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Acronyms

AFEB	Award Fee Evaluation Board
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
MIPR	Military Interdepartmental Purchase Request
O&M	Operation and Maintenance
RDT&E	Research, Development, Test, and Evaluation
SOFSA	Special Operations Forces Support Activity
USD (AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD (C)	Under Secretary of Defense (Comptroller)
USSOCOM	U.S. Special Operations Command



INSPECTOR GENERAL
 DEPARTMENT OF DEFENSE
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 ARLINGTON, VIRGINIA 22202-4704

May 18, 2007

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
 TECHNOLOGY, AND LOGISTICS
 UNDER SECRETARY OF DEFENSE
 (COMPTROLLER)/CHIEF FINANCIAL OFFICER
 ASSISTANT SECRETARY OF THE AIR FORCE FOR
 ACQUISITION
 COMMANDER, U.S. SPECIAL OPERATIONS COMMAND
 DIRECTOR, SPECIAL OPERATIONS FORCES SUPPORT
 ACTIVITY

SUBJECT: Report on Contract for Logistics Support Services for Special Operations
 Forces (Report No. D-2007-100)

We are providing this report for review and comment. The Under Secretary of Defense for Acquisition, Technology, and Logistics did not respond to the draft report. We considered comments from the Acting Deputy Chief Financial Officer, responding for the Under Secretary of Defense (Comptroller)/Chief Financial Officer, the Assistant Secretary of the Air Force for Acquisition, and the Chief of Staff, responding for the U.S. Special Operations Command, when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of management comments, we redirected Recommendations A.1. and A.2.a., A.2.b., A.2.c., A.2.d., and A.2.e.; revised Recommendations C.2.a. and C.3.; deleted draft Recommendation C.2.d.; and renumbered draft Recommendation C.2.e. as final Recommendation C.2.d., to clarify our intention. Therefore, we request that the Under Secretary of Defense (Comptroller)/Chief Financial Officer provide comments on Recommendations A.1. and A.2.a., A.2.b., A.2.c., A.2.d., and A.2.e.; the Under Secretary of Defense for Acquisition, Technology, and Logistics provide comments on Recommendation C.1.; the Assistant Secretary of the Air Force for Acquisition provide additional comments on Recommendation C.3.; and the Director, Special Operations Forces Support Activity provide comments on Recommendations C.2.a., C.2.b., C.2.c., and C.2.d. by June 18, 2007.

If possible, please send management comments in electronic format (Adobe Acrobat file only) to AudROS@dodig.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET). We appreciate the courtesies extended to the staff. Questions should be directed to ^{DoD OIG - (b)(6)} at (703) 604-^{DoD OIG - (b)(6)} (DSN 664-^{DoD OIG - (b)(6)}) or ^{DoD OIG - (b)(6)} at (703) 604-^{DoD OIG - (b)(6)} (DSN 664-^{DoD OIG - (b)(6)}). See Appendix C for the report distribution. The team members are listed inside the back cover.

By direction of the Deputy Inspector General for Auditing:

Wanda A. Scott
 Wanda A. Scott
 Assistant Inspector General
 Readiness and Operations Support

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Department of Defense Office of Inspector General

Report No. D-2007-100

May 18, 2007

(Project No. D2006-D000LC-0148.000)

Contract for Logistics Support Services for Special Operations Forces

Executive Summary

Who Should Read This Report and Why? DoD contracting officials and financial managers should read this report because it discusses contract award and administration. Specifically, it covers procedures and controls for funding purchases; award fees for high-dollar, long-term logistics contracts; and documentation for Economy Act orders.

Results. Financial and contracting officials at Special Operations Forces Support Activity (SOFSA), within the U.S. Special Operations Command's Special Operations Acquisition and Logistics contracting branch, did not comply with Federal appropriations law and the DoD Financial Management Regulation. Specifically, SOFSA officials accepted two categories of appropriations—procurement, and research, development, test, and evaluation—on a reimbursement basis when they were authorized to accept only operation and maintenance appropriations on a reimbursement basis for contracts they awarded to L3 Communications, Inc., totaling \$2.6 billion. SOFSA contracting officials also inappropriately cited appropriations for procurement and for research, development, test, and evaluation as operation and maintenance appropriations on task orders for the L3 Communications contracts. These actions constitute potential violations of the Antideficiency Act. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should perform an independent assessment to determine whether formal investigations should occur for potential violations of the Antideficiency Act on the 1997 and 2003 SOFSA contracts. To preclude future potential violations of the Antideficiency Act, the Under Secretary of Defense (Comptroller)/Chief Financial Officer should direct the Director, SOFSA to require contracting and financial officials to close out all reimbursement-funded task orders and use direct-cite funding for DoD customers, require the correct appropriation to be cited on all task orders, and request the necessary appropriation accounts from the Under Secretary of Defense (Comptroller)/Chief Financial Officer (finding A).

The fee determining officials at U.S. Special Operations Command increased the award fees for the 1997 and 2003 contracts without adequate written justification. As a result, the contractor received an additional ⁽⁴⁾ ~~USSOCOM - (b)~~ in award fees that were not adequately supported. The Commander, U.S. Special Operations Command should require fee determining officials to document any differences from the Award Fee Evaluation Board's recommendation and the rationale for these differences, as required in the award fee plan for the 1997 and 2003 contracts and as required by the Under Secretary of Defense for Acquisition, Technology, and Logistics Defense Procurement and Acquisition Policy guidance (finding B).

SOFSA contract files did not contain either Determinations and Findings documents or support agreements (determination documents) for Economy Act orders received through Military Interdepartmental Purchase Requests from requesting organizations for the 2003 contract. As a result, SOFSA contracting officials cannot ensure that the requesting

organizations submitted Economy Act orders that were in the best economic interest of the U.S. Government. The Under Secretary of Defense (Comptroller)/Chief Financial Officer, in coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics, should resolve inconsistencies in the Determinations and Findings requirements for Economy Act orders. The Director, SOFSA should comply with section 1535, title 31, United States Code (31 U.S.C. 1535); develop procedures and controls requiring financial and contracting staff to review supporting documents for completeness before accepting a Military Interdepartmental Purchase Request; develop procedures and controls for maintaining all required Military Interdepartmental Purchase Request documents, including copies of determination documents, in the contract files; and develop or update internal guidance and training for accepting and processing Military Interdepartmental Purchase Requests.

The Assistant Secretary of the Air Force for Acquisition should revise the Air Force Federal Acquisition Regulation Supplement to comply with 31 U.S.C. 1535(a) (finding C).

The U.S. Special Operations Command and SOFSA internal controls were not adequate. We identified a material internal control weakness in contract administration and financial management.

During the audit we noted other matters of interest concerning SOFSA contract administration—specifically, the recording of obligations and the use of project orders (see Appendix B).

Management Comments and Audit Response. The Acting Deputy Chief Financial Officer, responding for the Under Secretary of Defense (Comptroller)/Chief Financial Officer, partially concurred with the recommendation to use the Interagency Acquisition Working Group to resolve inconsistencies in the requirement of Determinations and Findings for Economy Act orders, stating that the working group expects to complete its evaluation by June 2007. The Assistant Secretary of the Air Force for Acquisition did not concur with the recommendation to revise the Air Force Federal Acquisition Regulation Supplement, section IG5317.5, Determinations and Findings requirements, stating that the requirements apply only to purchases by other agencies for DoD. As a result of management comments, we revised the draft recommendation to include 31 U.S.C. 1535(a), “Agency Agreements,” which requires a determination document when an agency places an order to another major organizational unit within the same agency or for another agency. We request that the Assistant Secretary of the Air Force for Acquisition provide additional comments on the final report by June 18, 2007.

The Chief of Staff, responding for the Commander, U.S. Special Operations Command, did not concur with a draft recommendation to determine whether violations of the Antideficiency Act occurred. The Chief of Staff stated that no Antideficiency Act violations are evident. We do not agree that no Antideficiency Act violations are evident. SOFSA financial officials accepted appropriations for procurement and for research, development, test, and evaluation on a reimbursement basis when they were authorized to accept only operation and maintenance appropriations on a reimbursement basis.

In addition, the Chief of Staff did not concur with five draft recommendations on recording, tracking, and expending funds according to the correct appropriation. He stated that there is no requirement for funded reimbursement authority for each type of general appropriation and that SOFSA correctly recorded, tracked, and expended customer funds for each task order in the accounting system SOFSA uses. We disagree that there is no requirement in the DoD Financial Management Regulation for funded

reimbursement authority for each type of general appropriation. The DoD Financial Management Regulation, volume 3, chapter 15, section 150204, "Reimbursements," requires DoD organizations that will receive or accept appropriated funds to establish accounts with the Under Secretary of Defense (Comptroller)/Chief Financial Officer for each type of appropriation the organizations can accept. We also disagree with the Chief of Staff that SOFSA contracting officials correctly recorded appropriation classifications as received on Military Interdepartmental Purchase Requests on task orders. On 13 of 15 reimbursement funded task orders reviewed, SOFSA contracting officials inappropriately cited procurement and research, development, test, and evaluation appropriations as operation and maintenance appropriations. The Chief of Staff partially concurred with one draft recommendation to update internal guidance on acceptance of Military Interdepartmental Purchase Requests and concurred with one draft recommendation to provide training on acceptance of Military Interdepartmental Purchase Requests. As a result of management comments, we redirected draft recommendations to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer. We request that the Under Secretary of Defense (Comptroller)/Chief Financial Officer provide additional comments on the final report by June 18, 2007.

Furthermore, the Chief of Staff concurred with the draft recommendation to document reasons for deviating from award fees recommended by the Award fee Evaluation Board. He stated the U.S. Special Operations Command will incorporate the rationale for changing award fees starting with the fee determining official's next decision memorandum.

Finally, the Chief of Staff did not concur with two draft recommendations and partially concurred with two draft recommendations on Determinations and Findings documents. The Chief of Staff stated that SOFSA has procedures and controls for maintaining all required Military Interdepartmental Purchase Requests, including Determinations and Findings documents. We disagree that SOFSA has procedures and controls for maintaining all required Military Interdepartmental Purchase Requests documents; if it did, SOFSA would not have accepted Economy Act order Military Interdepartmental Purchase Requests that did not meet the requirements of 31 U.S.C. 1535(a), "Agency Agreements." As a result of management comments, we revised the draft recommendation to include 31 U.S.C. 1535(a), "Agency Agreements." In addition, we deleted a draft recommendation and renumbered a draft recommendation. We request that the Director, Special Operations Forces Support Activity provide comments on the final report by June 18, 2007.

The Under Secretary of Defense for Acquisition, Technology, and Logistics did not respond to the draft report, issued on January 10, 2007. We request that the Under Secretary of Defense for Acquisition, Technology, and Logistics provide comments on the final report by June 18, 2007.

See the Findings sections of the report for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

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Background

U.S. Special Operations Command. The U.S. Special Operations Command (USSOCOM) is the unified command that trains, organizes, equips, and deploys U.S. Special Operations Forces to combatant commands. USSOCOM is also responsible for leading, planning, synchronizing, and executing global operations against terrorist networks. USSOCOM is located at MacDill Air Force Base in Tampa, Florida.

Special Operations Forces Support Activity. The Special Operations Forces Support Activity (SOFSA) is a government-owned and contractor-operated facility in Bluegrass Station, Lexington, Kentucky. The primary mission is to provide logistics support services to Special Operations Forces worldwide. SOFSA supports USSOCOM and other DoD Components by providing logistics support including repair, modification, maintenance management, life cycle support, and sustainment.

USSOCOM and SOFSA Contracting Functions. Within USSOCOM, the Special Operations Acquisition and Logistics contracting branch manages the procurement function by providing contractual support for Special Operations Forces equipment, material, supplies, and services. In addition, the Special Operations Acquisition and Logistics contracting branch is responsible for administrative support for contracts to carry out Special Operations Forces missions, using contractor personnel or Government employees.

The SOFSA contracting division is part of the USSOCOM Special Operations Acquisition and Logistics contracting branch and operates with its own contract staff at Bluegrass Station, Lexington, Kentucky. The SOFSA contracting division manages, oversees, and administers contracts in support of the maintenance and repair work performed at the Government-owned, contractor-operated facility.

Funding of DoD Purchase Requests. DoD uses DoD Form 448, Military Interdepartmental Purchase Request (MIPR), to transfer funds within the Services and between DoD and other Federal agencies. A MIPR is a request for materiel, supplies, or services submitted to a performing or servicing organization within the Federal Government. The MIPR is initiated by a requesting organization that requires the goods or services; the MIPR is typically routed to the approving official(s) through contracting and budgeting offices. The MIPR is then submitted to the servicing organization for acceptance, processing, and placement on a contract.

The MIPR also identifies and provides authority and funding to the performing or servicing Government organization. MIPRs can be funded either as a reimbursement of funds or through direct citation of funds. For the reimbursement method, the requesting organization records an obligation of funds when the performing organization accepts the MIPR to provide the requested supplies or services.

For direct-cite funding, the customer's funding citation on the MIPR is used directly on the task order, and the customer records the fund obligation when the task order is issued.

