# Audit Report

OFFICE OF THE INSPECTOR GENERAL

## DEFENSE CONTRACT MANAGEMENT AREA OPERATIONS FRANKFURT, GERMANY, CONTRACT FOR PROFESSIONAL AND TECHNICAL SERVICES

Report No. 95-035

November 22, 1994

**Department of Defense**

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**Acronyms**

| | |
|---|---|
| ACO | Administrative Contracting Officer |
| ADPE | Automated Data Processing Equipment |
| DCMAO | Defense Contract Management Area Operations |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| FAR | Federal Acquisition Regulation |
| O&M | Operation and Maintenance |
| STACCS | Standard Theater Army Command and Control System |
| UCA | Undefinitized Contractual Action |

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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November 22, 1994

MEMORANDUM FOR COMMANDER IN CHIEF, U.S. EUROPEAN COMMAND
DIRECTOR, DEFENSE LOGISTICS AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Report No. 95-035)

We are providing this audit report for your review and comment. We considered comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of management comments, we revised and redirected two recommendations. We request that the Army provide additional comments on revised Recommendation E.3.a. and Recommendation D.5.a. We request that the Defense Logistics Agency provide additional comments on revised Recommendation E.1.b. and Recommendation C.2. and provide a specific completion date for Recommendations A., B.1., B.2., B.3., C.1., D.1., E.1.a., and E.2. We request the comments to the final report by January 23, 1995.

We appreciate the cooperation and courtesies extended to the audit staff. If you have any questions on this audit, please contact Mr. Wayne K. Million, Audit Program Director, at (703) 604-9312 (DSN 664-9312) or Ms. Judith I. Karas, Audit Project Manager, at (703) 604-9231 (DSN 664-9231). Appendix F lists the distribution of this report. The audit team members are listed inside the back cover.

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**Report No. 95-035** **November 22, 1994**
(Project No. 4CG-8002)

# DEFENSE CONTRACT MANAGEMENT AREA OPERATIONS FRANKFURT, GERMANY, CONTRACT FOR PROFESSIONAL AND TECHNICAL SERVICES

## EXECUTIVE SUMMARY

**Introduction.** The audit was performed in response to a DoD Hotline complaint that the Defense Contract Management Area Operations Frankfurt, Germany, improperly awarded and administered delivery orders on contract DAEA18-89-D-0015 for professional and technical services. The Defense Contract Management Area Operations Frankfurt administered an average of 695 contracts, with a cumulative monthly average of $2.5 billion, in FY 1993. Contract DAEA18-89-D-0015, on which the Defense Contract Management Area Operations Frankfurt placed 36 delivery orders totaling $19.5 million, was one of two contracts for which the office had ordering responsibility. We did not audit award and administration of the other contract.

**Objectives.** The audit objectives were to determine the validity of allegations made in the DoD Hotline complaint and to evaluate the award and administrative contracting procedures over delivery orders on contract DAEA18-89-D-0015. The audit objectives also included assessment of internal controls and review of the DoD Internal Management Control Program implementation as they applied to the contract.

**Audit Results.** The DoD Hotline allegations were substantiated. See the findings in Part II for detailed discussions of the results of the audit.

The Defense Contract Management Area Operations Frankfurt awarded delivery orders that exceeded the contract terms. Additionally, the administrative contracting officer did not comply with the Federal Acquisition Regulation in awarding and administering the delivery orders (Finding A). The Defense Contract Management Area Operations Frankfurt awarded and administered delivery orders that required out of scope services on orders valued at $11.7 million, including unapproved personal services (Finding B), were unpriced for 1.3 years to 3.3 years and contained indefinite specifications (Finding C), acquired services using incorrect year funds of $5.3 million (Finding D), and improperly procured and funded $306,000 of automated data processing equipment (Finding E).

As a result of the Defense Contract Management Area Operations Frankfurt actions, costs were not controlled; Operation and Maintenance funds were overexpended; Operation and Maintenance funds were expended instead of Other Procurement, Army, funds; and Antideficiency Act violations potentially occurred.

**Internal Controls.** The audit identified material internal control weaknesses. The Defense Contract Management Area Operations Frankfurt personnel did not follow existing guidance. The Defense Contract Management Area Operations Frankfurt had not implemented the DoD Internal Management Control Program. See Part I for the internal controls reviewed and Finding A in Part II for details on the internal control weaknesses identified.

**Potential Benefits of Audit.** Monetary benefits can be realized by improving delivery order award and administration controls and procedures. We could not quantify the amount of benefits possible from improved internal controls. However, we did identify $74,465 in unsupported travel costs that could be recovered from the contractor. See Appendix D for a summary of the potential benefits resulting from the audit.

**Summary of Recommendations.** We recommend that internal controls be implemented over delivery order award and administration, that the Defense Contract Audit Agency audit travel claims, that unsupported travel costs be recouped, and that the award fee allowed on unpriced delivery orders be reduced. We recommend that organizations with overexpenditures make accounting adjustments to record funding in the year that the costs were incurred, to record funding from the correct appropriation for automated data processing equipment, and to investigate potential Antideficiency Act violations. We also recommend that all delivery orders awarded by Defense Contract Management Area Operations Frankfurt be reviewed for classification and correct year funding and that appropriate action be initiated against the officials responsible for awarding the delivery orders.

**Management Comments.** The Army generally concurred with the recommendations to adjust accounts, to investigate potential Antideficiency Act violations, and to review the classification of the delivery orders awarded by the Defense Contract Management Area Operations Frankfurt. The Army nonconcurred with the recommendations to adjust accounts and investigate for an Antideficiency Act violation on delivery order SS26 because the Army believed the delivery order requirements were nonseverable. The Army also nonconcurred with the recommendation to record funding from the correct appropriation for automated data processing equipment because the administrative contracting officer, not Army personnel, had to initiate the corrective action. The U.S. European Command concurred and agreed to make the necessary accounting adjustments. The Army and the U.S. European Command stated that sufficient funds were available to make the accounting adjustments and no antideficiency violations would result.

The Defense Logistics Agency concurred with the recommendations to implement internal controls, to request the Defense Contract Audit Agency to audit travel claims, and to initiate appropriate action against the administrative contracting officer. The Defense Logistics Agency nonconcurred with the recommendations to reduce the base and award fee on the delivery orders, and to recover or ratify an unauthorized contracting action.

**Audit Response.** As a result of Army comments, we revised and redirected to the Defense Logistics Agency the recommendation to record funding from the correct appropriation for automated data processing equipment. As a result of the Defense Logistics Agency comments, we revised and redirected to the Army the recommendation to ratify the unauthorized contracting action. Additional comments are needed from the Army on whether the delivery order requirements were severable and from the Defense Logistics Agency on the need to reduce the base and award fee. See Part II for a synopsis of the adequacy of management comments and Part IV for the full text of management comments.

We request comments on the final report from the Army and the Defense Logistics Agency by January 23, 1995.

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This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

# Part I - Introduction

# Background

**DoD Hotline Request.** In June 1993, the Inspector General, DoD, received a DoD Hotline request to review the procedures used by the Defense Contract Management Area Operations (DCMAO) Frankfurt, Germany, for awarding and administering delivery orders[1] on contract DAEA18-89-D-0015 (the contract).[2] The DoD Hotline request alleged that delivery orders placed by DCMAO Frankfurt on the contract included out of scope services, unapproved personal and consultant services, unpriced delivery orders with indefinite specifications, services acquired with incorrect year money, and improperly procured and funded automated data processing equipment (ADPE) purchases.

**DCMAO Organization, Functions, and Responsibilities.** The Defense Logistics Agency has 48 DCMAOs worldwide to provide contracting support for Defense organizations. DCMAOs perform a variety of pre- and postaward contract administration functions including contract management, quality assurance, property management, program and technical support, and customer advice. DCMAOs may also perform award functions for contracts with delivery order provisions when the procurement contracting office specifically delegates that responsibility.

DCMAO Frankfurt administered an average of 695 contracts in FY 1993. The average monthly value of the contracts administered in FY 1993 was $2.5 billion. Delivery order award was not commonly performed by DCMAO Frankfurt; however, DCMAO Frankfurt was delegated responsibility for awarding delivery orders for 2 of the 695 contracts it administered. A discussion of one of the two contracts forms the basis of the report. Reviewing the award and administration of the second contract was not part of our audit objective.

**Contract DAEA18-89-D-0015 Type and Contract Provisions.** The Army Information Systems Command, Fort Huachuca, Arizona, awarded contract DAEA18-89-D-0015 on behalf of the Army Information Systems Engineering Command, Fort Huachuca, to Science Applications International Corporation, San Diego, California, on September 21, 1989. The purpose of the contract was to obtain:

> professional/technical services to provide Information Mission Area systems engineering, information systems integration, systems analysis, technical, test, and installation support for the U.S. Army

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[1]Delivery orders are a contracting vehicle to precisely define the quantity of services and to obligate funds on an indefinite-quantity contract. They are subject to the same laws and regulations as contracts. For purposes of this report, "delivery orders" are those contracting actions that DCMAO Frankfurt awarded on contract DAEA18-89-D-0015.

[2]For purposes of this report, "the contract" is the basic contract DAEA18-89-D-0015 that the Army Information Systems Command awarded for services worldwide.

> Information Systems Engineering Command at locations in the Continental United States and Outside the Continental United States, as required.

The contract is a cost-plus-award-fee, indefinite-quantity, indefinite-delivery contract. Supplies and services are acquired through the award of delivery orders. The contract description fits the Federal Acquisition Regulation (FAR) subpart 16.5, "Indefinite-Delivery Contracts," definition of a requirements contract. The advantages of a requirements contract are that:

- o Government stocks are maintained at minimum levels,
- o products are shipped directly to the user,
- o quantities and schedule are flexible,
- o services are ordered when needed, and
- o Government obligation is limited to a minimum quantity.

The contract had 5 option years, the last year ending January 31, 1995. As of September 30, 1993, several organizations, including DCMAO Frankfurt, awarded 359 delivery orders on the contract, at a cumulative contract value of $133.3 million.

**DCMAO Frankfurt Contract Services.** The contract included line items to establish a field site for Science Applications International Corporation at Worms, Germany, and to have that field site perform services for the Army Information Systems Engineering Command in Europe. On February 22, 1991, the Army Information Systems Command delegated to DCMAO Frankfurt the contract administration and delivery order award responsibilities for the Worms field site contract line items.

**Administrative Contracting Officer.** The administrative contracting officer (ACO) who was first delegated the ordering and administration responsibility for the contract transferred from DCMAO Frankfurt to the U.S. Army Corps of Engineers Frankfurt in November 1992. The successor ACO issued stop work orders on seven delivery orders from June through August 1993 and requested incurred cost data from the contractor on December 16, 1993, to begin delivery order close-out negotiations. The Army Information Systems Command began awarding delivery orders for the Worms field site again in September 1993. However, responsibility remained with DCMAO Frankfurt for administration and close-out of the delivery orders awarded by the DCMAO Frankfurt ACO as a result of a February 22, 1991, delegation.

## Objectives

The audit objectives were to evaluate the award and administrative contracting procedures for delivery orders on the contract and to determine the validity of allegations made in the DoD Hotline complaint. The audit objectives also included assessment of internal controls and review of the DoD Internal Management Control Program implementation as they applied to the contract.

## Scope and Methodology

**Delivery Orders Reviewed.** Although awards on the contract were for services worldwide, the DoD Hotline, and consequently our audit, focused on the delivery orders awarded and administered by DCMAO Frankfurt from February 22, 1991, through September 30, 1993, and performed by the Worms field site. As of September 30, 1993, DCMAO Frankfurt had awarded 34 delivery orders, had significantly modified 2 delivery orders issued by Army Information Systems Command, and was administering the 36 delivery orders, which were all to be performed by the Worms field site. The 36 delivery orders had a cumulative value of $19.5 million. We reviewed all 36 delivery orders to evaluate the status of pricing actions. For detailed analysis, we judgmentally selected 11 delivery orders, with a cumulative value of $14.4 million.

For the 11 delivery orders, we reviewed delivery order files, delivery order modifications, statements of work, funding documents, payment records, correspondence, and contractor records and reports. We compared the terms of the delivery orders with the contract statement of work and discussed the terms of the delivery orders with personnel from contracting and from the organizations that placed the delivery orders. We also compared contracting actions taken on the delivery orders with the FAR, the Defense Federal Acquisition Regulation Supplement (DFARS), Defense Logistics Agency regulations, and Army regulations. We reviewed records and documents dated from May 1989 through December 1993.

**Computer-Processed Data.** Payment records and contractor records used for comparison purposes were computer-processed listings. We did not validate the reliability of the computer systems from which the listings were generated because the listings were not the sole basis for our conclusions, and the records for the contract were a minor segment of the data processed by the computer systems. Our audit conclusions are not affected by the reliability of the data.

**Audit Standards and Locations.** This economy and efficiency audit was made from October 1993 through April 1994 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Accordingly, we included tests of internal controls that were considered necessary. Appendix E lists the organizations visited or contacted during the audit.

# Internal Controls

**Internal Controls Reviewed.** We limited our review of internal controls to the internal controls that management exercised over the delivery orders that the DCMAO Frankfurt awarded, modified, and administered. We requested the DCMAO Frankfurt internal control plan, which is required by the DoD Internal Management Control Program, to identify the specific internal control objectives and procedures for awarding and administering contracts. The specific internal controls we observed and evaluated were controls over:

- o supervising staff performance,
- o separating duties and responsibilities,
- o recording transactions and events, and
- o authorizing and executing transactions and events.

We identified material internal control weaknesses as defined by DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987. Details of the weaknesses are discussed in Finding A.

**Adequacy of DoD Internal Management Control Program Implementation.** DCMAO Frankfurt management had not prepared an internal control plan and had not developed specific control objectives and procedures to comply with the DoD Internal Management Control Program. Inspector General, DoD, Report No. 93-174, "The Internal Management Control Program at the Defense Contract Management Command," September 23, 1993, stated that the Defense Contract Management Command, of which DCMAO Frankfurt is a subordinate element, had not fully implemented the DoD Internal Management Control Program and was in the process of taking corrective action.

