Audit Report

OFFICE OF THE INSPECTOR GENERAL

COUNTERNARCOTICS/COMMAND AND MANAGEMENT SYSTEM

Report No. 95-167

April 12, 1995

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Acronyms

CN/CMS	Counternarcotics/Command and Management System
DCAA	Defense Contract Audit Agency
DISA	Defense Information Systems Agency
DITCO	Defense Information Technology Contracting Office
DTS-PO	Diplomatic Telecommunications Service-Program Office
PTT	Post, Telephone, and Telegraph
SOUTHCOM	U.S. Southern Command

INSPECTOR GENERAL
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April 12, 1995

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (COMMAND, CONTROL, COMMUNICATIONS AND INTELLIGENCE)
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY

SUBJECT: Audit Report on the Counternarcotics/Command and Management System (Report No. 95-167)

We are providing this report for your review and comment. The audit was performed at the request of the House Appropriations Committee. Management comments on a draft of this report were considered in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. Comments from the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) were responsive. Comments from the Defense Information Systems Agency were partially responsive. The Defense Information Systems Agency is requested to provide comments on Recommendations A.1., A.3., and B.2 and potential monetary benefits by June 12, 1995.

If you have any questions on this audit, please contact Mr. Harrell D. Spoons, Audit Program Director, at (703) 604-9575 (DSN 664-9575). Appendix E lists the distribution of this report. The audit team members are listed inside the back cover.

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Report No. 95-167
(Project No. 4RF-5022)

April 12, 1995

COUNTERNARCOTICS/COMMAND AND MANAGEMENT SYSTEM

EXECUTIVE SUMMARY

Introduction. This audit was performed at the request of the House Appropriations Committee. The Counternarcotics/Command and Management System (CN/CMS) is a satellite communications system providing the U.S. Southern Command and other Government agencies in Central and South America secure data, text, imagery, and voice transmission capability. The CN/CMS consists of 11 foreign-based communications sites that are linked to command authorities in the United States by satellite. The space segment of the CN/CMS is contractor operated and maintained. The CN/CMS is managed by the Department of State Diplomatic Telecommunications Service and is funded by DoD. Operation and maintenance costs during FY 1994 were about $17 million.

Objectives. The objectives of the audit were to evaluate the management of DoD contracts for the CN/CMS, to determine the reasons for the delay in transferring responsibility for the management and operation of the CN/CMS to the Diplomatic Telecommunications Service, and to evaluate the accuracy of the allegations concerning the CN/CMS.

Audit Results. The Defense Information Technology Contracting Office improperly awarded two sole-source contracts, valued at $18.4 million, for the operation and maintenance of the CN/CMS rather than awarding through full and open competition. As a result, contracting officials prevented other qualified vendors from competing for the contracts (Finding A).

o Contract DCA200-93-D-0010 subjects the U.S. Government to potentially unreasonable and unwarranted costs. As a result, unnecessary foreign post telephone and telegraph charges have been incurred, and no incentive exists for the vendor to minimize costs (Finding B).

o The transfer of responsibility for CN/CMS management and operation from the Defense Information Technology Contracting Office to the Diplomatic Telecommunications Service was delayed because of confusion over the ownership and use of an 11-meter parabolic antenna (Appendix A).

o Allegations of undue influence by the former Joint Staff J-6 were not substantiated (Appendix A).

Potential Benefits of Audit. Competition in contracting for future CN/CMS services could reduce costs up to 25 percent. Reductions in foreign telecommunications carrier costs could total $2.5 million (see Appendixes B and C).

Summary of Recommendations. We recommend precluding the use of option years in the existing contracts, requiring full and open competition for future CN/CMS contracts, evaluating the actions of contracting officials, negotiating reduced foreign carrier charges, and requiring valid subcontractor pricing data before contract negotiations.

Management Comments. The Assistant Secretary of Defense (Command, Control, Communications and Intelligence) agreed to propose to the Diplomatic Telecommunications Service that it review contracting provisions for CN/CMS support to allow for negotiation of foreign carrier charges. The Defense Information Systems Agency stated that a decision to exercise option years on the contracts was delayed, pending the outcome of further investigation of the contracting process and the actions of the responsible officials. The Defense Information Systems Agency also stated that decisions concerning negotiation of foreign carrier charges would be made on a case-by-case basis. See Part II for a discussion of management comments. The complete texts of management comments are in Part IV.

Audit Response. Because two contracts for the operation and maintenance of the CN/CMS were improperly awarded sole source, the Government was denied the economic benefits of competition and qualified firms were denied the opportunity to compete. Therefore, extending the period of service by exercising contract option years would perpetuate the inequities and forgo the economic advantages of competition. Also, without firm subcontractor prices for foreign carrier charges, contracting officials have no valid basis for price negotiations. We request that the Defense Information Systems Agency reconsider its position and provide comments on this final report by June 12, 1995.

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Part I - Introduction

Background

The Counternarcotics/Command and Management System (CN/CMS) is a U.S. Government communications and intelligence dissemination system serving Central and South America with secure data, text, imagery, and voice transmission capability. The Joint Staff validated the requirement for the CN/CMS program in September 1991 and designated the Department of the Army as the executive agent for program management. The CN/CMS provides command management capability and counternarcotics-related communications for the U.S. Southern Command (SOUTHCOM) and other Government organizations. As of July 1994, the CN/CMS consisted of 11 communications sites in 9 foreign countries. Connectivity to DoD common user networks is achieved by satellite circuits to two gateway[1] earth terminals in the United States. In an arrangement between DoD and the Department of State, the Department of State is responsible for managing the operation and maintenance of CN/CMS with DoD providing the funding. The Defense Information Systems Agency (DISA) provides commercial communications support for the DoD. A DISA component, the Defense Information Technology Contracting Office[2] (DITCO), formerly the Defense Commercial Communications Office, provides contracting services for the CN/CMS. For FY 1994, $17.5 million appropriated for counterdrug programs was obligated for CN/CMS.

Origination of the CN/CMS. The U.S. Southern Command determined there was a need for a secure wideband communications capability. During October 1989, a small and disadvantaged business, GLS Associates, Incorporated (GLS), Alexandria, Virginia, that had previously provided only consulting services, briefed DISA officials on the GLS concept for providing a sensitive, commercial satellite communications network serving the SOUTHCOM theater of operations. The president of GLS is a retired U.S. Air Force officer who, while serving on active duty, had served in positions of responsibility that gave him direct knowledge of communications in the SOUTHCOM theater of operations.

[1]A network node that provides entry into or exit from a communications network. The node connects two otherwise incompatible networks.

[2]All report references to the Defense Information Technology Contracting Office pertain to its predecessor organization, the Defense Commercial Communications Office.

Planned Sole-Source Contract Award to GLS. Because of the firm's demonstrated knowledge and experience, DISA selected GLS to provide a sensitive, commercial satellite communications network in Central and South America. In November 1989, DITCO sent a letter of offer to the Small Business Administration, requesting that a contract be awarded sole source to GLS under the provisions of section 8(a) of the Small Business Act (U.S.C., title 15, section 631) to provide the needed satellite communications services. However, the Small Business Administration concluded that GLS' financial situation put its ability to perform at risk. Meetings attended by GLS, Small Business Administration, and DISA representatives during December 1989 did not sway the Small Business Administration, even though GLS provided evidence of expanded commercial credit. Further, the DISA Small and Disadvantaged Business Utilization officer provided written assurance to the Small Business Administration that DISA would do everything in its power to authorize and accommodate progress payments to mitigate the financial burden on GLS.