DoD typically issues MIPRs under the authority of the Economy Act, section 1535, title 31, United States Code (31 U.S.C. 1535), "Agency Agreements," January 7, 2003, unless a more specific statutory authority exists. Economy Act MIPRs must also comply with DoD Financial Management Regulation (FMR), volume 11A, chapter 3, "Economy Act Orders." Each Economy Act order must be supported by a Determinations and Findings document stating that using an interagency acquisition is in the best interest of the Government and that contracting directly with a private source to obtain supplies or services would not be as convenient or economical. An organization within a DoD Component may place an order for goods or services with another organization within the same DoD Component, another DoD Component, or with another Federal agency.

DoD Instruction. DoD Instruction 4000.19, "Interservice and Intragovernmental Support," August 9, 1995, implements policies, procedures, and responsibilities for interservice and intragovernmental support. The Instruction states that DoD organizations may provide services to other DoD organizations when the head of the requesting organization determines that it is in the best interest of the Government, and the head of the supplying organization determines that providing support will not jeopardize its own mission. Specifically, DoD organizations can provide support with their personnel or add the requesting organization's requirements to an existing contract.

USSOCOM and SOFSA Contracts. In 1997 and 2003, USSOCOM awarded contracts for logistics support services, and the SOFSA contracting division was responsible for contract administration, which included awarding task orders, accepting funding through incoming MIPRs, and issuing contract modifications. These contracts supported the Military Services and Special Operations Commands, as well as non-DoD agencies. Specifically, the contracts were as follows:

- On June 6, 1997, USSOCOM awarded a cost-plus-award-fee contract (USZA22-97-C-0013) for a base year and up to 4 option years to Raytheon E-Systems, Inc.¹ The scope of work was for logistics support operations, which included maintenance, repair, and modification of equipment. The contract minimum was \$72,305, and the maximum was \$1.12 billion. The contract was used for task orders that were funded on a reimbursement basis.

On November 19, 2001, SOFSA issued modification P00070, which created contract USZA22-97-D-0013.² This modification allowed Warner Robins Air Force Base to issue its own task orders under the contract, using direct-cite funding. However, there was no change to the scope of work or to the length of the original contract, and both contracts counted

¹ In March 2002, L3 Communications Integrated Systems purchased Raytheon E-Systems and took over the contract.

² According to SOFSA contracting officials, no task orders were awarded against this contract.

toward the \$1.12 billion ceiling. In addition, SOFSA maintained the responsibility for administering the contract.

- On April 1, 2003, USSOCOM awarded an indefinite-delivery, indefinite-quantity contract (USZA22-03-D-0006) to L3 Communications Integrated Systems (L3) for logistics support services. This contract was a follow-on to the 1997 contract to be used for direct-cite-funded task orders. The contract included a 6-month transition period, a base year, 4 option years, and the potential for an additional 5 years. The contract had a minimum amount of \$10 million and a maximum of \$1.5 billion and allowed for cost-plus-award-fee and firm-fixed-price task orders.

On September 24, 2003, SOFSA issued modification P00004, which created contract USZA22-03-C-0056 for reimbursement-funded task orders. There was no change to the scope of work or the length of contract, and both contracts counted toward the \$1.5 billion ceiling. The SOFSA contracting division administered the two contracts.

As of April 2006, SOFSA had awarded approximately 1,711 task orders on the 1997 and 2003 contracts for approximately \$1.31 billion.³ Specifically, SOFSA had awarded:

- 622 task orders on contract USZA22-97-C-0013 valued at \$439 million,⁴
- 206 task orders on contract USZA22-03-D-0006 valued at \$159 million, and
- 883 task orders on contract USZA22-03-C-0056 valued at \$712 million.

DoD Financial Management Regulation Guidance. Within DoD, FMR provides guidance on how DoD organizations may use appropriated funds for contracting purposes. Specifically, “Budget Formulation and Preservation,” volume 2A, chapter 1, December 2005, provides guidance on the correct use of DoD appropriations, including operation and maintenance (O&M); procurement; and research, development, test, and evaluation (RDT&E).

- **O&M Appropriations.** O&M appropriations are to be used for budgeting expenses incurred in continuing operations and current services. O&M funds are available for obligation for 1 year.
- **Procurement Appropriations.** Procurement appropriations are used to fund the procurement of fully developed and tested modification kits and associated installations, including technical assistance. Procurement funds are available for obligation for 3 years.

³ The number of task orders awarded represents a snapshot in time as of our audit visit in April 2006.

⁴ According to SOFSA officials, no task orders were issued until FY 1999 because of a contract protest.

-
- **RDT&E Appropriations.** RDT&E appropriations are used to develop, test, and evaluate requirements, including designing prototypes and processes. RDT&E funds are available for obligation for 2 years.

These appropriations may be used to fund task orders for DoD Components through the direct citation of funds or the reimbursement of funds.

Federal Appropriations Law. The Antideficiency Act is codified in a number of sections of title 31 of the United States Code, such as 31 U.S.C. 1341(a). The Antideficiency Act is one of the major laws through which Congress exercises its constitutional control of the public purse for the purpose, time, and amount of expenditures made by the Federal Government. Violations of other laws may create violations of Antideficiency Act provisions (for example, the “Purpose Statute,” 31 U.S.C. 1301(a)).

Statute 31 U.S.C. 1301(a) states that appropriations must be applied only to the objects for which the appropriations were made, except as otherwise provided by law. In addition, 31 U.S.C. 1341(a)(1)(A) states that an officer or employee of the U.S. Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

Objectives

The overall audit objective was to determine whether USSOCOM officials awarded and are administering the logistics support contract to L3 in accordance with DoD and Federal policies, guidance, and statutory requirements. See Appendix A for a discussion of the scope and methodology and prior coverage related to the objectives.

Review of Internal Controls

We identified material internal control weaknesses for USSOCOM and SOFSA as defined by DoD Instruction 5010.40, “Manager’s Internal Control (MIC) Program Procedures,” January 4, 2006. SOFSA did not have the necessary internal controls for contract administration and financial management. Specifically, SOFSA lacked procedures to ensure it accepted the correct appropriations from requesting agencies and recorded the correct appropriation classification on task orders. In addition, SOFSA lacked procedures to maintain the identity of appropriation classifications accepted on MIPRs from other DoD organizations. See finding A for further discussion of the internal control weaknesses.

Implementing Recommendation A.2. will improve SOFSA contract administration and financial management procedures and could avoid potential violations of the Antideficiency Act. A copy of the final report will be provided to the senior official responsible for internal controls in USSOCOM and SOFSA, and to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer.

We also identified nonmaterial internal control weaknesses. USSOCOM did not have procedures for the fee determining official to adequately justify deviations from the award amounts recommended by the Award Fee Evaluation Board (AFEB). Implementing Recommendation B will improve USSOCOM award fee administration. See finding B for further discussion of this weakness. In addition, SOFSA contracting officials did not have procedures in place to receive Determinations and Findings documents with Economy Act orders and maintain them in the contract files. Implementing Recommendation C.2. will improve SOFSA contract administration. See finding C for further discussion of this weakness.

See finding A for management comments and the audit response on the review of internal controls.

A. Adequacy of Administration and Management of Special Operations Forces Support Activity Contracts

SOFSA financial officials did not comply with DoD FMR when they accepted from requesting organizations MIPRs that were funded on a reimbursement basis using procurement and RDT&E appropriations, when SOFSA had the authority to accept only O&M appropriations on a reimbursement basis. SOFSA contracting officials also did not comply with Federal appropriations law when they inappropriately cited procurement and RDT&E appropriations on task orders as O&M appropriations. These conditions occurred because SOFSA financial and contracting officials ignored existing guidance. As a result, SOFSA financial and contracting officials may have incurred potential violations of the Antideficiency Act.

Accepting Procurement and RDT&E Reimbursement Funding

SOFSA financial officials did not comply with DoD FMR in accepting from requesting organizations MIPRs that were funded on a reimbursement basis using procurement and RDT&E appropriations, when SOFSA had the authority to accept only O&M appropriations on a reimbursement basis.

DoD FMR Requirements. According to DoD FMR, volume 3, chapter 15, section 150204, “Reimbursements,” December 1996, it is the responsibility of the DoD organization that will receive or accept the appropriated funds to establish accounts with the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD[C]) for each type of appropriation it can accept (for example, O&M, procurement, RDT&E).

According to SOFSA financial officials, the USSOCOM Comptroller, through the USD (C), authorized SOFSA to accept only O&M reimbursement funds during the performance periods of both the 1997 and the 2003 contracts. SOFSA financial officials neither requested nor obtained authorization from the USD(C) to establish procurement and RDT&E reimbursement accounts that would allow them to accept these types of funds under the contracts.

Acceptance of Funds. Upon the receipt of MIPRs from DoD and non-DoD organizations, SOFSA financial officials were responsible for accepting MIPRs that were consistent with the limitations on their authority to accept only O&M reimbursement funds. However, for both the 1997 and the 2003 contracts, SOFSA financial officials received and accepted MIPRs from DoD and non-DoD organizations that were for both procurement and RDT&E reimbursement funds. Specifically, out of 1,722 MIPRs, SOFSA financial officials accepted 619 MIPRs

valued at \$531 million⁵ that contained procurement or RDT&E reimbursement funding under both the 1997 and the 2003 contracts.

We reviewed 29 MIPRs⁶ valued at \$56.6 million that SOFSA received from DoD and non-DoD Government organizations. Only 2 of the 29 MIPRs that SOFSA accepted correctly cited O&M reimbursement funds. For 27 of the 29, SOFSA financial officials accepted MIPRs that included either procurement or RDT&E reimbursement funding. For example, SOFSA accepted:

- a MIPR from the Army on the 1997 contract for \$934,688 of Defense Agency procurement reimbursement funds to install parts on the MH-60L aircraft,
- a MIPR from the Army on the 2003 contract for \$19,998 of RDT&E reimbursement funds to perform nondestructive inspection of armor materials, and
- a MIPR from the Navy on the 2003 contract for over \$1.6 million of Navy aircraft procurement reimbursement funds to purchase maintenance kits.

Because SOFSA financial officials did not establish procurement and RDT&E reimbursement accounts in accordance with DoD FMR, they should not have accepted MIPRs of up to \$531 million of procurement and RDT&E reimbursement funding.

Appropriation Classifications

SOFSA contracting officials did not comply with Federal appropriations law when they inappropriately cited procurement and RDT&E appropriations on task orders as O&M appropriations.

Fund Appropriations on Task Orders. According to Federal appropriations law, 31 U.S.C. 1301(a), funds are to be obligated only for the purposes for which they were appropriated. In addition, 31 U.S.C. 1341 (a)(1)(A) states that an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

As stated previously, SOFSA financial officials did not obtain the authority to accept other than O&M reimbursement funds. As a result, SOFSA financial officials exceeded their funding authority by accepting both procurement and RDT&E funds that they were not authorized to accept. Also, by using the O&M

⁵ SOFSA does not have an automated process to track total dollars expended by appropriation. At our request, SOFSA manually prepared the financial data.

⁶ We reviewed 18 of 30 judgmentally selected task orders and the 29 corresponding MIPRs to identify whether the work performed was within the scope of the original contract, whether the Government received a fair and reasonable price, and whether SOFSA contracting officials used the correct appropriation in the correct fiscal year.

appropriation on task orders, SOFSA contracting officials appear to have spent O&M funds that did not exist.

Responsibilities of SOFSA Contracting Officials. After recording receipt of the funds and requests for work from DoD and non-DoD organizations, SOFSA financial officials forwarded the MIPRs to the SOFSA contracting officials who were responsible for preparing and awarding task orders to L3 for the requested work under the 1997 and 2003 contracts. In writing the task orders, it is the responsibility of the contracting officers to record the correct appropriation or fund.

Our review of the 18 task orders that SOFSA contracting officials wrote for the 1997 and 2003 contracts identified 2 that used the correct funding citation (O&M reimbursement) and another 3 that used direct-cite funding.⁷ For the remaining 13, valued at about \$46.5 million, the SOFSA contracting officers inappropriately cited procurement or RDT&E reimbursement funds as O&M reimbursement funds on the task orders to L3. For example:

- SOFSA financial officials accepted a MIPR (N0001904MP07489) from the Navy for \$496,790 in aircraft procurement reimbursement funds to purchase ALE-47 kits for the C-130 aircraft. However, on the corresponding task order (1786) under the 2003 contract, the SOFSA contracting officer recorded the funding as O&M reimbursement funds.
- SOFSA financial officials accepted a MIPR (FD20600361592) from the Air Force for \$4,128,996 that included O&M, Defense Agency procurement, and Air Force aircraft procurement reimbursement funds for a modification on the MC-130H combat aircraft. However, on the corresponding task order (1174) under the 1997 contract, the SOFSA contracting officer recorded the funding as O&M reimbursement funds.

In addition, for task order 1174, when returning the MIPR to the requesting organization, the SOFSA financial official asked the requestor to sign a waiver. By using this waiver, SOFSA financial officials may have violated the Purpose Statute, 31 U.S.C. 1301(a). Specifically, the waiver stated that:

Since the contractor assumed cost estimate 02-317-RB Option 1 would be funded under one accounting classification, the project was bid as one project code. In order to process your MIPR with three accounting classifications funding this CER [cost estimate request] option, you will need to sign this waiver agreeing that you understand that billings will not be tied to specific performance for each accounting classification. This means in the execution of this project, billings will be charged against one accounting classification until that funding is exhausted and then will revert to the second accounting classification, then the third accounting classification.

