne office space. In addition, the U.S. Government potentially lost approximately $0.5 million in interest when the GFEBS COR authorized payments of the lease in advance.

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[4] As previously discussed, ACC subsumed ACA in 2008.

PEO EIS Circumvented Congressional and DoD Oversight

PEO EIS personnel circumvented congressional and DoD oversight processes for leased office space by not following the procedures established in DoDI 5305.5. This Instruction incorporates the requirements of 40 U.S.C. § 3307, "Congressional Approval of Proposed Projects," which establishes thresholds that apply to construction, alteration, purchase, and acquisition of any building Federal agencies use as a public building, and to lease any space for use for public purposes. Congress must approve any proposed lease or building modifications that exceed the thresholds, and only GSA may request this approval. GSA establishes the threshold amounts annually. For FY 2006, the average annual lease threshold was $2.4 million, and the building modification threshold was $1.2 million.

The proposed annual lease amounts for the Kingstowne office space averaged $2.6 million, which exceeded the $2.4 million average annual lease threshold. See Table 1 for the proposed lease payment information.

Table 1. Proposed Annual Lease

Lease Period	**Proposed Annual Lease Amount** (in millions)
Year 1–2007	$2.8
Year 2–2008	2.6
Year 3–2009	2.1
Year 4–2010	2.8
Year 5–2011	2.7
Total	**$13.1***
Average Annual Lease	**$2.6**

***Total does not sum because of rounding.

In addition, the proposed building modification amounts included $8.9 million of construction and construction operation costs, which far exceeded the $1.2 million threshold. Since the proposed amounts exceeded the established GSA thresholds, the lease and building modifications required congressional approval.

Authorization of Improper Payments

The GFEBS COR authorized $23.6 million in improper payments for the Kingstowne office space. Specifically, he authorized payments of $15.4 million for the lease and $8.2 million for building modifications. According to the "Improper Payments Information Act of 2002" (31 U.S.C. § 3321), an improper payment includes any payments that should not have been made under statutory, contractual, administrative, or other legally applicable requirements, or payments made for an ineligible service.

Without a delegation from GSA to enter into a lease, PEO EIS personnel did not have the authority to obtain office space for the GFEBS program through a lease. According to 31 U.S.C. § 1501, "Documentary Evidence Requirement for Government Obligations" (the Recording Statute), an amount may not be recorded for obligation unless, among other things, it has a binding agreement for a purpose authorized by law. Because PEO EIS personnel did not have the authority to enter into a lease, they were not authorized by law to record the obligation of the funds associated with the lease. PEO EIS personnel also violated 31 U.S.C. § 1502(a), "Balances Available" (the Bona Fide Needs rule), which requires that the payment of expenses are only permitted when obligated consistent with the Recording Statute. Because the funds associated with the lease were not authorized by law, the payments for the lease and building modifications were improper. Because of the violations of the Recording Statute and the Bona Fide Needs rule, the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA[ALT]) should coordinate with its General Counsel and the DoD General Counsel Deputies (Fiscal) and (Acquisition and Logistics) to determine the legal effects of the inappropriate lease and whether any potential Antideficiency Act (ADA) violations have occurred and provide the Inspector General with the results.

Because the funds associated with the lease were not authorized by law, the payments for the lease and building modifications were improper.

Unless ratified by GSA, the agreement for the Kingstowne office space is unenforceable against the U.S. Government. PEO EIS personnel cannot circumvent Federal statutory and regulatory requirements on leasing by incorporating the lease agreement into the GFEBS contract. PEO EIS should coordinate with WHS to obtain GSA ratification of the contract. Without ratification, all payments made under this lease arrangement are improper, and the Secretary of the Army should take appropriate action to resolve the improper payments, such as recovering the funds.

Monetary benefits will be determined based on any collections the Army makes as a result of its review of the improper payments. We plan to track monetary benefits during the audit followup process.

Interest Lost by U.S. Government

The U.S. Government potentially lost approximately $0.5 million in interest when the GFEBS COR authorized payments of the lease in advance. Instead of making monthly payments for the lease, the GFEBS COR authorized payment of an entire lease period (12 or 24 months) in a single advance payment to the contractor. However, the lease between the contractor and the property owner stipulated that lease payments to the property owner be made monthly. Since the COR authorized payment of the lease amounts in advance, the U.S. Government lost the interest it may have earned if the funds had remained with the U.S. Treasury. Table 2 illustrates the potential interest lost on the lease payments.

