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Defense Advanced Research Projects Agency's Ethics Program Met Federal Government Standards

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Acronyms and Abbreviations

BAA	Broad Agency Announcement
CFR	Code of Federal Regulations
DARPA	Defense Advanced Research Projects Agency
DAEO	Designated Agency Ethics Official
DoDIG	Department of Defense Inspector General
I2O	Information Innovation Office
IPA	Intergovernmental Personnel Act
OGC	Office of General Counsel
POGO	Project on Government Oversight
SOCO	Standards of Conduct Office
U.S.C.	United States Code



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

January 24, 2013

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
DIRECTOR, DEFENSE ADVANCED RESEARCH
PROJECTS AGENCY

SUBJECT: Defense Advanced Research Projects Agency's Ethics Program Met Federal Government Standards (Report No. DODIG-2013-039)

We are providing this report for your information and use. We conducted this audit in response to a letter from the Project on Government Oversight (POGO) dated May 9, 2011, and allegations to the Defense Hotline on August 17, 2011.

We determined that the Defense Advanced Research Projects Agency (DARPA) ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards and that DARPA personnel were properly trained and followed DARPA ethics policies. In addition, DARPA did not award BAE Systems contracts as a result of undue influence from former BAE Systems employees in the DARPA Information Innovation Office.

No written response to this report was required, and we are publishing this report in final form.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077). If you desire, we will provide a formal briefing on the results.

Jacqueline L. Wicecarver
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Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Defense Advanced Research Projects Agency's Ethics Program Met Federal Government Standards

What We Did

Our audit objective was to determine whether DARPA ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards and whether DARPA personnel were properly trained and following their policies.

In addition, we determined whether DARPA awarded BAE contracts as a result of undue influence from former BAE Systems employees in the DARPA Information Innovation Office.

What We Found

The DARPA ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards, and the DARPA personnel we selected for review were properly trained and followed DARPA policies. In the last 3 years, DARPA officials issued standard ethics guidance and operating procedures that implemented ethics laws and regulations. The only DARPA ethics rule change was to the broad agency announcement process and the recusal rules interpretation for employees covered by the Intergovernmental Personnel Act.

DARPA's ethics program appropriately mitigated the potential for conflicts-of-interest. In addition, DARPA's ethics training followed Federal Government ethics rules and regulations, and for its annual training, the DARPA Deputy Designated Agency Ethics Official (DAEO) used the ethics training

material developed each year by the DoD Standards of Conduct Office.

Finally, we determined that the program management and contract award process participation of the DARPA employees who formerly worked for BAE Systems or its subsidiary, AlphaTech (BAE/AlphaTech), did not create a conflict-of-interest between the two entities. In addition, DARPA did not award BAE Systems contracts as a result of undue influence from former BAE employees in DARPA's Information Innovation Office.

Management Comments

We do not require a written response to this report.

Recommendations Table

Management	Recommendations Requiring Comment
Director, Defense Advanced Research Projects Agency	None

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Introduction

Objectives

Our objective was to determine whether Defense Advanced Research Projects Agency's (DARPA) ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards and whether DARPA personnel were properly trained and following their policies. In addition, we determined whether DARPA awarded BAE contracts as a result of undue influence from former BAE employees in the DARPA Information Innovation Office. See Appendix A for scope and methodology.

Project on Government Oversight Letter

We performed this audit in response to a letter from the Project on Government Oversight (POGO) dated May 9, 2011, and allegations to the Defense Hotline on August 17, 2011, concerning DARPA's ethics policies and program implementation. The POGO letter requested that the DoD Office of Inspector General (DoDIG) review the eight DARPA contracting and ethics issues listed below.

1. *Determine the adequacy of DARPA's selection, award, and administration of research projects.*
2. *Describe any changes in the last 3 years in the interpretation of ethics rules, regulations, and laws by DARPA's senior leadership, DARPA's general counsel, or by the DoD Office of General Counsel, as they relate to mitigating conflicts of interest in hiring, and in the award of grants and contracts.*
3. *Detail how conflicts of interest mitigation has been used at DARPA and by its contractors and grantees over the last four and a half years, including how often recusals were filed, waivers issued, and divestments made by DARPA employees, contractors and grantees in FY 2007, FY 2008, FY 2009, FY 2010, and the first half of FY 2011.*
4. *Determine the appropriateness of the use of DARPA's conflict-of-interest mitigation instruments and their effectiveness, given the facts presented by DARPA employees', contractors', and grantees' personal and financial interests, particularly for employees at GS-15 or higher level. This must include an examination of confidential financial disclosure statements for ownership of stock or other financial or personal connections to firms with contracts or grants with DARPA.*
5. *Determine whether DARPA has written ethics policies or related ethics training and if there is clear understanding of applicable ethics rules within DARPA.*
6. *Determine whether current DARPA senior officials, including Dugan, were fully in compliance with the terms of their recusal or other conflict-of-interest mitigation agreement, including whether Dugan remained completely uninvolved with decision-making involving her company.*
7. *Determine whether any DARPA employee dealing with RedXDefense knew that their director had ties to the company before there was reporting on the connection.*

8. *Examine how DARPA Conflict-of-Interest policies compare to other DoD agencies, DoD Federally Funded Research and Development Centers (FFRDCs), or other agencies with similar missions and how policy differences may increase or decrease risk of conflicts.*

This audit covered POGO requests 2, 3, 4, and 5.