⁷ SOFSA was authorized to accept O&M, procurement, or RDT&E appropriations if received by direct citation.

Table 1 identifies the 15 reimbursement-funded task orders that we reviewed and their associated MIPRs. Thirteen of the fifteen task orders, totaling about \$46.5 million, were funded with procurement and RDT&E appropriations, despite SOFSA being authorized to accept only O&M appropriations.

Table 1. Reimbursement-Funded Task Orders and MIPRs

Customer	Task Order Number	Task Order Appropriation Classification	MIPR Number	MIPR Appropriation Classification	MIPR \$ Amount
USASOC*	0348	O&M	MIPR1ABGARS011	O&M	76,943
USASOC	0509	O&M	MIPR1FBGAPV046	Procurement	934,688
Wright-Patterson AFB**	0604	O&M	NGLUMF00172022	Procurement	938,799
			NGLUMF00272017	Procurement	2,489,966
			NGLUMF00372005	Procurement	4,942,214
			NGLUMF00472005	Procurement	2,418,798
			NGLUMF00472043	Procurement	2,075,739
			NGLUMF00472054	Procurement	1,980,961
			F4FDBV5080G001	Procurement	2,800,474
			F4FDBV5080G002	Procurement	200,000
USASOC	0633	O&M	MIPR2ABGAPL011	Procurement	2,801,354
			MIPR3CBGAPL017	Procurement	119,006
Warner Robins AFB	1172	O&M	FD20600361592	O&M and Procurement	4,128,996
Warner Robins AFB	1173	O&M			
Warner Robins AFB	1174	O&M			
Warner Robins AFB	1540	O&M			
Warner Robins AFB	1553	O&M			
NAVAIR***	1786	O&M	N0001904MP07489	Procurement	496,790
NAVAIR	1810	O&M	N0001904MP07489	Procurement	1,159,177
USASOC	1870	O&M	MIPR4GBGAPV127	Procurement	1,357,182
			MIPR4CBGAP6239	Procurement	2,475,384
			MIPR4HBGAP6318	Procurement	34,097
			MIPR5GBGAPW117	Procurement	1,733,614
			MIPR5CBGAP6035	Procurement	614,435
			MIPR5CBGAPV037	Procurement	4,083,282
			MIPR5CBGAPW036	Procurement	1,071,393
			MIPR5HBGAP6351	Procurement	595,278
			MIPR6CBGAP6036	Procurement	2,050,649
			MIPR6DBGAPW046	Procurement	99,883
NAVAIR	2139	O&M	N0001905MP03685	Procurement	2,558,911
Army	2339	O&M	MIPR5KS6R01429	RDT&E	19,998
USSOCOM	2395	O&M	FAD606SP010003	O&M	10,040,787
Total					\$56,652,048

*U.S. Army Special Operations Command **Air Force Base *** Naval Air Systems Command

Compliance With the DoD Financial Management Regulation and Federal Appropriations Law

SOFSA financial officials accepted MIPRs funded on a reimbursement basis using procurement and RDT&E appropriations despite being authorized to accept only O&M appropriations on a reimbursement basis. SOFSA contracting officials inappropriately cited those appropriations on task orders to L3 as O&M appropriations because they relied on Defense Finance and Accounting Service rather than USD(C) guidance and authorization.

DoD Financial Management Regulation. According to DoD FMR, volume 3, chapter 15, section 150204, “Reimbursements,” December 1996, it is the responsibility of the DoD organization that will receive or accept the appropriated funds to establish accounts for each type of appropriation it can accept (for example, O&M, procurement, RDT&E) with the USD (C).

Interpretation of Guidance. According to SOFSA financial and contracting officials, for the periods encompassing the 1997 and 2003 contracts, the USD(C) authorized SOFSA to accept only O&M appropriations on a reimbursement basis. However, SOFSA financial officials accepted other than O&M reimbursement funds. SOFSA contracting officials cited the O&M appropriation on task orders to L3 when the funds received from the requesting agencies were not always O&M reimbursement funds.

According to SOFSA contracting officials, SOFSA accepted other than O&M reimbursable funds for both the 1997 and 2003 contracts and considered their actions appropriate. Neither USSOCOM nor SOFSA officials were able to explain why they accepted funds they were not authorized to accept or why they changed the classification of funds received to O&M when placed on task orders. The only time the practice was questioned was during an October 2004 USSOCOM Comptroller review, when a USSOCOM financial analyst questioned the SOFSA acceptance of other than O&M reimbursement funds and referred her question to the USSOCOM legal department. According to a USSOCOM Attorney-Advisor, he “found nothing in the FMR that prohibited SOFSA’s methodology for receiving, tracking, and disbursing of funds on reimbursable orders. Further, SOFSA’s procedures were coordinated with the Director of the Defense Finance and Accounting Service for their region, who concurred.”

Thus, SOFSA and USSOCOM officials ignored the USD(C) restriction on funding authorizations, and SOFSA continued the practice of accepting RDT&E and procurement reimbursement funds until October 2005. On October 22, 2005, the USSOCOM Comptroller issued a memorandum to SOFSA on “USSOCOM Funding Reimbursement Authority,” stating that SOFSA should accept and distribute all funding as direct-cite to facilitate a more efficient process and provide better funding controls and cleaner records in the accounting system. Because SOFSA is not subject to the same restrictions on accepting direct-cite funding as on reimbursement funding, this method allows SOFSA to accept appropriations other than O&M appropriations to fund task orders. However, according to SOFSA officials, USSOCOM financial officials verbally instructed SOFSA contracting officials to continue using the O&M reimbursement appropriation classifications for open task orders issued before October 1, 2005,

and for non-DoD customers.⁸ SOFSA contracting officials confirmed that they followed the verbal instruction from USSOCOM rather than the instructions in the USSOCOM Comptroller memorandum and did not change to direct-cite funding for the open task orders. SOFSA contracting officials stated that they did not change the open task orders because it would “create a mess” by requiring that they de-obligate the reimbursement and obligate direct-cite funds.

Conclusion

Complying with existing Federal and DoD policies and guidance is critical to managing contracts and appropriated funds properly. By accepting procurement and RDT&E reimbursement funding and using the O&M appropriations on task orders, SOFSA contracting officials could not demonstrate the money was used for the correct purposes or within the appropriate timeframes. SOFSA contracting officials may have commingled funds by mislabeling appropriations, whether O&M, procurement, or RDT&E, as O&M. Thus, the procurement and RDT&E funds may have lost their identity. Because SOFSA financial officials accepted up to \$531 million of funds they were not authorized to accept, and because SOFSA contracting officials inappropriately cited appropriations on task orders to L3, SOFSA did not comply with DoD FMR and may have incurred potential violations of the Antideficiency Act as set forth in DoD FMR, volume 14, chapter 2, “Violations of the Antideficiency Act,” August 2006. To determine whether a violation of the Antideficiency Act occurred, the USSOCOM Comptroller is required to perform an investigation. And, if the USSOCOM Comptroller determines that violations did occur, SOFSA is required to perform corrective actions as provided in DoD FMR, volume 14, chapter 10, “Violations – Causes, Prevention and Correction,” October 2004.

Management Comments on the Finding and Internal Controls and Audit Response

Management Comments on Finding. Responding for the Commander, the Chief of Staff of the U.S. Special Operations Command (Chief of Staff) did not concur with the finding. He stated that there is no legal or regulatory basis for the requirement to seek funded reimbursement authority for each type of appropriation, such as O&M, procurement, and RDT&E funding. The Chief of Staff also stated there is no reference to this requirement in DoD FMR, volume 3, chapter 15, section 150204, “Reimbursements.” In addition, the Chief of Staff said that the “potential” violations of the Antideficiency Act are unsubstantiated and not based on actual findings of existing violations of funding limitations. The Chief of Staff also noted that SOFSA uses the Standard Operations and Maintenance Army Research and Development System database to track customers’ funds by MIPR number, task order number, and appropriation citation from receipt through final expenditure or deobligation. Furthermore, the Chief of Staff stated that commingling of appropriations did not occur on task orders.

⁸SOFSA must accept MIPRs from non-DoD customers as reimbursement funded because DFAS does not recognize non-DoD accounting classification resource numbers.

SOFSAs financial officials requested the waiver for task order 1174 because a project was funded from two funding citations that were both O&M appropriations. According to the Chief of Staff, the officials issued the waiver to ensure the customer understood the first O&M funding citation would be expensed and disbursed prior to billing against the second O&M appropriation. He also stated that SOFSA never mixed appropriations on any of the projects.

Audit Response on Finding. We disagree with the Chief of Staff that there was no legal authority to seek reimbursement authority for procurement and RDT&E funding. The legal authority is the Purpose Statute, 31 U.S.C. 1301(a), which states that appropriations shall be applied only to the objects for which the appropriations were made. In addition, 31 U.S.C. 1341 (a)(1)(A) states that an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. SOFSA financial officials exceeded their funding authority by accepting 619 MIPRs valued at \$531 million that contained procurement or RDT&E reimbursement funding under both the 1997 and 2003 contracts. Those officials only had the authority to accept O&M reimbursement funding. According to DoD FMR, volume 3, chapter 15, section 150204, it is the responsibility of the DoD organization that receives or accepts the appropriated funds to establish accounts for each type of appropriation it can accept (for example, O&M, procurement, RDT&E) with the Under Secretary of Defense (Comptroller)/Chief Financial Officer. Even if SOFSA financial officials are able to track customers' funds by MIPR number, task order number, and appropriation citation using the Standard Operations and Maintenance Army Research and Development System, SOFSA was only authorized to accept O&M reimbursement funds. By accepting and using unauthorized procurement and RDT&E reimbursement funds, SOFSA officials incurred a potential violation of the Antideficiency Act. As for the Chief of Staff's comment about "potential" ADA violations being unsubstantiated, DoD FMR, volume 14, chapter 3, "Preliminary Reviews of Potential Violations," uses the term "potential" and states that the purpose of a preliminary review is to gather the basic facts to determine whether a violation has occurred. Finally, the waiver associated with MIPR FD20600361592 funded five task orders using three different accounting classifications. The waiver stated that the billings would not be tied to specific performance for each accounting classification. By using the processes outlined in this waiver, SOFSA financial officials may have commingled funds and violated the Purpose Statute, 31 U.S.C. 1301(a).

Management Comments on Internal Controls. The Chief of Staff stated that SOFSA has the necessary internal controls to ensure that it accepts the correct appropriations from requesting agencies and records the correct appropriation classification on task orders. SOFSA personnel monitor funding accounts to ensure proper administration, including a systematic assignment of project officers to each project to provide proper performance, quality assurance, and delivery. SOFSA personnel additionally review and approve all contractor billings before they are tracked against each customer's account in the Standard Operations and Maintenance Army Research and Development System database. When each account is accounted for, the contractor is paid for performing that particular task effort. At no time are accounts mixed, and funds are expended against properly approved and accounted-for customer funds.

Audit Response on Internal Controls. SOFSA internal controls were not adequate to ensure that the correct appropriation classification was recorded on task orders. On 13 of 15 reimbursement-funded task orders reviewed, SOFSA contracting officials inappropriately cited procurement and RDT&E appropriations as O&M appropriations. In addition, contractor billings were not tied to specific performance for each accounting classification, as stated in the waiver for task order 1174. Finally, SOFSA financial officials accepted 619 MIPRs valued at \$531 million that contained procurement or RDT&E reimbursement funding under both the 1997 and 2003 contracts, when SOFSA had the authority to accept only O&M reimbursement funding.

Recommendations, Management Comments, and Audit Response

Redirected Recommendations. We redirected draft Recommendations A.1. and A.2.a., A.2.b., A.2.c., A.2.d., and A.2.e., to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer because USSOCOM did not comply with DoD FMR, volume 14, chapter 3, section 0304, “Preliminary Reviews of Potential Violations,” November 2006. DoD FMR requires that, within 10 business days of receipt of a draft report that alleges a potential violation, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, the Assistant Secretary for Financial Management of a Military Department, or the Comptroller of a Defense Agency or DoD Field Activity, as applicable, must request that a preliminary review of the potential violation be initiated within the next 30 days.

A.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer perform an independent assessment and determine whether potential violations of the Antideficiency Act on the 1997 and 2003 SOFSA contracts should be formally investigated.

Management Comments. The Chief of Staff did not concur with draft Recommendation A.1. He noted that DoD FMR, volume 14, chapter 3, section 030201, states there must be some evidence that a potential violation may have occurred in order to conduct a preliminary review. The Chief of Staff also indicated that the USSOCOM Center for Force Structure, Requirements, Resources, and Strategic Assessments, Comptroller Office, reviewed SOFSA accounting procedures. The Center determined that all customer funds were properly accounted for and tracked individually by task order in the Standard Operations and Maintenance Army Research and Development System database. The Chief of Staff also stated that, on the basis of the U.S. Special Operations Command’s continuing analysis and monitoring of the accounting procedures at SOFSA, no Antideficiency Act violations are evident.

