Audit Report

OFFICE OF THE INSPECTOR GENERAL

PROCUREMENT OF SYSTEMS ACQUISITION AND SUPPORT SERVICES SOFTWARE

Report No. 95-181

April 24, 1995

Department of Defense

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Acronyms

CBD	Commerce Business Daily
DCMAO	Defense Contract Management Area Operations
DIA	Defense Intelligence Agency
GAO	General Accounting Office
SASS	Systems Acquisition and Support Services

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

Report No. 95-181 April 24, 1995

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

SUBJECT: Audit Report on the Procurement of Systems Acquisition and Support Services Software (Project No. 5RF-5014)

Introduction

This report is provided for information and use. It discusses the award of contract MDA90894D1520 to procure the Systems Acquisition and Support Services (SASS) software. This audit was performed at the request of Congressman John Conyers, Jr., former Chairman, House Committee on Government Operations, (now the House Committee on Government Reform and Oversight) to determine whether irregularities occurred in the SASS software contract. The contracting arm of the Defense Intelligence Agency (DIA), the Virginia Contracting Activity (hereafter referred to as DIA), awarded the contract. The audit also determined whether DIA achieved full and open competition when awarding the SASS software contract. Congressman Conyer's request was made on behalf of a constituent, Sylvest Management Systems Corporation (Sylvest).

Audit Results

DIA fully complied with the applicable provisions of the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement in the solicitation, evaluation, source selection, and award of the SASS software contract. DIA achieved full and open competition before awarding the SASS software contract based on DIA's assessment of best value to the Government.

Objectives

The objectives of the audit were to determine whether DIA's contract for software acquisition support was awarded through full and open competition and

whether the contract provides the best overall value to the Government. We reviewed DIA's management control program as it applied to the audit objectives.

Scope and Methodology

We reviewed documentation relating to contract MDA90894D1520, a firm fixed-price, indefinite delivery contract with an effective date of July 26, 1994. The contract had a ceiling price of $163 million and included a base year and 4 option years. DIA awarded the contract, known as the SASS software contract, to BDS, Incorporated. We examined Source Selection Evaluation Board files related to the management, cost, and technical evaluations of the best and final offers submitted by BDS, Incorporated, and Sylvest. Also, we reviewed correspondence and documents pertaining to the General Accounting Office (GAO) solicitation award protest filed by Sylvest, contracting and solicitation records, and correspondence between DIA and the vendors. The documentation reviewed was dated from June 1993 through October 1994. We interviewed the contracting officer and contract specialist for the SASS software contract; the chairman and other members of the Source Selection Evaluation Board; other concerned DIA officials; GAO legal counsel; officials from the Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence); and other DoD personnel involved with the SASS program. We also interviewed an official from the Small Business Administration and reviewed relevant Small Business Administration records dated July 1994.

This economy and efficiency audit was performed from November 1994 through February 1995 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD, and accordingly, included such tests of internal controls as were considered necessary. We did not rely on computer-processed data to achieve the audit objectives. We visited the following organizations during the audit: Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence); the Defense Intelligence Agency; the GAO; and the Small Business Administration.

Management Control Program

DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, requires DoD organizations to have internal management controls in place and to periodically evaluate those controls.

Scope of the Review of the Management Control Program. We reviewed the implementation of the management control program within the DIA contracting

and contract administration divisions as it applied to the audit objectives. We evaluated the procedures and directives involved in negotiating and awarding contracts. Specifically, our review included an evaluation of compliance with applicable parts of the Defense Federal Acquisition Regulation Supplement, cost and price analysis procedures, technical and management competence evaluations, contract solicitation development, and delivery order logs. Additionally, we examined management's self-assessments of two branches of the contracting division and the division chief's assessment of the contract administration division. We found controls to be in place and working as designed.

Adequacy of Management Controls. We determined that a management control program had been instituted, that adequate management controls were in place, and that the effectiveness of established control procedures was assessed by management on a recurring basis. We identified no material management control weaknesses.