Contract Amended to Accommodate GLS. SOUTHCOM determined that it needed one T-1 circuit[3] operational by March 15, 1990, and two additional T-1 circuits operational by April 3, 1990. Delays in getting the Small Business Administration to certify GLS threatened the DISA ability to meet the required in-service dates for the new satellite communications services. Therefore, using a Justification Authorization for National Security, DITCO awarded contract DCA200-90-C-0019 sole source to CONTEL, Federal Systems (CONTEL) to provide the three T-1 circuits for SOUTHCOM. In a letter dated February 15, 1990, GLS requested DITCO to review the CONTEL award. On February 22, 1990, GLS wrote its congressional representative, asserting that the DITCO award of the contract to another firm was morally intolerable and unethical and requested that its member of Congress look into the matter. The member of Congress asked DITCO in a letter of February 27, 1990, to provide information on the status of GLS with respect to the contract. On March 8, 1990, DITCO responded to the member of Congress that GLS could be certified to provide a portion of the required communications services. DITCO's letter also stated that GLS had verbally accepted the Government's offer to provide one T-1 circuit, that the contract would be for a period of 1 year, and that the services would be reawarded competitively as part of a much larger communications service requirement in mid-1991.

CONTEL Provides Service as GLS Subcontractor. DITCO dropped one T-1 circuit from CONTEL contract DCA200-90-C-0019. At the same time, DITCO awarded contract DCA200-90-C-0023 to GLS to provide one T-1 circuit between the Pentagon and Howard Air Force Base, Panama. GLS

[3]A digital transmission link with a capacity of 1.544 MBPS (1,544,000 bits per second).

subcontracted with CONTEL to provide the required T-1 circuit, resulting in CONTEL providing the three T-1 circuits, with GLS as the prime contractor for one of the T-1 circuits.

Contracts to Continue Service were Awarded Sole Source. Although DITCO had notified the member of Congress that the contract for follow-on services would be competitively awarded, DITCO awarded two follow-on contracts sole source to GLS for the operation and maintenance of the CN/CMS. GLS subcontracted with PanAmSat (formerly Alpha Lyracom) for the space segment of the communications circuits.

Initial Follow-on CN/CMS Contract. DITCO awarded the initial follow-on contract, DCA200-91-C-0028, to GLS on April 2, 1991. The firm fixed-price, multiyear letter contract covers 5 program years and 5 option years. The not-to-exceed amount of $11.5 million is the Government's estimate to perform the contract over the 5 program years. The contract was definitized December 20, 1991, with a not-to-exceed amount of $13.6 million. The requirement of the contract is for a gateway satellite earth terminal to provide six fractional[4] T-1 circuits and two full T-1 circuits between the Beltsville Information Management Center (the Center), Beltsville, Maryland, and six Central and South American locations supporting the DoD and Department of State.

Second Follow-on CN/CMS Contract. DITCO awarded the second follow-on contract (DCA200-93-D-0010) to GLS on October 6, 1992. The firm fixed-price, multiyear, indefinite delivery, indefinite quantity letter contract covers 5 program years. The contract provides a minimum of two fractional T-1 circuits and a maximum of 20 fractional T-1 circuits. The contract was definitized September 30, 1993, with a minimum not-to-exceed amount of $2.9 million for two fractional T-1 circuits. Contract DCA200-93-D-0010 provides for leased satellite communications services to downlink[5] at the Center. Equipment provided under contract DCA200-91-C-0028 is used to support the long-haul communications services GLS provides under the second follow-on contract. The T-1 circuits provide access to DoD common-user systems, such as the Defense Switched Network, the Red Switch Network, and the Defense Data Network. In addition, the T-1 circuits provide specialized services to the DoD and the Department of State in support of National Security Requirements. As of July 1994, the second follow-on contract provided communications circuits to six sites in Central and South America.

[4]A fractional T-1 circuit provides a data transmission rate between 56 kilobits per second and 1.544 megabits per second.

[5]The part of a transmission link reaching from a satellite to the earth.

Congress Questioned the Need for the CN/CMS. Because of concerns expressed by the House Appropriations Committee that the CN/CMS duplicated other telecommunications assets, the Committee Report on the FY 1993 Defense Appropriations Act directed that management and operation of the CN/CMS be transferred from DoD to the Department of State Diplomatic Telecommunications Service. Furthermore, the House Appropriations Committee directed that no funds appropriated in FY 1993 could be obligated for the CN/CMS until DoD certified to the Committee that the transfer had taken place. The Assistant Secretary of Defense (Command, Control, Communications and Intelligence) notified the Committee Chairman in a letter of December 4, 1992, that a memorandum of understanding had been completed with the Diplomatic Telecommunications Service-Program Office (DTS-PO) to transfer responsibility for managing the CN/CMS from DoD to the DTS-PO, and that the transfer of asset accountability to the DTS-PO would be accomplished as soon as practicable. In March 1994, members of the Surveys and Investigations Staff, House Appropriations Committee, asked the Deputy Inspector General, DoD, to evaluate investigative staff allegations of unwarranted CN/CMS contract cost escalation, bias in the award of contracts, undue influence by senior DoD officials, and delays in complying with the Committee Report. Appendix A provides a list of the specific allegations and the results of our audit pertaining to each allegation.

Objectives

The objectives of the audit were to evaluate DoD's management of contracts for the CN/CMS, to determine the reasons for the delay in transferring CN/CMS assets from DoD to the DTS-PO, and to evaluate the accuracy of the allegations made by the Surveys and Investigations Staff, House Appropriations Committee, concerning the CN/CMS.

Scope and Methodology

We reviewed documentation relating to two contracts awarded to GLS for the operation and maintenance of the CN/CMS: contract DCA200-91-C-0028 awarded April 2, 1991, for $13.6 million and contract DCA200-93-D-0010 awarded October 6, 1992, for $2.9 million. At GLS, we examined records of charges billed to DITCO and invoices from PanAmSat. At PanAmSat, we examined records of charges billed to GLS. At the Joint Staff, we reviewed files related to memorandums of agreement between DISA and the DTS-PO. Also, we examined correspondence and documents pertaining to the transfer of

CN/CMS assets to the DTS-PO. At DISA, we examined records pertaining to agreements with the DTS-PO, CN/CMS program documentation, and files relating to the transfer of CN/CMS assets to the DTS-PO. At DITCO, we reviewed CN/CMS contract files, payment files, and Small Business Administration policies germane to the CN/CMS contracts. At the CN/CMS program office, we reviewed program documentation to include requirements documentation and program reviews. We also reviewed the contract files maintained at the CN/CMS program office. All contract-related documentation we reviewed was dated from February 1991 through July 1994. We interviewed the Director for Command, Control, Communications and Computer Systems, Joint Staff, and members of his staff; the Program Executive Officer; contracting officers at DITCO; DISA officials; managers at the CN/CMS program office; officials at GLS and PanAmSat; and other DoD and State Department officials involved with the CN/CMS.