Audit Response. The comments of the Chief of Staff were not responsive. USSOCOM did not comply with DoD FMR, volume 14, chapter 3, section 0304, “Preliminary Reviews of Potential Violations,” November 2006. As a result, we redirected the recommendation to the Under Secretary of Defense (Comptroller)/Chief Financial Officer. DoD FMR, volume 14, chapter 3, section 030201, states that the purpose of a preliminary review is to gather basic facts and

determine whether a violation may have occurred. The Purpose Statute, 31 U.S.C. 1301(a), states that appropriations shall be applied only to the objects for which the appropriations were made. In addition, 31 U.S.C. 1341 (a)(1)(A) states that an officer or employee of the U.S. Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. SOFSA financial officials exceeded their funding authority by accepting 619 MIPRs valued at \$531 million that contained procurement or RDT&E reimbursement funding under both the 1997 and 2003 contracts, when they had the authority to accept only O&M reimbursement funding. We request that the Under Secretary of Defense (Comptroller)/Chief Financial Officer comment on this recommendation.

A.2. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer instruct the Special Operations Forces Support Activity Director to require contracting and financial officials to:

a. Close out all current year reimbursement-funded task orders other than operation and maintenance reimbursement-funded task orders and use direct-cite funding for DoD customers.

b. Correctly record appropriation classifications received on Military Interdepartmental Purchase Requests for Economy Act orders received on the 1997 and 2003 contracts with L3 Communications Integrated Systems, Inc.

c. Record the correct appropriation classifications as received on Military Interdepartmental Purchase Requests on task orders for future work to be performed under Economy Act orders received on the 1997 and 2003 contracts with L3 Communications Integrated Systems, Inc.

d. Establish procedures to identify correct appropriation classifications on all task orders and use those funds in accordance with their legal limitations.

e. Request that the U.S. Special Operations Command Comptroller provide the Special Operations Forces Support Activity the additional appropriation accounts needed to carry out its mission effectively, including accepting reimbursement-funded Military Interdepartmental Purchase Requests and issuing related task orders.

Management Comments. The Chief of Staff did not concur with draft Recommendations A.2.a., A.2.b., A.2.c., A.2.d., and A.2.e. The Chief of Staff stated that Recommendation A.2.a. was based on an unsupported interpretation requiring individual funded reimbursement authority for general appropriations. The Chief of Staff said that, for draft Recommendations A.2.b. and A.2.c., USSOCOM had correctly cited, tracked, and expended customer funds for all work received, and SOFSA had recorded, tracked, and expended customer funds for each task order in the Standard Operations and Maintenance Army Research and Development System database. In addition, the Chief of Staff stated that, for draft Recommendations A.2.d. and A.2.e., the legal limitations on the use of funds are basic requirements that are a part of the SOFSA accounting system, and

USSOCOM has been unable to determine a legal basis for the requirement to request additional appropriation accounts.

Audit Response. The comments of the Chief of Staff were not responsive. Because USSOCOM did not comply with DoD FMR, volume 14, chapter 3, section 0304, "Preliminary Reviews of Potential Violations," November 2006, we redirected the recommendations to the Under Secretary of Defense (Comptroller)/Chief Financial Officer. We do not consider SOFSA to be in compliance with DoD FMR, volume 3, chapter 15, section 150204, "Reimbursements." SOFSA needs to establish procedures to correctly record appropriation classifications as received on MIPRs for task orders, identify correct appropriation classifications on all task orders, and use those funds in accordance with their legal limitations. Through the USSOCOM Comptroller, SOFSA also needs to request additional appropriation accounts to carry out its mission. Refer to our audit response on Finding section for additional comments. We request the Under Secretary of Defense (Comptroller)/Chief Financial Officer comment on these recommendations by June 18, 2007.

f. Develop or update internal guidance for financial and contracting officials on accepting and processing Military Interdepartmental Purchase Requests.

g. Provide training for financial and contracting officials on accepting and processing Military Interdepartmental Purchase Requests.

Management Comments. The Chief of Staff partially concurred with draft Recommendation A.2.f. and concurred with draft Recommendation A.2.g. The Chief of Staff stated USSOCOM is always trying to improve its processes and procedures and will continue to monitor external guidance and incorporate changes into the training as necessary.

Audit Response. Although the Chief of Staff partially concurred with the draft recommendation, the comments provided met the intent of the recommendation, and no further comments are necessary.

B. Adequacy of Justification for Award Fee Increases

The USSOCOM fee determining officials increased the award fees for the 1997 and 2003 contracts without adequate written justification. This condition occurred because USSOCOM officials disregarded the award fee plan for the 1997 and 2003 contracts and did not comply with guidance from the Under Secretary of Defense for Acquisition, Technology, and Logistics Defense Procurement and Acquisition Policy on structuring and applying award fee arrangements. As a result of the lack of documentation, it is difficult to determine whether the contractor's level of performance warranted the increased award fees.

Award Fee Administration

The USSOCOM fee determining officials increased the award fees for the 1997 and 2003 contracts without adequate written justification.

Award Fee Determination Process. To determine the award to be paid to the contractor under the 1997 and 2003 contracts, both contracts included an award fee plan, which was developed in accordance with Federal and DoD contracting guidance. Both award fee plans required an Award Fee Evaluation Board (AFEB), comprising representatives from USSOCOM, SOFSA, and customers, to evaluate the contractor's overall performance every 6 months. AFEB then forwards its recommendation to the fee determining official, who currently is the USSOCOM Acquisition Executive. There have been two fee determining officials for the 1997 and 2003 contracts. One served from the first evaluation period of the 1997 contract through the third evaluation period of the 2003 contract (12 evaluation periods in total). The other served from the fourth evaluation period of the 2003 contract to the present.

According to the award fee plan, the fee determining official can either accept or change the AFEB recommendation. According to guidance from the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD [AT&L]) Defense Procurement and Acquisition Policy, "Contract Pricing Reference Guide," volume 4, chapter 1, section 1.4, if the fee determining official changes the percentage of the award fee to the contractor to either a higher or a lower amount, the fee determining official must document the reasons for the changes from the AFEB recommendation in a determination memorandum and retain the memorandum in the contract file.

Adequacy of Documentation. We reviewed the AFEB recommendations and the fee determining official determinations for all 13 evaluation periods⁹ for the 1997 and 2003 contracts through September 2005.¹⁰ For all 13 evaluation periods

⁹ Nine evaluation periods were for the 1997 contract, and four evaluation periods were for the 2003 contract.

¹⁰ In April 2006, AFEB was meeting for the evaluation period ending March 2006. Therefore, we were unable to obtain documentation for that period.

reviewed, AFEB properly prepared and forwarded a recommendation memorandum to the fee determining official. The recommendation memorandum stated the recommended percentage of award fees for the contractor and outlined strengths and weaknesses in contractor performance during the evaluation period. For 11 of the 13 evaluation periods reviewed, the fee determining official increased the award fee without adequate justification in the determination memorandum. For the remaining two evaluation periods, the fee determining official concurred with the AFEB recommendation and therefore was not required to document any justification.

Specifically, for 8 of the 11 evaluation periods in which the fee determining official increased the award fee, the fee determining official's determination memorandum contained only a percentage of the award fee pool awarded to the contractor and a corresponding dollar amount. The determination memorandums for those eight evaluation periods did not include an explanation of the decision to increase the amount of the award fee. For example, for the evaluation period ending March 2003, AFEB recommended that the contractor receive [redacted] percent of the award fee pool. The fee determining official's determination memorandum stated, "An award fee of [redacted] percent, in the amount of [redacted] is hereby awarded for the ninth award fee period of 01 October 2002 - 31 March 2003." The memorandum did not discuss why the fee determining official felt the contractor deserved [redacted] percent, or [redacted], above the [redacted] percent award fee recommended by AFEB.

For the remaining 3 of the 11 evaluation periods, the fee determining official's determination memorandum discussed the contractor's performance but did not adequately justify awarding a higher percentage of award fees than AFEB recommended. For example, the fee determining official's determination memorandum for the evaluation period ending September 2004 awarded [redacted] percent of the award fee pool, in the amount of [redacted]. This award exceeded the [redacted] percent that AFEB recommended by [redacted] percent or [redacted]. The narrative, however, was limited to citing areas where USSOCOM and SOFSA expected to see "measurable progress in strategic, operational, and tactical areas that will ultimately posture the SOFSA contract for enhanced logistical support to the SOF warfighters." The determination memorandum did not give any reasons for increasing the award fee recommended by AFEB.

Unsupported Award Fees. Calculations of the difference between the dollar amount of the award fee recommended by AFEB and the dollar amount awarded by the fee determining official show the contractor received an additional [redacted] in award fees that were not adequately supported in the fee determining official's determination memorandums. Specifically, the AFEB recommendations totaled [redacted] in award fees over the 13 evaluation periods, and the fee determining officials raised the amount of award fees to [redacted]. The increases in the contractor's award fee ranged from [redacted] percent to [redacted] percent.

Table 2 provides an analysis of the AFEB recommendations and the fee determining official determinations.

Table 2. Analysis of Award Fee Determinations

Evaluation Period	Award Fee Pool \$	AFEB Recommendation		FDO* Determination		FDO Increase Over AFEB		FDO Justified the Increase
		%	\$	%	\$	%	\$	
		Oct. 98-Mar. 99	USSOCOM - (b)(4)					
Apr. 99-Sept. 99	USSOCOM - (b)(4)						No	
Oct. 99-Mar. 00	USSOCOM - (b)(4)						No	
Apr. 00-Sept. 00	USSOCOM - (b)(4)						-	
Oct. 00-Mar. 01	USSOCOM - (b)(4)						No	
Apr. 01-Sept. 01	USSOCOM - (b)(4)						No	
Oct. 01-Mar. 02	USSOCOM - (b)(4)						No	
Apr. 02-Sept. 02	USSOCOM - (b)(4)						-	
Oct. 02-Mar. 03	USSOCOM - (b)(4)						No	
Oct. 03-Mar. 04	USSOCOM - (b)(4)						No	
Apr. 04-Sept. 04	USSOCOM - (b)(4)						No	
Oct. 04-Mar. 05	USSOCOM - (b)(4)						No	
Apr. 05-Sept. 05	USSOCOM - (b)(4)						No	
Total	USSOCOM - (b)(4)							

*Fee determining official

Note: Dash indicates not applicable.

Compliance With Award Fee Guidance

USSOCOM officials disregarded the award fee plan for the 1997 and 2003 contracts and did not comply with guidance from the USD (AT&L) Defense Procurement and Acquisition Policy on structuring and applying award fee arrangements.

Award Fee Guidance. USD (AT&L) Defense Procurement and Acquisition Policy, "Contract Pricing Reference Guide," volume 4, chapter 1, section 1.4.2, and the award fee plan require the fee determining official to document the reasons for any differences from an AFEB recommendation. The USD (AT&L) Defense Procurement and Acquisition Policy guidance on applying an award fee

pricing arrangement stresses that “the award-fee determination is a subjective process that requires effective communication between all parties involved.” For the fee determining official specifically, the USD (AT&L) Defense Procurement and Acquisition Policy guidance states:

[The] decision [of the fee determining official] may or may not be in accord with the [AFEB] recommendation. If it is not in accord with the [AFEB] recommendation, the fee determining official must assure that reasons for any difference are fully documented.

While the award fee plan for the two contracts gives the fee determining official broad discretion to incorporate subjective judgment into the process and allows him to make a unilateral decision on the percentage or amount of award fee earned, the rationale for any change needs to be documented and explained with a reference to the award fee plan in the determination memorandum.

Compliance With Guidance. The fee determining officials who presided over the SOFSA contracts considered their determination memorandums adequate in justifying the contractor’s increased percentage of award fee for the majority of evaluation periods. One fee determining official stated that, in all but one of the determination memorandums, “sufficient rationale was provided in justification of each award decision. The award letter, dated April 29, 2004,¹¹ however, failed to provide appropriate explanation and was an oversight on my behalf.” However, this fee determining official had presided over nine evaluation periods prior to that, and the determination memorandums for the nine previous evaluation periods mirrored the determination memorandum for the evaluation period ending March 2004. The other fee determining official had presided over only one evaluation period as of April 2006, but stated that the rationale for the decision was adequately explained in the award fee determination memorandum.

The award fee plan and the USD (AT&L) Defense Procurement and Acquisition Policy guidance both state that the fee determining official must document the reasons for any change in the award fee and explain the rationale for the change with a reference to the award fee plan in the determination memorandum. The justifications that the fee determining officials provided in the determination memorandums were inadequate because they did not specifically address the AFEB recommendation or give any reason for the difference or change in percentage of the award fee ultimately awarded to the contractor. Therefore, the fee determining officials disregarded the award fee plan requirements and did not comply with the USD (AT&L) Defense Procurement and Acquisition Policy guidance.

Conclusion

While AFEB explained the rationale for recommending a percentage of award fees in accordance with the award fee plan, USSOCOM fee determining officials disregarded the award fee plan and did not comply with USD (AT&L) Defense

¹¹ This was the determination memorandum for the evaluation period ending March 2004, the first of the 2003 contract.

Procurement and Acquisition Policy guidance in not documenting their rationale for awarding a higher percentage of award fees to the contractor. The changes made by the fee determining officials resulted in an increase of ^{USSOCOM: (b)} (4) in award fees to the contractor that was not adequately supported in the fee determining official's determination memorandums. As a result of this lack of documentation, it is difficult to determine whether the contractor's level of performance warranted the increased award fees.