**Internal Control Weaknesses Identified.** DCMAO Frankfurt did not implement adequate internal controls for awarding and administering delivery orders on the contract. As a result of an inadequate internal control system, DCMAO Frankfurt:

- o awarded delivery orders that exceeded the scope of the contract (Finding B),
- o awarded delivery orders without an established price (Finding C),
- o acquired services using incorrect year funds (Finding D), and
- o funded ADPE purchases from the incorrect appropriation (Finding E).

**Corrective Actions Recommended.** Recommendations A., B.1., C.1., D.1., and E.1.a., if implemented, will correct the internal control weaknesses. The potential monetary benefits to be realized from correcting the internal control

weaknesses could not be quantified. The potential benefits that can be realized by implementing the recommendations are described in Appendix D. A copy of the final report will be provided to the senior official responsible for internal controls in the Defense Logistics Agency.

## Prior Audits and Other Reviews

**Inspector General, DoD Audit.** Inspector General, DoD, Report No. 95-026, "Controls Over Funds Used for the Worldwide Military Command and Control System in the European Theater," November 8, 1994, evaluated the procedures and controls over Worldwide Military Command and Control System funds. Two delivery orders awarded by DCMAO Frankfurt on contract DAEA18-89-D-0015 were for Worldwide Military Command and Control System services. The report states that the U.S. Army Europe and 7th Army used funds for purposes other than intended, inappropriately used expired funds, and used funds on a contract from which it received no product. In addition, the report states that the U.S. European Command did not have accurate accounting records and misstated assets in financial statements.

The report recommended that the U.S. Army Europe and 7th Army implement control procedures over funds for the Worldwide Military Command and Control System and make necessary accounting adjustments. The report also recommended that the U.S. European Command correct accounting errors and adjust financial statements to properly reflect assets. The Army and the U.S. European Command concurred with the recommendations.

**Army Audit Agency Audit.** Army Audit Agency Report No. WR 94-1, "Temporary Duty Travel and Contract Unliquidated Obligations," March 24, 1994, states that the Army Information Systems Command funded local area network projects in Europe with Operation and Maintenance funds when similar projects were funded with Other Procurement, Army, funds. The report also questions the use of incremental funding of the European local area networks and the number of European local area networks in drawdown conditions.

The report recommended that Army Information Systems Command review Common User Data Network project appropriation and year funds used and make accounting adjustments for funds incorrectly applied. The report also recommended that the Army Information Systems Command revalidate Common User Data Network requirements and either use in-house resources or justify contractor support to install and operationally test network components. The Army Information Systems Command concurred with the recommendations.

# Part II - Findings and Recommendations

# Finding A. Internal Controls Over Delivery Order Awards and Administration

The DCMAO Frankfurt ACO awarded delivery orders that exceeded the scope of the terms of the basic contract, and the ACO did not establish the delivery order terms and price before performance, as required by the FAR. The ACO did not comply with contract terms and FAR requirements because DCMAO Frankfurt management did not implement effective internal controls. As a result, the Government allowed the contractor to incur unchallenged, unsupported delivery order costs and to charge prices not negotiated by the Government, and the requiring commands funded services using incorrect year funds. Further, the ACO improperly procured, and the requiring commands improperly funded, ADPE.

## Background

**Policies and Procedures for Contract Administration Functions.** The policies and procedures to assign or retain contract administration responsibilities and to delegate responsibilities considered outside normal contract administration functions are stated in FAR subpart 42.2, "Assignment of Contract Administration." FAR subpart 42.2 states that duties not specifically retained by the contracting office, along with the authority to perform all normal administrative functions that apply to the contract, automatically attach to a contract administration office when a contracting officer delegates full or partial contract administration.

FAR 42.202(c), "Assignment of Contract Administration," states that the contracting office may delegate additional responsibilities, for example, delivery order award authority, to a contract administration office when coordination shows that adequate contract administration resources are available and that delegation is justified.

**Indefinite-Quantity-Type Contract Terms.** The contract was a cost-plus-award-fee, indefinite-delivery, indefinite-quantity contract. An indefinite-quantity contract provides for procurement of specific supplies or services to be furnished during a fixed period within stated limits, with scheduled deliveries to be made by placing orders with the contractor. The FAR does not specifically state whether procurement contracting officers may delegate award of delivery order responsibilities under indefinite-quantity contracts. However, the procedures are similar for placing delivery orders under indefinite-quantity contracts and under basic ordering agreements. Therefore, the principles prescribed in FAR 42.202(c) can be logically extended to indefinite-quantity contracts.

**Contract Responsibility Delegated to DCMAO Frankfurt.** On February 22, 1991, the contracting officer at the Army Information Systems Command delegated the award and administration responsibilities for the Worms field site contract line items to DCMAO Frankfurt. The Army Information Systems Command contracting officer retained all responsibilities applicable to the basic contract. At the same time, the Army Information Systems Command contracting officer transferred administration of delivery orders 0043 and 0045, awarded by the Army Information Systems Command on September 28 and 30, 1990, respectively, to an ACO at DCMAO Frankfurt.

When the DCMAO Frankfurt accepted the delivery order award and administration responsibility on the contract, DCMAO Frankfurt assigned a warranted ACO to award and administer delivery orders applicable to the Worms field site. A warranted contracting officer or ACO is bound by the standards in FAR subpart 1.6, "Contracting Authority and Responsibilities." FAR subpart 1.6 states:

> No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

Because other disciplines affect the contracting process, FAR subpart 1.6 further states that contracting officers "shall request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate."

## Following Delivery Order Award Procedures

**Awarding Delivery Orders That Exceeded the Contract Scope.** The DCMAO Frankfurt ACO did not ensure that all contractual requirements of law, executive orders, regulations, and applicable procedures were met. The delivery orders that the DCMAO Frankfurt ACO awarded exceeded the scope of the contract and did not establish terms and price before performance.

Of the 11 delivery orders reviewed in detail, the ACO awarded 9 delivery orders for requirements that were not submitted by or approved by the Army Information Systems Engineering Command. Personal services, which were not part of the contractual provisions, were included on four of the nine delivery orders. Details regarding the nine delivery orders that exceeded the scope are discussed in Finding B.

**Awarding Delivery Orders Without Established Terms or Price.** Of the 36 delivery orders reviewed for terms and pricing status, 35 delivery orders were unauthorized, unpriced delivery orders. The 35 delivery orders remained unpriced even though billings for performance exceeded legal parameters and the time from award exceeded regulatory parameters. Details regarding the 35 delivery orders that were unauthorized, unpriced contractual actions, called undefinitized contractual actions (UCAs), are discussed in Finding C.

## Internal Controls and Management Responsibilities

**Effective Internal Controls Needed.** While an appointed warranted ACO is bound by FAR standards, management must have a system of internal controls in place to provide assurance that the ACO meets the FAR standards in executing the ACO responsibilities.

Specific internal control standards are prescribed in the Comptroller General publication, "Standards for Internal Controls in the Federal Government," June 1, 1983. The standards include supervising staff performance, separating duties and responsibilities, recording transactions and events, and authorizing and executing transactions and events.

**Supervising Staff Performance.** Internal control standards require that qualified and continuous supervision be provided to ensure that internal control objectives are achieved. Supervision is a control that is critical to successfully implement other control procedures. Qualified and continuous supervision demonstrates management support for controls and verifies that controls are effective. DCMAO Frankfurt management did not effectively implement procedures to provide supervisory oversight for the contract and to oversee the actions of the ACO.

The contract files contained no evidence of supervisory review such as memorandums of instruction or inquiry regarding delivery order pricing, increased costs, or frequent delivery order modification. The contract files did contain memorandums from management encouraging prompt service to customers. The prompt service memorandums were initiated when a requiring organization commander complained because his delivery order was not awarded as quickly as he wanted. The contract files also contained a September 14, 1993, memorandum to a successor ACO from the Defense Logistics Agency-Europe Associate Counsel that showed that supervisory reviews were not accomplished. The memorandum stated:

> You inherited, from a former ACO who no longer works for us, a contract that was in disarray . . . . Until you began work with the contract, none of us . . . knew that there was anything amiss. I believe it is a fair assessment that we still do not know everything that at some time or another might have gone wrong, and it will be some time before we do.

**Separating Duties and Responsibilities.** Internal control standards require that key duties and responsibilities in authorizing, processing, recording, and reviewing transactions be separated among individuals. Contrary to the standards, the ACO exercised control over all aspects of the contracting actions, including awarding delivery orders, accepting funding authorizations, and approving contractor payments. For the contract, DCMAO Frankfurt management had not separated authorizing, ordering, and administrative duties, which would provide checks and balances to reduce errors and effectively monitor contractor performance. Details are discussed in Finding B regarding errors on delivery orders that could have been avoided if authorizing, processing, recording, and reviewing functions were separated.

**Recording and Classifying Transactions and Events.** Internal control standards require that transactions and significant events, such as the award of delivery orders, be promptly recorded and properly classified. The ACO did not properly classify the delivery orders awarded as level-of-effort orders and did not properly classify acquisition of ADPE. Although procedures existed to request the advice of legal, engineering, ADPE, and other specialists who could assist in properly classifying award of the delivery orders, the ACO did not implement the procedures for this contract. Details regarding delivery orders that were improperly classified are discussed in Findings B, D, and E.

**Authorizing and Executing Transactions and Events.** Internal control standards require that transactions and significant events be authorized and executed only by persons acting within the scope of their authority. The ACO did not have authority to award unpriced delivery orders without authorization from the head of the agency. The ACO also did not have the authority to execute contractual actions to acquire ADPE. Procedures to delineate responsibilities and obtain authority required by law and regulation were not implemented. Details regarding delivery orders that were unauthorized UCAs are discussed in Finding C, and details regarding unauthorized ADPE acquisitions are discussed in Finding E.

## ACO Actions Created Cost and Funding Impacts

Because the DCMAO Frankfurt management did not implement internal control procedures for the contract, the ACO actions created the following cost and funding impacts:

o The contractor was allowed to incur unchallenged and unsupported costs (Finding B).

o The contractor charged for work performed for which the Government had not established a price (Finding C).

o The requiring commands did not recognize severable services, expended incorrect year funds and may have violated the Antideficiency Act (Finding D).

o The ACO improperly procured and advised commands to improperly fund the acquisition of ADPE (Finding E).

## Management Comments on the Finding and Audit Response

The Defense Logistics Agency partially concurred with the finding. The Defense Logistics Agency considered the conditions identified in the finding to be isolated breaches of internal control procedures rather than material internal

control weaknesses within the Defense Contract Management Command. The Defense Logistics Agency further stated that strong internal controls might not prevent a determined ACO from ignoring procedural, regulatory, or contractual requirements. The Defense Logistics Agency comments regarding the materiality of internal control weaknesses apply to internal controls discussed in all of the report findings.

**Audit Response.** The findings and recommendations discussed in this report are based on the audit of DCMAO Frankfurt contracting procedures for professional services and do not include an overall assessment of Defense Contract Management Command internal controls.

We consider the internal control weaknesses identified in this report, and subject to the limitations described in the scope, to be material according to the criteria in DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987. According to the directive, a material weakness is a specific instance of noncompliance with internal controls sufficiently important to report to the next higher level of management. The directive also states that a material weakness is one that can result in unreliable information causing unsound management decisions; in diminished management credibility or reputation reducing management effectiveness; and in violated statutory or regulatory requirements causing fraud, waste, or mismanagement.

We believe the conditions described throughout the report regarding documented reviews and technical consultations support our conclusion that the system of internal controls at DCMAO Frankfurt was not adequate to prevent the contracting improprieties that occurred and, therefore, reflect material weaknesses.

## Recommendation, Management Comments, and Audit Response

**We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement internal control procedures to control indefinite-quantity, indefinite-delivery contracts currently administered by the Defense Contract Management Area Operations Frankfurt staff, for supervising staff performance, separating duties and responsibilities, recording and classifying transactions and events, and authorizing and executing transactions and events.**

**Management Comments.** The Defense Logistics Agency concurred. The Defense Logistics Agency directed that, during scheduled visits, the Defense Contract Management Command and the Defense Contract Management

Command International assess whether internal control weaknesses occur systemically. Also, the Defense Contract Management Command International:

o directed Defense Contract Management Area Operations Frankfurt to do a special assessment of its internal control system during FY 1995 and

o agreed to establish and implement the internal control procedures specified in the recommendation.

**Audit Response.** The Defense Logistics Agency planned actions are responsive to the intent of the recommendation. We request that, in its response to the final report, the Defense Logistics Agency provide specific dates by which the Defense Contract Management Area Operations Frankfurt will complete the planned actions.

# Finding B. Award of Delivery Orders That Exceeded the Scope of the Basic Contract

Of the 11 delivery orders reviewed, the ACO at DCMAO Frankfurt significantly modified 1 and awarded 8 delivery orders, totaling $11.7 million, that exceeded the scope of the contract, and included unapproved personal services. The out-of-scope delivery orders were awarded because the ACO did not seek the advice of legal or technical specialists on the contract and because the ACO exercised control over all aspects of the contracting actions, including awarding and modifying delivery orders, administering contractor performance, and approving contractor payments. As a result, the contractor was allowed to perform and bill for work that could not be measured against the terms of the specific delivery orders and to accumulate costs that were unchallenged and unsupported.

## Background

**Contract Statement of Work.** The contract statement of work defined 14 provisions of work that the contractor might be required to perform for the Army Information Systems Engineering Command, such as conducting engineering surveys, reviewing technical documents, and preparing engineering publications. The statement of work did not include personal services among the 14 specific work provisions or other contract provisions.

**Contract Planning and Reporting Requirements.** Contract section C, paragraphs 3.5 and 3.6, requires the contractor to prepare a staffing estimate and cost proposal for each delivery order. In addition, the contract requires that the contractor prepare a work plan, which the Government must approve, for each completion-type delivery order before work begins. Contract section C, paragraphs 3.7 and 3.8, requires the contractor to prepare periodic detailed cost and staff progress reports for review by the Government.

**Definition of Personal Services.** According to FAR subpart 37.1, "Service Contracts, General," a personal services contract is, ". . . a contract that, by its express terms or as administered, makes the contractor personnel appear in effect Government employees." Additional definition in FAR subpart 37.2, "Advisory and Assistance Services," states in part that, ". . . advisory and assistance services shall not be used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials." Although personal services are not entirely excluded by the FAR, they are limited, and legal counsel should review services statements of work for compliance. The ACO should include in the contract files all legal opinions rendered.