This economy and efficiency audit was performed from March 1994 through July 1994 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. We did not rely on computer-processed data to achieve the audit objectives. The organizations visited or contacted are listed in Appendix D.

Internal Controls

The audit identified material internal control weaknesses as defined by DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987. Controls were not effective to ensure competitive award of CN/CMS contracts or that CN/CMS contract costs were reasonable. Operating procedures permitted the sole-source award of contracts when competition was feasible and permitted the award of a contract without adequate subcontractor pricing data. Recommendations A.2. and B.2., if implemented, will correct the weaknesses. A copy of the final report will be provided to the officials responsible for internal controls in the Office of the Secretary of Defense, DISA, and DITCO.

The Army Command and Control Systems Program Executive Office, Fort Monmouth, New Jersey, identified the CN/CMS program as an assessable unit of the Army's internal management control program. The Army reported no material internal control weaknesses in its FY 1993 Statement on Internal Management Control for CN/CMS. However, the internal management control program did not prevent deficiencies from occurring in contracting for the CN/CMS. Although the CN/CMS program manager defined communications requirements, full responsibility for the contracting function to satisfy the requirements was vested in DISA and DITCO.

Prior Audits and Other Reviews

There have been no published reports, prior audits, or other reviews of the CN/CMS during the last 5 years. The Inspector General, Department of State, audited the DTS-PO under Project No. 4021, but the audit scope did not include the Counter Narcotics Division of the DTS-PO.

Part II - Findings and Recommendations

Finding A. Contract Award Process

DITCO improperly awarded two sole-source contracts for the operation and maintenance of the CN/CMS rather than awarding through full and open competition. The improper awards occurred because DISA and DITCO contracting officials made faulty assumptions about the urgency of need and vendor capabilities to perform the required services and reduced the scope of work to avoid exceeding the dollar threshold for which competition is mandated. As a result, other qualified small and disadvantaged businesses were prohibited from competing for the contracts.

Criteria for Justification for Sole-Source Award. Both U.S.C., title 10, section 2304, and U.S.C., title 41, section 253, require, with certain limited exceptions, contracting officers to promote and provide for full and open competition in awarding Government contracts. Federal Acquisition Regulation subpart 6.303-1 provides that negotiations for a sole-source contract shall not commence without providing for full and open competition, unless the contracting officer justifies his or her actions, certifies to the accuracy and completeness of the justification, and obtains the necessary approval.

Sole-Source Award of Contract DCA200-91-C-0028. The DISA Senior Procurement Executive approved a justification and approval document for the sole-source award of contract DCA200-91-C-0028 to continue the satellite communications services because of the unusual and compelling urgency of the requirement and because of a purported exclusive agreement between GLS and PanAmSat for the use of satellite circuits. Contract DCA200-91-C-0028 is a firm fixed-price multiyear contract for 5 program years and 5 option years. The contract is a Small Business Administration set-aside contract that was awarded sole source to GLS on April 2, 1991, with a not-to-exceed amount of $11.5 million. The contract was definitized December 20, 1991, with a not-to-exceed amount of $13.6 million.

Unusual and Compelling Urgency. The justification and approval document cited an unusual and compelling urgency as the reason for awarding the contract sole source rather than through full and open competition. However, in March 1990, the Director, DITCO, advised a member of Congress that the existing CN/CMS contracts were for a period of 1 year and that the contract would be competitively awarded to continue and expand the service requirements. The justification and approval document was dated March 25, 1991, and required services to be provided by June 17, 1991. DITCO amended the justification and approval document on June 3, 1991, to change the operational date to July 31, 1991. DITCO contracting officials knew that the Small Business Administration identified other qualified small and disadvantaged businesses, but did not take advantage of a 15-month period to obtain DISA circuit requirements and to competitively award the follow-on

contract. We believe that the unusual and compelling urgency was created by DITCO's failure to pursue opportunities to competitively award the contract within the ample time available. The contract should have been awarded through full and open competition.

Exclusive Agreement with PanAmSat. The justification and approval document also referenced a statement (attributed to the president of PanAmSat) that GLS was the only small and disadvantaged business that would be able to provide the space segments[6] by the required dates. The DITCO contract specialist cited an exclusive agreement between GLS and PanAmSat, evidenced by a March 1991 Alpha Lyracom (PanAmSat) letter to GLS, regarding bulk rates for space segments and associated engineering support. GLS and PanAmSat officials told the auditors that the agreement was nothing more than a verbal agreement on a bulk rate for the 5-year period of the multiyear contract. PanAmSat officials also stated that the agreement could have been readily obtained by any vendor able to pay for the space segment. Thus, the DISA Senior Procurement Executive, the DISA Competition Advocate, and the DITCO contracting officer had no basis on which to conclude that GLS was the only vendor capable of providing the required services in a timely manner. However, each of those officials approved the justification and approval document.

DITCO Review of Subcontract Costs. The DITCO contracting officer neither performed an in-house review of $4.3 million in proposed subcontractor costs that represented 32 percent of total contract costs nor waited for the results of an assist audit as recommended in a Defense Contract Audit Agency audit report, before negotiating the contract price. Federal Acquisition Regulation subpart 1.602-2 states that contracting officers are responsible for safeguarding the interests of the United States in its contractual relationships. We believe that the contracting officer's failure to perform an in-house review of the subcontractor costs and to ask the Defense Contract Audit Agency to perform an assist audit was a breach of that responsibility.

Sole-Source Award of Contract DCA200-93-D-0010. Contract DCA200-93-D-0010 was awarded sole source to GLS on October 6, 1992, for a guaranteed minimum not-to-exceed cost of $2.9 million. The contract requirements were originally structured to provide for fractional T-1 services between the Center and three sites in South America at a not-to-exceed contract amount of

[6]The band of frequency purchased by the satellite customer. The customer can purchase a portion of the bandwidth of a single transponder (transmitter/receiver), or the customer can purchase one or more entire transponder bandwidths.

$4.8 million. However, because the cost of providing service to three sites would exceed the $3 million threshold for competitive contract award, DISA and DITCO officials reduced the minimum number of sites to bring the contract value under the threshold and permit sole-source award of the contract.

Criteria for Competing 8(a) Acquisitions. The Business Opportunity Development Reform Act of 1988 (Public Law 100-656) requires that an acquisition offered under the Section 8(a) Program to the Small Business Administration shall be awarded on the basis of competition if the anticipated award price of the contract (including options) exceeds $3 million (for service contracts), and if there is a reasonable expectation that at least two Section 8(a) firms will submit offers at a fair market price. Federal Acquisition Regulation subpart 19.805 implements Public Law 100-656. Neither Public Law 100-656 nor the Federal Acquisition Regulation excludes indefinite delivery, indefinite quantity contracts from the $3 million threshold. However, the Small Business Administration established guidance for indefinite delivery, indefinite quantity contracts under 13 Code of Federal Regulations 124.311(a)(2), which requires the use of the guaranteed minimum value of such contracts, exclusive of options, to determine whether a contract meets the threshold for competition.