DoD contracting has been highly scrutinized for paying contractors excessively high award fees that the contractors did not earn or deserve. Specifically, GAO Report 06-66, "DoD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes," December 2005, stated that award fees paid to DoD contractors were generally not linked to acquisition outcomes, and DoD had paid out an estimated \$8 billion in award fees on the contracts in the GAO study population, regardless of outcomes. If the contractor is demonstrating excellent performance and has actually earned a high percentage of the award fee, it is important that USSOCOM and the fee determining official adequately document the decision to reward the contractor for outstanding performance. The fee determining official's documentation will allow the process of determining contractor award fees to be clearly understood.

Management Comments on the Finding

Management Comments. The Chief of Staff concurred with the finding.

Recommendation and Management Comments

B. We recommend that the Commander, U.S. Special Operations Command require fee determining officials to document the rationale for changing the award fee from the Award Fee Evaluation Board's recommendation and explain the decision in the determination memorandums as required by the Under Secretary of Defense for Acquisition, Technology, and Logistics Defense Procurement and Acquisition Policy, "Contract Pricing Reference Guide," volume 4, chapter 1, section 1.4.2, and as stated in the award fee plan for contracts USZA22-03-D-0006 and USZA22-03-C-0056.

Management Comments. The Chief of Staff concurred and stated the recommendation will be incorporated starting with the fee determining official's next decision memorandum.

C. Adequacy of Documentation for Economy Act Orders

SOFSA contract files did not contain either Determinations and Findings documents or support agreements (determination documents) for Economy Act orders received through MIPRs from requesting organizations for the 2003 contract. This condition occurred because SOFSA contracting officials used outdated guidance and did not comply with Federal and DoD guidance to require determination documents when accepting MIPRs, and because the requesting organizations did not prepare or provide determination documents. As a result, SOFSA contracting officials did not have proof that the requesting organizations determined that the Economy Act orders were in the best economic interest of the Government before submitting the MIPRs to SOFSA.

Determination Documents

SOFSA contract files did not contain determination documents for Economy Act orders received from requesting agencies through MIPRs.

Federal and DoD Guidance for Determination Documents. Section 1535, United States Code, title 31 (31 U.S.C. 1535), “Agency Agreements,” January 7, 2003, allows the head of an agency to place an order to another major organizational unit within the same agency or another agency for goods and services if those goods or services are available, if the order is in the best interest of the U.S. Government, if the other agency can fill the order, and if the order cannot be provided as conveniently by contract with a commercial enterprise.

The Federal Acquisition Regulation (FAR), Subpart 17.503, “Determinations and Findings Requirements,” August 25, 2003, and DoD FMR, volume 11A, chapter 3, “Economy Act Orders,” April 2000, require that requesting organizations prepare a Determinations and Findings document to support each Economy Act order when obtaining supplies or services from another DoD or non-DoD agency. The requesting organization should use the Determinations and Findings document to determine whether the orders are in the best interest of the U.S. Government, that the servicing organization can fill the order, and that the requesting organization cannot obtain the supplies and services as conveniently or economically by contracting directly with a commercial enterprise.

The Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 217.504, “Ordering Procedures,” March 25, 1999, requires that, when the requesting organization is within DoD, a copy of the Determinations and Findings document should be given to the servicing agency as an attachment to the order. DFARS also requires that a DoD contracting office acting as the servicing agency obtain a copy of the Determinations and Findings document from the requesting agency and place it in the contract file.

In addition, DoD Instruction 4000.19, “Interservice and Intragovernmental Support,” August 9, 1995, and DoD FMR, volume 11A, chapter 3, state that DoD

organizations may provide services to other DoD organizations when the head of the requesting organization determines that it is in the best interest of the Government, and the head of the supplying organization determines that providing support will not jeopardize its own mission. The instruction and FMR require a signed DD Form 1144, "Support Agreement," to document the required determination.

Determination Documents in SOFSA Contract Files. As the servicing organization for Economy Act order MIPRs, SOFSA contracting officials were responsible for determining whether the MIPRs contained a copy of the determination document to be placed in the contract files. However, prior to accepting work from other DoD and non-DoD organizations, SOFSA contracting officials did not request or require a copy of a determination document from the requesting organizations on task orders for the 2003 contract. We reviewed 29 MIPRs, of which 20 were Economy Act orders and 9 were project orders.¹² For the 20 Economy Act orders, the SOFSA contract files did not contain copies of the determination documents to support the MIPRs. SOFSA contracting officials acknowledged that they did not request or require a determination document before accepting MIPRs under the 2003 contract.

Preparation of Determination Documents by Requesting Organizations. SOFSA did not receive copies of determination documents from requesting organizations, in part because many of them did not prepare the documents. Specifically, the requesting organizations for the 20 MIPRs reviewed acknowledged that they did not prepare determination documents to be included with Economy Act orders submitted to SOFSA.

In addition, in October 2006, USSOCOM contracting officials sought advice from USD (AT&L) Defense Procurement and Acquisition Policy on whether a Determinations and Findings document was required for Economy Act orders within DoD. In an e-mail response, USD (AT&L) Defense Procurement and Acquisition Policy officials stated that, since such acquisitions remain within DoD, no Economy Act determination is required. However, the USD (AT&L) determination is not consistent with the USD (C) interpretation of Federal and DoD guidance.

Use of Outdated and Inconsistent Guidance

SOFSA contracting officials did not comply with the Federal and DoD guidance in not requiring a determination document for Economy Act order MIPRs and instead relying on outdated guidance. Requesting organizations did not prepare a determination document, either because of an oversight or because they followed service-level guidance that was inconsistent with FAR and DFARS.

SOFSA Guidance on Determination Documents. According to SOFSA contracting officials, they followed a March 18, 1996, memorandum from the

¹² The Project Order Statute, 41 U.S.C. 23, provides DoD with interdepartmental authority separate and distinct from the Economy Act to order goods and services. The statute does not require determination documents for project orders.

Deputy Assistant Secretary of the Army (Procurement), “Contract Offloading Clarification,” as justification for not requiring determination documents. The memorandum stated that Determinations and Findings documents for Economy Act orders did not have to be prepared for transactions within the Army or the rest of DoD. However, SOFSA is not an Army organization and, therefore, should not follow Army policy exclusively.

In addition, the Army memorandum was superseded in March 1999 by DFARS Subpart 217.504 and in 2003 by FAR Subpart 17.503 and DoD FMR, volume 11A, chapter 3. As stated earlier, all of these require that the requesting agency, whether within DoD or not, prepare a determination document and that the receiving agency include a copy in the contract file. Lastly, DoD Instruction 4000.19 still applies and must be followed. According to SOFSA contracting officials, they were not aware of the FAR and DFARS requirements and received no training on or updates to either document.

Military Services’ Guidance on Determination Documents. Six requesting agencies from the Army, Navy, and Air Force accounted for the 20 Economy Act MIPRs that did not include a determination document. The requesting agencies did not complete determination documents for various reasons.

Army Guidance. Of the 20 MIPRs reviewed that did not have determination documents, SOFSA received 12 from the Army, specifically from the Army Technology Applications Program Office, U.S. Army Reserve Alaska, and the Army 21st Theater Support Command. According to the Acting Director, Army Procurement Policy Support, the Army Federal Acquisition Regulation Supplement is silent on determination documents because the Army follows DFARS section 217.504 on these documents, and the Army Federal Acquisition Regulation Supplement implements and supplements FAR and DFARS to establish uniform policies for Army acquisition. The three Army requesting organizations gave the following reasons for not completing a determination document.

- Personnel in the Army Technology Applications Program Office did not believe they needed to prepare determination documents because both SOFSA and the Army Technology Application Program Office are USSOCOM organizations.
- Coast Guard contracting personnel directed U.S. Army Reserve Alaska officials not to complete a determination document.
- The 21st Theater Support Command officials stated it was an oversight in processing the MIPRs.

Navy Guidance. SOFSA received 2 of the 20 MIPRs that did not have determination documents from the Naval Air Systems Command. Navy and Marine Corps Acquisition Regulation Supplement, Subpart 5217.503, “Determinations and Findings Requirements,” is not specific on when a Determinations and Findings document must be completed, but like the Army guidance, it references DFARS 217.504, which requires that a copy of the Determinations and Findings document be attached to the order and be placed in

the contract file. The Naval Air Systems Command was unable to explain why it did not complete determination documents for these Economy Act MIPRs.

Air Force Guidance. Of the 20 MIPRs reviewed that did not have determination documents, SOFSA received 6 from the Air Force, specifically from Wright-Patterson Air Force Base and Warner Robins Air Force Base. According to Wright-Patterson Air Force Base Financial Management Office personnel, they did not complete a Determinations and Findings document because 31 U.S.C. 1535 does not require a Determinations and Findings document. Warner Robins Air Force Base officials, on the other hand, were unable to explain why they did not complete Determination and Findings documents for these Economy Act MIPRs. In addition, according to an official in the Assistant Secretary of the Air Force for Acquisition, Contract Policy and Implementation Division, the Air Force does not require Determinations and Findings documents when the requesting organization and servicing agency are both in DoD. Further, Air Force Federal Acquisition Regulation Supplement IG5317.503, "Determinations and Findings Requirements," January 27, 2005, interprets a Secretary of Defense memorandum dated February 8, 1994, to require written Determinations and Findings documents only for Economy Act orders released outside DoD. Moreover, the Air Force Federal Acquisition Regulation Supplement states the interpretation of "agency" as it relates to the Economy Act, and as implemented by FAR 17.5, has been that DoD is an "agency." The implication is that an Economy Act Determinations and Findings document is not required before releasing funds for contracting within DoD.

Guidance Inconsistencies From the Office of the Secretary of Defense.

Guidance from the Office of the Secretary of Defense on determination documents is unclear and inconsistent. In DoD Inspector General (IG) Report D2006-102, "Marine Corps Governmental Purchases," July 31, 2006, we reported that the Marine Corps did not provide Determinations and Findings documents to support 16 of 54 MIPRs to non-DoD organizations or support agreements to support the other 37 MIPRs provided to DoD servicing organizations.¹³ The report recommends that the USD (C) revise DoD FMR, volume 11A, chapter 3, to clarify that a DoD requesting organization should complete a Determinations and Findings document. The USD (C) nonconcurred with the recommendation, stating that the FMR is clear in requiring all Economy Act orders to be supported by Determinations and Findings documents and that FMR reflects FAR Subpart 17.5, which mandates that Economy Act orders be supported by Determinations and Findings documents.

Subsequently, in followup comments on the DoD IG report, the USD(C) stated that she and the USD (AT&L) established an Interagency Acquisition Working Group, including representatives from the Military Services and selected Defense agencies, tasked to review and recommend improvements in DoD business practices and policies governing interagency orders under the Economy Act and other statutory authorities. Further, the USD (AT&L) is the appropriate authority to clarify whether a DoD organization must prepare a determination document.

¹³ One MIPR file did not include enough information to identify whether the supplying organization was DoD or non-DoD.

Conclusion

Without requesting determination documents, SOFSA contracting officials did not verify that requesting organizations had determined whether the Economy Act orders were in the best economic interest of the Government. Army, Navy, and Air Force personnel did not prepare determination documents showing that they had made Economy Act orders in the best economic interest of the Government, that they had determined whether the other agency was capable of filling the order, or that the order could not have been provided as conveniently by contracting with a commercial enterprise. Therefore, SOFSA may be accepting work on the 2003 contract that should not be accepted under the Economy Act. Consequently, the 2003 contract ceiling may be reached earlier than anticipated by purchase orders that could have been serviced more conveniently or economically by private enterprise.

Clear and consistent guidance from the Office of the Secretary of Defense is imperative to achieving uniform implementation and application of the Economy Act by the Services and requesting agencies. It is also important that contracting officials at all levels in DoD receive training on updates to FAR, DFARS, DoD Instructions, and other DoD contracting policies, including Service-level implementing guidance. Without consistent guidance and proper training, contracting personnel may unknowingly make decisions that are not in the best economic interest of the Government, using time, money, and effort better spent elsewhere.

Management Comments on the Finding and Audit Response

Management Comments. The Chief of Staff did not concur with the finding and noted that the DoD Inspector General interpretation of DFARS 217.504 would require a Determinations and Findings document for all MIPRs executed within DoD for another DoD agency. The Chief of Staff also noted that, to clarify the provision of DFARS and the conflicting guidance, USSOCOM officials contacted the Office of the USD (AT&L) Defense Procurement and Acquisition Policy for guidance that confirmed the USSOCOM understanding of DFARS Subpart 217.504 that Determinations and Findings are not required for intra-DoD funding transfers.

Audit Response. Based on management comments, we made changes to the report to clarify the requirement on Determinations and Findings Documents and support agreements (determination documents). We agree there is conflicting guidance within DoD on Determinations and Findings documents for Economy Act orders. However, 31 U.S.C. 1535, "Agency Agreements," requires a determination when an agency places an order to another major organizational unit within the same agency or another agency for goods or services. DoD FMR, volume 11A, chapter 3, section 030201, "Legal Authority," also requires a determination for Economy Act orders. In addition, DoD Instruction 4000.19, "Interservice and Intragovernmental Support," requires a support agreement, which includes the same requirements as a Determinations and Findings document.