Table 2. Potential Interest Lost

Lease Period	Month Paid	Amount Paid (in millions)	Interest Lost* (in millions)
January 2007–December 2008	January 2007	$5.1	$0.2
January 2009–December 2010	February 2008	4.7	0.3
January 2011–December 2011	March 2010	2.8	0
January 2012–December 2012	July 2011	2.7	0
Total		**$15.4****	**$0.5**

*Zero amounts indicate that interest lost was less than $100,000.
**Total may not sum because of rounding.

Recommendations, Management Comments, and Our Response

A.1 We recommend that the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) coordinate with its General Counsel and the DoD General Counsels (Fiscal) and (Acquisition and Logistics) to determine the legal effects of the inappropriate lease and whether any additional potential Antideficiency Act violations have occurred and provide the DoD Inspector General with the results.

Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments

The Deputy Assistant Secretary of the Army (Procurement), responding for ASA(ALT) and the Army Office of General Counsel (OGC), agreed and stated that ASA(ALT) coordinated with the Army OGC regarding the legal effects of the inappropriate lease and whether any additional potential ADA violations have occurred. The Army OGC's preliminary opinion was that no additional potential ADA violations have occurred. The Deputy Assistant Secretary also stated that the Army OGC was coordinating its preliminary opinion with the DoD OGCs (Fiscal) and (Acquisition and Logistics) as recommended.

Our Response

Comments from the Deputy Assistant Secretary of the Army (Procurement) were responsive. As of July 17, 2012, the Army OGC had not received the opinions of the DoD OGCs (Fiscal) and (Acquisition and Logistics). ASA(ALT) personnel stated that when they received these opinions, they would provide them to the DoD Office of Inspector General. As of the date of this report, the opinions were still outstanding. The proposed actions met the intent of the recommendation.

A.2 We recommend that the Program Executive Officer, Enterprise Information Systems, coordinate with the Washington Headquarters Services to submit a request to the General Services Administration to obtain ratification of the contract. If the General Services Administration does not ratify the contract, the Secretary of the Army should take appropriate actions to resolve the $23.6 million in improper payments made for the lease and building modifications.

Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments

The Deputy Assistant Secretary of the Army (Procurement), responding on behalf of the Program Executive Officer, Enterprise Information Systems, agreed and stated that PEO EIS would submit a ratification request to the Administrative Assistant to the Secretary of the Army, Real Estate and Facilities Division, no later than July 31, 2012. He also stated that according to Army Regulation 1-21, "Administrative Space Management," May 8, 1985, the Administrative Assistant is the Army's liaison with WHS, which is the liaison to GSA. If GSA does not ratify the contract, the Deputy Assistant Secretary stated that ASA(ALT) would evaluate the recovery options advised by the Army OGC, to include a possible waiver under the equitable theories of Quantum Meruit (the value of services provided) and Quantum Valebant (the value of goods).

Our Response

Comments from the Deputy Assistant Secretary of the Army (Procurement) were responsive, and the actions met the intent of the recommendation. PEO EIS personnel stated that the ratification request was submitted to the Administrative Assistant to the Secretary of the Army, Real Estate and Facilities Division on August 16, 2012.

A.3 We recommend that the Executive Director, Army Contracting Command–National Capital Region Contracting Center, develop and implement procedures requiring that contracting officers maintain in their contracting files the Washington Headquarters Services documentation authorizing the lease of the requesting activity before approving DoD contracts or modifications containing the leasing of office space in the National Capital Region.

Army Contracting Command–National Capital Region Comments

The Executive Director, ACC–NCR, agreed and stated that ACC-NCR would reiterate to its workforce the requirement not to enter into contracts for office space leases in the NCR unless requesting activities obtain the required approval(s) to lease space in the NCR. In addition, he stated that ACC would develop a Command Policy Letter that sets forth policies and procedures for the acquisition of federally leased administrative space occupied by DoD Components located in the NCR. The Executive Director indicated that these actions would be completed by September 2012.

Our Response

Comments from the Executive Director, ACC–NCR, were responsive, and the proposed actions met the intent of the recommendation.

Finding B. Potential ADA Violations for Lease Payments and Building Modifications for the Kingstowne Office

GFEBS personnel inappropriately authorized $5.5 million in annual Operation and Maintenance (O&M) funds for lease payments for the Kingstowne office. In addition, PEO EIS personnel violated 10 U.S.C. § 2353 when they used at least $4.7 million[5] in Research, Development, Test, and Evaluation (RDT&E) funds for building modifications associated with the Kingstowne office space. PEO EIS personnel stated that RDT&E funds were the only funds available at the time. As a result of inappropriately authorizing O&M funds and using funding for purposes other than those authorized, GFEBS and PEO EIS personnel may have violated the Antideficiency Act (ADA).