Contract Requirements Reduced to Avoid Competition. The original acquisition plan, dated March 6, 1992, identified a validated requirement to activate CN/CMS communications at three sites. The estimated minimum contract value was $2 million, and the estimated maximum contract value was $7.5 million. Because DISA and DITCO officials planned to award the contract to GLS, DITCO requested GLS to submit a cost proposal for the requirement. On September 1, 1992, DITCO received a proposal from GLS to activate CN/CMS communications at the three sites for $4.8 million. An interoffice memorandum in the contract file shows that on September 23, 1992, the DISA Terrestrial Transmission Management Division asked the DITCO contracting office to place a letter contract with GLS for the installation, lease, and continued maintenance of a minimum of three fractional T-1 services by October 1, 1992, due to urgent and compelling operational requirements. DITCO confirmed with the Small Business Administration on September 28, 1992, that other Section 8(a) sources existed and that in order to meet a service date of October 1, 1992, a justification for other than full and open competition would be required, or the statement of work would have to be downscoped. When advised of the Small Business Administration's determination, a representative of the DISA Terrestrial Transmission Management Division indicated that he "did not want to go through the process of preparing a Justification and Approval for Other than Full and Open Competition." Therefore, to place a contract with GLS to meet the October 1, 1992, service date, the Chief, DITCO Defense Switched Network/Defense Communications System Procurement Division; the DITCO Contracting Officer; and a

representative of the DISA Telecommunications Certification Office scaled back the scope of work to two sites. By that stratagem, those officials manipulated the stated requirement to reduce the contract value to the minimum not-to-exceed contract amount of $2.9 million, an amount below the $3 million threshold for mandatory competitive award.

Essential Services Excluded From Guaranteed Minimum Cost. DITCO excluded the cost of essential services from the minimum guaranteed contract price, even though the services were needed to activate the site. Specifically, the cost per site, $23,381, for the requirement to provide technical and installation support overseas was not included in the minimum guaranteed amount. Instead, that requirement was made an optional service. DITCO exercised that option as the first purchase order issued October 9, 1992, under the contract. Thus, the option was exercised only 3 days after the contract was signed. We believe that the option should have been included as a component of the minimum guaranteed contract amount. Inclusion of the option for the two sites would have pushed the minimum guaranteed contract amount above the $3 million threshold for mandatory competitive contract award.

Manner of Contract Execution Exceeded Threshold for Competitive Award. The manner in which contract DCA200-93-D-0010 was executed demonstrated that the reduction of the minimum number of sites from three to two was a means to avoid competing the award of the contract. Following contract award, a single communications site was installed. After the first site was installed on October 31, 1992, the second and third communications sites to be installed under the contract were installed on November 17, 1992, and November 23, 1992, as originally planned. The actual contract price of $4.8 million exceeded the $3 million threshold.

Conclusion

Preferential actions by DISA and DITCO officials, in effect, steered the award of contract DCA200-91-C-0028 and contract DCA200-93-D-0010 to GLS. As a result, other responsible small businesses were denied the opportunity to compete for the contracts. According to the Defense Federal Acquisition Regulation Supplement, competition saves the Government an average of about 25 percent more than sole-source contracts. Contracting officers have a duty to safeguard the interests of the United States. We do not believe that the two CN/CMS contracts meet that requirement. Clearly, the CN/CMS contracts should have been awarded through full and open competition rather than sole source with price negotiations based on adequate subcontractor pricing data.

Management Comments on the Finding.

Assistant Secretary of Defense (Command, Control, Communications and Intelligence) Comments. The Assistant Secretary stated that a compelling urgency required uninterrupted communications services for SOUTHCOM as documented by the Joint Staff during the Required Operational Capability process.

DISA Comments. DISA stated that further review and analysis are necessary to evaluate both the process and the actions by DISA and DITCO personnel. Further, contract DCA200-91-C-0028 was awarded sole source, and appropriate officials approved the justification for other than full and open competition. Contract DCA200-93-D-0010 was not a sole-source award, but a set aside[7] by the Small Business Administration under the Section 8(a) Program.

Audit Response. As stated in the finding, the actions of DISA and DITCO officials steered the award of the two contracts to GLS, excluding other responsible small businesses and circumvented Competition in Contracting Act requirements. The officials knew of the requirement for the services for at least 15 months before contract DCA200-91-D-0028 was awarded. Further, DITCO promised a member of Congress that the contract would be competed, and the Small Business Administration verified the existence of other responsible small businesses that were eligible to compete for the contract. Thus, the compelling urgency was created by the failure of DISA and DITCO officials to act in a timely manner during the 15 months they knew of the requirement for continued communications services and provided no valid basis for a justification and approval for other than full and open competition.

Contract DCA200-93-D-0100 qualified as a set aside under the Section 8(a) Program only because DISA and DITCO officials manipulated requirements to bring the contract price below the $3 million threshold that requires competition. We believe that action was taken to circumvent the requirement to compete the contract among responsible, small, disadvantaged businesses. The existence of documents that purport to justify the actions taken by DISA and DITCO officials do not alter the method of actual award of the two questioned contracts.

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[7]A certain kind or class of procurement reserved for a certain class of contenders, for example, small businesses or those in labor surplus geographical areas.

Recommendations, Management Comments, and Audit Responses

We recommend that the Director, Defense Information Systems Agency:

A.1. Direct the Defense Information Technology Contracting Office not to exercise any option years on contract DCA200-91-C-0028.

DISA Comments. DISA concurred in part with the recommendation. No options will be exercised, pending a review and evaluation of the process and actions of DISA officials. The DISA review will be completed by June 30, 1995. Based on the results of the evaluation, DISA will determine by August 31, 1995, whether options will be exercised on the contract.

Audit Response. DISA's comments are partially responsive. The evaluation of the contracting process may result in improved procedures and controls. However, actions by DISA and DITCO to circumvent competition and award the contract sole source to GLS denied bidding opportunity to other responsible firms and denied the Government the economic benefits of competition. Exercise of any option to extend the contract would perpetuate the inequity and forgo the economic advantages of competition. We request that management reconsider its position in response to this final report.

A.2. Require competitive award of any follow-on contract executed by the Defense Information Technology Contracting Office for the Counternarcotics/Command Management System.

DISA Comments. Management concurred, stating that any follow-on award will be in accord with policy on competitive awards.

A.3. Evaluate the actions of the Defense Information Systems Agency Senior Procurement Executive; Director, Defense Information Systems Agency Transmission Systems; Defense Information Systems Agency Competition Advocate; the Chief, Defense Information Technology Contracting Office, Defense Switched Network/Defense Communications System Procurement Division; and the contracting officers for the Defense Information Technology Contracting Office involved in the award of contracts DCA200-91-C-0028 and DCA200-93-D-0010 and take appropriate action.

DISA Comments. DISA concurred, stating that the evaluation of the actions of the officials involved in the award of contract DCA200-21-C-0028 would be completed by June 30, 1995.

Audit Response. DISA's comments are partially responsive. The recommendation involves the award of contract DCA200-91-C-0028, which DISA shows as DCA200-21-C-0028 in its comments, and contract DCA200-93-D-0010, which DISA does not mention in its comments. In response to this final report, we request that DISA clarify which contracts pertain to its evaluation of officials' actions.