## Delivery Orders Awarded That Exceeded the Scope of the Contract

Nine of the delivery orders reviewed exceeded the scope of the contract. The delivery orders exceeded the scope in the following ways:

o Delivery orders were awarded on behalf of other Army organizations without Army Information Systems Engineering Command approval.

o Delivery orders were awarded with vague and unclear statements of works that resulted in the contractor performing unauthorized services.

o Delivery orders were awarded that resulted in the contractor performing personal services.

**Requirements From Non-Information Systems Engineering Command Organizations Processed Without Approval.** Although the contract was to support the Army Information Systems Engineering Command, the U.S. European Command and the U.S. Army Europe and 7th Army submitted requirements to the ACO for automated data processing systems. The ACO processed delivery orders against the contract for the requirements of the two organizations without any evidence of Army Information Systems Engineering Command review or authorization. The statements of work in the delivery orders were vaguely stated and included work not specified in the scope of the contract. The work was to support the Standard Theater Army Command and Control System (STACCS) (five delivery orders), Worldwide Military Command and Control System (two delivery orders), and an intelligence system (two delivery orders).

**Examples of Vague and Unclear Delivery Order Requirements.** Sections of the contract provided for technical reports on engineering surveys and engineering publications and documentation. Each section gave descriptive titles or purpose statements about the technical reports to be developed and provided military handbook and standards references. However, the ACO approved and processed delivery orders that contained requirements for technical reports that were unclear.

o Delivery order SS20 did not specify the type of technical reports or the military handbook and standards references. Delivery order SS20 included a requirement to "develop technical reports for the implementation and fielding of STACCS." The delivery order statement of work did not elaborate further on what technical documents would be required. The delivery order SS20 contract data requirements list was a two-word entry, "technical reports" and the delivery dates stated "as required."

o Delivery order 0043 specified identifying and reporting personal computer failures experienced by the STACCS branches, and conducting semiannual and annual inventories of STACCS equipment at Government user

sites in the delivery order statement of work, dated September 1, 1992. Maintenance and inventory functions were not services provided for by the scope of the contract statement of work.

**Examples of Personal Services Performed.** Although the statements of work for delivery orders SS08 and SS27 did not specify personal services, the contractor actually performed personal services. The statements of work for delivery orders SS08 and SS27 required on-site consultative services, systems engineering, systems integration, and technical assistance to the Command and Control Support Activity-Europe for the research, development, and integration of an enhanced Worldwide Military Command and Control System. However, monthly progress reports stated that the contractor provided a variety of services that, because of their managerial or decisionmaking nature, were personal services. For example, the contractor:

o attended a meeting on the future of the Command and Control Support Activity-Europe role in the rewrite of war plans;

o attended Inspector General, DoD, briefings;

o prepared information documents and Government procedure descriptions to provide to the Inspector General, DoD;

o attended a planning meeting on the Army War College consolidation;

o assisted in mission briefing preparation; and

o attended a meeting with the newly formed continental United States consolidation team to discuss duties and responsibilities.

The fifth revision of delivery order 0043 statement of work, dated September 1, 1992, section C, paragraph 3.6, "Assignment," states, "Contractor personnel will be assigned to the STACCS Support, Plans, & Operations Branch." Assignment to a Government office and branch implies relatively continuous supervision and control by Government employees and meets the criteria for personal services described in FAR subpart 37.1.

The delivery order SS19 statement of work stated that the contractor would "take a pro-active role in development coordination and evaluating STACCS system products." The detailed requirements paragraph goes on to direct the contractor to:

> participate and, when required, represent ODCSIM [Office of the Deputy Chief of Staff for Information Management] in working groups, configuration management groups, technical meetings, in-progress reviews, structured program walk-throughs, design reviews and other designated STACCS forums.

While contractor advice would be appropriate on technical issues regarding STACCS, contractor representation of the Office of the Deputy Chief of Staff

for Information Management, U.S. Army Europe and 7th Army, would be performing work of a policy, decision-making, or managerial nature, that is, personal services.

## Effectiveness of Internal Controls Over Statements of Work

The ACO awarded delivery orders that exceeded the scope of the contract because DCMAO Frankfurt had not implemented effective internal controls to ensure appropriately recorded transactions and events and separation of duties and responsibilities.

**Seeking Specialist Advice.** DCMAO Frankfurt did not implement procedures to identify the circumstances or the methodology for seeking specialist advice, which is a means to ensure that transactions are promptly recorded and that delivery orders are properly classified. The contract files for the DCMAO Frankfurt-awarded delivery orders contained no documented requests for legal or technical review from the time the responsibilities were delegated in February 1991 until December 1992. Although the statements of work were for services, legal statements regarding compliance with FAR subparts 37.1 and 37.2 were not included in the contract files as a matter of procedure.

The statements of work were also technical in nature, using engineering and data processing terms, yet the ACO did not document any reviews or discussions with specialists in engineering or data processing. The Army Information Systems Command is the primary contracting office and the Army Information Systems Engineering Command is the primary requiring office. A December 1992 inquiry about delivery order compliance with the scope of the basic contract by the successor ACO was the first evidence that the delivery orders statements of work were discussed with the two offices.

**Separating Duties and Responsibilities.** DCMAO Frankfurt management also did not implement procedures to separate delivery order award and modification, contract performance administration, and contractor payment approval. Separation of duties such as award, administration, and payment approval over delivery orders on the contract may have highlighted imprecise and inconsistent statement of work requirements by providing checks and balances on the award function. For example, if the person who administered delivery order SS13 was separate from the person who awarded the delivery order, one of them could have identified and pointed out that SS13 did not describe an end product or specify a level-of-effort within a definite time period.

## Contractor Incentives To Control Delivery Order Performance

**Contractor Control of Delivery Order Terms.** Because legal and technical reviews were not accomplished and because award and administration were not separately performed, the contractor was allowed to perform and bill for work that could not be measured. The vaguely stated requirements in the delivery order statements of work, such as ". . . provide technical reports as required," did not establish criteria for the product form, product quality, or schedule against which the contractor performance could be measured. The contractor had no incentive to clarify requirements or to meet the terms of the contract because no one challenged the statements of work, contractor performance, or contractor billings and because delivery orders were readily modified.

For example, delivery order 0043 was modified 22 times between April 23, 1991, and March 16, 1993. The modifications included five fund increases and five statement of work changes. The statements of work, rather than increasing in specificity, became less specific with each iteration.

**Contractor Control of Delivery Order Costs.** Because legal and technical reviews were not accomplished and because award and administration were not separately performed, the contractor also had no incentive to control costs. The ACO did not require the contractor to provide detailed cost and staff-hour estimates and did not review the monthly progress reports submitted by the contractor under the terms of contract section C, paragraphs 3.5 and 3.6.

**Value of Delivery Orders Increased Without ACO Challenge.** The 11 delivery orders reviewed increased by 39 percent from the initially funded amount, increasing from $10.4 million to $14.4 million from time of award until the date of our review. Delivery order 0043, as an extreme example, increased by 342 percent from $0.9 million $3.9 million. The contract files showed no evidence that increased obligations were questioned or explained before December 1992. Additionally, the ACO did not perform comprehensive reviews of the monthly status reports. The ACO did not challenge differences between delivery order requirements and services provided or challenge differences between the contractor charges for actual staff-hours and budget estimates on status reports.

**Delivery Order SS07 Labor Category Variances.** For example, the contractor estimated 2,118 hours of senior computer scientist or engineer services in the FY 1992 contractor work plans for delivery order SS07. The contractor was paid for 2,500 hours of senior computer scientist or engineer services, a difference of $18,733. The contract files contained no evidence that this variance was challenged.

The delivery order SS07 statement of work included the labor categories that the contractor was to provide to perform the work. The statement of work specified that a senior information systems engineer and an information systems engineer were required. In FY 1993, the contractor expended 1,616 hours at $54.50 per hour of senior information systems engineer time and no hours at

$49.16 per hour of information systems engineer time performing the delivery order requirements. The statement of work also specified that a computer programmer was required; however, no computer programmer hours were recorded. The statement of work did not specify a senior information mission area technician, yet 906 hours attributed to a senior information mission area technician were recorded against the delivery order.

**Unreviewed Travel Order Costs.** As another example, the ACO did not subject travel costs to approvals, controls, or surveillance. The contractor incurred approximately $1.3 million in travel costs on the 36 delivery orders awarded and administered by DCMAO Frankfurt. The contractor was reimbursed for travel costs that were not authorized in advance by the Government, as required by contract section H.30, "Travel and Per Diem Expenses." In addition, portions of the travel costs exceeded the amounts authorized under the contract or were not reimbursable under the contract.

For example, the Government reimbursed the contractor personnel for safe-arrival phone calls when the only allowable costs are official long distance calls certified by an approving officer as necessary in the interest of the Government. In another example, the contractor was reimbursed for $74,465 in undocumented lodging costs distributed over 66 claims. The files reviewed at the contractor site and the paying activity had no receipts or other documentation to support the lodging costs claimed and reimbursed.

## Recommendations, Management Comments, and Audit Response

**We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to:**

**1. Establish and implement procedures to:**

**a. Identify the circumstances and methodology for seeking legal and technical advice and for documenting the resulting advice.**

**b. Require personal services to be properly authorized and provided for in the terms of the contract.**

**c. Prohibit performance of inherently governmental functions.**

**Management Comments.** The Defense Logistics Agency concurred. The Commander, Defense Contract Management Area Operations Frankfurt, will establish and implement the procedures specified in the recommendations.

**Audit Response.** The Defense Logistics Agency actions planned are responsive to the intent of the recommendations. We request that the Defense Logistics Agency provide a specific date by which the Defense Contract Management Area Operations Frankfurt will complete the planned action in its comments to the final report.

**2. Request the Defense Contract Audit Agency to audit all travel claims submitted by the contractor for the Worms, Germany, field site delivery orders to:**

**a. Determine whether costs are allowable under the contract provisions.**

**b. Recover unsupported and unallowable costs from the contractor.**

**Management Comments.** The Defense Logistics Agency concurred. The Commander, Defense Contract Management Area Operations Frankfurt, requested that the Defense Contract Audit Agency do an incurred cost audit of the contractor. The ACO will recover the costs from the contractor, if justified.

**Audit Response.** The Defense Logistics Agency planned actions are responsive to the recommendations. We request that, in its comments to the final report, the Defense Logistics Agency provide a specific date by which the results from the incurred cost audit and the corresponding actions of the ACO will be completed.

**3. Recoup $74,465 from the contractor for the undocumented lodging expenses claimed and paid.**

**Management Comments.** The Defense Logistics Agency partially concurred. The Defense Logistics Agency stated that details contained in the audit report were not adequate to support recovery of the specific amount. However, the Defense Logistics Agency will pursue recovery actions, if justified by the Defense Contract Audit Agency incurred cost audit.

**Audit Response.** The Defense Logistics Agency actions planned are responsive to the intent of the recommendation. We request that the Defense Logistics Agency provide a specific date by which the results from the incurred cost audit and the corresponding actions of the ACO will be completed.

# Finding C. Delivery Orders to Establish Price

The ACO at the DCMAO Frankfurt awarded unpriced delivery orders, called UCAs, without authorization and did not obtain timely definitization (agreement on cost or pricing data and any other open clauses, terms, or conditions) for the UCAs. The ACO awarded UCAs because procedures were not implemented to preclude contracting personnel from acting outside their authority. In addition, procedures to use positive or negative incentives to obtain contractor proposals were not effective. As a result of the UCAs, the contractor charged $12.1 million in costs for work performed at prices not negotiated by the Government, and the Government assumed increased cost risk.

## Background

**Justification and Authorization Requirements for UCAs.** DFARS 217.7403, "Policy," states that the use of UCAs should be limited to the maximum extent practicable. Contracting officers should not enter into UCAs without prior authorization from the head of the agency or a designee. DFARS 217.7404, "Limitations," requires that the authorization or justification for a UCA include a narrative statement of the specific operational impact on organization mission requirements if the UCA is disapproved. If the use of a UCA is disapproved, contracting personnel must negotiate a definitively priced contract before the contractor can begin work.

**Timely Definitization of UCAs.** DFARS 217.7404-3, "Definitization Schedule," requires UCA definitization within 180 days of award or before funds expended under the UCA equal or exceed 50 percent of the not-to-exceed price. The 180-day period may be extended if the contractor submits a qualifying proposal, but may not exceed 180 days from the date that the contractor submits a qualifying proposal.

DFARS 217.7404-6, "Allowable Profit," states:

> When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the agency shall ensure the profit allowed reflects--
>
> (a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price; and
>
> (b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract.

**Limitations on Obligation and Expenditure of UCA Funds.** United States Code, title 10, section 2326(b), "Limitations on Obligations and Expenditure of Funds," establishes the limitations on UCA obligations and expenditures. DFARS 217.7404-4 paraphrases this section where it prescribes that:

> The Government shall not expend more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been expended by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent . . . .

## Definitization of UCAs

**Obtaining Required Authorization to Issue UCAs.** The ACO awarded 35 delivery orders as UCAs without prior authorization from the Defense Contract Management Command International and without detailed narrative justification of the specific operational impact on the requiring organizations' mission if the UCA was disapproved.

**Definitizing UCAs in a Timely Manner.** The ACO did not obtain timely definitization for 35 of the 36 delivery orders awarded. As of January 28, 1994, the 35 delivery orders had been undefinitized from 485 to 1,218 days, far longer than the 180-day limit specified in DFARS 217.7404-3. Appendix A shows the number of days each delivery order was undefinitized. The contractor was allowed to begin and continue work on the delivery orders even though the ACO had not received a qualifying proposal, as required by United States Code, title 10, section 2326(b). The amount expended on 22 delivery orders exceeded 50 percent of the amount obligated and totaled $6.8 million. The contractor did not submit qualifying proposals that would permit increasing the limitation on obligations to 75 percent. Appendix B shows the analysis of obligations and expenditures exceeding 50 percent of the not-to-exceed price.

## Authority of Contracting Staff Over Unpriced Delivery Orders

**Defining Circumstances Requiring Authorization.** DCMAO Frankfurt did not implement procedures to ensure that transactions and significant events were authorized and executed only by persons acting within the scope of their authority. Procedures were not implemented that defined the circumstances under which authorizations were required and that prescribed how to obtain authorizations, even though the basic requirements for authorizations were established in the FAR and DFARS.