Recommendations, Management Comments, and Audit Response

Revised, Deleted, and Renumbered Recommendations. As a result of management comments, we revised draft Recommendations C.2.a. and C.3. to include 31 U.S.C. 1535(a), “Agency Agreements.” In addition, we deleted draft Recommendation C.2.d. and renumbered draft Recommendation C.2.e. as final Recommendation C.2.d.

C.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer, in coordination with the Under Secretary of Defense (Acquisition, Technology, and Logistics), use the Interagency Acquisition Working Group to resolve inconsistencies on the requirement of Determinations and Findings for Economy Act orders.

Management Comments. The Acting Deputy Chief Financial Officer, responding for the Under Secretary of Defense (Comptroller)/Chief Financial Officer partially concurred with the recommendation. He stated that the DoD Financial Management Regulation and the Federal Acquisition Regulation outline the requirements of Determinations and Findings for Economy Act orders. He further noted that the inconsistencies cited exist in the DoD Instruction 4000.19, which is under the purview of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The Acting Deputy Chief Financial Officer requested that we refer the recommendation to the Under Secretary of Defense (Acquisition, Technology, and Logistics). He also indicated that the Interagency Acquisition Working Group is reviewing and evaluating DoD Instruction 4000.19, and the evaluation and subsequent guidance are expected to be completed by June 2007.

Audit Response. Although the Acting Deputy Chief Financial Officer partially concurred, the comments provided meet the intent of the recommendation and no further comments are necessary. We expect the Interagency Acquisition Working Group to decide whether a DoD organization must prepare either a Determinations and Findings document or support agreement for Economy Act orders within DoD. The recommendation was also directed to the Under Secretary of Defense for Acquisition, Technology, and Logistics; however, the Under Secretary of Defense for Acquisition, Technology, and Logistics did not respond to the draft report. We request comment on this recommendation from Under Secretary of Defense (Acquisition, Technology, and Logistics) by June 18, 2007.

C.2. We recommend that the Director, Special Operations Forces Support Activity:

a. Comply with 31 U.S.C. 1535(a), “Agency Agreements,” for all Economy Act order Military Interdepartmental Purchase Requests.

Management Comments. The Chief of Staff did not concur with draft Recommendation C.2.a. The Chief of Staff stated that the provisions of DFARS 217.5 apply only when work is being performed by or for non-DoD agencies.

Audit Response. The comments of the Chief of Staff are not responsive. The Chief of Staff did not address compliance with 31 U.S.C. 1535(a). As a result of management comments, we revised the recommendation to comply with 31 U.S.C. 1535(a), “Agency Agreements,” which requires a determination when an agency places an order to another major organizational unit within the same agency or another agency. We request the Director, Special Operations Forces Support Activity comply with 31 U.S.C. 1535(a), “Agency Agreements,” for all Economy Act order MIPRs. We request the Director, Special Operations Forces Support Activity to reconsider his position on Recommendation C.2.a. and provide additional comments in response to the final report.

b. Develop procedures and controls for properly maintaining all required Military Interdepartmental Purchase Request documents, including copies of Determinations and Findings documents, in the contract files.

Management Comments. The Chief of Staff did not concur with draft Recommendation C.2.b. The Chief of Staff stated that SOFSA already has procedures and controls for properly maintaining all required MIPR documents.

Audit Response. The comments of the Chief of Staff are not responsive. We disagree with the Chief of Staff comments that SOFSA has procedures and controls for maintaining all required MIPR documents. SOFSA contracting and financial officials did not require and maintain a determination for Economy Act order MIPRs as required by 31 U.S.C. 1535(a), “Agency Agreements.” SOFSA policy does not provide procedures and controls to ensure MIPR documentation is properly maintained. The MIPRs we reviewed did not include copies of determinations that the acquisition was in the best interest of the Government. We request that the Director, Special Forces Support Activity reconsider his position on Recommendation C.2.b. and provide additional comments in response to the final report.

c. Develop procedures and controls, such as a checklist, that will determine whether staff have developed and appropriately reviewed all required data and supporting documents before accepting a Military Interdepartmental Purchase Request.

Management Comments. The Chief of Staff partially concurred with draft recommendation C.2.c. The Chief of Staff stated that SOFSA has adequate controls and procedures in place, and USSOCOM always reviews them to see if changes are needed to improve them.

Audit Response. The comments of the Chief of Staff are not responsive. We disagree with the Chief of Staff that SOFSA has adequate procedures and controls in place. SOFSA staff did not review all required data and supporting documents, or they would not have accepted MIPRs that did not meet the requirements of 31 U.S.C. 1535(a). SOFSA lacks procedures and controls such as a checklist to ensure that financial and contracting officials accept MIPRs and determination documents that are properly prepared and appropriately received. Development of controls, such as a checklist, will improve the accuracy of MIPR documentation. We request that the Director, Special Forces Support Activity

reconsider his position on Recommendation C.2.c. and provide additional comments to the final report by June 18, 2007.

d. Develop or update internal guidance and training on how to accept and process Military Interdepartmental Purchase Requests, including the requirement for Determinations and Findings.

Management Comments. The Chief of Staff partially concurred with draft Recommendation C.2.e. (renumbered C.2.d. in final report). The Chief of Staff stated USSOCOM has been providing training for the past 15 years and will continue to monitor external guidance and incorporate changes into the training as necessary. However, the Chief of Staff also stated there is no requirement for a Determinations and Findings for internal DoD MIPRs.

Audit Response. The comments of the Chief of Staff are partially responsive. We acknowledge there is conflicting guidance within DoD on Determinations and Findings documents for Economy Act orders. However, SOFSA needs to develop or update internal guidance and training on accepting and processing MIPRs to meet the requirements of 31 U.S.C. 1535(a). We request that the Director, Special Forces Support Activity reconsider his position on Recommendation C.2.d. and provide additional comments to the final report.

C.3. We recommend that the Assistant Secretary of the Air Force for Acquisition revise the Air Force Federal Acquisition Regulation Supplement, section IG5317.5, “Interagency Acquisitions Under the Economy Act,” to comply with 31 U.S.C. 1535(a), “Agency Agreements,” for all Economy Act order Military Interdepartmental Purchase Requests.

Management Comments. The Assistant Secretary of the Air Force for Acquisition did not concur with the recommendation. The Assistant Secretary disagreed with the recommendation that Air Force Federal Acquisition Regulation Supplement IG5317.5 does not comply with DFARS 217.5. According to the Assistant Secretary of the Air Force, DFARS expressly states that FAR 17.5, DFARS 217.5, and DoD Instruction 4000.19, “Interservice and Intragovernmental Support,” apply only to purchases by other agencies for DoD. In addition, the Assistant Secretary of the Air Force for Acquisition confirmed with the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics Defense Procurement and Acquisition Policy that Economy Act Determinations and Findings are not required for orders within DoD. Although not required to comment, the Assistant Secretary of the Air Force for Acquisition concurred with Recommendation C.1. She stated that her office will participate in the Interagency Acquisition Working Group and will verify that Air Force Federal Acquisition Regulation Supplement is in compliance with all DoD regulations on Economy Act procedures as soon as the Working Group completes its review of DoD guidance on determinations.

Audit Response. The comments of the Assistant Secretary of the Air Force for Acquisition are not responsive. In response to the comments, we revised the recommendation in the final report to comply with 31 U.S.C. 1535(a). The Air Force Federal Acquisition Regulation Supplement, section IG 5317.5, “Interagency Acquisitions Under the Economy Act” does not require that an Economy Act order within DoD have a Determinations and Findings document.

However, 31 U.S.C. 1535(a), “Agency Agreements,” requires a determination when an agency places an order to another major organizational unit within the same agency or another agency. Without a determination document, the Air Force does not have proof that Economy Act orders were in the best economic interest of the Government. We request that the Assistant Secretary of the Air Force for Acquisition revise the Air Force Federal Acquisition Regulation Supplement, section IG5317.5, “Interagency Acquisitions Under the Economy Act,” to comply with 31 U.S.C. 1535(a), “Agency Agreements,” for all Economy Act order Military Interdepartmental Purchase Requests. We request that the Assistant Secretary of the Air Force for Acquisition reconsider her position and provide additional comments to the final report.

Management Comments on Appendix B

Management Comments on Recording Obligations. The Chief of Staff stated that USSOCOM personnel acknowledged and fully understand the requirement to obligate the contract minimum at the time of the award.

Management Comments on Project Orders. The Chief of Staff stated that, when FMR was revised to add volume 11A, chapter 3, SOFSA modified its processes to implement the revised guidance.

Appendix A. Scope and Methodology

We performed this audit from March 2006 through November 2006 in accordance with generally accepted government auditing standards. We evaluated how USSOCOM and SOFSA officials awarded and administered the L3 logistics support contracts and determined whether they were in accordance with DoD and Federal policies, guidance, and statutory requirements. We performed site visits to USSOCOM in Tampa, Florida, and to SOFSA at Bluegrass Station in Lexington, Kentucky, from April 2006 through July 2006. At each location, we interviewed program, contracting, legal, and financial personnel. We also interviewed personnel from the USD(C), USD (AT&L) Defense Procurement and Acquisition Policy, Defense Finance and Accounting Service, and L3. In addition, we obtained support from the DoD Office of Inspector General legal counsel on contract awards and administration. We reviewed and analyzed existing DoD and Federal policies, guidance, and statutory requirements.

We selected a judgmental sample of 30 task orders¹⁴ out of 1,711 from the 3 contracts. We drew the sample from the database of all open and closed task orders between April 1, 2003, and April 5, 2006. The 30 task orders, valued at \$138.4 million, were associated with the three largest categories of logistics work performed at SOFSA, which include: Aviation Modification Rotary Wing, Aviation Modification Fixed Wing, and the Individual Unit Support categories. These three categories represented 55 percent of the total task orders awarded from the 1997 and 2003 contracts.¹⁵ We selected task orders with spending history to facilitate adequate review of various actions related to the task order.

We reviewed 18¹⁶ of the 30 task orders (to include modifications). Within the task order files, we reviewed the task order, cost estimates, MIPRs, business clearance memoranda, tasking letters, cost impacts, price negotiation memoranda, cost and technical evaluations, and other correspondence and supporting documentation. We reviewed these documents to determine whether the work performed was within the scope of the original contract, if the Government received a fair and reasonable price, and if SOFSA contracting officials used the correct appropriation in the correct fiscal year. We reviewed 29 MIPRs valued at \$56.6 million that were associated with the 18 task orders to identify whether SOFSA contracting officials used the correct appropriations to fund the task orders and whether they required a Determinations and Findings document from requesting activities. We also reviewed award fee documents for the 13 evaluation periods for the 1997 and 2003 contracts through September 2005 to identify whether the award fees were adequately justified.

¹⁴ The sample included 9 task orders under contract USZA22-97-C-0013, 16 task orders under USZA22-03-C-0056, and 5 task orders under USZA22-03-D-0006.

¹⁵ The audit universe included all open and closed task orders for the USZA22-03-C-0056 and USZA22-03-D-0006 contracts from April 1, 2003, through April 5, 2006, and all task orders for the USZA22-97-C-0013 contract that were either open as of April 5, 2006, or closed between April 1, 2003, and April 5, 2006.

¹⁶ Of the 18 task orders reviewed, 7 task orders were under contract USZA22-97-C-0013, 8 task orders were under USZA22-03-C-0056, and 3 task orders were under USZA22-03-D-0006. We did not continue our review of the remaining 12 task orders when we discovered the potential violations of the Antideficiency Act.

Use of Computer-Processed Data. To achieve the audit objective, we relied on computer-processed data provided directly from SOFSA personnel that were extracted from the Standard Operations and Maintenance Army Research and Development System and the SOFSA Special Operations Forces Funds database. We did not perform a formal reliability assessment of the computer-processed data. We did not find errors between the computer-processed data and MIPR and task order source documents that would preclude use of the computer-processed data to meet the audit objective or that would change the conclusions of the report.

Use of Technical Assistance. We obtained support from the DoD Office of Inspector General (IG) Quantitative Methods Division on sampling methodology. Because of the various types of work performed under SOFSA contracts, the Quantitative Methods Division advised the audit team to use a judgmental sample to review the task orders.

Government Accountability Office High-Risk Area. The Government Accountability Office (GAO) has identified several high-risk areas in DoD. This report provides coverage of the high-risk areas “DoD Contract Management” and “Management of Interagency Contracting.”

Prior Coverage

During the last 5 years, GAO and the DoD IG have issued five reports discussing DoD contract management, award fees, and MIPRs. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. GAO-06-66, “DoD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes,” December 2005

GAO Report No. GAO-05-207, “High-Risk Series, An Update,” January 2005

DoD IG

DoD IG Report No. D-2007-007, “FY 2005 DoD Purchases Made Through the General Services Administration,” October 30, 2006

DoD IG Report No. D-2006-102, “Marine Corps Governmental Purchases,” July 31, 2006

DoD IG Report No. D-2006-082, “Report on Allegations to the Defense Hotline Concerning Funds ‘Parked’ at the U.S. Special Operations Command,” April 28, 2006

Appendix B. Other Matters of Interest

During the audit we noted other matters of interest concerning SOFSA contract administration.