Finding B. CN/CMS Contract Price Increase

Contract DCA200-93-D-0010 subjects the U.S. Government to potentially unreasonable and unwarranted costs. The Government is at risk because neither the Department of State nor DoD acted to reduce or eliminate foreign post telegraph and telephone (PTT) charges on CN/CMS satellite circuits. Also, DITCO contracting officials' analyses of vendor and subcontractor pricing proposals were not adequate to determine whether contractor pricing was fair and reasonable. As a result, unnecessary foreign PTT charges have been incurred, and no incentive exists for GLS to minimize costs.

Background

CN/CMS Contract Pricing Differences. The initial CN/CMS contract, DCA200-91-C-0028, was awarded at a not-to-exceed cost of $13.6 million. GLS negotiated a bulk rate with PanAmSat to provide the space segment for the 5-year period of the contract. A bulk rate was feasible because the number of fractional T-1 and full T-1 circuits to be provided was known. Follow-on contract DCA200-93-D-0010 was awarded at a minimum guaranteed cost of $2.9 million. GLS did not negotiate a bulk rate with PanAmSat because DITCO could not define the numbers of needed T-1 circuits and the length of time they would be needed. The contract merely specified a requirement for a guaranteed minimum of 2 fractional T-1 circuits and a maximum of 20 fractional T-1 circuits over the 5-year period of the contract. As a result, foreign PTT charges, not separately identified on the first contract, were experienced on the follow-on CN/CMS contract, adding significantly to space segment costs.

Space Segment Costs

Foreign PTT Charges. Satellite vendors must establish a correspondent relationship with a host country communications carrier to operate in foreign countries. This negotiated operating arrangement is established by payment of foreign PTT charges. The application of foreign carrier charges to the foreign space segment of contract DCA200-93-D-0010 is the principal reason for the allegations of cost escalation from the House Appropriations Committee. About

52 percent of the monthly recurring costs billed to DITCO for the CN/CMS is attributable to foreign PTT charges. The * percent general and administrative expense and * percent profit charge added by GLS resulted in $76,492 in monthly recurring costs for the CN/CMS. Accordingly, 52 percent of total monthly charges is attributable to foreign PTT charges. Costs attributable to foreign PTT charges on CN/CMS will total $1.8 million by December 31, 1994, and $4.3 million by the expiration date of the follow-on contract. Details are in Appendix B.

PTT Charges Inconsistent with Cooperative Counternarcotics Efforts. The foreign carriers' inclusion of PTT charges on the CN/CMS is not consistent with host country support for joint U.S. and foreign counternarcotics efforts. Foreign carriers do not provide communications services in support of the CN/CMS, and the CN/CMS does not rely on foreign equipment or funding.

Department of State Agrees PTT Charges are Inappropriate. According to Department of State officials, foreign carrier PTT charges are based on the Vienna Convention, which entitles foreign countries to demand payment for the rights of other countries to set up communications services or links within host countries. On February 25, 1992, the DTS-PO established policy that negotiation of foreign licensing fees for the CN/CMS was the responsibility of space segment carriers. However, State Department officials agreed that since CN/CMS supports U.S. and host nation efforts against illegal narcotics trafficking, a blanket CN/CMS exemption from foreign carrier charges makes sense. State Department officials recommended that the DTS-PO should initiate the recommendation to seek a blanket exemption from foreign carrier charges for the CN/CMS. We could not determine potential monetary benefits from reducing or eliminating foreign PTT charges on CN/CMS; however, all or a portion of the $2.5 million cost that will be incurred from January 1995 to October 1997 could be avoided (See Appendix C).

Obtaining a Bulk Rate for Space Segments. GLS did not negotiate a bulk rate with PanAmSat to provide the space segment circuits for contract DCA200-93-D-0010. PanAmSat officials stated that a bulk rate was not possible for the contract because the exact number of sites needing circuits installed and the number of months each site would be on-line were unknown. However, PanAmSat officials stated that a bulk rate for the guaranteed minimum number of sites could have been obtained for the contract. Furthermore, GLS has little incentive under the CN/CMS contracts to seek reduction of PanAmSat charges. GLS added a * percent general and administrative expense charge and a * percent profit charge to all amounts PanAmSat invoiced to GLS. Moreover, only 3 full years remain on contract DCA200-93-D-0010. Accordingly, PanAmSat has little incentive to offer a bulk rate as favorable as that obtained under the initial CN/CMS contract.

* Contractor proprietary data removed.

Analyses of Contractor Pricing Proposals.

Audit of Subcontract Costs. The Defense Contract Audit Agency (DCAA) audit of the GLS contract proposal (Report No. 6121-93A21000004, November 25, 1992), excluded the examination of $3.2 million in proposed PanAmSat subcontract costs. The unaudited subcontract costs represented 68 percent of the entire contract pricing proposal ($4.7 million) GLS submitted. DCAA determined that its audit of the GLS contract proposal for contract DCA200-93-D-0010 lacked sufficient scope to determine whether pricing was fair and reasonable and issued a qualified opinion on the adequacy of the pricing data. Rather than request an audit by DCAA to examine subcontract costs, DITCO contracting officials told DCAA that DITCO personnel would perform an in-house review of the PanAmSat subcontract proposal.

DITCO Review of GLS Pricing Proposal. DITCO contracting officials determined that instead of a DCAA audit, the in-house review of subcontractor pricing would suffice. However, the review by DITCO contracting officials of subcontract pricing data was not adequate to determine whether pricing was fair and reasonable because foreign space segment charges were not known. Federal Acquisition Regulation subpart 15.804-3(a) states:

> . . . the contracting officer shall not require submission or certification of cost or pricing data when the contracting officer determines that prices are;
>
> o based on adequate price competition . . . ;
>
> o based on established catalog or market prices of commercial items sold in substantial quantities to the general public . . . ; or
>
> o set by law or regulation.

However, subcontractor pricing data for foreign space segments were not based on price competition, were not catalog or market pricing, and were not set by law. The following paragraphs explain why DITCO's in-house review was not adequate to determine whether pricing was fair and reasonable.

Price Competition. Vendor pricing was not based on adequate price competition because DITCO contracting officials did not solicit offers from other vendors. Federal Acquisition Regulation subpart 15.804-3(b) requires that offers must be solicited for price competition to exist.

Catalog or Market Pricing. The foreign PTT rate sheets GLS furnished were not established catalog or market prices because the quoted rates were negotiable, not fixed. DCAA auditors told us that if they had examined the foreign PTT rate sheets, the auditors probably would not have certified

pricing as appropriate and reasonable. To establish market pricing, DITCO contracting officials said they compared PanAmSat space segment charges with similar International Telecommunications Satellite Organization charges and found the pricing to be comparable. DITCO could provide no documentation on its comparison.

Pricing Set By Law. Vendor pricing of space segments was not set by law or regulation. According to Federal Communications Commission officials, PanAmSat has noncommon carrier status and is, therefore, not subject to Federal Communications Commission fair and reasonable pricing requirements. Defense Federal Acquisition Regulation Supplement 239.7406 provides that rates or preliminary estimates quoted by a noncommon carrier for any communications services are not considered prices set by law or regulation.

Operating Agreements. PanAmSat officials stated that operating agreements have been signed with foreign communications carriers covering PanAmSat communications activities in Central and South America. Signed agreements between foreign communications carriers and PanAmSat would provide evidence of fixed PTT charges and firm-fixed pricing. However, PanAmSat officials refused to make any such agreements available for examination.