Allegations to the Defense Hotline

This audit also included an allegation to the Defense Hotline dated August 17, 2011, that DARPA's Information Innovation Office (I2O) had created a revolving door and conflict-of-interest with BAE Systems and a company BAE Systems acquired in 2004, AlphaTech.¹ The allegation stated that at least eight employees from BAE/AlphaTech became program managers/leaders from 2002 through 2010 in the DARPA Information Processing Technology Office/Information Exploitation Office, now I2O. These program managers/leaders rotated between working at DARPA and then returning to senior positions within BAE Systems. The allegation also noted that there appeared to be bias in contract awards. Specifically, POGO alleged that BAE/AlphaTech was awarded a disproportionate share of contracts between 2002 through 2010 because of a conflict-of-interest.

DARPA Background

DoD Directive 5134.10, "Defense Advanced Research Projects Agency," February 17, 1995, identifies DARPA as the central research and development organization of DoD. The agency functions under the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Assistant Secretary of Defense for Research and Engineering Enterprise. The Agency's budget was about \$3 billion annually for FYs 2010, 2011, and 2012.

According to DARPA's Strategic Plan, "Bridging the Gap Powered by Ideas," February 2007, DARPA's mission is to pursue imaginative and innovative research and development efforts to maintain U.S. technological superiority over potential adversaries. DARPA's main tactic for executing its strategy is to constantly search for high-payoff ideas and then sponsor projects that bridge the gap between fundamental discoveries and the provision of new military capabilities.

DARPA's mission implies one imperative for the Agency: radical innovation for national security. DARPA's business process mirrors this by bringing in expert entrepreneurial program managers, empowering them, protecting them from red tape, and quickly making decisions about starting, continuing, or stopping research projects.

To maintain an entrepreneurial atmosphere and the flow of new ideas, DARPA hires program managers for 3- to 6-year tours as the best way to foster new ideas and bring in

¹ A revolving door exists when personnel move from the Government into the private sector and from the private sector into the Government. Government ethics policy does not prohibit revolving doors; however, they create an increased risk for conflicts-of-interest.

new people with fresh outlooks. Congress has granted DARPA authorities to assist the Agency in carrying out its mission in accord with a flexible management philosophy.

DARPA Ethics Program

DARPA's Ethics Program follows the Federal Government ethics rules and regulations. See Appendix B for a list and discussion of the ethics criteria. The DoD General Counsel is the Designated Agency Ethics Official (DAEO) for DoD and reports to the Secretary of Defense. The DoD Standards of Conduct Office (SOCO) manages the DoD ethics program and is responsible for maintaining the DoD 5500.07-R, "Joint Ethics Regulation," November 17, 2011, implementing guidance and training material.

DoD SOCO provides oversight of the DARPA ethics program. In accordance with the Joint Ethics Regulation, DoD SOCO reviews the DARPA ethics program every 4 to 5 years to verify compliance with governing statutes and regulations. On October 30, 2008, DoD SOCO issued "DARPA's 2008 Ethics Program Review," which states that the DARPA Office of General Counsel was knowledgeable and had a dedicated staff with a well-managed ethics program and that major elements of the program, including public and confidential financial disclosure reports and training, met or exceeded the statutory and regulatory requirements.

Review of Internal Controls

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. DARPA's internal controls over its ethics program were effective as they applied to the audit objectives.

Audit Responses to POGO's May 9, 2011, Requests

To answer the POGO requests, we nonstatistically sampled the ethics records of 40 DARPA Senior Executive Service and GS-15 employees from a universe of 204 employees as of March 2012.

DARPA's Interpretation of Ethics Policy

The POGO letter requested that the DoDIG describe any changes in the last 3 years in the interpretation of ethics rules, regulations, and laws by DARPA's senior leadership, DARPA's general counsel, or the DoD Office of General Counsel (OGC), as they relate to mitigating conflicts-of-interest in hiring and in awarding grants and contracts.²

Audit Response

In the last 3 years, DARPA officials issued standard ethics guidance and operating procedures that implemented ethics laws and regulations. This guidance did not change any existing policies; the guidance only implemented ethics laws and regulations. From September 9, 2011, through February 12, 2012, DARPA OGC issued and subsequently updated six standard operating procedures on counseling and advising, orientation briefings, exit interviews/briefings, post-employment disclosures, restrictions, and advisory opinions. Additional standard operating procedures covered maintenance of ethics records, employee financial disclosure requirements, and staff responsibilities of DARPA OGC. In addition, the officials maintained accurate ethics files.

The only DARPA ethics rule change was to the broad agency announcement (BAA)³ process and the recusal rules interpretation for Intergovernmental Personnel Act (IPA) employees. The DARPA Deputy DAEO/GC requested that the DoD SOCO provide DARPA officials with a legal opinion on the recusal rules. DARPA officials requested guidance on the application of section 208, title 18, United States Code (18 U.S.C. § 208 [2012]), the criminal financial conflict-of-interest statute, and related requirements, to a DARPA IPA employee participating in a BAA proposal review process that involves a proposal from the sponsoring organization. On April 20, 2010, the DoD SOCO provided DARPA with a legal opinion that expanded the interpretation of recusal rules for IPA employees on temporary duty assignment in DARPA. The legal opinion reduced the scope of potential recusals for IPA employees involved in managing DARPA projects. Previously DARPA required IPA employees to recuse themselves from all work involving their sponsoring institution. The April 20, 2010, SOCO legal opinion states that IPA employees need only recuse themselves from acting on matters affecting their sponsoring organizations, such as evaluating proposals or recommending funding

² The audit team reviewed the DARPA ethics program. It did not review specific grants or contracts that DARPA awarded. It reviewed DARPA employee participation in the broad agency announcement process, which could result in either a grant or contract award.