Recording Obligations. USSOCOM did not record an obligation for the contract minimum at the time the contract was awarded on April 1, 2003. USSOCOM did not obligate the \$10 million contract minimum until April 28, 2003. USSOCOM legal counsel agreed that not recording the minimum contract obligation at the time of award constituted a technical violation. GAO-05-354SP, *Principles of Federal Appropriations Law*, states: “An agency is required to record an obligation at the time it incurs a legal liability. Therefore, for an indefinite delivery/indefinite quantity contract, an agency must record an obligation for the minimum amount at the time of contract execution.” Section 1501(a)(1), United States Code, title 31 (31 U.S.C. 1501(a)(1)), states an amount should be recorded as an obligation of the U.S. Government only when supported by documentary evidence of a binding agreement between an agency and another person including an agency. Therefore, to be consistent with the recording statute, 31 U.S.C. 1501(a)(1), USSOCOM should have recorded the obligation for the contract minimum at the time it awarded the contract on April 1, 2003.

Project Orders. The Project Order Statute 41 U.S.C. 23 provides DoD with interdepartmental authority separate and distinct from the Economy Act to order goods and services. The statute applies to transactions between the Military Departments and DoD Government-owned, Government-operated facilities. The statute does not require Determinations and Findings as with the Economy Act orders. DoD organizations may issue project orders only to Government-owned, Government-operated facilities in DoD.

SOFSA financial officials should not have accepted project orders because SOFSA is a Government-owned, contractor-operated facility. On February 17, 1998, the Director of Defense Procurement, Office of the Secretary of Defense issued a memorandum, “Procurement Management Review of USSOCOM,” to the USSOCOM Director of Procurement, which recommended that SOFSA stop using project orders. However, SOFSA continued to accept project orders under the 1997 and 2003 contracts. On July 24, 2003, SOFSA issued a memorandum stating that, effective October 1, 2003, SOFSA would be accepting only reimbursable customer orders received on DoD Form 448 as Economy Act orders under the provisions of 31 U.S.C. 1535 and DoD 7000.14-R, volume 11A, chapter 3.

Appendix C. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Director, Acquisition Resources and Analysis
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Director, Program Analysis and Evaluation
Director, Defense Procurement and Acquisition Policy

Department of the Army

Auditor General, Department of the Army

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Assistant Secretary of the Air Force for Acquisition
Auditor General, Department of the Air Force

Combatant Command

Commander, U.S. Special Operations Command
Inspector General, U.S. Special Operations Command
Director, Special Operations Forces Support Activity
Inspector General, U.S. Joint Forces Command

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Oversight and Government Reform
House Subcommittee on Government Management, Organization, and Procurement,
Committee on Oversight and Government Reform
House Subcommittee on National Security and Foreign Affairs,
Committee on Government Reform

Under Secretary of Defense (Comptroller)/ Chief Financial Officer Comments



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

MEMORANDUM FOR PROGRAM DIRECTOR, DEFENSE FINANCIAL AUDITING
SERVICE, OFFICE OF INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE

SUBJECT: Draft Audit Report, "Special Operations Forces Support Activity Contract,"
(Project No. D2006-D000LC-0148.000)

This memo is in response to the subject January 10, 2007, draft report provided to this office for review and comment. Our response to each of the audit report recommendations directed to the Under Secretary of Defense (Comptroller)/Chief Financial Officer is at Attachment 1.

We appreciate the opportunity to respond to your draft audit report and look forward to resolving the cited issues. My point of contact is [DoD OIG - (b)(6)]. She can be contacted by telephone at 703-697-[DoD OIG - (b)(6)] or e-mail at [DoD OIG - (b)(6)]@osd.mil.


Robert McNamara
Acting Deputy Chief Financial Officer

Attachments:
As stated

cc:
ODGC(F)
USD(AT&L)
DFAS

Attachment 1
Response to Draft Audit Report Recommendations

Office of the Inspector General (OIG), Department of Defense (DoD)
“Special Operations Forces Support Activity Contract”
OIG Project No. D2006-D000LC-0148.000

OIG Recommendation C.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer, in coordination with the Under Secretary of Defense (Acquisition, Technology, and Logistics), use the interagency acquisition working group to resolve inconsistencies on the requirement of Determinations and Findings for Economy Act orders.

OSD Response. Partially Concur. The DoD Financial Management Regulation (FMR) and the Federal Acquisition Regulation (FAR) clearly outline the requirements of determinations and findings for Economy Act orders. The inconsistencies cited exist in the DoDI 4000.19 which is under the purview of OUSD (AT&L). Therefore, OUSD (Comptroller) requests that the recommendation be referred to OUSD(AT&L). The Interagency Acquisition Working Group is reviewing and evaluating the instruction for possible updates or cancellation. This evaluation and subsequent guidance/instruction is expected to be completed by June 2007.

Department of the Air Force Comments

Final Report
Reference



OFFICE OF THE ASSISTANT SECRETARY

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC



FEB 22 2007

MEMORANDUM FOR DEPUTY INSPECTOR FOR AUDITING
ATTN: ASSISTANT INSPECTOR GENERAL

FROM: SAF/AQ

SUBJECT: Air Force Response to DoDIG Draft Audit Report, Special Operations Forces
Support Contract, (Project No. D2006LC-0148)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Acquisition) to provide comments on subject report. The Air Force appreciates the opportunity to comment and recognizes the efforts of the DoDIG in its analysis and report preparation. Our responses to the draft recommendations are as follows:

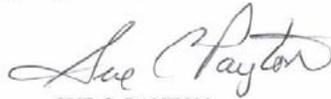
C.3. We recommend that the Assistant Secretary of the Air Force for Acquisition revise the Air Force Federal Acquisition Regulation Supplement, section IG5317.5, "Interagency Acquisitions Under the Economy Act," to comply with the Defense Federal Acquisition Regulation Supplement, subpart 217.504, "Ordering Procedures."

Nonconcur: The Air Force does not agree with the finding that AFFARS IG5317.5 does not comply with DFARS subpart 217.5. The draft report interprets DFARS 217.504 to require all MIPRs to have a D&F. However, this section does not stand on its own; this section supplements FAR 17.500, Scope of Subpart, which states "**This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.**" In supplementing FAR 17.500, DFARS 217.500, Scope of Subpart, states "**(b) Unless more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DoDI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency. This includes orders under a task or delivery order contract entered into by the other agency (Pub. L. 105-261, Section 814).**" The DFARS expressly states that the requirements of FAR 17.5, DFARS 217.5, and DoDI 4000.19, Interservice and Intragovernmental Support, only apply to purchases by other agencies for DoD. Additionally, we have confirmed with OUSD (AT&L) DPAP staff that Economy Act D&Fs are not required for orders within DoD.

Revised

Notwithstanding the above, we concur with your finding C.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer, in coordination with the Under Secretary of Defense (Acquisition, Technology, and Logistics), use the interagency acquisition working group to resolve inconsistencies on the requirement of Determinations and Findings for Economy Act orders. We will participate in the interagency working group and ensure the AFFARS is in compliance with all DoD regulations on Economy Act procedures as soon as the working group review is complete.

The point of contact for the Air Force response is DoD OIG - (b)(6) SAF/AQCP,
(703)588-DoD email: DoD OIG - (b)(6)@pentagon.af.mil.



SUE C. PAYTON
Assistant Secretary of the Air Force
(Acquisition)

United States Special Operations Command Comments



UNITED STATES SPECIAL OPERATIONS COMMAND
OFFICE OF THE CHIEF OF STAFF
7701 TAMPA POINT BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

1 March 2007

MEMORANDUM FOR Department of Defense (Inspector General), 400 Army Navy Drive
(Room 801), Arlington, VA 22202-4704

SUBJECT: Response to Draft Report of Department of Defense Inspector General Audit of
the Special Operations Forces Support Activity Contract, Project No. D2006-D000LC-
0148.000

1. On 10 January 2007, the Department of Defense (DoD) Office of the Inspector General (IG) issued a Draft Report on the Special Operations Forces Support Activity (SOFSA) Contract, Project No. D2006-D000LC-0148.000.
2. The United States Special Operations Command (USSOCOM) appreciates the time and effort the DoD IG Team invested in providing a very thorough and professional review of the activities at SOFSA. USSOCOM's response to the subject report is contained within the attached document.
3. The point of contract is USSOCOM: (b)(3), 10 U.S.C. § 130b

Encl
as

THOMAS D. WALDHAUSER
Brigadier General, U.S. Marine Corps
Chief of Staff



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**UNITED STATES SPECIAL OPERATIONS COMMAND
RESPONSE TO DEPARTMENT OF DEFENSE INSPECTOR GENERAL
(DoD IG)
DRAFT AUDIT REPORT NO. D2006-D000LC-0148.000
SPECIAL OPERATIONS FORCES SUPPORT ACTIVITY CONTRACT (SOFSA)**

SUMMARY SECTION

The response contained herein to the Draft Report is broken into three sections:

- a. United States Special Operations Command (USSOCOM) comments related to the fundamental premises of the Draft Report.
- b. USSOCOM comments related to the findings of the Draft Report.
- c. The USSOCOM response to the recommendations of the Draft Report.

COMMENTS ON THE FUNDAMENTAL PREMISES OF THE DRAFT REPORT

1. The DoD IG findings and recommendations are based on two premises: (1) that USSOCOM violated a legal or regulatory requirement for not obtaining funded reimbursable authority (FRA) for each type of general appropriation (i.e., Operation and Maintenance (O&M); Other Procurement Authority (OPA); and Research, Development, Test and Evaluation (RDT&E) funds); and (2) that, having not secured FRA authority for OPA and RDT&E funding, USSOCOM has "potential" Anti-Deficiency Act (ADA) violations. USSOCOM fundamentally disagrees with both premises. USSOCOM has been unable to identify a legal or regulatory basis for the requirement to seek individual FRAs for OPA and RDT&E funding. Additionally, the reference to "potential" violations of the ADA is merely an unfounded speculation, and is not based on actual findings of existing violation(s) of funding limitations.

2. The Draft Report also directs USSOCOM to comply with the DoD IG's interpretation of the Defense Federal Acquisition Regulation Supplement (DFARS) 217.504 for the creation of Determination and Findings (D&Fs) for all military interdepartmental purchase requests (MIPRs). This interpretation of DFARS 217.504 would require the inclusion of a D&F in the MIPR package and contract file, even for those requirements being executed within DoD for another DoD Agency. The DoD IG acknowledges that DoD is inconsistent in its treatment of Economy Act orders and the appropriate procedures for accepting a MIPR from another DoD agency or military department. Uncharacteristically, the DoD IG does not, however, acknowledge the application section of DFARS 217.500 which states, "Unless a more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DODI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency." (Emphasis added.) Based upon this provision of the DFARS and the conflicting guidance, USSOCOM endeavored to clarify this requirement with the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Defense Procurement and Acquisition Policy (OUSD (AT&L) DPAP). On October 31, 2006, USSOCOM received an email from DoD OIG: (b)(6) of the OUSD (AT&L) DPAP. DoD OIG: (b)(6) confirmed USSOCOM's understanding of DFARS 217.504 that D&Fs are

not required for intra-DoD funding transfers. *See*, Attachment 1. The confirmation clearly justifies USSOCOM's use of D&F procedures for non-DoD transactions only. Should DoD policies and procedures change from those noted above, the command will modify its procedures to reflect the changes.

RESPONSE TO THE DoD IG FINDINGS OF THE DRAFT REPORT

DoD IG Finding on Internal Controls (Reference Draft Report: Page 4), SOFSA did not have the necessary internal controls for contract administration and financial management. Specifically, SOFSA lacked procedures to ensure it accepted the correct appropriations from requesting agencies and recorded the correct appropriation classification on task orders. In addition, SOFSA lacked procedures to maintain the identity of appropriation classifications accepted on MIPRs from other DoD organizations.

USSOCOM Response to Finding on Internal Controls. Nonconcur.

1. SOFSA does have the necessary internal controls to ensure that it accepts the correct appropriations from requesting agencies and that it records the correct appropriation classification on task orders. Specifically, for the past 10 years, SOFSA has been using a comprehensive data base, which is known as the Standard Operations and Maintenance Army Research and Development System (SOMARDS). The SOMARDS data base tracks the customer's funds by MIPR number, task order number, and appropriation citation from receipt through final expenditure or de-obligation. Funding accounts are continually monitored to ensure proper administration occurs, including a systematic assignment of project officers to each project to ensure proper performance, quality assurance, and delivery. All contractor billings are reviewed and approved prior to being tracked against each customer's account in SOMARDS. Once each individual account is properly accounted for, the contractor is paid for efforts expended in performance of that particular task effort. At no time are accounts mixed. Funds are expended only against properly approved and accounted for customer funds.
2. Furthermore, a team of SOFSA financial specialists examine every incoming MIPR for the proper year, type, and amount of funds for the work effort being requested. After a thorough fiscal analysis, the SOFSA financial specialists manually enter the customer's funds by individual task order, funding citation, and customer into the SOMARDS data base. These funds are then individually tracked throughout their utilization at SOFSA.
3. As an administrative convenience to SOFSA, and in coordination with the Defense Finance and Accounting Service (DFAS), the customers' funding citations were not used on their respective individual task orders. The SOMARDS process provides extensive fiscal controls for over 600 accounting lines each month while avoiding the DFAS' line of accounting customer charges and other associated costs (estimated at \$743,000 per year in the aggregate) for tracking each individual account on a monthly basis. The project funds are obligated and tracked in SOMARDS utilizing the assigned Job Order Number (JONO), customer MIPR number, and customer funding citation. The project funds are also entered into the Special Operations Forces Funds (SOFFUNDS) data base utilizing the assigned

JONO, customer MIPR number, and customer funding citation. *See*, paragraph 1 and all corresponding subparagraphs under the section on pages 3-4 (below) entitled “USSOCOM Response to Finding A.2,” for additional details. The use of these procedures ensures that the customer’s funds are properly identified, tracked, and expended on an individual basis.