No Incentive to Reduce Costs. GLS has no incentive under either contract to reduce or eliminate costs. The contract authorizes GLS to add * percent general and administrative expense and * percent profit charges, applied on the total cost input basis. Thus, increased contract costs increase GLS's profits without commensurate added value to the Government.

Conclusion

Foreign PTT charges represent a significant cost in the overall operation of the CN/CMS. Because the CN/CMS exists primarily to support U.S. and host country counternarcotics efforts, those charges are inappropriate and should be eliminated. The DTS-PO is responsible for the management of the CN/CMS. Therefore, the Department of State should take the lead in negotiating relief from foreign PTT charges. Furthermore, when foreign PTT charges are appropriate, signed operating agreements between noncommon carriers and the foreign PTT representative are the sole evidence of firm-fixed pricing. DITCO should contract only with noncommon carriers for foreign telecommunications circuits if foreign PTT charges are firm.

* Contractor proprietary data removed.

Management Comments on the Finding.

Assistant Secretary of Defense (Command, Control, Communications and Intelligence) Comments. The Assistant Secretary agreed that in the specific case discussed in the report, it may have been possible to reduce the cost of communications services by having the U.S. Government negotiate with foreign governments. However, such is not always the case. By negotiating, the U.S. Government would be accepting additional responsibilities and risks and could be called upon to provide quid pro quo in other negotiations. Therefore, the Assistant Secretary did not agree that communications providers should be relieved of the risks and responsibilities of providing complete end-to-end service. However, on a case-by-case basis, the DTS-PO should determine whether government-to-government negotiations are practical for specific locations.

Audit Response. As a matter of principle, the U.S. Government should be willing to accept all risks and responsibilities attendant to governmental functions. In the case of the CN/CMS, a system that ostensibly benefits both the host government and the U.S. Government, communications service costs under contract DCA200-93-D-0010 have escalated in large part because of foreign PTT charges and the absence of incentives for the contractor to seek reduced costs. As previously discussed, the higher the cost, the greater the contractor's profits. Therefore, we believe that prudent exercise of fiscal responsibilities requires an entity of the U.S. Government to seek to negotiate, on a government-to-government basis, lower costs for operating CN/CMS in foreign nations.

Recommendations, Management Comments, and Audit Response

B.1. We recommend that the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) ask the Department of State to negotiate elimination or reduction of foreign post telephone and telegraph charges for Counternarcotics/Command Management System circuits in countries where those charges are imposed.

Management Comments. The Assistant Secretary of Defense (Command, Control, Communications and Intelligence) concurred, stating that he will propose that the DTS-PO review its contracting provisions for CN/CMS support to allow for government-to-government negotiation of foreign phone system fees.

Audit Response. The Assistant Secretary's comments are fully responsive. On March 7, 1995, the Assistant Secretary requested that the Director, Diplomatic Telecommunications Service, support negotiating the elimination or reduction of foreign charges for CN/CMS circuits in countries where those charges are imposed or anticipated. No additional comments are required.

B.2. We recommend that the Director, Defense Information Technology Contracting Office, make price negotiations for future site requirements under contract DCA200-93-D-0010 contingent on negotiated operating agreements between PanAmSat and the designated foreign telecommunications carrier.

DISA Comments. DISA concurred in part, but referenced a number of reasons against negotiating prices. DISA concluded that while it can encourage the vendor to negotiate operating agreements with foreign communications carriers, circumstances must be evaluated on a case-by-case basis, and contract price negotiations cannot be contingent on negotiation of such agreements.

Audit Response. Without firm subcontractor prices for foreign PTT charges, DITCO contracting officials have no valid basis for contract price negotiations. Because PanAmSat is a noncommon carrier, evidence of firm-fixed PTT charges between PanAmSat and the foreign telecommunications carrier should be prerequisite to contract price negotiations. We request that DISA reconsider its position in response to this final report.

Part III - Additional Information

Appendix A. Allegations from House Committee on Appropriations

Allegation. A Letter of Agreement between the Defense Information Systems Agency (DISA) and the Diplomatic Telecommunications Service Program Office (DTS-PO) effecting the transfer of CN/CMS assets had been completed, but was withdrawn at the last minute before signature at the direction of the Director for Command, Control, Communications and Computer Systems (J-6), Joint Staff.

Audit Result. The allegation was substantiated. Conclusion of the agreement was delayed at the request of the Joint Staff J-6. The original version of the proposed letter of agreement included language that would have transferred an 11-meter parabolic antenna at the Beltsville Information Management Center from DoD to the DTS-PO. As an expedient measure to ensure continued service, that antenna had been used to support CN/CMS circuits for 5 weeks, but the antenna was not a permanent component of the CN/CMS system. The original proposed agreement was modified at the request of the Joint Staff J-6 to delete reference to the 11-meter antenna.

Allegation. An 11-meter parabolic antenna at the Beltsville Information Management Center is the sole asset delaying the transfer of CN/CMS assets from DoD to the DTS-PO.

Audit Result. The allegation was not substantiated. The language of the Committee Report on the FY 1993 Defense Appropriations Act requires transfer of responsibility for the operation and maintenance for the CN/CMS from DoD to the DTS-PO, not the transfer of title to physical assets. That transfer of responsibility for the operation and maintenance of the CN/CMS has been accomplished. Conclusion of the letter of agreement was delayed while confusion over the status of the 11-meter antenna was being resolved. That confusion stemmed from the fact that the 11-meter antenna had been used to support CN/CMS circuits for 5 weeks, while the installation of an 18-meter antenna to permanently support the CN/CMS was being completed. The 11-meter antenna is excess to current and future CN/CMS requirements.

Allegation. The sudden direction (for DoD) to use the 11-meter antenna came from the office of J6R (a subordinate of the Joint Staff J-6).

Audit Result. The allegation was substantiated. A staff officer from the office of the Joint Staff J-6 sought to determine whether there was a continuing DoD need for the 11-meter antenna. The Joint Staff J-6 had a responsibility to determine whether a valid DoD mission for the antenna existed before a DoD asset was offered to other users. As of November 1, 1994, neither DoD nor the DTS-PO had identified a firm requirement for the 11-meter antenna. Both DISA and the DTS-PO were working to develop a letter of agreement that would cover the future operation, maintenance, funding, and shared use of the antenna.

Allegation. The president of GLS Associates, Incorporated, (GLS) is a personal friend of the Joint Staff J-6, and this contact caused the Joint Staff's sudden interest in the 11-meter antenna.

Audit Result. The allegation was not substantiated. The president of GLS is a retired Air Force colonel who, while on active duty, served in the same career field as the Joint Staff J-6. During that time, the two became acquainted. Joint Staff actions with respect to the 11-meter antenna are discussed above.

Allegation. Both contracts for the CN/CMS program were steered to GLS because of the personal friendship between the president of GLS and the Joint Staff J-6.

Audit Result. The allegation was not substantiated. The individual on whom the president of GLS allegedly relied for favored treatment exercised no authority or control over source selection or contract award. Furthermore, he was not assigned to the Joint Staff when the first CN/CMS contract was awarded and did not assume the position of J-6 until after the second CN/CMS contract was awarded.