³ DARPA officials primarily use a BAA process detailed in Federal Acquisition Regulation Part 35, "Research and Development Contracting," to obtain proposals for basic and applied research.

decisions on selected proposals. Additionally, IPA employees may not act as program managers for programs having contracts or agreements with their sponsoring organizations.

Conflict-of-Interest Mitigation

POGO requested that the DoDIG detail how conflict-of-interest mitigation has been used at DARPA and by its contractors and grantees over the last 4½ years, including how often recusals were filed, waivers issued, and divestments made by DARPA employees, contractors, and grantees in FYs 2007 through 2010 and the first half of FY 2011.

Audit Response

DARPA's ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards. DARPA personnel were properly trained and followed applicable ethics laws and regulations. DARPA's ethics program personnel mitigated the potential for conflicts-of-interest. Specifically, the DARPA Ethics Program Manager mitigated conflicts-of-interest from January 2010 through March 2012⁴ by:

- counseling DARPA managers and current and former employees on potential conflict-of-interest issues and potential remedial actions, such as recusals and authorizations, and
- providing ethics guidance and operating procedures that implemented current ethics laws and regulations.

In order to verify any potential conflicts-of-interest, we analyzed all the BAAs for that corresponding period to determine how many of these announcements the 40 employees in the sample managed.

We determined that 13 of the 40 sampled employees managed 18 BAAs. We reviewed 14 of the 18 BAAs⁵ and determined that the programs followed the appropriate guidance and no conflicts-of-interest existed in those contract actions. DARPA's policy puts the responsibility on employees to disclose personal and financial interests and seek guidance on potential conflict-of-interest problems on the employee. We reviewed 53 mitigation instruments, including recusals and authorizations, on file for these 40 employees. The details on the mitigation instruments follow.

⁴ Although DARPA officials manage their budget and contracts in fiscal years, they manage DARPA ethics files and training in calendar years.

⁵ DARPA officials had not completed the four remaining BAAs at the time of our audit.

Appropriateness of DARPA Conflict-of-Interest Mitigation Instruments

POGO also requested that DoDIG determine the appropriateness of the use of DARPA’s conflict-of-interest mitigation instruments and their effectiveness, given the facts presented by DARPA employees’, contractors’, and grantees’ personal and financial interests, particularly for employees at GS-15 or higher level. Specifically, POGO requested that DoDIG examine confidential financial disclosure statements for ownership of stock or other financial or personal connections to firms with contracts or grants with DARPA.

Audit Response

DARPA’s ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards and followed ethics laws and regulations. DARPA’s ethics program appropriately mitigated the potential for a conflict-of-interest.

We examined financial disclosure reports for the 40 sampled employees. All 40 employees completed Public or Confidential Financial Disclosure reports (Forms SF-278 or OGE 450) from January 2010 through March 2012.

The mitigation instruments included Notices of Disqualification (a general recusal), Disqualifications for Seeking Employment, Agency Designee Determinations (the employee’s supervisor determines whether an appearance of a conflict-of-interest exists for an employee), Post-employment Ethics Letters, and a withdrawal. Table 1 lists the 53 mitigation instruments filed.

Table 1. Instruments for Mitigating Conflicts-of-Interest

Mitigation Instrument	Number
Notices of Disqualification	30
Disqualifications for Seeking Employment	9
Agency Designee Determinations	9
Post-employment Ethics Letter	4
Withdrawal	1
Total	53

DARPA employees filed the 30 notices of disqualification and the 9 disqualifications for seeking employment when the employees chose to remove themselves from participating substantially with companies with which the employees had a conflict. The notices of disqualification were filed for financial conflicts-of-interest. The disqualifications for seeking employment were filed solely when DARPA employees sought a job with other companies. These two types of mitigation instruments represented the majority of the 53 mitigation instruments we reviewed.

Each of the agency designee determinations were based on a supervisory review of the employees' financial disclosure and coordinated with the DARPA OGC. Four agency designee determinations stated that even though there was an appearance of a conflict-of-interest, the Government's interest in the employee's participation outweighed any concerns that a reasonable person might question the Government's integrity. The other five agency designee determinations disqualified the employee from participating on that BAA and designated replacements.

The four post-employment ethics letters provided opinions from DARPA OGC on those companies with which employees should not interact after they leave DARPA. These advisory opinions provide information on the Procurement Integrity Act and 18 U.S.C. § 207 (2012) and whether the ban is for a year, 2 years, or a lifetime.

The one withdrawal established a specific time frame the employee could not work with prohibited companies. Specifically, the employee filed two disqualifications for seeking employment in February 2012 and withdrew the disqualifications in March 2012. If the employee worked on a BAA or any project pertaining to the companies in the disqualifications from February to March 2012, then there would have been a conflict-of-interest. The employee could have worked with the companies before or after that time frame if the employee did not have a substantial personal or financial conflict. We determined that the employee did not work with the prohibited companies during the specified time frame.

DARPA officials did not direct that any of the 40 sampled employees divest themselves as a result of a potential conflict-of-interest. The DARPA OGC stated in cases where an actual conflict-of-interest existed, waivers were almost never granted, and the DARPA OGC could not recall processing a waiver for a DARPA employee. DARPA must coordinate waivers with the DoD SOCO and the DoD SOCO must approve each waiver. In 40 sampled cases, DARPA officials undertook a mitigation process that usually included either a voluntary divestiture process or the employee self-disqualifying from personally and substantially participating in actions dealing with the organization or person where an actual conflict-of-interest existed. DARPA OGC maintained a standard that it was up to the informed employee to disclose personal and financial interests and seek guidance on potential conflicts-of-interest.