O&M Funds Not Available for Lease Expenses

GFEBS personnel inappropriately authorized $5.5 million in annual O&M funds for lease payments for the Kingstowne office that met a legitimate, or bona fide, need in the following fiscal year. According to the Bona Fide Needs rule, the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability. As illustrated in Table 3, GFEBS personnel inappropriately used FY 2010 and FY 2011 O&M funds to cover lease expenses for 2011 and 2012, which violated the Bona Fide Needs rule.

Table 3. Funding of Lease Expenses

Fiscal Year of O&M Funds Used	**Period of Availability**	**Lease Period**	**Lease Expense** (in millions)
2010	October 2009–September 2010	January 2011–December 2011	$2.8
2011	October 2010–September 2011	January 2012–December 2012	2.7
Total			**$5.5**

When asked for their justification for using FY 2010 and FY 2011 funds for these lease expenses, GFEBS personnel stated that the terms of the contract required payment of the leased space in advance; therefore, they used the funds available at the time. However, GFEBS personnel were unable to provide evidence that this requirement was in the contract. Further, the contracting officer stated that the contract did not contain a clause requiring advance payment.

[5] The proposed amount for building construction costs was $8.9 million and the disbursed amount was $6.5 million. In addition, the contract file did not contain sufficient detail to determine how $1.8 million (rounded) in credits were allocated back to the contract for building modification purposes. As a result, we excluded this amount from the total of funds used for the construction.

Use of RDT&E Funds

PEO EIS personnel violated 10 U.S.C. § 2353 when they used at least $4.7 million in RDT&E funds for building modifications associated with the Kingstowne office space. Specifically, they violated 10 U.S.C. § 2353 (a) and (b)(1). According to 10 U.S.C. § 2353(a), RDT&E funds can be used to provide research, developmental, or test facilities and equipment that the Secretary of the Military Department concerned determines to be necessary for the performance of the contract. However, it does not authorize the use of RDT&E funds for new construction or improvements having general utility. In addition, 10 U.S.C. § 2353(b)(1) restricts the installation or construction of facilities that would not be readily removable, or separable, without unreasonable loss of money on nongovernmental property, unless the contract provides for reimbursement of the fair value at the completion of the contract.

The contractor proposal identified the Kingstowne office space as being in "shell condition," with only the main air ducts and sprinkler lines completed. The construction of the three floors of general office space included installation of items such as heating, ventilation, and air-conditioning; plumbing; electrical work; doors; countertops; and carpeting. In addition, the lease agreement between the contractor and the property owner stated that the office space was for general office use. PEO EIS personnel stated that they used the RDT&E funds to make the building modifications to the office space because, at that time, those were the only funds provided to the GFEBS program, as it was in the developmental phase. The PEO EIS budget officer who certified the RDT&E funds for the GFEBS program has since retired. PEO EIS personnel violated the terms of 10 U.S.C. § 2353(a) when they expended $4.7 million of RDT&E funds to improve "general utility" space.

> *PEO EIS personnel violated the terms of 10 U.S.C. § 2353(a) when they expended $4.7 million of RDT&E funds to improve "general utility" space.*

Furthermore, the lease agreement between the contractor and the property owner stated that at the end of the lease agreement, alterations of any kind to the premises would become part of the property and belong to the property owner. Thus, PEO EIS personnel violated the terms of 10 U.S.C. § 2353(b)(1) because the building modifications were not removable and the Army would not be reimbursed for the modifications. The violations of 10 U.S.C. § 2353(a) and (b)(1) resulted in a violation of 31 U.S.C. § 1301(a), "Application" (the Purpose Statute). The Purpose Statute states that the appropriations are to be applied "only to the objects for which the appropriations were made except as otherwise provided by law." Because PEO EIS personnel used RDT&E funds to improve a general utility facility and make building modifications that were not readily removable, they violated the Purpose Statute.

Potential Antideficiency Act Violations

GFEBS personnel violated the Bona Fide Needs rule and PEO EIS personnel violated the Purpose Statute, leading to potential ADA violations. GFEBS personnel used

$5.5 million in annual O&M funds for lease payments that met bona fide needs in the following fiscal years. In addition, PEO EIS personnel used at least $4.7 million in RDT&E funds to improve a general utility facility and make building modifications that were not readily removable. The Deputy Assistant Secretary of the Army (Financial Operations) should comply with DoD Regulation 7000.14-R, "Financial Management Regulation," Volume 14, Chapter 3, "Preliminary Reviews of Potential Violations," to report and initiate a preliminary review of the potential ADA violations for the GFEBS contract.