Allegation. The first CN/CMS contract was awarded against the advice of the DCAA auditor.

Audit Result. The allegation was not substantiated. DCAA issued a qualified opinion after DITCO indicated it would perform an in-house review of subcontractor costs. Details are in Finding A.

Allegation. Leased radio frequency equipment costs under the second CN/CMS contract have increased by 277 percent, and associated space segment costs have increased by 421 percent. Total costs for the second CN/CMS contract have increased by 229 percent.

Audit Result. The allegations of contract cost escalation were substantiated. Costs under contract DCA200-93-D-0010 were substantially greater than the costs for similar services under contract DCA200-91-C-0028. Details are in Finding B.

Allegation. The president of GLS is a retired O-6 contract officer who had formerly been assigned to the Defense Commercial Communications Office.

Audit Result. The allegation was not substantiated. The president of GLS is a retired Air Force colonel. However, the official Statement of Service that details his career assignments shows that although he was assigned to the Defense Communications Agency (now DISA), he was never assigned to the Defense Commercial Communications Office (now DITCO).

Appendix B. Foreign PTT Charges on Contract DCA200-93-D-0010

Country	Monthly Recurring[1] PTT Charges	Initial Billing Date	Costs Through Dec. 31, 1994	Jan. 1995 to[2] Oct. 1997
Ecuador	$ 5,448	Oct. 1992	$147,096	$179,784
Venezuela	26,428	Oct. 1992	713,556	872,124
Paraguay	17,521	Dec. 1992	438,025	578,193
Guatemala	6,765	July 1993	121,770	223,245
Honduras	6,682	Aug. 1993	113,594	220,506
Columbia	13,649	Sept. 1993	218,384	450,417
Total	**$76,493**		**$1,752,425**	**$2,524,269**

[1]Includes GLS general and administrative and profit charges.
[2]Costs would be avoided if Recommendation B.1. is fully implemented by January 1, 1995.

Appendix C. Potential Benefits Resulting from Audit

Recommendation Reference	Description of Benefit	Amount and/or Type of Benefit
A.1.	Economy and Efficiency. Precludes extension of contracts with unfavorable provisions.	Nonmonetary.
A.2.	Internal Controls. Ensures competition to obtain most favorable prices and terms for future CN/CMS contracts.	Nonmonetary.
A.3.	Compliance. Ensures accountability.	Nonmonetary.
B.1.	Economy and Efficiency. Reduces or eliminates foreign PTT charges.	Monetary benefits are undeterminable. Amounts realized depend on results of negotiations. As much as $2.5 million (foreign PTT charges from January 1995 to October 1997) could be put to better use.
B.2.	Internal Controls. Provides firm basis for evaluation of contract costs.	Nonmonetary.

Appendix D. Organizations Visited or Contacted

Office of the Secretary of Defense

Assistant Secretary of Defense, (Command, Control, Communications and Intelligence)
Joint Staff, Washington, DC

Department of the Army

Counternarcotics/Command and Management System Program Office, McLean, VA
Intelligence Materiel Management Center, Vint Hill Farms Station, Warrenton, VA

Unified Commands

U.S. Southern Command Field Office, Arlington, VA

Defense Agencies

Defense Information Systems Agency, Arlington, VA
  Defense Information Technology Contracting Office, Scott Air Force Base, IL
Defense Contract Audit Agency, Springfield, VA

Non-Defense Federal Organizations

Inspector General, Department of State, Rosslyn, VA
Diplomatic Telecommunications Service Program Office, Department of State, Springfield, VA
Director, Beltsville Information Management Center, Department of State, Beltsville, MD
U.S. Federal Communications Commission, Washington, DC

Non-Government Organizations

GLS Associates, Incorporated, Alexandria, VA
PanAmSat, Greenwich, CT

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller)
Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
Director of Defense Procurement
DoD Coordinator for Drug Enforcement Policy and Support
Assistant to the Secretary of Defense (Public Affairs)
Director, Joint Staff

Department of the Army

Auditor General, Department of the Army

Department of the Navy

Auditor General, Department of the Navy

Department of the Air Force

Auditor General, Department of the Air Force

Unified Command

U.S. Southern Command

Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Information Systems Agency
Director, Defense Information Technology Contracting Office
Director, Defense Logistics Agency

Defense Organizations (cont'd)

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

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
Technical Information Center, National Security and
International Affairs Division, General Accounting Office
Inspector General, Department of State
Director, Diplomatic Telecommunications Service

Chairman and Ranking Minority Member of each 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
Senate Select Committee on Intelligence
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and
Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security
House Permanent Select Committee on Intelligence

Part IV - Management Comments

Assistant Secretary of Defense (Command, Control, Communications and Intelligence) Comments

ASSISTANT SECRETARY OF DEFENSE

6000 DEFENSE PENTAGON
WASHINGTON, DC 20301-6000

March 7, 1995

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on the Counternarcotics/Command and Management System(CN/CMS) (Project No. 4RF-5022)

This is in reply to your memorandum of November 21, 1994 that forwarded a draft report for our comments and concurrence. Since many of the findings and recommendations pertain solely to the Defense Information Systems Agency (DISA) it was necessary to allow that Agency to evaluate the specific details prior to our review. DISA also provided their interim evaluation directly to you, via a February 9, 1995 memorandum.

In regard to Finding A, Contract Award Process, we fully agree that contracts for satellite communications support to the CN/CMS should be awarded via full and open competition or competition amongst 8A's. We are not in a position to determine whether the causes for sole source award are as described in your draft report until such time as DISA completes their review of all pertinent records, which they state will be completed prior to July 1995. We do agree, however, that there was compelling urgency to insure that uninterrupted communications services were provided to USCINCSOUTH and that such was documented by the Joint Staff (J-6) via the ROC process.

Recommendations for Corrective Action for Finding A are as follows. We recommend that the Director, Defense Information Systems Agency:

1. Direct the Defense Information Technology Contracting Office not to exercise any option years on contract DCA200-91-C-0028.

ASD(C3I) Response: Do not fully concur at this time. As stated above, DISA will fully evaluate the contract award process prior to July 1, 1995. Until that time, no additional options will be exercised. Upon completion of the examination, a decision will be made as to the proper means of assuring communications support to CN/CMS.

2. Require competitive award of any follow-on contract executed by the Defense Information Technology Contracting Office for CN/CMS.

ASD(C3I) Response: Concur. As stated above, we agree with DISA that services will be competitively procured. However, note that the Diplomatic Telecommunication System (DTS) is now responsible for the majority of CN/CMS support per Congressional direction.

3. Evaluate the actions of the DISA Senior Procurement Executive; Director, DISA Transmission Systems; DISA Competition Advocate; Chief, Defense Information Technology Contracting Office, Defense Switched Network/Defense Communications System Procurement Division; and the contracting officers for the Defense Information Technology Contracting Office involved in the award of contracts DCA200-21-C-0028 and DCA200-93-D-0010 and take appropriate action.

ASD(C3I) Response: Concur. DISA will complete such an evaluation prior to July 1995 and this office will review and forward their response at that time.