**Monitoring Definitization and Delivery Order Status.** DCMAO Frankfurt had no monitoring system or management information reports in place for the contract that could alert management to irregularities such as the award of UCAs without authorization. Management information reports that would show the status of UCAs, including the extent to which the UCAs exceeded time and monetary limitations, were not prepared.

**Using Incentives to Obtain Timely Definitization.** The ACO did not use positive or negative incentives to obtain timely submission of contractor proposals. For example, the contract files contained no evidence that monetary goals were employed as a positive means to accelerate the UCA negotiation process. In addition, the contracting files contained no evidence that the ACO reduced or suspended contractor progress payments when the contractor did not submit timely proposals. On the contrary, the ACO continued to add work to the delivery orders by issuing amendments to the original statements of work and increasing the amount of funds obligated on the delivery orders. On delivery orders 0043, 0045, SS01, SS02, and SS03, the ACO approved payment of award fees totaling $56,748 and fixed fees totaling $23,073, even though the contractor had not submitted qualifying proposals.

## Increased Cost Risk Assumed by Government

The Government expended $12.1 million in contract costs for work at prices and with a workforce composition that the Government had not negotiated. The Government assumed increased cost risk in the negotiation process when the ACO permitted the contractor to perform and charge services for which the costs exceeded 50 percent of the original funded amount of the delivery order. Because a substantial portion of the required performance had been completed on the delivery orders and because the delivery orders remained undefinitized, the Government continued to assume risk that the contractor would charge more than the $19.5 million obligated on the delivery orders.

## Recommendations, Management Comments, and Audit Response

**We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to:**

**1. Establish and implement procedures to:**

**a. Define the circumstances under which authorizations for undefinitized contractual actions are required and to prescribe how to obtain authorizations.**

**b. Monitor and report the status of delivery order contracting actions.**

**c. Limit obligations to 50 percent, or 75 percent if appropriate, before definitization.**

**d. Use positive or negative incentives to obtain timely submission of contractor proposals.**

**Management Comments.** The Defense Logistics Agency concurred and agreed to establish and implement the internal control procedures specified in the recommendations.

**Audit Response.** The Defense Logistics Agency planned actions are responsive to the recommendation. We request that, in its response to the final report, the Defense Logistics Agency provide a specific date by which the Defense Contract Management Area Operations Frankfurt will complete the planned internal control procedures.

**2. Reduce the award and fixed fee allowed to the contractor to reflect the reduced risk the contractor assumed for costs incurred during contract performance before negotiation of the final price.**

**Management Comments.** The Defense Logistics Agency nonconcurred. The Defense Logistics Agency based the nonconcurrence on contract section L, which the Defense Logistics Agency said set out fee calculations. The Defense Logistics Agency also stated that the Government is not assuming additional risk and that the contractor is not reducing risk in the event of unnegotiated delivery orders. However, the Defense Logistics Agency commented that fee would be a factor in definitizing the delivery orders.

**Audit Response.** Contract section L spells out instructions to bidders, not fee calculations. Further, although the Defense Logistics Agency commented that fee would be a factor in definitizing the delivery orders, the action the Defense Logistics Agency plans is not clear. We request that the Defense Logistics Agency provide additional comments on the recommendation and provide the date by which the action will be taken.

# Finding D. Classification of Delivery Orders for Funding

The ACO at the DCMAO Frankfurt improperly classified delivery orders awarded on the contract as completion-type instead of as level-of-effort-type contracts. The delivery orders were improperly classified because the ACO did not seek the advice of legal or technical experts to correctly classify delivery orders on this contract. As a result, the following organizations did not recognize severable services, overexpended Operation and Maintenance (O&M) funds, and may also have violated the Antideficiency Act:

o the U.S. European Command overexpended $156,906 of FY 1993 funds;

o the Office of the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army, overexpended $2,214,497 of FY 1993 funds and $675,465 of FY 1994 funds;

o the Office of the Deputy Chief of Staff for Intelligence, U.S. Army Europe and 7th Army, overexpended $249,190 of FY 1992 and $1,118,260 of FY 1993 funds; and

o the 5th Signal Command, Army Information Systems Command, overexpended $688,174 of FY 1993 and $198,625 of FY 1994 funds.

## Background

**Determining Type of Contract Actions.** Determining the type, completion or level-of-effort, of a contract or delivery order depends on whether the services are for a single undertaking or whether the services are continuous and recurring. The determination is based not on the stated contract type, but on the nature of work being performed.

Completion-type contracts and delivery orders require a definite goal and a specific end product to be defined in the scope of work. Level-of-effort-type contracts and delivery orders require a generally defined scope of work and provisions to more specifically define work by task orders issued at undetermined intervals as specific needs arise. The Comptroller General has ruled that the contracting agency is responsible for determining whether a contract type is completion or level-of-effort.

**Determining Funding of Contract Actions.** Several factors determine how a contract action must be funded. One determining factor is whether the contract or delivery order is a completion- or a level-of-effort-type action.

Contract section G.13, "Delivery Orders," states, "delivery orders will be drawn in either completion or term (level-of-effort) form. It is anticipated that the preponderance of delivery orders will be issued in the completion form."

**Funding for Severable Services.** Another determining factor in how a contracting action must be funded is whether the contract or delivery order services are severable or nonseverable. Services are severable if they can be separated into components, each of which can be independently performed to meet a separate need. If the services can be separated into components, each component is identified with the year in which the services are performed.

**Funding from Available Appropriations.** Completion-type contracts are funded from the appropriation available at the time of contract award. Level-of-effort-type contracts are funded from the appropriation available at the time the services are rendered. United States Code, title 31, section 1501(a)1(B), "Documentary Evidence Requirement for Government Obligations," states that an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement between an agency and another person; when executed before the end of the availability period for obligation of the appropriation or fund; and when used for specific goods, work, or services.

United States Code, title 31, section 1502, "Balances Available," states that 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 or to complete contracts properly made within the period of availability and obligated consistently with section 1501. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

**Funding According to Antideficiency Act Provisions.** United States Code, title 31, section 1341, "Limitations on Expending and Obligating Amounts," prohibits any officer or employee of the United States from making or authorizing obligations or expenditures from any appropriations or fund in excess of the amount available, except as authorized by law (availability of appropriations as to time and amount). An antideficiency violation can occur when a subdivision of funds is overobligated, overdisbursed, or obligated in advance of appropriations.

DoD Directive 7200.1, "Administrative Control of Appropriations," May 7, 1984, implements Federal law on appropriations and prescribes the policy and procedures to be followed regarding a violation of the Antideficiency Act. DoD Directive 7200.1 assigns responsibility to the Secretaries of the Military Departments and the Directors of Defense Agencies for investigating any apparent violations of the Antideficiency Act and for reporting violations as required by Federal law.

## Classification of Delivery Orders

**Accuracy of Delivery Order Classifications.** The ACO at the DCMAO Frankfurt classified 9 of 11 delivery orders reviewed as completion-type delivery orders rather than level-of-effort, even though the delivery order statements of work described services that clearly met the criteria for level-of-effort and for severable services.

The nine delivery orders that were incorrectly classified contained generally defined scopes of work with provisions to obtain services on an as-required basis. Although the delivery orders included specific end products such as configuration management plans and test plans to be delivered by a particular date, they also included indefinite products such as the products in delivery order 0043:

> The Contractor will
>
> o Participate in the preparation and validation of technical papers.
>
> o Participate in working group meetings to develop and/or review documentation.
>
> o Develop technical reports regarding the integration and fielding of STACCS systems as required.

The delivery orders further proved to be level-of-effort because task orders were issued on them. If the delivery orders were genuinely completion-type delivery orders, task orders would not be used.

**Severable Services on Delivery Orders Awarded.** In addition to being incorrectly classified regarding level-of-effort, nine delivery orders were incorrectly classified regarding severability of services according to guidelines in the FAR and as detailed in an April 21, 1993, opinion.

In an April 21, 1993, opinion, the Associate Counsel for the Defense Logistics Agency Europe provided the following guidelines to classify delivery order services as severable or nonseverable:

o To the extent that a task order simply orders staff-years of effort to be devoted to general support services, the task order is for severable services.

o To the extent that the task order is for recurring performance of the same task, the task order is for severable services.

o To the extent that a task order is for a specific, single task, the task order is for nonseverable services.

Delivery order SS13, for example, was awarded in May 1992 as a completion-type delivery order and was funded with $500,000 of FY 1992 O&M funds. However, the delivery order SS13 statement of work specified that the contractor would be directed by individual task orders that met level-of-effort

criteria. Delivery order SS13 was funded as a single, nonseverable service. As of September 30, 1992, the ACO had obligated $1.3 million of FY 1992 O&M funds on the delivery order. The contractor provided only $16,825 in services by September 30, 1992. The contractor performed $600,000 of additional services in FY 1993 that were severable, but only $25,000 of FY 1993 O&M funds were obligated for that fiscal year. Thus, $575,000 of FY 1993 work was incorrectly paid for with FY 1992 O&M funds.

## Seeking Specialist Advice to Properly Classify Delivery Orders

The DCMAO Frankfurt did not implement procedures to request advice from legal, engineering, or other specialists who could assist in properly classifying delivery orders for the contract according to contract type and severability of services. The contract files dated before December 1992 for the DCMAO Frankfurt-awarded delivery orders contained no requests for opinions regarding contract type or service severability and the corresponding funding implications.

## Classification of Delivery Orders Impacted Fiscal Year Funding

Based on the ACO classification, the requiring organizations financed the delivery orders with O&M appropriations that were available at the time of delivery order award and overobligated approximately $9.2 million of O&M funds to acquire severable services for FYs 1990 through 1994. In addition, expenditures totaling approximately $5.3 million in FYs 1992 through 1994 exceeded the O&M funds obligated on individual delivery orders for the same period. The overexpenditures could result in violations of the Antideficiency Act. Appendix C shows the amount of funds obligated and expended on each delivery order by fiscal year. The following table summarizes the O&M funds overexpended by each requiring organization by fiscal year.

**O&M Funds Overexpended by Requiring Organization by Fiscal Year**

| | Delivery Orders | FY 1992 | FY 1993 | FY 1994 | Total |
|---|---|---|---|---|---|
| EUCOM | SS29 | $ 0 | $ 156,906 | $ 0 | $ 156,906 |
| USAREUR | | | | | |
| DCSIM | 0043, SS19, SS20, SS34 | 0 | 2,214,497 | 675,465 | 2,889,962 |
| DCSINT | SS07, SS13 | 249,190 | 1,118,260 | 0 | 1,367,450 |
| 5th SIG | SS08, SS26, SS27 | 0 | 688,174 | 198,625 | 886,799 |
| **Total** | | **$249,190** | **$4,177,837** | **$874,090** | **$5,301,117** |

| | |
|---|---|
| 5th SIG | 5th Signal Command |
| DCSIM | Deputy Chief of Staff for Information Management |
| DCSINT | Deputy Chief of Staff for Intelligence |
| EUCOM | U.S. European Command |
| USAREUR | U.S. Army Europe and 7th Army |

# Recommendations, Management Comments, and Audit Response

**1. We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement procedures to correctly classify completion and level-of-effort contracts.**

**Management Comments.** The Defense Logistics Agency concurred. The Defense Logistics Agency agreed that the Commander, Defense Contract Management Area Operations Frankfurt, would establish and implement the internal control procedures specified in the recommendation.

**Audit Response.** We consider the Defense Logistics Agency actions planned responsive to the recommendation. We request that the Defense Logistics Agency, in its response to the final report, provide a specific date by which the Defense Contract Management Area Operations Frankfurt will complete the planned action.

**2. We recommend that the Commander in Chief, U.S. European Command:**

**a. Make the accounting adjustments on delivery order SS29 to the contract to obligate $156,906 of FY 1993 Operation and Maintenance funds.**

**b. Follow the procedures in DoD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate action against the responsible officials if accounting adjustments cause an overobligation.**

**Management Comments.** The U.S. European Command concurred and stated that the U.S. European Command will:

o make accounting adjustments when the report is finalized and

o determine whether a violation of the Antideficiency Act results from making the accounting adjustments.

The Command also stated that it does not expect accounting adjustments to result in an Antideficiency Act violation.

**3. We recommend that the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army:**

**a. Make the accounting adjustments on delivery orders 0043, SS19, SS20, and SS34 to the contract to obligate $2,214,497 of FY 1993 and $675,465 of FY 1994 Operation and Maintenance funds.**

**Management Comments.** The Army nonconcurred with Recommendation D.3.a. to obligate $675,465 of FY 1994 funds. The Army said that the ACO terminated the delivery orders on or before September 30, 1993, and the contractor did no work during FY 1994. In addition, the Army believes that the vendor invoices dated in FY 1994 were for expenses incurred in FY 1993; therefore, the FY 1994 funds require no adjustment. According to the Army, U.S. Army Europe and 7th Army cannot adjust FY 1993 funds until DCMAO Frankfurt, the Defense Contract Audit Agency, and the vendor decide the FY 1993 expenses. The U.S. Army Europe and 7th Army will adjust the accounts for the exact expenses, when decided.

**Audit Response.** Although the Army nonconcurred, the actions planned are responsive to the intent of the recommendation. We encourage the Army to carefully review the vendor invoices representing $675,465 of FY 1994 O&M funds, because the invoices showed October and November 1993 dates as the service period. We agree that the Army should adjust the accounts for the exact expenses, when decided.

**b. Follow the procedures in DoD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate action against the responsible officials if accounting adjustments cause an overobligation.**

**Management Comments.** The Army concurred. The Army does not believe that the accounting adjustments for FY 1993 will result in antideficiency violations. However, the Army will determine whether any violations resulted after adjusting the accounts.

**4. We recommend that the Deputy Chief of Staff for Intelligence, U.S. Army Europe and 7th Army:**

**a. Make the accounting adjustments on delivery orders SS07 and SS13 to the contract to obligate $249,190 of FY 1992 and $1,118,260 of FY 1993 Operation and Maintenance funds.**

**b. Follow the procedures in DoD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate action against the responsible officials if accounting adjustments cause an overobligation.**

**Management Comments.** The Army concurred and agreed to adjust FYs 1992 and 1993 O&M funds and to determine whether any antideficiency violations resulted. The Army also stated that it did not expect the accounting adjustments to result in an Antideficiency Act violation.