Recommendations, Management Comments, and Our Response

B. We recommend that the Deputy Assistant Secretary of the Army (Financial Operations), Office of the Assistant Secretary of the Army (Financial Management and Comptroller):

1. Comply with DoD Regulation 7000.14-R, "Financial Management Regulation," Volume 14, Chapter 3, "Preliminary Reviews of Potential Violations," in reporting a potential Antideficiency Act violation and initiating a preliminary review of

a. the $5.5 million in Operation and Maintenance, Army, funds used for lease payments and

b. the $4.7 million in Research, Development, Test, and Evaluation funds used for building modifications.

2. Conduct a formal investigation to determine responsible officials and recommend appropriate corrective actions if the investigation determines that a reportable Antideficiency Act violation has occurred.

3. Submit a formal report to the Under Secretary of Defense (Comptroller)/ Chief Financial Officer, DoD, and provide a copy of the preliminary review report and the final investigation report to the DoD Office of Inspector General.

Deputy Assistant Secretary of the Army (Financial Operations) Comments

The Deputy Assistant Secretary of the Army (Financial Operations) agreed. In response to Recommendation B.1.a, he stated that the GFEBS COR agreed that O&M funds were improperly used in FYs 2010-2011 to fund advance lease payments. He indicated that the contract funding was being modified and that all corrections should be completed by July 16, 2012. For Recommendation B.1.b, he stated that if the final report continued to identify a potential ADA violation with respect to the building modifications, his office would direct ASA(ALT) to report a potential ADA violation and initiate a preliminary investigation in accordance with DoD Regulation 7000.14-R, Volume 14, Chapter 3.

In response to Recommendations B.2 and B.3, the Deputy Assistant Secretary stated that if the investigation determined a reportable ADA violation occurred, his office would conduct a formal investigation to determine the responsible officials and recommend appropriate corrective actions. Upon completion of the formal investigation, his office would submit the formal report to the Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD, and provide results to the DoD Office of Inspector General.

Our Response

Comments from the Deputy Assistant Secretary of the Army (Financial Operations) were responsive, and the proposed actions met the intent of the recommendations. We will verify that all of the investigations and reporting required by DoD Regulation 7000.14-R Volume 14, Chapter 3 have been conducted for both of the potential ADA violations. In addition, we contacted the current contracting officer for an update on the contract modification regarding the O&M funds. He stated that the contract modification will be completed by August 31, 2012.

Appendix. Scope and Methodology

We conducted this performance audit from September 2011 through May 2012 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.

To determine whether the Army appropriately modified the GFEBS contract to include leasing of the Kingstowne, Virginia, office space, we spoke to and reviewed contract documentation provided by personnel from the GFEBS Program Management Office; ACC-NCR; PEO EIS; GSA; WHS; Army Installation Management Command; Under Secretary of Defense for Acquisition, Technology, and Logistics; Real Estate and Facilities–Army, and the system integrator (contractor). In addition, we researched applicable laws and regulations relating to the leasing and funding of office space in the NCR.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Use of Technical Assistance

We did not use technical assistance for the audit.

Prior Coverage on Inappropriate Leasing Arrangements

During the last 5 years, the Department of Defense Inspector General (DoD IG) issued one report discussing inappropriate leasing arrangements. Unrestricted DoD IG reports can be accessed at http://www.dodig.mil/audit/reports.

DoD IG

DoD IG Report No. D-2007-044, "FY 2005 DoD Purchases Made Through the Department of the Interior," January 16, 2007

Assistant Secretary of the Army (Acquisition, Logistics, and Technology Comments

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

SAAL-PP

JUL 10 2012

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, 4800 MARK CENTER DRIVE, ALEXANDRIA, VIRGINIA 22350-1500

SUBJECT: Response to Department of Defense Inspector General (DoD IG) Draft Report Dated May 29, 2012, Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Project No. D2011-D000FL-0262.000)

1. This memorandum provides the consolidated response to the DoD IG Draft Report (D2011-D000FL-0262.000) for the Assistant Secretary of the Army for Acquisition, Logistics and Technology, Office of the General Counsel and the Program Executive Office, Enterprise Information Systems.

2. The Army concurs with comment on the recommendations. The enclosure to this memorandum provides our responses to the specific recommendations included in the draft report.