In regard to Finding B, CN/CMS Price Escalation, we agree that in the specific case being examined it may have been possible to reduce the cost of services by having the U.S. Government take responsibility for direct negotiations with foreign governments for so called "landing rights". However, such is not always the case. Also, by doing so, the Government would be accepting additional responsibilities and risks and could also be called upon to provide suitable quid pro quo in other negotiations. Hence, we are not in agreement that communications providers should be relieved from the risks and responsibilities of providing complete end-to-end service. However, we do agree that on a case-by-case basis, the Diplomatic Telecommunications Service (DTS) should be requested to determine whether direct government-to-government negotiations are practical for specific geographic locations.

In response to the recommendations for Finding B:

1. We recommend that the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) ask the Department of State to negotiate elimination or reduction of foreign post telephone and telegraph charges for Counternarcotics/Command and Management System circuits in countries where those charges are imposed.

ASD(C3I) Response: Concur. The ASD(C3I) will propose that the DTS review their contracting provisions for CN/CMS support to allow for government-to-government negotiation of foreign phone

system fees. Note that by Congressional direction, future telecommunications support for CN/CMS is to be contracted via DTS rather than through DISA.

2. We recommend that the Director, Defense Information Technology Contracting Office, make price negotiations for future site requirements under contract DCA200-93-D-0010 contingent on negotiated operating agreements between PanAmSat and the designated foreign telecommunications carrier.

ASD(C3I) Response: Do not concur at this time. We do not believe that the Director, DISA is in a position at this time to dictate such cost reductions. Rather, costs should be reduced via competition in future DTS contracts whenever feasible. Based upon the response from DTS, we will provide DISA with further guidance in this area.

Thank you for the opportunity to comment on this draft, and we will provide additional inputs after the DISA review is completed.

Emmett Paige, Jr.

Defense Information Systems Agency Comments

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

IN REPLY REFER TO: Inspector General

09 FEB 1995

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE
ATTN: DIRECTOR, READINESS AND OPERATIONAL SUPPORT AUDITS

Subject: DISA Reponse to DoDIG Draft Audit Report, Project No. 4RF-5022, Counter Narcotics/Command and Management Systems (CN/CMS), 21 Nov 94

1. As requested, we have reviewed the subject report. Our response, is by necessity, an interim response. Further analysis is required to determine the actions taken by DISA and DITCO personnel and to evaluate the processes and controls relative to those actions. A detailed review will be conducted by the DISA-IG with estimated completion no later than 30 June 95. Further comments on the DoDIG report are provided as the enclosure.

2. If there are any questions regarding this response, please contact Mr. Philip Lavietes, AIG Audits at (703) 607-6312, or Ms. Lillian Smith, RIG, Scott AFB, IL at (618) 256-9138.

FOR THE DIRECTOR:

1 Enclosure a/s

Richard T. Race
Inspector General

DISA Response to DOD-IG Draft Audit Report, Project No. 4RF-5022, Counter Narcotics/Command and Management Systems (CN/CMS) (U), 21 November 1994

FINDING A. CONTRACT AWARD PROCESS

Finding A The DISA-IG initial evaluation of management documentation in the preparation of this response indicates that further review and analysis are necessary to evaluate both the process and the actions taken by DITCO and DISA Personnel. This evaluation will be completed not later than 30 June 95.

A point that needs to be clarified in the final audit report is that DITCO awarded two contracts. The first CN/CMS contract (Contract DCA200-91-C-0028) was awarded as a sole-source basis and the requisite justified other than full and open competition was approved by the appropriate officials and definitized at a firm price of approximately $13.6 million rather than the not-to-exceed amount as indicated in the report. The subsequent CN/CMS contract (Contract DCA200-93-D-0010) was not a sole-source award, but awarded as set-aside by the U.S. Small Business Administration (SBA) under the auspices of the 8(a) program.

RECOMMENDATIONS FOR CORRECTIVE ACTION

Recommendation 1. Direct the Defense Commercial Communications Office not to exercise any option years on contract DCA200-91-C-0028.

DISA Response to Recommendation 1 Concur in part. This contract's first option year is for the period 1 April 1996 through 31 March 1997. By 30 June 1995, the DISA-IG will complete a review of the process and an evaluation of the actions of DISA officials as recommended by the DoDIG. No options will be exercised prior to completion of this evaluation. After the evaluation and based on the results, DISA will make a determination whether any options will be exercised on this contract. This determination will be based on Federal Acquisition Regulation criteria and customer needs. DISA management's determination will be completed by 31 August 95.

Recommendation 2. Require competitive award of any follow-on contract executed by the Defense Commercial Communications Office for the Counternarcotics/Command Management System.

DISA Response to Recommendation 2. Concur. The DISA-IG review described in response to Recommendation 1 will evaluate the methodology used for awarding any follow-on contracts. Any follow-on award will be in accord with policy regarding competitive awards.

Recommendation 3. Evaluate the actions of the DISA Senior Procurement Executive; the Director, DISA Transmission Systems; the DISA Competition Advocate; the Chief, DECCO DSN/DCS Procurement Division; and the DECCO Contracting officers involved in the award of contracts DCA200-21-C-0028 and DCA200-93-D-0010 and take appropriate action.

DISA Response to Recommendation 3. Concur. Actions will be taken to evaluate the DISA Senior Procurement Executive; the Director, DISA Transmission Systems; the DISA Competition Advocate; the Chief, DITCO Procurement Division; and the DITCO Contracting Officer involved in the award of contracts DCA200-21-C-0028. Estimated completion date is 30 June 95.

Finding B. CN/CMS Contract Price Increase

Finding B. The DISA IG intends to further evaluate the issues identified in the report and perform further analysis.

RECOMMENDATIONS FOR CORRECTIVE ACTION

2. We recommend that the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) request the Department of State to negotiate elimination or reduction of Post Telephone and Telegraph charges for Counternarcotics/Command Management System circuits in countries where those charges are imposed.

DISA Response to Recommendation 1. None, Addressed to ASD(C3I)

Recommendation 2. We recommend that the Director, Defense Commercial Contracting Office make price negotiations for future site requirements under contract DCA200-93-D-0010 contingent on negotiated operating agreements between PanAmSat and the designated foreign telecommunications carrier.

DISA Response to Recommendation 2. Concur in part. If the Department of State determines activation of additional site requirements provided under Contract No. DCA200-93-D-0010 are necessary, a contract modification may be incorporated which requires the contractor/subcontractor to have negotiated operating agreements with the foreign telecommunications carrier. Currently, CN/CMS requirements are volatile and no assurances have been provided as to the number of services required, the date when services will be activated, nor the duration of required services. Consequently, contractor/subcontractor negotiations of operating agreements may be difficult since firm

commitments cannot be provided. In addition, the contractor/subcontractor may charge the Government for negotiating such operating agreements in which case, an economic evaluation must be conducted to determine whether or not the negotiation of operating agreements is beneficial to the Government. Also, should the foreign telecommunications carrier choose not to be party to such an agreement, the customer's requirement could not be fulfilled.
Therefore, while we can encourage the vendor to negotiate operating agreements with the designated foreign telecommunications carrier, we need to evaluate the circumstances on a case-by-case basis and cannot make price negotiations contingent on negotiation of these agreements.

Audit Team Members

This report was prepared by the Readiness and Operational support Directorate, Office of the Assistant Inspector General for Auditing, Department of Defense.

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