**5. We recommend that the Commander, 5th Signal Command, Army Information Systems Command:**

**a. Make the accounting adjustments on delivery orders SS08, SS26, and SS27 to the contract to obligate $688,174 of FY 1993 and $198,625 of FY 1994 Operation and Maintenance funds.**

**Management Comments.** The Army partially concurred. The Army agreed to adjust the accounts for delivery orders SS08 and SS27. Further, the Army plans to provide the needed FYs 1993 and 1994 funds and to request the return of unused FY 1992 funds.

However, the Army considered delivery order SS26 appropriately classified and, therefore, requiring no adjustment to an account. Delivery order SS26 was a completion-type delivery order and was properly charged against the funds that were current when the ACO issued it. Delivery order SS26 for engineering, installation, and testing of the Community Common User Data Network at specified European locations was a single undertaking. The Community Common User Data Network is supposed to connect communities in Europe through the Defense Data Network. In FY 1990, the Army identified a need to connect about 26 communities.

Because the Army did not consider engineering, installation, and testing the Community Common User Data Network as continuous, recurring, and divisible tasks, the Army found delivery order SS26 consistent with the Comptroller General criteria for a complete or entire order. If the contracting parties stopped or severed work at the end of a fiscal year, little or no benefit would accrue to the Government. A partially completed Community Common User Data Network at a single or at multiple locations would not fill a discrete need of the Government.

Further, even if Community Common User Data Network projects were severable at each location, the Army perceived no difference between separate delivery orders for each location and a single delivery order for multiple locations. The product and funding would be identical in either case.

**Audit Response.** The Army actions planned on delivery orders SS08 and SS27 are responsive to the recommendation. However, we disagree with the Army comments on delivery order SS26.

We believe that each Community Common User Data Network location becomes a usable unit when completed and connected to the Defense Data Network. The work accomplished is continuous, recurring, and divisible when applied to discrete locations. Installation of a Community Common User Data Network at any given location connects buildings, provides a usable service for the community, and connects the communities completed through the Defense Data Network.

If the Community Common User Data Network locations were not severable, all 26 locations identified in 1990 should be on one delivery order. Delivery order SS26, however, was for nine locations. In comparison, delivery order 0210 was to prepare Engineering Installation Packages for 19 locations and to install equipment for 14 locations. The Army funded delivery order 0210 with FY 1993 funds and delivery order SS26 with FY 1992 funds; therefore, the funds were not identical, as the Army indicated they should be. Consequently, we believe that each location should be considered a severable service and funded in the fiscal year in which the service started. We request that the Army reconsider its position on delivery order SS26 in its response to the final report.

**b. Follow the procedures in DoD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate action against the responsible officials if accounting adjustments cause an overobligation.**

**Management Comments.** The Army nonconcurred with Recommendation D.5.b. Sufficient prior year funds would be available to cover the necessary accounting adjustments associated with delivery orders SS08 and SS27.

**Audit Response.** Although the Army nonconcurred, the planned actions are responsive.

**6. We recommend that the Commander, Army Information Systems Command, review the classification and funding of the 25 delivery orders that we did not review in detail, and initiate accounting adjustments as necessary.**

**Management Comments.** The Army partially concurred. The Army reported that the Army Information Systems Command provided an assistance team to

DCMAO Frankfurt to help classify and adjust accounts as necessary on the unaudited 25 delivery orders. However, DCMAO Frankfurt is responsible for classifying delivery orders and requesting accounting adjustments.

**Audit Response.** Although the Army only partially concurred, the Army actions taken and planned are responsive to the intent of the recommendation.

# Finding E. Purchasing Procedures for Automated Data Processing Equipment

The ACO at DCMAO Frankfurt procured ADPE from a vendor that was not a party to the negotiated contract without authorization under either the basic contract or the FAR. The ACO also improperly classified ADPE purchases. The ACO took these actions because procedures were not implemented to preclude contracting staff from acting outside its authority. The ACO also did not seek the advice of legal or technical specialists. As a result, the Office of the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army, expended $94,105 of O&M funds instead of Other Procurement, Army, funds on delivery order SS10 and $212,511 of O&M funds on delivery order SS07 instead of Other Procurement, Army, funds and may have violated the Antideficiency Act.

## Background

**Modifying the Contract Statement of Work.** Contract section G.10, "Designation of Ordering Officers," states that ordering officers have no authority to modify any provision of the basic contract. Any deviations from the terms of the basic contract must be submitted to the primary contracting officer at Army Information Systems Command for contractual action. Contract section H.32, "Contractor Acquired Automation Equipment," states that the contractor is responsible for providing all of the ADPE needed to satisfy the requirements of the contract except when the use of Government-owned ADPE is authorized or required in individual delivery orders or task orders.

**Small Purchase Procedures.** FAR part 13, "Small Purchase and Other Simplified Purchase Procedures," defines a small purchase as the acquisition of supplies, nonpersonal services, and construction in the amount of $25,000 or less and establishes the policy and procedures for making a small purchase. The policy states that simplified procedures shall not be used to purchase supplies or services that exceed the $25,000 limitation.

**Contract Ratification.** FAR 1.602-3, "Ratification of Unauthorized Commitments," defines an unauthorized commitment as an agreement that is not binding on the Government solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. FAR 1.602-3 states, "subject to limitations . . . the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment."

**Regulations Applicable to ADPE Funding.** United States Code, title 31, section 1301, "Appropriations," states that appropriations shall be applied only to the objects for which the appropriations were made except as otherwise

provided by law. United States Code, title 31, section 1341, "Limitations on Expending and Obligating Amounts," states that an officer or employee of the Federal Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. Section 1341 also prohibits an officer or employee from involving the government in a contract or obligation for payment of money before an appropriation is made unless authorized by law (availability of appropriations as to time and amount).

United States Code, title 31, section 1517(a), "Prohibited Obligations and Expenditure," states that an officer or employee of the Government may not make or authorize an expenditure or obligation exceeding the amount permitted by regulations (availability of appropriations under a administrative subdivision of funds).

O&M and Other Procurement, Army, funds are applied according to criteria detailed in DoD Regulation 7000.14-R, "Financial Management Regulation." DoD Regulation 7000.14-R criteria include the following:

o Section 010201-C.1f, "Procedures for Determining Expenses Versus Investments," states that the expense or investment decision should be determined by the unit cost of a complete system rather than by the individual items of equipment or components which, when aggregated, become a system.

o Section 010201-C.2b, "Investments," states that all equipment items not subject to centralized item management and asset control, and with a system unit cost equal to or greater than the approved threshold of $15,000 (the threshold at the time the award was made) should be classified as investments. A validated requirement may not be fragmented or acquired piecemeal to circumvent the expense and investment criteria policy.

o Section 010201-D1, "New Equipment or System Procurement," states that the aggregate cost of new equipment or systems, including peripherals and system unique software, will be used to determine whether the procurement should be treated as an expense or investment cost.

## Contracting Actions Required Authorization Under Basic Contract or FAR

**Compliance with Negotiated Contract.** The ACO failed to comply with the terms of the contract and to safeguard the interests of the United States in its contractual relationships. The ACO purchased modems, a specific kind of ADPE, from a local vendor who was not a party to the contract. The U.S. Army Europe and 7th Army required two types of modems to upgrade the STACCS Europe Wide Area Network. The contractor purchased one type of modem and proposed a schedule to acquire the other. The ACO did not approve of the contractor schedule to obtain the other modems. The ACO purchased the other modems from a local vendor, even though the statement of

work for contract delivery order SS10 specified that the modems were to be purchased from the contractor. The ACO actions infringed on the contractor's responsibilities under the contract.

The justification that the ACO provided to the 266th Theater Finance Command to support payment of this action was, "this purchase is a requirement of the contract and was purchased for the Government. To avoid contractor applied G&A [general and administrative] fees, the Government will pay the vendor directly."

**Unauthorized Commitment.** The ACO did not have authority to issue delivery orders to vendors that were not part of the basic contract. The ACO purchase circumvented the requirements of the basic contract and the delivery order statement of work that authorized the contractor to acquire automation. The ACO circumvention of the negotiated contract essentially established a new contract for a small purchase with the vendor who provided the modems. The ACO did not have the authority to enter into a small purchase agreement with the modem vendor because the purchase price was $94,105, exceeding the $25,000 limitation established by the FAR. The purchase was an unauthorized commitment that required ratification in accordance with FAR 1.602-3 because the ACO did not follow procedures for authorization. In the absence of ratification, the Government may recover funds from the ACO for the unauthorized contract.

## Classification of ADPE Purchases for Funding Purposes

In addition to circumventing the basic contract and the delivery order statement of work, the ACO incorrectly classified the modem purchase as an O&M-funded purchase instead of an investment purchase.

The ACO also approved, and improperly classified as an O&M-funded purchase, the purchase on delivery order SS07 of two minicomputers. The two minicomputers individually exceeded the $15,000 investment threshold for ADPE. The two minicomputers, $17,546 each plus $177,419 worth of peripherals, were not stand-alone operating pieces of equipment but were a system upgrade. The system upgrade should have alerted the ACO that the purchase should be classified as an Other Procurement, Army-funded purchase.

## Internal Controls Over Authorizations Obtained and Funds Used for ADPE Purchases

**Executing Transactions and Events.** DCMAO Frankfurt did not implement procedures to ensure that transactions and significant events were authorized and executed only by persons acting within the scope of their authority.

Specifically, the DCMAO Frankfurt had not implemented procedures that defined the circumstances for which authorizations were required and that prescribed how to obtain authorizations, even though the FAR and DFARS contain basic requirements for authorizations.

**Recording Transactions and Events.** DCMAO Frankfurt did not implement procedures to identify the circumstances or the methodology for seeking specialist advice. The ACO did not request and consider the advice of specialists in ADPE procurement when determining the type of funding required for ADPE acquisition. In addition, the ACO did not seek technical advice to determine whether ADPE acquisitions were additional components or upgrades to an existing system and then follow the expense versus investment procedures established in DoD Regulation 7000.14-R for funding.

## Purchase of ADPE Using O&M Funds

The ACO purchased ADPE on delivery order SS10 at a cost of $94,105, citing O&M funds for the purchase, even though the delivery order statement of work specifically identified Other Procurement, Army, funds for the purchase. The ACO citation of O&M funds resulted in the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army, obligating the incorrect funds for purchasing ADPE equipment.

The ACO approval and classification on delivery order SS07 of the two minicomputers that exceeded the investment threshold for ADPE resulted in the Deputy Chief of Staff for Intelligence, U.S. Army Europe and 7th Army, obligating $212,511 of O&M funds instead of Other Procurement, Army, funds for purchasing ADPE equipment.

The ACO violated United States Code, title 31, section 1301(a), "Application," and potentially violated the Antideficiency Act when the ACO used O&M funds to procure investment-type items that should have been funded with Other Procurement, Army, funds.

## Recommendations, Management Comments, and Audit Response

**Revised, Renumbered, Redirected, and Deleted Recommendations.** As a result of management comments, and to ensure that recommendations are directed appropriately, we revised draft report Recommendation E.2.a. and renumbered and redirected the corrective action to the Army as Recommendation E.3.a. We revised draft report Recommendation E.3. into two separate parts. We redirected one part of the corrective action to the Defense Logistics Agency as revised Recommendation E.1.b., and we

redirected the second part of the corrective action to the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army, as revised Recommendation E.3.b. We deleted draft Recommendation E.2.c.

**1. We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to**

**a. Establish and implement procedures to properly authorize and classify expense and investment transactions.**

**b. Amend delivery order SS10 to use $94,105 of FY 1992 Other Procurement, Army, funds already obligated.**

**Management Comments.** The Defense Logistics Agency agreed to establish and implement the internal control procedures specified in the recommendation.

**Audit Response.** The Defense Logistics Agency comments are responsive to Recommendation E.1.a. We request that, in its comments to the final report, the Defense Logistics Agency provide comments on Recommendation E.1.b. and provide a specific date by which the Defense Contract Management Area Operations Frankfurt will complete the planned actions.

**2. We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Command, to review the performance of the administrative contracting officer who awarded delivery orders that exceeded the scope of the basic contract DAEA18-89-D-0015, that were unpriced and incorrectly classified, and that used incorrect year funds and incorrect appropriation funds, and take appropriate action.**

**Management Comments.** The Defense Logistics Agency stated that it nonconcurred with draft Recommendation E.2. However, the actions the Defense Logistics Agency described in its comments are responsive to the intent of draft Recommendations E.2.b (now Recommendation E.2.) and E.2.c. (deleted).

The Defense Logistics Agency explained that the unauthorized commitment, discussed in draft Recommendation E.2.a. (now Recommendation E.3.a.) benefitted the Government. Consequently, ratification rather than recovery from the ACO would be the appropriate action. The authority to ratify the purchase belongs to the command that requested, paid for, and used the goods. The Defense Logistics Agency also stated that it will review the facts of the case concerning both the ACO and the supervisor and take appropriate action.

**Audit Response.** We consider ratification a responsive action to the draft recommendation, and we have revised and redirected the recommendation, renumbered as Recommendation E.3.a., to the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army.

Although the Defense Logistics Agency comments on Recommendation E.2. are responsive to the intent of the recommendation, we request that, in its

comments to the final report, the Defense Logistics Agency provide a specific date by which the Defense Contract Management Command will complete the review of the administrative contracting officer performance. We deleted draft Recommendation E.2.c.

**3. We recommend that the Deputy Chief of Staff for Information Management, U.S. Army Europe and 7th Army,**

**a. Ratify the unauthorized commitment.**

**b. Make accounting adjustments to deobligate $94,105 of FY 1992 Operation and Maintenance funds that were improperly used to procure automated data processing equipment under contract DAEA18-89-D-0015.**

**Management Comments.** The Army nonconcurred with draft Recommendation E.3. The Army stated that DCMAO Frankfurt must amend delivery order SS10 to cite the correct funds because the Other Procurement, Army, funds originally provided are still available. The U.S. Army Europe and 7th Army will then be able to deobligate the O&M funds improperly cited.

**Audit Response.** We agree with the Army that DCMAO Frankfurt must take action to obligate the Other Procurement, Army, funds correctly. As a result, we have revised the portion of the recommendation to correctly obligate funding and redirected it to the Defense Logistics Agency. We consider the Army planned action to deobligate the O&M funds (now Recommendation E.3.b.) after DCMAO Frankfurt amends delivery order SS10 to be responsive to the intent of the recommendation. We request that, in its comments to the final report, the Army provide comments on the added Recommendation E.3.a.