DARPA Employees Received Ethics Training

POGO requested whether DARPA had written ethics policies and provided ethics training and whether DARPA employees understood applicable ethics rules.

Audit Response

DARPA's ethics training follows the Federal Government's ethics rules and regulations, and the DARPA Deputy DAEO/GC used the ethics training material developed each year by DoD SOCO for its annual training. DARPA Deputy DAEO/GC provided new employee and annual ethics training for all DARPA employees. We determined that

39 of the 40 sampled employees properly completed the required annual or new employee ethics training.⁶

DARPA begins ethics training between September and October each year and completes the training by December 31. The DARPA Deputy DAEO/GC also provides ethics training to all new employees at the beginning of their employment, and the ethics program manager conducts one-on-one ethics training with each new employee.

Conclusion

DARPA's ethics policies and program implementation were consistent with Federal Government conflict-of-interest mitigation standards, and DARPA personnel were properly trained and followed their policies.

⁶ The 40th employee left DARPA on June 25, 2010, despite being listed as a 2012 employee.

POGO Defense Hotline Allegation on BAE Individuals and Audit Response

On August 17, 2011, POGO submitted a Defense Hotline allegation that DARPA's I2O had created a revolving door and conflict-of-interest with BAE/AlphaTech. The allegation stated that at least eight employees from BAE/AlphaTech became program managers/leaders or a consultant from 2002 through 2010 for the DARPA I2O. These program managers/leaders/consultant rotated between working at DARPA and then returning to senior positions within BAE.

The allegation also noted that there appeared to be bias in contract awards. Specifically, POGO alleged a conflict-of-interest because BAE/AlphaTech was awarded a disproportionate share of contracts from 2002 through 2010.

Audit Response

We determined that the program management and contract award process participation of the seven DARPA employees who formerly worked for BAE/AlphaTech did not create a conflict-of-interest between the two entities. One individual was not a Government employee, but a DARPA consultant. DARPA personnel were properly trained, followed ethics laws and regulations, and mitigated conflicts-of-interest in program management and contract award decisions. As a result, in the DARPA-awarded BAE contracts, there were no apparent conflicts-of-interest or undue influence from former BAE employees assigned to DARPA's I2O. As we found no indication of bias in contract award, we did not evaluate whether BAE received a disproportionate share of awards. The DARPA ethics personnel, DARPA contracting officers, and I2O managers implemented Government ethics safeguards to make sure that DARPA employees were properly trained, followed ethics laws and regulations, and mitigated conflicts-of-interest in program management and contract award decisions.

DARPA personnel routinely rotate between the private and public sectors. DARPA recruits and hires individuals to fill specific innovational research needs for limited time periods (generally 3 to 6 years), then the employee returns to private industry. DARPA I2O employed seven of the eight individuals. The eighth individual was not a Government employee but a Scientific, Engineering, and Technical Assistance contractor working as an I2O subject-matter expert. Seven of the eight individuals previously worked for BAE or AlphaTech and two of the eight went to work for BAE after working for DARPA. We used LinkedIn, a professional network on the Internet, and an education site to determine current employment, but did not validate this information. Table 2 shows the employment history of the eight named individuals as it relates to their employment at DARPA and BAE/AlphaTech.

**Table 2. Former Industry Employees Working for
DARPA I2O From FY 2002 Through FY 2010**

Individual	Prior Ties to Contractor	1 Year Prior to Working for DARPA	Current Employer
B1	BAE	BAE	DARPA
B2	BAE	BAE	Other
B3	AphaTech/BAE	BAE	Other
B4	AlphaTech	Other	Other
B5	AlphaTech	Other	Other
B6	AlphaTech	AlphaTech	BAE
B7	Other	Other	BAE
B8	AlphaTech/BAE	N/A	N/A

As employees of DARPA, a DoD agency within the Executive branch of the Federal Government, the seven individuals were required to comply with the Standards of Ethical Conduct for employees of the Executive Branch as codified in Title 5, Code of Federal Regulations (CFR), “Administrative Personnel,” and with Title 18 U.S.C.

Compliance With Ethics Laws and Regulations

The DARPA ethics personnel and I2O managers implemented ethics safeguards to make sure DARPA personnel followed ethics laws and regulations. Specifically, DARPA ethics counselors and I2O managers provided ethics advice, ethics training, and monitored and mitigated conflicts-of-interest for DARPA employees.

Individual Ethics Requirements

We reviewed the ethics files of the seven DARPA Government employees to determine whether they met Government ethics requirements. DARPA ethics personnel provided the seven employees with ethics advice and training and documented this information in DARPA ethics files. DARPA ethics personnel made sure that the seven employees completed annual financial disclosure reports as required and mitigated conflicts-of-interest with authorizations and recusals when necessary. In addition, DARPA provided employees with post-Government advisory opinions explaining their individual post-employment restrictions. Table 3 shows the status of the seven Government employees’ ethics requirements and demonstrates that DARPA ethics counselors made sure that DARPA employees were aware of and followed ethics rules.