Prior Audits and Other Reviews

There have been no published reports, prior audits, or other reviews of the SASS software contract during the last 5 years.

Background

On July 19, 1993, the DIA announced in the *Commerce Business Daily* (CBD), the intention to award a single contract for commercial-off-the-shelf computer software, software licenses, documentation, and maintenance in support of the DoD Intelligence Information System community. DIA required vendors to submit a request for a copy of the solicitation package within 10 calendar days of the CBD announcement. One hundred and eighty-three vendors requested a solicitation package. Six vendors submitted a total of seven bids (one vendor submitted two bids). After concluding an extensive source selection evaluation and an operational compliance demonstration of the effectiveness of the software offered, DIA determined that the offer submitted by BDS, Incorporated, provided the best value to the Government. DIA awarded the SASS software contract to BDS, Incorporated, on July 26, 1994. On August 5, 1994, Sylvest filed a solicitation award protest with GAO. Sylvest withdrew the protest on October 21, 1994, alleging DIA refusal to provide relevant procurement documents as the reason, and filed a complaint in U.S. District Court for the Southern District of Maryland on that same date. On November 7, 1994, Congressman John Conyers, Jr., requested that the Secretary of Defense investigate Sylvest's allegations dealing with the contract award and subsequent solicitation award protest. Each of the allegations and our audit results are discussed below.

Discussion

Congressman Conyers' letter (Enclosure 1) contained five specific allegations concerning the contract award and ensuing solicitation protest.

It was alleged that DIA repeatedly refused to provide procurement documents that were relevant to the GAO bid protest. The allegation was not substantiated. A representative from the Office of General Counsel, GAO, affirmed that DIA promptly provided all relevant documentation to GAO. All requested documentation relating to Sylvest's solicitation award protest was either provided by DIA or found not to be relevant by GAO, in which case Sylvest was notified by the GAO General Counsel.

It was alleged that DIA refused to respond to Sylvest's Freedom of Information Act request. The allegation was not substantiated. DIA received two Freedom of Information Act requests from Sylvest's legal counsel, both dated September 22, 1994 (Enclosure 2). Sylvest requested all documents relating to the DIA determination to authorize performance of the SASS software contract and all delivery orders issued under the contract, although a protest challenging the propriety of the award existed. DIA provided the requested documentation on December 7, 1994 (Enclosure 3). DIA withheld portions of the information in the document that involved the determination to authorize performance. DIA took that action in compliance with Executive Order 12356, section 1.3(a)(4), because of the security classification of the information. We believe the withheld information in the DIA determination to authorize performance would not have been useful to Sylvest in its solicitation award protest efforts.

It was alleged that DIA conducted a "preaward" audit of Sylvest, although the contract had already been awarded to BDS, Incorporated. The allegation was substantiated. However, the preaward survey was done to help ensure proper management of the contract and there was no adverse impact. DIA requested that the Defense Contract Management Area Operations (DCMAO), Baltimore, conduct a preaward survey of Sylvest, but not for prejudicial reasons. On June 16, 1994, DIA requested a preaward survey of BDS, Incorporated, after it became the apparent contract award winner. DCMAO, Baltimore, completed the survey on July 8, 1994, and recommended that DIA complete the award to BDS, Incorporated. In August 1994, Sylvest filed a solicitation award protest with GAO. DIA knew that Sylvest was ranked second among bidders on the SASS software contract and that there was urgent reason to continue ordering off the contract as soon as possible after a decision was rendered on the protest by Sylvest. Therefore, to ensure that delivery orders could be placed against the contract as soon as the protest decision was made, DIA requested and received an immediate preaward survey of Sylvest, in the event that Sylvest replaced BDS, Incorporated, as the contract awardee. DIA requested the preaward survey on September 12, 1994, and

DCMAO, Baltimore, completed the preaward survey on September 29, 1994. DCMAO, Baltimore, rated Sylvest as qualified for award of the contract (Enclosure 4).