**4. We recommend that the Deputy Chief of Staff for Intelligence, U.S. Army Europe and 7th Army:**

**a. Make accounting adjustments to deobligate $210,581 of FY 1992 and $1,930 of FY 1993 Operation and Maintenance funds under contract DAEA18-89-D-0015, delivery order SS07, and obligate $212,511 of FY 1992 Other Procurement, Army, funds.**

**b. Follow DoD procedures to investigate and to report any Antideficiency Act violations, and initiate action against the responsible officials if accounting adjustments result in an overobligation in the appropriation accounts.**

**Management Comments.** The Army concurred and agreed to adjust FYs 1992 and 1993 O&M funds and FY 1992 Other Procurement, Army, funds, and to determine whether any antideficiency violations resulted. The Army also stated that it did not expect the accounting adjustments to result in an Antideficiency Act violation.

# Part III - Additional Information

# Appendix A. Undefinitized Delivery Orders

| Delivery Order | Issue Date of Delivery Order | Required Date of Definitization* | | No. of Days Undefinitized as of Jan. 28, 1994 |
|---|---|---|---|---|
| | | 50 Percent of Initial Delivery Order Amount | 180 Days from Issue Date | |
| 0043 | Sept. 28, 1990 | | Mar. 27,1991 | 1,218 |
| 0045 | Sept. 30, 1990 | | Mar. 29,1991 | 1,216 |
| SS01 | Apr. 1, 1991 | | Sept. 28,1991 | 1,033 |
| SS02 | May 15, 1991 | Aug. 15,1991 | | 989 |
| SS03 | May 15, 1991 | Sept. 10, 1991 | | 989 |
| SS04 | Sept. 16, 1991 | | Mar. 14,1992 | 865 |
| SS05 | Sept. 16, 1991 | | Mar. 14,1992 | 865 |
| SS06 | Sept. 16, 1991 | | Mar. 14,1992 | 865 |
| SS07 | Sept. 30, 1991 | | Mar. 28,1992 | 851 |
| SS08 | Dec. 3, 1991 | | May 31,1992 | 787 |
| SS09 | Feb. 14, 1992 | | Aug. 12,1992 | 714 |
| SS10 | Mar. 16, 1992 | Sept. 11,1992 | | 683 |
| SS11 | Mar. 30, 1992 | Sept. 26,1992 | | 669 |
| SS12 | Apr. 25, 1992 | | Oct. 22, 1992 | 643 |
| SS13 | May 6, 1992 | | Nov. 2, 1992 | 632 |
| SS14 | May 6, 1992 | | Nov. 2, 1992 | 632 |
| SS15 | May 15, 1992 | | Nov. 11,1992 | 623 |
| SS16 | May 11, 1992 | | Nov. 7, 1992 | 627 |
| SS17 | May 15, 1992 | | Nov. 11,1992 | 623 |
| SS18 | June 19, 1992 | | Dec. 16,1992 | 588 |
| SS19 | July 21, 1992 | | Jan. 17, 1993 | 556 |
| SS20 | July 21, 1992 | | Jan. 17, 1993 | 556 |
| SS21 | Aug. 10, 1992 | | Feb. 6, 1993 | 536 |
| SS22 | Aug. 10, 1992 | | Feb. 6, 1993 | 536 |
| SS23 | Aug. 10, 1992 | | Feb. 6, 1993 | 536 |
| SS24 | Aug. 10, 1992 | | Feb. 6, 1993 | 536 |
| SS25 | Aug. 10, 1992 | | Jan. 29, 1993 | 536 |
| SS26 | Aug. 26, 1992 | | Feb. 22,1993 | 520 |
| SS27 | Aug. 10, 1992 | | Feb. 6, 1993 | 536 |
| SS28 | Sept. 15, 1992 | | Mar. 14,1993 | 500 |
| SS29 | Sept. 28, 1992 | | Mar. 27,1993 | 487 |
| SS30 | Sept. 29, 1992 | | Mar. 28,1993 | 486 |
| SS31 | Sept. 29, 1992 | | Mar. 28,1993 | 486 |
| SS32 | Sept. 29, 1992 | | Mar. 28,1993 | 486 |
| SS33 | Sept. 30, 1992 | | Mar. 29,1993 | 485 |
| SS34 | Dec. 23, 1992 | | definitized | 0 |

*DFARS 217.7404-3 states that a delivery order should be definitized by the date on which the amount of funds spent under the delivery order exceeds 50 percent of the not-to-exceed price or within 180 days following the issuance of the delivery order, whichever comes first. In our analysis, we recognized 50 percent of the not-to-exceed price as 50 percent of the initial delivery order amount as shown in Appendix B.

# Appendix B. Delivery Order Obligations and Expenditures

| Delivery Order | Initial Delivery Order Amount Obligated | 50 Percent of Initial Delivery Order Amount | Total Amount Expended | Is the Amount Expended More Than 50 Percent of the Amount Obligated | If Yes, by How Much |
|---|---|---|---|---|---|
| 0043 | $ 881,401 | $ 440,701 | $ 3,658,919 | yes | $3,218,218 |
| 0045 | 644,549 | 322,275 | 726,135 | yes | 403,860 |
| SS01 | 50,000 | 25,000 | 28,366 | yes | 3,366 |
| SS02 | 56,359 | 28,179 | 45,574 | yes | 17,395 |
| SS03 | 73,000 | 36,500 | 37,824 | yes | 1,324 |
| SS04 | 540,000 | 270,000 | 87,738 | no | |
| SS05 | 300,000 | 150,000 | 108,472 | no | |
| SS06 | 125,000 | 62,500 | 115,781 | yes | 53,281 |
| SS07 | 1,073,794 | 536,897 | 1,198,762 | yes | 661,865 |
| SS08 | 450,000 | 225,000 | 354,658 | yes | 129,658 |
| SS09 | 328,835 | 164,418 | 246,291 | yes | 81,873 |
| SS10 | 389,500 | 194,750 | 695,766 | yes | 501,016 |
| SS11 | 314,937 | 157,469 | 158,746 | yes | 1,277 |
| SS12 | 100,000 | 50,000 | 90,073 | yes | 40,073 |
| SS13 | 500,000 | 250,000 | 617,024 | yes | 367,024 |
| SS14 | 120,514 | 60,257 | 150,254 | yes | 89,997 |
| SS15 | 35,000 | 17,500 | 10,456 | no | |
| SS16 | 125,000 | 62,500 | 86,671 | yes | 24,171 |
| SS17 | 35,000 | 17,500 | 10,726 | no | |
| SS18 | 120,000 | 60,000 | 32,696 | no | |
| SS19 | 595,000 | 297,500 | 754,847 | yes | 457,347 |
| SS20 | 679,000 | 339,500 | 870,428 | yes | 530,928 |
| SS21 | 70,000 | 35,000 | 22,758 | no | |
| SS22 | 50,000 | 25,000 | 2,276 | no | |
| SS23 | 630,000 | 315,000 | 221,876 | no | |
| SS24 | 448,300 | 224,150 | 290,853 | yes | 66,703 |
| SS25 | 35,000 | 17,500 | 29,836 | yes | 12,336 |
| SS26 | 1,900,000 | 950,000 | 695,167 | no | |
| SS27 | 250,000 | 125,000 | 105,355 | no | |
| SS28 | 150,000 | 75,000 | 103,837 | yes | 28,837 |
| SS29 | 1,700,000 | 850,000 | 156,906 | no | |
| SS30 | 306,000 | 153,000 | 262,619 | yes | 109,619 |
| SS31 | 250,000 | 125,000 | 6,097 | no | |
| SS32 | 90,000 | 45,000 | 73,485 | yes | 28,485 |
| SS33 | 184,623 | 92,312 | 87,440 | no | |
| SS34 | 2,621,624 | definitized | definitized | | definitized |
| **Total** | **$16,222,436** | **$6,800,408** | **$12,144,712** | | **$6,828,653** |

# Appendix C. Operation and Maintenance Amounts Obligated and Expended By Delivery Order and Fiscal Year

| Delivery Order and Financial Action | Fiscal Year 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|
| 0043 | | | | | |
| Obligated | $881,401 | $ 890,000 | $2,170,000 | $ 0 | $ 0 |
| Expended | 0 | 799,276 | 1,884,080 | 880,359 | 95,205 |
| **(Over)/Under Expended** | **$881,401** | **$ 90,724** | **$ 285,920** | **($ 880,359)** | **($ 95,205)** |
| SS07 | | | | | |
| Obligated | $ 0 | $1,073,794 | $ 179,000 | $ 15,000 | $ 0 |
| Expended | 0 | 0 | 428,190 | 558,061 | 0 |
| **(Over)/Under Expended** | **$ 0** | **$1,073,794** | **($ 249,190)** | **($ 543,061)** | **$ 0** |
| SS08 | | | | | |
| Obligated | $ 0 | $ 0 | $ 378,518 | $ 0 | $ 0 |
| Expended | 0 | 0 | 268,022 | 63,941 | 22,696 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$ 110,496** | **($ 63,941)** | **($ 22,696)** |
| SS10 | | | | | |
| Obligated | $ 0 | $ 0 | $ 551,000 | $ 0 | $ 0 |
| Expended | 0 | 0 | 518,360 | 0 | 0 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$ 32,640** | **$ 0** | **$ 0** |
| SS13 | | | | | |
| Obligated | $ 0 | $ 0 | $1,329,600 | $ 25,000 | $ 0 |
| Expended | 0 | 0 | 16,825 | 600,199 | 0 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$1,312,775** | **($ 575,199)** | **$ 0** |
| SS19 | | | | | |
| Obligated | $ 0 | $ 0 | $ 985,000 | $ 0 | $ 0 |
| Expended | 0 | 0 | 32,113 | 614,093 | 108,642 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$ 952,887** | **($ 614,093)** | **($ 108,642)** |
| SS20 | | | | | |
| Obligated | $ 0 | $ 0 | $1,031,000 | $ 0 | $ 0 |
| Expended | 0 | 0 | 19,542 | 720,045 | 130,842 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$1,011,458** | **($ 720,045)** | **($ 130,842)** |

## Appendix C. Operation and Maintenance Amounts Obligated and Expended By Delivery Order and Fiscal Year

| Delivery Order and Financial Action | Fiscal Year 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|
| SS26 | | | | | |
| Obligated | $ 0 | $ 0 | $1,974,000 | $ 0 | $ 0 |
| Expended | 0 | 0 | 0 | 519,237 | 175,929 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$1,974,000** | **($ 519,237)** | **($ 175,929)** |
| SS27 | | | | | |
| Obligated | $ 0 | $ 0 | $ 189,282 | $ 0 | $ 0 |
| Expended | 0 | 0 | 359 | 104,996 | 0 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$ 188,923** | **($ 104,996)** | **$ 0** |
| SS29 | | | | | |
| Obligated | $ 0 | $ 0 | $ 400,000 | $ 0 | $ 0 |
| Expended | 0 | 0 | 0 | 156,906 | 0 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$ 400,000** | **($ 156,906)** | **$ 0** |
| SS34 | | | | | |
| Obligated | $ 0 | $ 0 | $ 0 | $2,183,692 | $ 0 |
| Expended | 0 | 0 | 0 | 1,324,893 | 340,776 |
| **(Over)/Under Expended** | **$ 0** | **$ 0** | **$ 0** | **$ 858,799** | **($ 340,776)** |
| **Total by Fiscal Year** | | | | | |
| **Under Expended** | **$881,401** | **$1,164,518** | **$6,269,099** | **$ 858,799** | **$ 0** |
| **Over Expended** | **$ 0** | **$ 0** | **$ 249,190** | **$4,177,837** | **$ 874,090** |
| **Total** | | | | | |
| **Under Expended** | | | | | **$9,173,817** |
| **Over Expended** | | | | | **$5,301,117** |

# Appendix D. Summary of Potential Benefits Resulting From Audit

| Recommendation Reference | Description of Benefit | Amount and Type of Benefit |
|---|---|---|
| A., B.1., C.1., D.1., E.1.a. | Internal Controls. Reduces the potential for errors, fraud, waste, and abuse and ensures that contracting regulatory procedures are followed. | Undeterminable. Prevention of errors, fraud, waste, and abuse will have continuing monetary benefits. |
| B.2. | Economy and Efficiency. Provides assurance that costs charged by the contractor are bona fide costs. | Undeterminable. The amount of unallowable costs depends on the results of Defense Contract Audit Agency postaward audit. |
| B.3. | Economy and Efficiency. Reimburses appropriated funds for unsupported costs. | $74,465 O&M funds questioned costs. |
| C.2. | Economy and Efficiency. Reduces the cost of services in recognition of risk accepted. | Undeterminable. The reduction in profit depends on the final negotiated amount of the delivery orders. |
| D.2.a., D.3.a., D.4.a., D.5.a., E.4.a. | Compliance with Regulations or Laws. Obligates the correct year funds. | Nonmonetary. |
| D.2.b., D.3.b., D.4.b., D.5.b., E.4.b. | Compliance with Regulations or Laws. Identifies and reports Antideficiency Act violations and directs appropriate personnel action. | Nonmonetary. |
| D.6., E.1.b., E.3.b. | Compliance with Regulations or Laws. Applies funds properly. | Nonmonetary. |

## Appendix D. Summary of Potential Benefits Resulting From Audit

| Recommendation Reference | Description of Benefit | Amount and Type of Benefit |
|---|---|---|
| E.3.a. | Compliance with Regulations or Laws. Ratifies unauthorized commitment. | Nonmonetary. |
| E.2. | Compliance with Regulations or Laws. Enforces accountability for unauthorized and incorrect contracting procedures. | Nonmonetary. |

# Appendix E. Organizations Visited or Contacted

## Department of the Army

U.S. Army Europe and 7th Army, Heidelberg, Germany
- U.S. Army Corps of Engineers, Frankfurt, Germany
- Office of the Deputy Chief of Staff for Intelligence, Heidelberg, Germany
- Office of the Deputy Chief of Staff for Information Management, Heidelberg, Germany
- U.S. Army Contracting Command Europe, Heidelberg, Germany
- 266th Theater Finance Group, Leimen, Germany
- Internal Review Office, Heidelberg, Germany