Table 3. DARPA Ethics Services Provided to Former BAE/AlphaTech Employees

Individual	Service Provided					
	Ethics Advice	Ethics Training	Financial Disclosure	Authorizations Related to BAE	Recusals Related to BAE	Post-Employment Opinion
B1	Yes	Yes	Yes	Yes	N/A	N/A
B2	Yes	Yes	Yes	Yes	N/A	Yes
B3	Yes	Yes	Yes	Yes	N/A	Yes
B4	Yes	Yes	Yes	N/A	N/A	Yes
B5	Yes	Yes	Yes	N/A	Yes	Yes
B6	Yes	Yes	Yes	N/A	Yes	Yes
B7	Yes	Yes	N/A	N/A	Yes	Yes

N/A = Not Applicable

Ethics Advice

DARPA ethics counselors provided the seven employees with ethics advice and guidance. Executive branch agencies are required by 5 CFR § 2634.607 (b) (2012) to offer advice and guidance in complying with ethics requirements. Though not required, documentation shows DARPA ethics counselors proactively met with six of the seven employees before their employment. This allowed both DARPA and the potential employees to make an informed employment decision based on conflict-of-interest issues and mitigation requirements. All seven employees interacted with the ethics counselors throughout their employment at DARPA. The DARPA ethics counselors provided advice and guidance on ethics rules and regulations for conflicts-of-interest, conflict-of-interest mitigation, and post-employment. These ethics areas were also discussed during ethics training.

Ethics Training

DARPA ethics counselors provided ethics training to the seven Government employees. Executive branch agencies are required by 5 CFR § 2638.703-705 (2012) to educate every new employee on ethics laws and regulations within 90 days of their entrance to Government service and to provide annual ethics training to employees who file Public and Confidential Financial Disclosure Reports. Because of the records retention policies, we could only verify that new entrant ethics training was provided to the three employees hired after 2006.

All seven employees completed ethics training annually; however, DARPA was unable to provide documentation for 1 year of annual training on one employee. DARPA’s ethics training follows the Federal Government ethics rules and regulations, and the DARPA Deputy DAEO/GC used the ethics training material developed each calendar year by DoD SOCO. DARPA employees were properly trained on ethics requirements and conflict-of-interest mitigation.

Financial Disclosure

DARPA ethics counselors used employee financial disclosure reports to identify potential conflicts-of-interest and implement appropriate mitigation efforts.

Financial Disclosure Reports

DARPA ethics counselors and I2O managers received financial disclosure reports from six of the seven employees. The executive branch agencies are required by 5 CFR § 2634 (2012) to establish public financial disclosure requirements for senior employees and a system of confidential financial disclosure for mid-level employees of the executive branch. Because of the National Archives General Records Schedule records retention policy, DARPA is only required to retain Financial Disclosure Reports for 6 years. We reviewed DARPA employees' financial disclosure reports for 2006 through 2010. Employees required to complete the financial disclosure reports had to complete an initial disclosure report within 30 days of employment, an annual report by February 15 of the succeeding year for confidential filers and May 15 for public filers, and a termination report within 30 days of termination.

One employee left DARPA in 2005. Three other employees were hired before 2006. We reviewed new entrant financial disclosure reports for the three DARPA employees hired after 2006. Two were filed within 30 days; one was completed 12 days late. All six employees filed annual financial disclosure reports during their employment term, and the five employees who left DARPA employment filed termination financial disclosure reports within 30 days of termination.

DARPA ethics counselors were unable to locate one employee's 2007 financial disclosure report. We reviewed the six employees' financial statements filed during their employment terms and found no reported financial conflicts-of-interest with BAE/AlphaTech. We identified that five of the six had 401(k) plans with BAE/AlphaTech. This was not a conflict-of-interest because the money was in mutual funds, managed by equity firms, and BAE/AlphaTech no longer contributed to the plans.

Agency Designee Determinations, Divestitures, and Recusals

DARPA managers, with the assistance of ethics personnel, properly justified and documented four authorizations that involved program management and BAE for three employees, one divestiture involving AlphaTech, and four recusals for three employees for employment talks with BAE.

Several ethics provisions concern conflicting financial interests and the requirement that employees act impartially. For example, 18 U.S.C. § 208 (2012) requires an employee to be recused from participation if it would have a direct and predictable effect on the employee's own financial interests or on certain financial interests that are treated as the employee's own, such as those of the employee's spouse or a prospective employer. In addition, 5 CFR § 2635.502 (2012) requires employees to consider whether their impartiality would be questioned. If employees conclude that their participation would cause a reasonable person to question their impartiality, they should not participate unless given an authorization. Government employees may not work on issues involving a

former employer for 1 year from the last date of employment, unless given an authorization.

Only three ways of handling a financial conflict-of-interest under 18 U.S.C. § 208 (2012) and 5 CFR § 2635.502 (2012) were applicable.

- An agency designee may grant an individual authorization to the employee.
- The employee may divest the conflicting interest.
- The employee may be recused from participation.

DARPA ethics personnel reviewed the appearances of a conflict-of-interest on four agency designee determinations submitted and determined pursuant to 5 CFR § 2635.502(d) (2012) that it was in the Government's best interest to allow the employees' participation. DARPA managers then made four authorizations to three employees involving BAE, not because of financial conflicts-of-interest, but because their impartiality could be questioned. Three of the four authorizations involved participation by the employee with BAE before the 1-year ban from participation involving a former employer. The other one involved a family member with a consulting job at BAE.

One employee was in the process of divesting AlphaTech assets when employment began. However, because of DARPA's records retention policy, the financial disclosure reports for that time period were unavailable for our review.

Three employees filed recusals near the end of their DARPA employment as they were having employment discussions with BAE and other potential employers. Subsequently, two of those three employees accepted post-employment positions with BAE.

Post-Employment

DARPA ethics personnel made sure that employees were aware of post-employment rules and restrictions while employed at DARPA. DARPA ethics personnel also provided employees with post-employment opinions based on their work at DARPA.