3. Point of contact for this memorandum is [redacted] at [redacted] or e-mail: [redacted]

Enclosure

for Kim D. Denver, BG, USA
Kim D. Denver
Deputy Assistant Secretary
of the Army (Procurement)

ENCLOSURE 1: RECOMMENDATIONS and RESPONSES
(A1 and A2)

Department of Defense Inspector General (DoD IG) Draft Report Dated 29 May 2012, Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Project No. D2011-D000FL-0262.000)

A1 - Recommendation: We recommend that the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) coordinate with its General Counsel and the DoD General Counsels (Fiscal) and (Acquisition and Logistics) to determine the legal effects of the inappropriate lease and whether any additional potential Antideficiency Act violations have occurred and provide the DoD Inspector General with the results.

A1- Response: Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(ALT)) and the Army Office of General Counsel (OGC)

Concur. The ASA(ALT) has coordinated with the Army OGC to determine the legal effects of the inappropriate lease and whether additional potential ADA violations have occurred. The Army OGC has provided a preliminary opinion that it is coordinating with the DoD Office of General Counsel (Fiscal, and Acquisition and Logistics) per the recommendation. The Army OGC concluded that no additional potential ADA violations have occurred; and has advised ASA(ALT) that in the event that GSA refuses to ratify the contract modification, that ASA(ALT) should evaluate its recovery options, to include a possible waiver under the equitable theories of Quantum Meriut and Quantum Valebant."

A2 - Recommendation: We recommend that the Program Executive Officer, Enterprise Information Systems, coordinate with the Washington Headquarters Services to submit a request to the General Services Administration to obtain ratification of the contract. If the General Services Administration does not ratify the contract, the Secretary of the Army should take appropriate actions to resolve the $23.6 million in improper payments made for the lease and building modifications.

A2 - Response: Program Executive Officer Enterprise Information Systems (PEO EIS)

Concur with comment. PEO EIS will submit a ratification request to the Office of the Administrative Assistant to the Secretary of the Army (OAA), Real Estate and Facilities Division (REF-A), no later than 31 Jul 2012. Per Army Regulation 1-21, OAA is the responsible office for coordinating Space Packages within the National Capital Region and is the Army's liaison with Washington Headquarters Services (WHS) and subsequently the General Services Administration (GSA). If the GSA does not ratify the contract, PEO EIS will take appropriate actions as may be advised by the Office of General Counsel as detailed in response to recommendation A1.

Deputy Assistant Secretary of the Army (Financial Operations) Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
FINANCIAL MANAGEMENT AND COMPTROLLER
109 ARMY PENTAGON
WASHINGTON DC 20310-0109

REPLY TO
ATTENTION OF

JUN 20 2012

MEMORANDUM THRU Auditor General, Department of the Army, 3101 Park Center Drive, Alexandria, Virginia 22302-1596

FOR Inspector General, Department of Defense, Financial Management and Reporting, 4800 Mark Center Drive, Alexandria, Virginia 22350-1500

SUBJECT: Draft Report, Inappropriate Leasing for the General Fund Enterprise Business System (GFEBS) Office Space (D2011-D000FL-0262.000)

1. We appreciate the opportunity to provide comments on the subject report.

2. The audit asserts that the U.S. Army improperly funded $5.5M in lease expenses of future fiscal years in violation of the 31 U.S.C. 1502 (the Bona Fide Needs Rule) and obligated $4.7M in permanent building modifications in apparent violation of 31 U.S.C. 1301 (the Purpose Statute). The audit makes the following recommendations:

- Recommendation B.1 -- Comply with DoD Regulation 7000.14-R, "Financial Management Regulation," Volume 14, Chapter 3, "Preliminary Reviews of Potential Violations," in reporting a potential Antideficiency Act violation and initiating a preliminary review of the $5.5 million in Operation and Maintenance, Army (OMA) funds used for lease payments and the $4.7 million in Research, Development, Test, and Evaluation (RDTE) funds used for building modifications.

- Recommendation B.2 -- Conduct a formal investigation to determine responsible officials and recommend appropriate corrective actions if the investigation determines that a reportable Antideficiency Act violation has occurred.

- Recommendation B.3 -- Submit a formal report to the Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD, and provide a copy of the preliminary review report and the final investigation report to the DoD Office of Inspector General.

3. Army generally concurs.

a. The GFEBS Contracting Officer's Representative concurs that OMA was improperly used in Fiscal Years 2010-2011 to fund advance lease payments. The contract funding is currently being modified and all corrections should be completed by July 16, 2012.