It was alleged that DIA contacted reporters at *Washington Technology* to obtain critical, negative information about senior management personnel at Sylvest. The allegation was not substantiated. A DIA representative had contacted *Washington Technology*, a trade periodical. The DIA representative noticed on an affidavit (in connection with the solicitation award protest) filed by a Sylvest employee that the employee began working at Sylvest on December 1, 1993. The DIA representative remembered reading in a *Washington Technology* article that the employee began working at Sylvest in February 1994. The DIA representative called *Washington Technology* to determine where the author of the article obtained the information and to determine whether a Sylvest official had submitted incorrect information on an affidavit. The representative talked to the author of the article and determined that the author obtained the information from a Sylvest news release. The release, dated February 1994, stated that the employee had recently begun working at Sylvest, but did not mention an exact date. At that point, the DIA representative terminated his efforts.

It was alleged that DIA did not provide for full and open competition, because all offerers did not have the opportunity to compete on an equal basis. The allegation was not substantiated. DIA announced the original SASS software solicitation in the CBD on July 19, 1993, to provide all interested vendors the opportunity to request a copy of the solicitation. Subsequently, DIA amended the solicitation and published the amendment in the November 12, 1993, CBD. One hundred and eighty-three vendors requested copies of the solicitation, seven of which were Small Disadvantaged Businesses, as verified by Small Business Administration records. (See Enclosure 5 for a list of the Small Disadvantaged Businesses that requested the solicitation.) DIA received seven bids in response to the solicitation. Although Sylvest was the only Small Disadvantaged Business that bid, three other bidders were classified as Small Business concerns. Additionally, all bids were evaluated using identical criteria and analysis techniques for evaluating and comparing costs and for appraising technical and management competence. All information available indicated that DIA made a concerted and successful effort to conduct full and open competition.

Management Comments

A draft of this report was provided to the Assistant Secretary of Defense (Command, Control, Communications and Intelligence); the Director, Defense

Information Systems Agency; and the Director, Defense Intelligence Agency, on February 28, 1995. Although management comments were not required, the Defense Intelligence Agency replied and concurred with the report.

The cooperation and courtesies extended to the staff are appreciated. If you have questions on this audit, please contact Mr. Harrell D. Spoons, Audit Program Director, at (703) 604-9575 (DSN 664-9575) or Mr. Ralph S. Dorris, Audit Project Manager, at (703) 604-9584 (DSN 664-9584). The distribution of this report is listed in Enclosure 6. The audit team members are listed inside the back cover.

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Enclosures

Congressman Conyers' Request for Investigation

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House of Representatives

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MINORITY—(202) 225-5074

November 7, 1994

Honorable William J. Perry
Secretary
Department of Defense
1000 Defense, The Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

As Chairman of the Government Operations Committee, a Member of the Small Business Committee, and a sponsor of the newly enacted Federal Acquisition Streamlining Act of 1994 (FASA), I have a particular interest in ensuring the economic and efficient award of a substantial number of Federal contracts to Small, Disadvantaged Businesses (SDB). As you know, notwithstanding the legislative mandates enacted by Congress, ensuring that SDB firms have a fair and equitable opportunity in the Federal marketplace has been an uphill battle. In this regard, recently, I became aware of alleged irregularities concerning the conduct of a procurement by the Defense Intelligence Agency. These allegations raise serious questions as to whether the award of a contract to a large, majority-owned business instead of an eligible SDB was proper. Given these questions, I believe this case deserves serious review at the highest levels of the Department of Defense.

In November 1993, the DIA issued a request for proposals to purchase commercially available off-the-shelf computer software, software licenses and associated services for the DIA and other elements of the defense intelligence community. The Software Acquisition Support Services procurement was conducted as an unrestricted competition, and sought the responsible contractor whose proposal offered the combination of management, technical, and price features determined under the solicitation to offer the best overall value to the Government. With respect to cost, the RFP emphasized that the contract would not be awarded to an offeror who proposed unreasonably low prices. This latter provision reflects procurement regulations which prohibit offerors from attempting to "buy-in" to a Federal contract.