Post-Employment Notification and Certification

Five of the seven employees filed public financial disclosure reports and certified that they were aware of post-employment restrictions and had not violated those restrictions. DoD 5500.07-R, "Joint Ethics Regulation," November 17, 2011, requires employees who file public financial disclosure reports to certify annually that they are aware of the post-employment restrictions and that they have not violated those restrictions. Because of the records retention policy, we do not know whether the employee who left in 2005 was required to file a public financial disclosure report or complete a post-employment certification. One employee was required to file a confidential financial disclosure report and, therefore, was not required to complete a post-employment certification.

Post-Employment Opinions

DARPA ethics counselors provided post-employment opinions on six of the seven employees. DARPA still employed one of them. Public Law 110-181, “The National Defense Authorization Act for FY 2008,” Section 847, “Requirements for Senior Department of Defense Officials Seeking Employment With Defense Contractors,” requires a selected category of senior DoD acquisition officials to seek a post-employment DoD ethics opinion letter before accepting compensation from a DoD contractor within 2 years of Government employment termination. The Defense Federal Acquisition Regulation Supplement 203.171 implements Section 847. DARPA ethics counselors provided post-employment opinions to six employees as they considered outside offers before or shortly after leaving DARPA. One employee who left in 2006, before the DoD requirement, requested a post-employment opinion in 2008. In addition two employees asked DARPA ethics counselors for additional advice on post-employment.

The post-employment opinions provided the employees with post-employment rules and restrictions applicable to the employees based on their work at DARPA. These rules and restrictions are laid out in 18 U.S.C. § 207 and 41 U.S.C. §§ 2101-2107.⁷ Additionally, 41 U.S.C. §§ 2101-2107 prohibits employees who are involved in the procurements or the administration of contracts valued at \$10 million or greater from working for the contractor for a period of 1 year following their involvement. However, an exception under 41 U.S.C. §§ 2104(b) states that an employee may accept compensation from any division or affiliate of that company that does not produce the same or similar products or services.

Further, 18 U.S.C. § 207(a)(1) has a lifetime ban on attempting to influence the Government on behalf of someone regarding an issue the employee worked on personally and substantially while employed by the Government. Finally, 18 U.S.C. § 207(a)(2) provides that if a particular issue was under an individual’s official responsibility during the last year of Government service, even if the individual did not personally participate in it, he or she is barred from making representational contacts about that issue for 2 years.

DARPA Ethics personnel made sure that DARPA employees were aware of ethics rules and regulations for post-employment and when conducting official duties. The employees’ post-employment opinions were written broadly and encompass rules and restrictions applicable to the employees based on their work at DARPA. As only two employees identified BAE as their new or prospective employer, BAE is only one of the identified contractors with whom the employees had post-employment restrictions. DARPA Ethics personnel made sure that DARPA employees were aware of ethics rules and regulations for post-employment and when conducting official duties.

⁷ Previously codified at 41 U.S.C. § 423.

Conflict-of-Interest Mitigation in Contract Awards

DARPA contracting officers, ethics personnel, and I2O managers implemented ethics safeguards to make sure DARPA personnel mitigated conflicts-of-interest and impartiality in contract award decisions. DARPA Contract Management Office employees included requirements within their scientific review process to make sure proposal evaluations were impartial, equitable, and comprehensive.

DARPA officials used DARPA Instruction 20, “Soliciting, Evaluating, and Selecting Proposals Under Broad Agency Announcements and Research Announcements,” February 10, 2011, and DARPA Instruction 74, “Scientific Review of Proposals,” March 20, 2009, to evaluate and select awardees for BAAs to fulfill requirements for scientific research. All scientific reviews were based on the evaluation criteria detailed in the published BAA. The key individuals involved in the Scientific Review Process included the program manager, reviewers, subject-matter experts, and the scientific review official. The proposal evaluation criteria included requirements to mitigate conflicts-of-interest in contract award decisions, including:

- a list of the review panel members,
- a conflict-of-interest briefing,
- signed conflict-of-interest self-certifications,
- a required number of reviewers and written evaluation reports, and
- a program manager decision package and scientific review official approval.

We reviewed 12 BAAs to determine whether the scientific review teams met the acquisition conflict-of-interest requirements. We reviewed proposal evaluations from FYs 2005 to 2010 in which BAE provided a proposal and at least one of the eight individuals was a participant. Seven of the eight individuals participated in the scientific review process as a subject-matter expert, reviewer, program manager, or scientific review official on at least one of the 12 BAAs reviewed. DARPA did not provide BAA proposal evaluation participation documentation for the individual who left DARPA in 2005. The review showed DARPA officials complied with the acquisition conflict-of-interest requirements.

Table 4 shows the 12 BAAs reviewed and their compliance with the acquisition conflict-of-interest requirements.

Table 4. Compliance With Acquisition Conflict-of-Interest Requirements

BAA Number	List of Review Panel Members	Conflict -of- Interest Briefing	Conflict-of- Interest Self- Certification	Required Number of Reviewers and Evaluation Reports	Decisions and Approval	Number of Contracts Awarded
05-04	Yes	N/A	Yes ¹	Yes	Yes	7
05-44	Yes	N/A	Yes	Yes	Yes	6
05-45	Yes	N/A	No	Yes ²	Yes	26
07-13	Yes	N/A	Yes	Yes	Yes	5
07-15	Yes	N/A	Yes ¹	Yes ²	Yes	22
08-20	Yes	N/A	Yes	Yes	Yes	5
09-41	No	No	Yes	Yes	Yes	1
10-02	Yes	Yes	Yes	Yes	Yes	2
10-07	Yes	Yes	Yes	Yes	Yes	4
10-49	Yes	Yes	Yes	Yes	Yes	5
10-50	Yes	Yes	Yes	Yes	Yes	7
10-79	Yes	Yes	Yes	Yes	Yes	2

N/A = Not Applicable

¹ All required review panel members except the program manager signed a conflict-of-interest self-certification.