SUBJECT: Draft Report, Inappropriate Leasing for the General Fund Enterprise Business System (GFEBS) Office Space (D2011-D000FL-0262.000)

b. Pursuant to Volume 14, Chapter 3 of the DoD Financial Management Regulation (DoDFMR), we will defer action on the potential violation involving RDTE funding until we have had an opportunity to review the command reply of the Assistant Secretary of the Army (Acquisition, Logistics and Technology). If the DoDIG final report continues to identify a potential ADA violation with respect to the building modifications, we will direct ASA(ALT) to report a potential ADA violation and initiate a preliminary investigation in accordance with the DoDFMR.

c. If the investigation determines that a reportable ADA violation has occurred, we will conduct a formal investigation to determine responsible officials and recommend appropriate corrective actions. Upon completion of the formal investigation, we will submit the formal report to OSD (Comptroller) and provide results to the DoD Office of Inspector General.

4. My point of contact for this report is [redacted] who can be reached at [redacted]

John J. Argodale
Deputy Assistant Secretary of the Army
(Financial Operations)

Army Contracting Command – National Capital Region Comments

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4400 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

REPLY TO
ATTENTION OF:

AMCIR

JUN 29 2012

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN: Mr. Craig W. Michaels, Program Director, Financial Management and Reporting, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Reply to DoDIG Draft Report – Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Project No. D2011-D000FL-0262.000)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject draft report and the response from the U.S. Army Contracting Command (ACC). AMC endorses the enclosed ACC response.

2. The AMC point of contact is [redacted] or email: [redacted]

Encl

JOHN B. NERGER
Executive Deputy to the
Commanding General

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
3334A WELLS ROAD
REDSTONE ARSENAL, AL 35898-5000

REPLY TO
ATTENTION OF:

AMSCC-IR

17 JUL 2012

MEMORANDUM FOR Mr. Randy Flisak, Director, Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898

SUBJECT: Draft Report on the Audit of Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Project No. D2011-D000FL-0262.000) (D1239) (11371)

1. Memorandum and Audit Report, 29 May 2012, subject: Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Project No. D2011-D000FL-0262.000).

2. The Army Contracting Command (ACC) concurs with the enclosed ACC-National Capital Region comments.

3. The ACC point of contact is [redacted] Internal Review and Audit Compliance Office, [redacted]

Encl

Carol E. Lowman
CAROL E. LOWMAN
Deputy to the Commanding General

DEPARTMENT OF THE ARMY
ARMY CONTRACTING COMMAND – NATIONAL CAPITAL REGION
200 STOVALL STREET
ALEXANDRIA, VA 22332

REPLY TO
ATTENTION OF:

CCNC

6 June 2012

MEMORANDUM THRU U.S. Army Contracting Command, Internal Review and Audit Compliance Office, 3334F Wells Road, Redstone Arsenal, AL 35898

FOR Program Director, Financial Management and Reporting, Department of Defense, Inspector General, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Draft Report on the Inappropriate Leasing for the General Fund Enterprise Business System Office Space (Project No. D2011-D000FL-0262.000)

1. Army Contracting Command-National Capital Region (ACC-NCR) appreciates the opportunity to comment on the subject draft report. ACC-NCR has reviewed the report's facts and conclusions. We agree with the report's recommendation (A.3) addressed to ACC-NCR. Our comments are enclosed.

2. ACC-NCR point of contact is [redacted] Internal Review and Audit Compliance. She can be reached via email at [redacted]

Michael R Hutchison

Enclosure

MICHAEL R. HUTCHISON
Executive Director

ENCL

Audit of Inappropriate Leasing For the General Fund Enterprise Business System (GFEBS) Office Space

Army Contracting Command-National Capital Region Command Comments

Recommendation: We recommend that the Executive Director, Army Contracting Command–National Capital Region Contracting Center, develop and implement procedures requiring that contracting officers maintain in their contracting files the Washington Headquarters Services documentation authorizing the lease of the requesting activity before approving DoD contracts or modifications containing the leasing of office space in the National Capital Region.

Command Response: Concur. We will reiterate to the workforce the requirement to not enter into contracts for office space leases in the National Capital Region (NCR) unless requiring activities obtain the required approval(s) to lease space in the NCR. The Command will develop a Command Policy Letter that sets forth policies and procedures for the acquisition of federally leased administrative space occupied by Department of Defense Components located in the NCR. These actions will be completed by September 2012.

Inspector General
Department of Defense