Army Information Systems Command, Fort Huachuca, AZ
- Internal Review Office, Fort Huachuca, AZ
- Contracting Office, Fort Huachuca, AZ
- Systems Engineering Directorate, Information Systems Engineering Command, Fort Huachuca, AZ
  - Systems Engineering Integration Division, Worms, Germany
- 5th Signal Command, Worms, Germany
  - Command and Control Support Activity - Europe, Heidelberg, Germany
  - Office of the Deputy Chief of Staff for Logistics, Worms, Germany
  - Office of the Deputy Chief of Staff for Plans, Worms, Germany

## Unified Command

U.S. European Command, Stuttgart, Germany
- Automation Resources Branch, Directorate of Command, Control, and Communications, Stuttgart, Germany
- Comptroller, Stuttgart, Germany

## Defense Organizations

Defense Logistics Agency, Alexandria, VA
- Defense Contract Management Center International, Dayton, OH
  - Defense Contract Management Area Operations Frankfurt, Germany
- Defense National Stockpile Center, Arlington, VA

Los Angeles Region, Defense Contract Audit Agency, San Diego, CA

Financial Management Division, DoD Education Activity, DoD Dependent Schools, Wiesbaden, Germany

## Non-Government Organizations

Science Applications International Corporation, San Diego, CA

Technology Applications, Incorporated, Alexandria, VA

# Appendix F. Report Distribution

## Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
Under Secretary of Defense (Comptroller)
Director, Defense Procurement
  Deputy Director, Foreign Contracting
Assistant to the Secretary of Defense (Public Affairs)

## Department of the Army

Secretary of the Army
Assistant Secretary of Army (Financial Management)
Commander in Chief, U.S. Army Europe and 7th Army
  Commander, U.S. Army Contracting Command Europe
Commander, Army Information Systems Command
  Commander, Army Information Systems Engineering Command
Auditor General, Department of the Army

## Department of the Navy

Auditor General, Department of the Navy

## Department of the Air Force

Auditor General, Department of the Air Force

## Unified Command

Commander in Chief, U.S. European Command

## Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
  Commander, Defense Contract Management Command
    Commander, Defense Contract Management Command International
      Commander, Defense Contract Management Area Operations Frankfurt

## Defense Organizations (cont'd)

Director, National Security Agency
Inspector General, Central Imagery Office
Inspector General, Defense Intelligence Agency
Inspector General, National Security Agency
Director, Defense Logistics Studies Information Exchange

## Non-Defense Federal Organizations

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division, General Accounting Office

Chairman and Ranking Minority Member of the Following Congressional Committees and Subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Operations
House Subcommittee on Legislation and National Security, Committee on Government Operations

# Part IV - Management Comments

# Department of the Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
107 ARMY PENTAGON
WASHINGTON DC 20310-0107

Office, Director of Information
Systems for Command, Control,
Communications, & Computers

SAIS-C4S

20 SEP 1994

MEMORANDUM FOR FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ATTN: ASSISTANT INSPECTOR GENERAL FOR AUDITING, 400 ARMY NAVY DRIVE, ARLINGTON, VA 22202-2884

SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No, 4CG-8002)

1. Reference memorandum, IG, DoD, 8 July 1994, SAB, with the enclosed Draft Audit Report.

2. This Army response only responds to Army directed issues from the Draft Audit Report.

3. The Army partially agrees with the subject Audit findings. The Army's detailed response to the subject Draft Report is enclosed.

4. SAIS-C4 POC is LTC Kersh, DSN 224-6166.

FOR THE DIRECTOR:

Encl

for DONALD E. FOWLER JR., COL, GS
Colonel, GS
Deputy Director, C4 Modernization
and Integration

CF:
SAAG-PRF-E

SAIS-C4S
SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No, 4CG-8002)

RECOMMENDATION D-3.

We recommend that the Deputy Chief of Staff, Information Management, U.S. Army, Europe, and Seventh Army:

a. Make accounting adjustments on delivery orders 0043, SS19, SS20, and SS34 to the contract to obligate $2,214,497 of FY93 and $675,465 of FY 94 O&M funds.

b. Follow the procedure in DoD Directive 7200.1, Administrative Control of Appropriations, to report any violations of the Antideficiency Act, and initiate disciplinary action against the responsible officials if accounting adjustments cause an over obligation.

ACTION TAKEN: (USAREUR)

D-3a. NONCONCUR. No expenses were incurred during FY 94, as each delivery order terminated on or before 30 Sep 93 and no work was performed in FY 94. Therefore, no adjustment to FY 94 is in order. FY 93 expenses are misstated, as they are based upon erroneous vendor invoices which do not reflect the cost of work performed as allocated to the Army fiscal year.

USAREUR cannot affect adjustments to FY 93. Expenses must first be determined by DCMAO, in coordination with the Defense Contract Audit Agency and the vendor, for work performed during the Army fiscal year. As soon as amended contractual documents are issued to USAREUR by DCMAO, USAREUR can make any needed adjustments to FY 93 obligations.

D-3b. CONCUR. According to USAREUR's estimates, the ultimately required accounting adjustments for FY 93 are not expected to result in Antideficiency violations. A final determination will be made after adjustments are completed.

RECOMMENDATION D-4.

We recommend that the Deputy Chief of Staff, Intelligence, U.S. Army, Europe, and Seventh Army:

a. Make the accounting adjustments on delivery orders SS07 and SS13 to the contract to obligate $249,190 of FY 92 and $1,118,260 of FY 93 O&M funds.

b. Follow the procedure in DoD Directive 7200.1, Administrative Control of Appropriations, to report any violations of the Antideficiency Act, and initiate disciplinary action against

SAIS-C4S
SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No, 4CG-8002)

the responsible officials if accounting adjustments cause an over obligation.

ACTION TAKEN: (USAREUR)

CONCUR. Because of the erroneous classifications by the contracting office, USAREUR agrees that accounting adjustments are necessary to FY 92 and FY 93 O&M funds. Adjustments will be made as soon as this report is final. According to USAREUR's estimates, the required accounting adjustments are not expected to result in Antideficiency violations. A final determination will be made after adjustments are completed.

RECOMMENDATION D-5.

Commander, 5th Signal Command, Army Information Systems Command:

a. Make the accounting adjustment on delivery orders SS08, SS26, and SS27, to the contract to obligate $688,174 of FY 1993 and $198,625 of FY 1994 Operation and Maintenance funds.

b. Follow the procedures in DoD Directive 7200.1, Administrative Control of Appropriations, to report any violations of the Antideficiency Act, and initiate disciplinary action against the responsible officials if accounting adjustments cause an over obligation.

ACTION TAKEN. (USAISC)

D-5a. PARTIALLY CONCUR.

(1) We completed an examination, 12 August 1994, of the funding of delivery orders SS08, SS26, and SS27. We agree that SS08 and SS27 are incorrectly classified and require accounting adjustments. Accordingly, we will provide the DCMAO-Frankfurt with the needed FY 1993 and FY 1994 funds and request the unused FY 1992 funds be returned.

(2) We do not agree that delivery order SS26 is mis-classified and requires an accounting adjustment. In our opinion, this is a true completion order and properly chargeable to the funds current when the order was issued.

(a) Delivery order SS26 is a single undertaking to complete the engineering, installation, and test of the Community Common User Data Network (CUDN) at specified European locations. The primary intent of the CUDN is to give connectivity, through the Defense Data Network (DDN), among numerous communities

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SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No, 4CG-8002)

in Europe. The need to connect these communities, about 26 total, was established in FY 1990.

(b) The Comptroller General (B-240264) has rendered an opinion that where the services provided constitute a specific entire job with a defined end-product that cannot feasibly be subdivided for separate performance in each fiscal year, the task should be financed entirely from the appropriation current at the time of award, notwithstanding that the performance may extend into future fiscal years.

(c) We believe SS26 fits the Comptroller General criteria for a completion or entire order. Conversely, the DODIG contends that SS26 is severable at each location. This conclusion is based on the fact that an Engineering Installation Package (EIP) is prepared for each installation and that each CUDN can be completed as a separate task. While it is true that an EIP is prepared for each location; this should not be interpreted as making the project severable by individual location. Installation of CUDN at any given location, even though it does provide some connectivity between buildings, does not satisfy the Army's primary requirement, which is connectivity between European Communities.

(d) The nature of the service associated with the CUDN is not continuing and recurring service that can be divided between fiscal years. If work is stopped or severed at the end of a fiscal year, little or no benefit would accrue to the government. A partially completed CUDN at a single or at multiple locations does not fill an independent need of the government.

(e) Lastly, even if the DODIG contention that the CUDN project is severable at each location was accepted, there is no difference between the options of preparing separate delivery orders for each location or preparing a single delivery order for multiple locations. The end product and funding appropriation are identical.

D-5b. NONCONCUR. We believe sufficient prior year funds are available to cover the necessary accounting adjustments associated with SS08 and SS27, thus antideficiency reporting is not required.

RECOMMENDATION D-6. Commander, Army Information Systems Command, review the classification and funding of the 25 delivery orders that we did not review in detail, and initiate accounting adjustments as necessary.

ACTION TAKEN. (USAISC) PARTIALLY CONCUR.

Final Report Reference

SAIS-C4S
SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No, 4CG-8002)

a. The U.S. Army Information Systems Command provided an assistance team to DCMAO-Frankfurt, 8 August 1994, to help in the classification and associated accounting adjustment on the remaining 25 delivery orders. The DCMAO is continuing their examination and definitization of these orders. They are using their legal and technical staff to complete this process and any resultant adjustments. Their intent is to coordinate with the requiring organization and the CORs to finalize delivery order classification and funding. This command is here to assist, if desired by the ACO.

b. However, as pointed out by the DODIG, the DCMAO is responsible for classifying orders and funding. As such, we cannot unilaterally direct action on classification of delivery orders and funding.

RECOMMENDATION E-3:

Revised

We recommend that the Deputy Chief of Staff, Information Management, U.S. Army, Europe, and Seventh Army, make accounting adjustments to deobligate $94,105 of FY 92 O&M funds that were improperly used to procure ADPE under contract #DAEA18-89-D-0015, delivery order SS10; and use $94,105 of FY 92 OPA funds already obligated.

ACTION TAKEN: (USAREUR)

NONCONCUR. DCMAO must take necessary actions. OPA funds were provided to DCMAO at the time required for the procurement and the funds are still available at DCMAO. Delivery order SS10 must be amended by DCMAO; USAREUR cannot correct DCMAO's error. With an amended delivery order SS10, USAREUR will be able to deobligate the O&M funds DCMAO may have improperly cited on delivery order SS10.

RECOMMENDATION E-4:

We recommend that the Deputy Chief of Staff, Intelligence, U.S. Army Europe and Seventh Army:

a. Make accounting adjustments to deobligate $210,581 of FY 92 and $1,930 of FY 93 O&M funds under contract DAEA18-89-D-0015, delivery order SS07, and obligate $212,511 of FY 92 OPA funds.

b. Follow the procedures in DoD Directive 7200.1, Administrative Control of Appropriations, to report any violations of the Antideficiency Act, and initiate disciplinary action against the responsible officials if accounting adjustments cause an over obligation.

5

SAIS-C4S
SUBJECT: Audit Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No, 4CG-8002)

ACTION TAKEN: (USAREUR)

CONCUR. Because of the erroneous classifications by the contracting office, USAREUR agrees that accounting adjustments are necessary to FY 92 and FY 93 O&M and OPA funds. Adjustments will be made as soon as this report is final. According to USAREUR's estimates, the required accounting adjustments are not expected to result in Antideficiency violations. A final determination will be made after adjustments are complete.

6

# Defense Logistics Agency Comments

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22304-6100

IN REPLY REFER TO DDAI

22 SEP 1994

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: DoD IG Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

This is in response to your 1994 request.

JACQUELINE G. BRYANT
Chief, Internal Review

14 Enclosures

cc:
AQCOE
AQCBA
FOE

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

FINDING A: Internal Controls Over Delivery Order Awards and Administration. The DCMAO Frankfurt ACO awarded delivery orders that exceeded the scope of the terms of the basic contract, and the ACO did not establish the delivery order terms and price before performance, as required by the FAR. The ACO did not comply with contract terms and FAR requirements because DCMAO Frankfurt management did not implement effective internal controls. As a result, the Government allowed the contractor to incur unchallenged, unsupported delivery order costs and to charge prices not negotiated by the Government, and the requiring commands funded services using incorrect year funds. Further, the ACO improperly procured, and the requiring commands improperly funded, ADPE.

DLA COMMENTS: PARTIALLY CONCUR:

1. The DoD IG is in dialogue with the Army Information Systems Command (AISC) regarding the technical scope of the basic contract.

2. Concur that the ACO did not establish delivery order terms, limitations and prices, before performance, as required by the FAR.

3. No major exceptions are taken to the remainder of the finding although the cause (i.e.: lack of effective internal controls) might not have prevented a determined ACO from ignoring procedural, regulatory or contractual requirements

INTERNAL MANAGEMENT CONTROL WEAKNESS:

( ) Nonconcur.
(x) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

COMMENT: In our opinion this is an isolated instance, not a material weakness within DCMC. DCMC and DCMCI during the scheduled field assesments will ensure this is not a systemic problem. At the present time DCMCI has notified their Staff Assistance Teams to check on this issue and has tasked DCMAO Frankfurt to perform a special accessment during FY95.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, 40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
D. Stumpf f/ Jacqueline G. Bryant, 49600

DLA APPROVAL:

2 1 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION A: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement internal control procedures to control indefinite-quantity, indefinite-delivery contracts currently administered by the Defense Contract Management Area Operations Frankfurt staff, for supervising staff performance, separating duties and responsibilities, recording and classifying transactions and events, and authorizing and executing transactions and events.

DLA COMMENTS: Concur

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
D. Stumpf f/Jacqueline G. Bryant, 49600

DLA APPROVAL:

21 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

FINDING B: Award of Delivery Orders That Exceeded the Scope of the Basic Contract. Of the 11 delivery orders reviewed, the ACO at DCMAO Frankfurt significantly modified 1 and awarded 8 delivery orders, totaling $11.7 million, that exceeded the scope of the contract, and included unapproved personal services. The out-of-scope delivery orders were awarded because the ACO did not seek the advice of legal or technical specialists and because the ACO exercised control over all aspects of the contracting actions including awarding and modifying delivery orders, administering contractor performance, and approving contractor payments. As a result, the contractor was allowed to perform and bill for work that could not be measured against the terms of the specific delivery orders and to accumulate costs that were unchallenged and unsupported.