² Officewide BAAs are required to keep only summary reports, not individual review reports.

The DARPA I2O personnel generally complied with the requirements that mitigated conflicts-of-interest in contract award decisions. They made sure that review team members were identified, team members were aware of conflict-of-interest rules, and conflicts-of-interest were mitigated. Ten of the 12 BAA scientific review teams included experts from DARPA as well as from at least one other DoD entity, such as the Air Force Research Lab; Naval Research Lab; Communications-Electronics Research, Development, and Engineering Center; or the National Geospatial-Intelligence Agency. Program managers reviewed the evaluation reports and made recommendations to the scientific review official, who reviewed and approved the recommendations. We determined that DARPA’s compliance with the acquisition conflict-of-interest requirements mitigated conflicts-of-interest in award decisions.

Conclusion

DARPA personnel were properly trained, followed ethics laws and regulations, and mitigated conflicts-of-interest in program management and contract award decisions. We did not find any evidence that DARPA awarded BAE contracts as a result of undue influence from the seven former BAE employees in DARPA’s I2O.

Appendix A. Scope and Methodology

We conducted this performance audit from February 2012 through December 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions in response to POGO's requests and allegations based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

This audit covered POGO requests 2, 3, 4, and 5. DoDIG Audit on DARPA Contracting (Project No. D2013-D000CG-0055.000) will address POGO request no. 1. Office of the Deputy IG for Administrative Investigations investigated POGO request nos. 6 and 7. We did not compare DARPA's ethics program to other DoD entities (POGO request no. 8.) because we determined that it would not provide POGO with the risks of conflicts because each DoD Component needs to evaluate its own risks.

We nonstatistically sampled the ethics records of 40 DARPA Senior Executive Service and GS-15 employees from a universe of 204 employees as of March 2012 using a random number generator.

We reviewed the ethic records for the sampled DARPA personnel and the eight individuals in the POGO Defense Hotline Allegation on BAE Individuals dated from October 2001 through December 2012. The ethics records included preemployment correspondence, ethics training records, authorizations, recusals, post-employment opinions, DARPA's ethics annual training plans and training material, and e-mail correspondence. We reviewed laws and regulations in the United States Code, Public Laws, Executive Orders, DoD Joint Ethics Regulations, and DARPA's implementing guidance for criteria specific to our review of the DARPA ethics program. We also reviewed DARPA employee participation in the broad agency announcement process, which could result in either a grant or contract award. However, we did not review specific grants or contracts that DARPA awarded.

We interviewed DoD SOCO ethics personnel and DARPA contracting, program management, and ethics personnel.

Use of Computer-Processed Data

We relied on computer-processed data from the Financial Disclosure Management System, After Government Employment Advice Repository, and DARPA Management Support System to establish the initial universe of employees to perform the nonstatistical sample selection of DARPA employees for this audit. We also used this data to obtain employees' ethics documentation, such as ethics training records, financial disclosure documentation, conflict-of-interest mitigation documentation, and an inventory of broad agency announcements from January 1, 2010, to March 31, 2011.

To assess their accuracy and appropriateness, we verified the computer-processed data from the Financial Disclosure Management System, After Government Employment

Advice Repository, and DARPA Management Support System against official DARPA records. We determined that the data obtained were sufficiently reliable to accomplish our audit objective.

Use of Technical Assistance

We held discussions with personnel from the DoD Office of Inspector General, Quantitative Methods Division. We selected a nonstatistical sample of 40 DARPA Senior Executive Service and GS-15 employees from a universe of 204 employees as of March 2012 and then reviewed DARPA employees' ethics files for compliance with ethics laws and regulations. In addition, we consulted with the OIG Office of General Counsel to identify applicable ethics laws and regulations and the interpretation of the ethics laws and regulations.

Prior Coverage

No prior coverage has been conducted on the DARPA ethics program during the last 5 years.

Appendix B. Ethics Criteria

Congress enacted conflict-of-interest statutes, the President issued executive orders for executive branch employees, and the Office of Government Ethics (OGE) issued the implementing regulations. In addition, DoD issued supplemental ethics regulations that apply to DoD employees. This appendix includes statutes, executive orders, and regulations used during the audit.

Code of Federal Regulations (CFR), Title 5, “Administrative Personnel,” Chapter 26, “Office of Government Ethics, Subchapter B – Government Ethics,” and Chapter 36, “Department of Defense,” current as of January 1, 2012

OGE publishes its own chapter of regulations each year in 5 CFR Chapter XVI. Chapter XVI is divided into two subchapters. The regulations in subchapter A (parts 2600-2610) concern the internal organization and operation of OGE. The regulations in subchapter B (parts 2634-2641) are broader in scope and are central to the executive branch ethics program. In particular, the OGE regulation at 5 CFR part 2635 contains standards that govern the conduct of all executive branch employees. The other regulations in subchapter B contain guidance concerning the interpretation of certain civil and criminal conflict-of-interest laws, implement statutory provisions relating to financial disclosure, and describe responsibilities relating to the administration of the executive branch ethics program.