The contract was awarded pursuant to the solicitation to BDS, Inc. on July 26, 1994. Sylvest Management Systems Corporation, a Section 8(a)/SDB company, was the next-highest

ranked offeror overall behind BDS. Sylvest sought and received a debriefing from DIA, which I understand disclosed that BDS's proposed price was substantially below that of every other offeror and possibly below BDS's own cost.

Although Sylvest filed a GAO bid protest, the protest process appears to have been manipulated by DIA so that Sylvest was not able to develop the merits of the protest as contemplated by the GAO's Bid Protest Regulations. Specifically, DIA repeatedly refused to produce procurement documents relevant to the protest. As a result of DIA's apparent disregard of normal GAO procedures, Sylvest withdrew its protest. DIA has also refused to respond to Sylvest's Freedom of Information Act request, advising Sylvest that such response would not be forthcoming for at least a year. Additionally, immediately after Sylvest filed its protest, DIA informed Sylvest that it was going to conduct a "pre-award" audit of the company, notwithstanding the fact that DIA had already awarded the contract to BDS. Around this same time, Sylvest alleges that DIA had contacted reporters at a local trade publication (Washington Technology) seeking critical, negative information regarding Sylvest's principals.

As you well know, the Competition in Contracting Act requires agencies to engage in "full and open competition" in Federal procurement. Full and open competition means that all offerors (including SBD companies), must have the opportunity to compete on a level playing field. From all appearances, however, not only has DIA failed to ensure full and open competition, it appears to be obstructing efforts to review its compliance therewith. The fact that Sylvest was the only minority offeror in the procurement makes DIA's conduct particularly questionable given the difficulty that minority businesses have traditionally had in winning unrestricted competitions.

Sylvest has now filed an action in United States District Court regarding DIA's conduct of the procurement. While that case, in time, may address some of the issues discussed in this letter, I believe this case also warrants your immediate, serious and thorough investigation. Please inform me personally of the results of your review. Of course, in the interim, please do not hesitate to contact me or one of my staff if you have any questions or concerns.

Sincerely,

JOHN CONYERS, JR.
Chairman

Sylvest's Freedom of Information Act Request

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**MEMBER OF PENNSYLVANIA BAR

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CORRESPONDENCE TO:
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8TH FLOOR, SUITE 800
WASHINGTON, D.C. 20005

22 September 1994

Defense Intelligence Agency
PSP/FOIA
Washington, D.C. 20340-5100

Attn: Mr. Paul Richardson

RE: Contract No. MDA908-94-D-1520

Dear Mr. Richardson:

Under the authority of the Freedom of Information Act, 5 U.S.C. Section 552, please provide the undersigned with a copy of the following:

all delivery orders issued under the subject contract.

If any documents or portions thereof are withheld, please indicate the name and title of the official authorizing such withholding. Pursuant to the FOIA we shall be expecting your response within ten (10) days.

If any material is deemed to be exempt, I request a specific statement of the portion deleted or withheld, a full statement of the reasons for the refusal of the access, and specific citation or statutory authority for the denial.

We shall, of course, pay any reasonable and appropriate costs associated with this request. However, if you anticipate that such costs will exceed $100.00, please advise the undersigned before incurring those costs. Please refer to our Freedom of Information Act Request No. 94-24 in all correspondence relating to this request.

Sincerely yours,

POMPAN, RUFFNER & WERFEL

Jacob B. Pompan

JBP/mhc

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6TH FLOOR, SUITE 600
WASHINGTON, D.C. 20006

22 September 1994

Defense Intelligence Agency
PSP/FOIA
Washington, D.C. 20340-5100

Attn: Mr. Paul Richardson

RE: Contract No. MDA908-94-D-1520

Dear Mr. Richardson:

Under the authority of the Freedom of Information Act, 5 U.S.C. Section 552, please provide the undersigned with access to the following:

all documents relating to or supporting the determination by the Defense Intelligence Agency to authorize performance of the above-referenced contract notwithstanding the existence of a protest challenging the propriety of the award of that contract.