DLA COMMENTS: Partially concur.

The requiring activity, Army Information Systems Command (AISC), has stated they have a very broad interpretation of the contract's technical scope. AISC considers umbrella type contracts to have very flexible coverage under the Economy Act. A cost type contract is used when the requiring activity is not able to define the precise requirements of the contract at award. The ACO placed orders based on customer requirements. AISC considers it inappropriate to review, approve, or authorize other activity's or command's purchase requests. The DoD IG is in discussion with AISC to resolve the interpretation of scope and AISC's intent for umbrella type contracts.

The incumbent ACO at DCMAO Frankfurt is in the process of definitizing delivery orders issued under this contract and determining which of the contractor's billed costs are supportable under the terms of the contract.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(x) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See Comment under Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
D. Stumpf f/Jacqueline G. Bryant, 49600

DLA APPROVAL:

21 SEP 1999

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION B.1: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement procedures to:

a. Identify the circumstances and methodology for seeking legal and technical advice and for documenting the resulting advice.

b. Require personal services to be properly authorized and provided for in the terms of the contract.

c. Prohibit performance of inherently governmental functions.

DLA COMMENTS: Concur.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comments under Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751
REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
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DLA APPROVAL:

21 SEP 1994

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION B.2: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to request the Defense Contract Audit Agency to audit all travel claims submitted by the contractor for the Worms, Germany, field site delivery orders to:

a. Determine whether costs are allowable under contract provisions.

b. Recover unsupported and unallowable costs from the contractor.

DLA COMMENTS: Concur.

The Administrative Contracting Officer (ACO) at DCMAO Frankfurt is requesting an incurred cost audit from the Defense Contract Audit Agency (DCAA). The ACO has also begun the process of identifying unsupported and unallowable costs for the purpose of recovering them, if justified.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comment under Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
D. Stumpf f/Jacqueline G. Bryant, 49600

DLA APPROVAL:

21 SEP 1994

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION B.3: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to recoup $74,465 from the contractor for the undocumented lodging expenses claimed and paid.

DLA COMMENTS: Partially concur.

The ACO at DCMAO Frankfurt should recover all undocumented lodging expenses from the contractor. The DoD IG report is not specific enough to initiate recovery action on $74,465. The ACO, with the assistance of DCAA, will pursue recovery actions once the amounts are identified.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comment under Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
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DLA APPROVAL:

21 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

FINDING C: Delivery Orders to Establish Price. The ACO at the DCMAO Frankfurt awarded unpriced delivery orders, called UCAs, without authorization and did not obtain timely definitization (agreement on cost or pricing data and any other open clauses, terms, or conditions) for the UCAs. The ACO awarded UCAs because procedures were not implemented to preclude contracting personnel from acting outside their authority. In addition, procedures to use positive or negative incentives to obtain contractor proposals were not effective. As a result of the UCAs, the contractor charged $12.1 million in costs for work performed at prices not negotiated by the Government, and the Government assumed increased cost risk.

DLA COMMENTS: Partially concur.

Presently the DoD IG is in dialogue with AISC on this issue. The AISC is providing the DoD IG with contract information on fee being based on "should have cost" rather than "actual costs". When the current ACO definitizes the orders, fee will be one of the factors in the negotiation.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comment on Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
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DLA APPROVAL:

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION C.1: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement procedures to:

a. Define the circumstances under which authorizations for undefinitized contractual actions are required and to prescribe how to obtain authorizations.

b. Monitor and report the status of delivery order contracting actions.

c. Limit obligations to 50 percent, or 75 percent if appropriate, before definitization.

d. Use positive or negative incentives to obtain timely submission of contractor proposals.

DLA COMMENTS: Concur.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

See Comment in Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, 40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
D. Stumpf f/Jacqueline G. Bryant, 49600

DLA APPROVAL:

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION C.2: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to reduce the award and fixed fee allowed to the contractor to reflect the reduced risk the contractor assumed for costs incurred during contract performance before negotiation of the final price.

DLA COMMENTS: Nonconcur

Fee calculations are set out in Section L of the contract. The fee pool (base and award fee) is computed on the number of established (should take) hours in the initial contractor's proposal. The base fee is a fixed amount payout while the amount of award fee paid out is based on the contractor's performance/delivery.

The DoD IG and AISC are discussing this issue. DCMC and DCMCI agree that the government is not assuming additional risk nor is the contractor's risk reduced. When the current ACO definitizes the orders, fee will be a factor in the negotiations.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

See comments in Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751
REVIEW/APPROVAL: ~~Robert P. Scott, AQC,~~ x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
Eileen Sanchez, FOE, x46220
DD D. Stumpf f/Jacqueline G. Bryant, 49600

DLA APPROVAL:
21 SEP 1994

LAWRENCE P. [illegible]
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

FINDING D: Classification of Delivery Orders for Funding. The ACO at the DCMAO Frankfurt improperly classified delivery orders awarded on the contract as completion-type instead of as level-of-effort-type contracts. The delivery orders were improperly classified because the ACO did not seek the advice of legal or technical experts to correctly classify delivery orders. As a result, the following organizations did not recognize severable services, overexpended Operation and Maintenance (O&M) funds, and may also have violated the Antideficiency Act:

- o the U.S. European Command overexpended $156,906 of FY 1993 funds,
- o the Office of the Deputy Chief of Staff, Information Management, overexpended $2,214,497 of FY 1993 funds and $675,465 of FY 1994 funds,
- o the Office of the Deputy Cheif of Staff, Intelligence, U.S. Army Europe and 7th Army, overexpended $249,190 of FY 1992 and $1,118,260 of FY 1993 funds, and
- o the 5th Signal Command, Army Information systems Command, overexpended $688,174 of FY 1993 and $198,625 of FY 1994 funds.

DLA COMMENTS: Partially concur.

An Army/DLA team is reviewing the delivery orders identified by the DoDIG to determine if these orders should be classified as "completion" or "level of effort". Preliminary findings by the team indicate that some orders were misclassified.

Documentation at DCMAO Frankfurt indicates the ACO obtained advice from legal counsel and technical specialists on other contracts and from other sources; therefore, the cause of the misclassification cannot be solely attributed, as concluded in the draft audit report, to the ACO not seeking legal or technical advice.

Use of incorrect accounting appropriations on the delivery orders might be attributed to administrative error by the ACO, lack of oversight by the ACO's supervisor(s), and/or lack of coordination with the funding/requiring activity. However, the Army has stated that sufficient funds are available, from the proper fiscal year appropriations, to process accounting adjustments without causing Antideficiency Act violations.

The AISC is presently in dialogue with the DoD IG in order to determine the "severability" of delivery orders. In connection with this issue, the matter of government-caused start up delays (bond, GFP) to the contractor will be addressed as well as start up delays caused by the contractor due

to shortages of personnel.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

See comment in Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

COORDINATION: Frank Lalumiere, AQCOE, x47751
Charles D. Bartlett, COL, USA, AQCO, x43013
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DLA APPROVAL:

21 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

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RECOMMENDATION D.1: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement procedures to correctly classify completion and level-of-effort contracts.

DLA COMMENTS: Concur.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comment in Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

REVIEW/APPROVAL: Robert P. Scott, AQC, x40821

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DLA APPROVAL:

21 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

FINDING E: Purchasing Procedures for Automated Data Processing Equipment. The ACO at DCMAO Frankfurt procured ADPE from a vendor that was not a party to the negotiated contract without authorization under either the basic contract or the FAR. The ACO also improperly classified ADPE purchases. The ACO took these actions because procedures were not implemented to preclude contracting staff from acting outside its authority. The ACO also did not seek the advice of legal or technical specialists. As a result, the Office of the Deputy Chief of Staff, Information Management, expended $94,105 of O&M funds instead of Other Procurement Army funds on delivery order SS10 and $212,511 of O&M funds on delivery order SS07 instead of Other Procurement Army funds and may have violated the Antideficiency Act.

DLA COMMENTS: Partially concur.

Concur that the ACO improperly procured ADPE from a third party vendor who was not a party to the contract; the ACO improperly classified the ADPE purchase; the ACO apparently failed to seek legal and technical advice from assigned personnel. Also, that procedures at DCMAO Frankfurt were not implemented to detect or preclude contracting officers from acting outside their authority.

Do not concur with other issues in the finding. The obligation of O&MA funds instead of OPA is being treated by AISC as an administrative error which can be rectified by processing an accounting adjustment voucher.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comment in Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

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DLA APPROVAL:

1994

Deputy Director

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION E.1: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Area Operations Frankfurt, to establish and implement procedures to properly authorize and classify expense and investment transactions.

DLA COMMENTS: Concur.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
( ) Nonconcur.
(X) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

NOTE: See comment under Finding A.

MONETARY BENEFITS:
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

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DLA APPROVAL:

21 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

Final Report Reference

TYPE OF REPORT: AUDIT DATE OF POSITION: 20 SEP 1994

PURPOSE OF INPUT: INITIAL POSITION

AUDIT TITLE AND NO: Draft Report on Defense Contract Management Area Operations Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

RECOMMENDATION E.2: We recommend that the Director, Defense Logistics Agency, direct the Commander, Defense Contract Management Command, to:

a. Institute recovery of the $94,105 that the Government paid for the unauthorized commitment from the administrative contracting officer or ratify the unauthorized commitment. Revised

b. Initiate disciplinary action against the administrative contracting officer who awarded delivery orders that exceeded the scope of the basic contract DAEA18-89-D-0015, that were unpriced and incorrectly classified, and that used incorrect year funds and incorrect appropriation funds.

c. Initiate disciplinary action against the supervisor of the administrative contracting officer. Deleted

DLA COMMENTS: Nonconcur.

The ACO did not personally benefit from the unauthorized ADPE order. The ADPE was delivered to the Army and is currently being utilized in the accomplishment of the mission. Recovery action by the government against the ACO would result in the unjust enrichment of the government.

The authority to contract with a third party was not delegated to DCMC. Therefore, DLA and DCMC had no authority to perform the duties executed by the ACO and therefore no authority to ratify them. Ratification authority rests with the Command requesting, paying, and using the goods delivered; the command for which the delivery order was executed and for whom the ACO acted as agent. The issue of ratification must be addressed to the Department of the Army.

DCMC will review the facts of the case of both the ACO and the supervisor. Appropriate disciplinary action will be taken.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: FY 95
( ) Action is considered complete.

INTERNAL MANAGEMENT CONTROL WEAKNESSES:
(X) Nonconcur.
( ) Concur; however, weakness is not considered material.
( ) Concur; weakness is material and will be reported in the DLA Annual Statement of Assurance.

DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE BENEFITS REALIZED:

ACTION OFFICER: Dorothy Mills, AQCOE, x47751

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DLA APPROVAL:

1 SEP 1994

LAWRENCE P. FARRELL, JR.
Major General, USAF
Principal Deputy Director

# U.S. European Command Comments

HEADQUARTERS
UNITED STATES EUROPEAN COMMAND
UNIT 30400
APO AE 09128

13 SEP 1994

MEMORANDUM FOR Inspector General, Department of Defense (ATTN: Director, Financial Management Directorate), 400 Army-Navy Drive, Arlington, VA 22202-2884

SUBJECT: Draft Audit Report on Defense Contract Management Area Operations (DCMAO), Frankfurt, Germany, Contract for Professional and Technical Services (Project No. 4CG-8002)

1. Reference DOD Inspector General memorandum dated 13 June 1994, SAB.

2. HQ U.S. European Command (HQ USEUCOM) has reviewed the subject report and provides the enclosed comments (encl). HQ USEUCOM concurs with the portion of Finding D-2 that applies to this headquarters. Because of erroneous classifications made by the contracting officer, HQ USEUCOM agrees that the recommended accounting adjustments must be made to Delivery Order SS29. These adjustments will be made as soon as subject report is finalized.

3. According to HQ USEUCOM's estimates, the required accounting adjustments are not expected to result in Antideficiency Act violations. A final determination will be made after all adjustments are completed.

Enclosure

RICHARD F. KELLER
Lieutenant General, USA
Chief of Staff

HEADQUARTERS UNITED STATES EUROPEAN COMMAND
RESPONSE TO

DODIG DRAFT AUDIT REPORT ON DEFENSE CONTRACT MANAGEMENT
AREA OPERATIONS, FRANKFURT, GERMANY
CONTRACT FOR PROFESSIONAL AND TECHNICAL SERVICES, 13 JUN 94
(PROJECT No. 4CG-8002)

**DOD IG FINDING D:** Classification of Delivery Orders for Funding

The Administrative Contracting Officer (ACO) at the Defense Contract Management Area Operations (DCMAO) Frankfurt improperly classified delivery orders awarded under the contract as completion-type instead of level-of-effort-type contracts. The delivery orders were improperly classified because the ACO did not seek the advise of legal or technical experts to correctly classify delivery orders. As a result, the following organization did not recognize severable services, overexpended Operation and Maintenance (O&M) Funds, and may have also violated the Antideficiency Act:

- the U.S. European Command overexpended $156,906 of FY 1993 funds

**DOD IG RECOMMENDATION D-2:** Recommend that the Commander in Chief, U.S. European Command:

- Make the accounting adjustments on Delivery Order SS29 to the contract to obligate $156,906 of FY93 Operation and Maintenance Funds.

- Follow the procedures in DOD Directive 7200.1, "Administrative Control of Appropriations," to report any violations of the Antideficiency Act, and initiate disciplinary action against the responsible officials if accounting adjustments cause an overobligation.

**HQ USEUCOM RESPONSE:**

Concur. Because of the erroneous classifications made by the contracting officer, and because the contracting officer failed to obtain legal and/or technical review of this delivery order prior to award, accounting adjustments are necessary to replace the FY92 O&M Funds currently obligated on Delivery Order SS29, with O&M funds available for obligation in FY93.

According to HQ USEUCOM's estimates, the required accounting adjustments are not expected to result in a violation of the Antideficiency Act. A final determination will be made after finalization of the DOD IG report, and any subsequent modifications/adjustments to Delivery Order SS29.

# Audit Team Members

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