The CFR sections applicable to this audit are:

- 5 CFR Part 2634, “Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divesture”
- 5 CFR Part 2635, “Standards of Ethical Conduct for Employees of the Executive Branch”
- 5 CFR Part 2636, “Limitations on Outside Earned Income, Employment, and Affiliations for Certain Non-Career Employees”
- 5 CFR Part 2638, “Office of Government Ethics and Executive Agency Ethics Program Responsibilities”
- 5 CFR Part 2640, “Interpretation, Exemptions, and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)”
- 5 CFR Part 2641, “Post-employment Conflict of Interest Restrictions”
- 5 CFR Part 3601, “Supplemental Standards of Ethical Conduct for Employees of the Department of Defense”

United States Code, Title 18, Chapter 11, “Bribery, Graft, and Conflicts of Interest”

- 18 U.S.C. 11 § 201, “Bribery and Gratuities.” Prohibits public officials from accepting bribes or gratuities to influence their Government actions.
- 18 U.S.C. 11 § 203, “Representation of Others for Compensation.” Prohibits compensation for representational activities involving certain matters in which the United States is a party or has a direct and substantial interest. Significantly, the

prohibition applies to compensation in exchange for the representational activities of either the employee or another individual.

- 18 U.S.C. 11 § 205, “Representation of Others With or Without Compensation.” Prohibits an employee from certain involvement in a claim against the United States or representing another before the Government in matters in which the United States is a party or has a direct and substantial interest.
- 18 U.S.C. 11 § 207, “Post-employment Restrictions.” Imposes restrictions on an employee’s activities after leaving the Government. Most restrictions are limited to communications with or appearances before the Government on behalf of another, but some restrictions cover behind-the-scenes activities.
- 18 U.S.C. 11 § 208, “Conflicting Financial Interests.” Prohibits employees from participating in certain Government matters affecting their own financial interests or the interests of certain persons with whom they have ties outside the Government.
- 18 U.S.C. 11 § 209, “Supplementation of Salary.” Prohibits employees from being paid by someone other than the United States for doing their official Government duties.

United States Code, Title 5 App., Title I – “Financial Disclosure Requirements of Federal Personnel,” §§ 101-111

These sections establish the public financial disclosure requirements for senior employees of the executive branch as well as particular employees of the legislative and judicial branches. The statute also provides the authority for a system of confidential financial disclosure for mid-level employees of the executive branch.

United States Code, Title 41, Chapter 21, “Restrictions on Obtaining and Certain Disclosing Information,” §§ 2101-2107

These subsections establish requirements and prohibitions for procurement officials and former Government officials regarding post-government employment. Specifically, Section 2103 requires a Government official, participating personally and substantially in the procurement of a contract over \$10 million, to report any contact with an offeror or contractor regarding possible post-government employment to their agency ethics official. In addition, Section 2104 prohibits former employees from accepting compensation, directly or indirectly, from a contractor for a period of one year if they served in any of seven positions, or made any of seven types of decisions, on a contract award in excess of \$10 million to that contractor.

Public Law 95-521, “Ethics in Government Act of 1978,” October 26, 1978

Passed by the 95th Congress to establish certain Federal agencies, effect certain reorganizations of the Federal Government, implement certain reforms in the operation of the Federal Government to preserve and promote the integrity of public officials and institutions, and for other purposes. The section is applicable to the Title II, “Executive Personnel Financial Disclosure Requirements.”

Executive Order 12731, “Principles of Ethical Conduct for Government Officers and Employees,” October 17, 1990

In 1989, the President’s Commission on Federal Ethics Law Reform recommended that individual agency standards of conduct be replaced with a single regulation applicable to all employees of the executive branch. To address some of those recommendations, President Bush signed Executive Order 12731 on October 17, 1990.

The new executive branch-wide standards of conduct regulation, the “Standards of Ethical Conduct for Employees of the Executive Branch,” became effective in 1993 and codified in 5 CFR part 2635. These standards:

- set out 14 basic principles of ethical conduct for employees of the executive branch;
- direct OGE to establish a single, comprehensive, and clear set of executive branch standards of conduct;
- direct OGE to promulgate regulations interpreting certain conflict-of-interest laws;
- direct OGE to establish a system of confidential financial disclosure by executive branch employees to complement the public financial disclosure system;
- authorize agencies to supplement the comprehensive executive branch-wide regulations by publishing agency supplemental regulations;
- direct agencies to coordinate with OGE in developing annual training plans;
- direct agencies to consult formally or informally with OGE, where practicable, before granting any individual waiver under 18 U.S.C. § 208;
- direct agencies to ensure that the resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program;
- delegate the authority of the President to make certain determinations relating to the applicability of certain conflict-of-interest laws; and
- promulgate an outside earned income ban applicable to certain political appointees.

DoD Directive 5500.07, “Standards of Conduct,” November 29, 2007

States that DoD agencies must administer and maintain a comprehensive agency ethics program, ensure that all organizations within their jurisdiction administer and maintain an ethics program, and ensure compliance with additional requirements and regulations. Additionally, DoD personnel must perform their official duties lawfully and comply with the highest ethical standards.

DoD 5500.07-R, “Joint Ethics Regulation,” including changes, November 17, 2011

Provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment

rules, enforcement, and training. Specifically, the sections applicable to the audit are as follows:

- Chapter 2, “Standards of Ethical Conduct”
- Chapter 5, “Conflicts of Interest
- Chapter 7, “Financial and Employment Disclosure”
- Chapter 8, “Seeking Other Employment”
- Chapter 11, “Training”
- Chapter 12, “Ethical Conduct”



Inspector General Department of Defense