We understand that some or all of these documents may be classified. I am currently cleared for access to classified information, and am merely seeking an opportunity to inspect such documents at a mutually convenient time and place.

If any records (or portions thereof) within the scope of our request are withheld, please indicate the name and title of the official authorizing such withholding. If any material is deemed to be exempt from release under FOIA, we request a specific statement describing the records being withheld, a full statement of the reasons for denying access, and specific citation or statutory authority for the denial.

We shall, of course, pay any reasonable and appropriate costs associated with this request. However, if you anticipate that such costs will exceed $100.00, please advise the undersigned before incurring those costs. Please refer to our Freedom of Information Act Request No. 94-25 in all correspondence relating to this request.

Sincerely yours,

POMPAN, RUFFNER & WERFEL

Jacob B. Pompan

DIA Response to the Sylvest Freedom of Information Act Request

DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-

U-15,851/PSP/FOIA/KINSEY/373-2225/1t 7 December 1994

Mr. Jacob Pompan
Pompan, Ruffner & Werfel
209 North Patrick Street
Alexandria, VA 22314

Dear Mr. Pompan:

This responds to your requests under the Freedom of Information Act dated 22 September 1994. The first request is for documents supporting the determination to authorize performance of Contract Number MDA908-94-D-1520 notwithstanding a protest to the General Accounting Office. The second request is for all delivery orders issued under the contract.

A search of DIA's systems of records located two documents responsive to the first request. Upon review, it has been determined that some portions of the document entitled "Determination and Findings" are not releasable. The information withheld is exempt from release pursuant to 5 U.S.C. 552 (b)(1), Freedom of Information Act. Subsection (b)(1) applies to information properly classified under Executive Order 12356 Section 1.3 (a)(4). Former security marking were also deleted. All reasonably segregable portions of the document are attached hereto. The second document, a letter to the General Accounting Office dated 12 August 1994 is enclosed for your use without deletions.

A search of DIA's systems of records located 35 delivery orders for the contract. Of these, 13 contain one amendment. The delivery orders and the amendments are provided in their entirety. An inventory of these delivery orders and amendments is also enclosed.

You are advised that a requester may appeal, within 60 days, an initial decision to withhold a record or part thereof. Should you wish to exercise this right, you may do so by referring to case #0652-94 and addressing your appeal to:

Defense Intelligence Agency
ATTN: PSP/FOIA
Washington, D.C. 20340-5100

Sincerely,

ROBERT P. RICHARDSON
Chief, Freedom of Information Act Staff

38 Enclosures
1. Letter DIA to GAO 12 Aug 1994
2. Redacted Determinations and Findings 12 August 1994
3. Index of delivery orders
4. Delivery orders 0001 to 0035

Enclosure 3

Preaward Survey Determination on Sylvest

OFFEROR: SYLVEST MANAGEMENT SYSTEMS
LANHAM, MD

SOLICITATION NUMBER: MDA908-94-D-1520

PAS SERIAL NUMBER: S2101A4915APC

RECOMMENDATION: COMPLETE AWARD.

Recommendation for award is based upon the satisfactory findings of the offeror's technical, security and financial capabilities.

If the offeror is the awardee, please provide the following information to the attention of DCMDM-GBEO/PASM: (A) contract number and, if awarded over negative recommendation, whether awarded by (B) SBA or (C) PCO override (give brief rationale).

ROMAN S. SCHARF
Preaward Survey Manager
DCMAO Baltimore

Enclosure 4

Small Disadvantaged Businesses that Requested a Solicitation Package from DIA

Digital Technologies, Incorporated, Reston, VA

DSK Systems, Incorporated, Alexandria, VA

DUAL Incorporated, Arlington, VA

Prompt Tech, Incorporated, Miami, FL

SMF Systems Corporation, San Francisco, CA

Sylvest Management Systems Corporation, Lanham, MD

TTK Associates, Moraga, CA

Enclosure 5

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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

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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