DoD IG Finding A. Adequacy of Administration and Management of Special Operations Forces Support Activity Contracts (Reference Draft Report: Page 6).

Finding A.1: SOFSA financial officials did not comply with the DoD FMR when they accepted MIPRs for work from requesting organizations that were funded on a reimbursement basis using procurement and RDT&E appropriations, when SOFSA had the authority to accept only O&M appropriations on a reimbursement basis. SOFSA contracting officials did not comply with Federal appropriations law when they inappropriately cited procurement and RDT&E appropriations as O&M appropriations. These conditions occurred because SOFSA financial and contracting officials ignored existing guidance.

USSOCOM Response to Finding A.1. Nonconcur.

1. As noted in paragraph 1. above under the section entitled “Comments on the Fundamental Premises to the Draft Report,” there is no legal or regulatory basis for the requirement to seek individual FRAs for OPA and RDT&E funding. In fact, there is no reference to this requirement in Section 150204, Reimbursements, Volume 3, Chapter 15, of the DoD Financial Management Regulation (FMR). Prior to opining that separate FRA was unneeded for SOFSA to accept MIPRs that were funded with procurement or RDT&E, USSOCOM legal counsel carefully reviewed this section of the FMR and consulted with the USSOCOM Comptroller.

Finding A.2: As a result, SOFSA financial and contracting officials may have incurred potential violations of the ADA.

USSOCOM Response to Finding A.2. Nonconcur.

1. The reference to “potential” violations of the ADA is unsubstantiated and not based on actual findings of existing violation(s) of funding limitations. The Draft Report claims SOFSA contracting officials inappropriately cited appropriations on task orders by recording OPA and RDT&E appropriations as O&M appropriations. As previously stated in paragraph 1 under the section on page 2 entitled “USSOCOM Response to Finding on Internal Controls,” SOFSA has a very detailed Standard Operations and Maintenance Army Research and Development System (SOMARDS) data base that tracks the customer’s funds by MIPR number, task order number, and appropriation citation from receipt though final expenditure/de-obligation.

a. The SOMARDS data base is managed by a team of financial specialists who examine every incoming MIPR for the proper year, type, and amount of funds for the work being effort requested. Once these funds are determined to be correct, they are

manually entered and assigned individual task orders, funding citation, and the specific customer into the SOMARDS data base and tracked throughout their utilization at SOFSA. These orders are billed by the contractor against work expended on that order, and paid by the DFAS against the customer's appropriation. As an administrative convenience to SOFSA, and in coordination with DFAS, the customer's funding citation was not used on the individual task order. However, the SOMARDS process provides extensive fiscal controls for over 600 accounting lines each month while avoiding the DFAS' line of accounting customer charges and other associated costs (estimated at \$743,000 per year in the aggregate) for tracking each individual account on a monthly basis. The use of these procedures ensures that the customer's funds are properly identified, tracked, and expended on an individual basis. Based upon recurring internal reviews over the last 10 years, this accounting procedure has never led to an accounting error giving rise to an ADA.

b. The SOFSA staff described to the DoD IG team the DFAS-approved contractual and financial processes in place that do, in fact, ensure the correct appropriations (in accordance with the nature of the work being accepted against the contract) are accepted, recorded, expended, and tracked. At no time do the accepted funds lose their identity, nor have they ever been commingled.

c. SOFSA accepts and obligates funds on a reimbursable basis as they are stated on the customer MIPR. Each MIPR funding citation is assigned a unique Job Order Number (JONO) to ensure funds retain their identity and are utilized for their intended purpose throughout the life of the project. The project funds are obligated and tracked in SOMARDS utilizing the assigned JONO, customer MIPR number, and customer funding citation. The project funds are also entered into the SOFFUNDS data base utilizing the assigned JONO, customer MIPR number, and customer funding citation. A query can be performed in the accounting system by either JONO or MIPR number. The resulting query retrieves the line of accounting cited on the MIPR versus the FRA line of accounting cited on the task order. This process was demonstrated to the DoD IG team using random MIPR numbers of their choice.

Finding A.3. POTENTIAL COMMINGLING OF DIFFERENT TYPES OF FUNDS (Reference Draft Report: Page 8). The Draft Report contains the following comments about MIPR FD20600361592 and the potential commingling of different types of funds:

“...In addition, for task order 1174, when returning the MIPR to the requesting organization, the SOFSA financial official asked the requestor to sign a waiver to accommodate the SOFSA inappropriate citations of funds.”

USSOCOM Response to Finding A.3. Nonconcur.

1. Commingling of appropriations did not occur on these individual projects or task orders. The following four task orders were issued for MIPR FD20600361592:

TO 1174 – Project 1892 – funded with O&M
TO 1172 – Project 1843 – funded with Defense Agency Procurement

TO 1173 – Project 1891 – funded with Air Force Aircraft Procurement
TO 1553 – Project 2026 – funded with Air Force Aircraft Procurement

2. The waiver referenced was not to accommodate the “inappropriate citation” of funds. The waiver was requested because project 1892 was funded from two funding citations, both O&M appropriations. The waiver was issued to ensure the customer understood the first (O&M) funding citation would be fully expensed and disbursed prior to billing against the second O&M appropriation. No appropriations were ever mixed on any of the projects. After a 15 December 2006 conference call with the DoD IG team, SOFSA furnished the DoD IG with supporting documents for the subject MIPR consisting of a spreadsheet showing SOMARDS data, a SOFFUNDS report, a PDF file of all MIPRs and 448-2s, a PDF file of the SOMARDS query, and a PDF file of all task orders to clarify the status of this MIPR.

DoD IG Finding B. Adequacy of Justification for Award Fee Increases (Reference Draft Report: Page 13). The USSOCOM fee determining officials increased the award fees for the 1997 and 2003 contracts without adequate written justification. This condition occurred because USSOCOM officials disregarded the award fee plan for 1997 and 2003 contracts and did not comply with the Under Secretary of Defense for Acquisition, Technology and Logistics Defense Procurement and Acquisition Policy on structuring and applying award fee arrangements. As a result of the lack of documentation, it is difficult to determine whether the contractor’s level of performance warranted the increased award fees.

USSOCOM Response to Finding B. Concur.

DoD IG Finding C. Determination and Findings Documents (Reference Draft Report: Page 18). SOFSA contract files did not contain Determination and Findings documents for Economy Act orders received from requesting organizations through MIPRs for the 2003 contract. This condition occurred because SOFSA contracting officials used outdated guidance and did not comply with Federal and DoD guidance to require Determinations and Findings when accepting MIPRs, and the requesting organizations did not prepare or provide Determinations and Findings documents. As a result, SOFSA contracting officials did not have proof that the requesting organizations determined that the Economy Act orders were in the best economic interest of the Government before submitting the MIPRs to SOFSA.

USSOCOM Response to Finding C. Nonconcur for reasons previously stated in paragraph 2 under the section on page 1 entitled “Comments on the Fundamental Premises of the Draft Report.”

DoD IG Findings in Appendix B (Reference Draft Report: Page 27).

Finding 1. USSOCOM did not record an obligation for the contract minimum at time the contract was awarded on April 1, 2003.

USSOCOM Response to Finding 1 in Appendix B. Concur. USSOCOM acknowledges and fully understands the requirement to obligate the contract minimum at time of award. The failure to obligate the minimum upon award of the 2003 contract was identified by the USSOCOM legal advisor and immediately corrected (within 18 days of the 1 April 2003 award). The USSOCOM contracting process performed its function in identifying errors and immediately corrected them.

Finding 2. SOFSA financial officials should not have accepted project orders because SOFSA is a Government-owned, contractor operated facility.

USSOCOM Response to Finding 2 in Appendix B. Partially concur. It should be noted that USSOCOM identified its process to OSD in 1994, clearly identifying its use of Project Order accounting for the SOFSA operation. OSD concurred in this method of operation, and the existing regulations did not mandate a change of process until the FMR revision which added Volume 11A, Chapter 3. Subsequent to this revision, SOFSA modified its processes to implement the revised FMR guidance.

RESPONSE TO DoD IG RECOMMENDATIONS OF THE DRAFT REPORT

DoD IG Recommendation A.1 (Reference Draft Report: Page 11). We recommend that the U.S. Special Operations Command (USSOCOM) Comptroller perform an independent assessment and determine whether potential violations of the Antideficiency Act on the 1997 and 2003 SOFSA contracts should be formally investigated.

USSOCOM Response to Recommendation A.1. Nonconcur. In accordance with the DoD Financial Management Regulation (FMR), Volume 14, Chapter 3, Section 030201, there must be some "evidence" that a potential violation may have occurred in order to conduct a preliminary review. The USSOCOM Center for Force Structure, Requirements, Resources, and Strategic Assessments (SORR), Comptroller Office, has reviewed the accounting procedures in place at SOFSA and has found that all customer funds were, and continue to be, properly accounted for and tracked individually by each task order in the SOFSA SOMARDS data base. Task orders are billed by the contractor against each individual task order number, are paid by DFAS, and disbursements tracked against the individual customer accounts. Based upon our continuing analysis and monitoring of the accounting procedures at SOFSA, no ADA violations are evident. *See also*, paragraph 1, page 1, under the section entitled "Comments on the Fundamental Premises to the Draft Report" and the "USSOCOM Response to Finding A.2" on pages 3-4. Note: In accordance with USSOCOM's on-going program of process improvement, USSOCOM has scheduled a review of SOFSA processes and procedures combined with a training session for employees in April 2007.

Timeline for Completion of Recommendation A.1. Not applicable for reasons stated in the USSOCOM response to this recommendation.

DoD IG Recommendation A.2 (Reference Draft Report: Page 11). We recommend that the Director, Special Operations Forces Support Activity instruct contracting and financial officials to:

DoD IG Recommendation A.2.a (Reference Draft Report: Page 11). Close out all current year reimbursement-funded task orders other than operations and maintenance reimbursement-funded task orders and use direct-cite funding for DoD customers.

USSOCOM Response to Recommendation A.2.a. Nonconcur. As discussed in paragraph 1, page 1, under the section entitled “Comments on the Fundamental Premises to the Draft Report and in “USSOCOM Response to Finding A.1” on page 3, this recommendation is based upon an unsupported interpretation requiring individual FRAs for general appropriations. *Also see*, “USSOCOM Response to Recommendation A.2.b” below.

Timeline for Completion of Recommendation A.2.a. Not applicable.

DoD IG Recommendation A.2.b (Reference Draft Report: Page 12). Correctly record appropriation classifications received on Military Interdepartmental Purchase Requests (MIPRs) for Economy Act orders received on 1997 and 2003 contracts with L3 Communications Integrated Systems, Inc.

USSOCOM Response to Recommendation A.2.b. Nonconcur. USSOCOM has consistently and correctly cited, tracked, and expended customer funds for all work received. *See*, paragraph 1, page 1, under the section entitled “Comments on the Fundamental Premises to the Draft Report; and paragraph 1 and corresponding subparagraphs under the section on pages 3-4 entitled “USSOCOM Response to Finding A.2.”

Timeline for Completion of Recommendation A.2.b. Not applicable.

DoD IG Recommendation A.2.c (Reference Draft Report: Page 12). Record the correct appropriation classifications as received on MIPR on task orders for future work to be performed under Economy Act orders received on the 1997 and 2003 contracts with L3 Communications Integrated Systems, Inc.

USSOCOM Response to Recommendation A.2.c. Nonconcur. As stated in “USSOCOM Response to Recommendation A.2.b,” above, SOFSA is recording, tracking, and expending customer funds as documented for each task order in the SOMARDS and SOFFUNDS accounting systems.

Timeline for Completion of Recommendation A.2.c. Not applicable.

DoD IG Recommendation A.2.d. Establish procedures to identify correct appropriation classifications on all task orders and use those funds in accordance with their legal limitations in coordination with the USSOCOM Comptroller assessment in Recommendation A.1.

USSOCOM Response to Recommendation A.2.d. Nonconcur. The legal limitations on the use of funds are basic fiscal requirements that have always been a part of the SOFSA accounting system. *See*, paragraph 1, page 1, under the section entitled “Comments on the Fundamental Premises to the Draft Report”; and paragraph 1 and all corresponding subparagraphs under the section on pages 3-4 entitled “USSOCOM Response to Finding A.2,” for a complete description of the SOFSA accounting systems.

Timeline for Completion of Recommendation A.2.d. Not applicable.

DoD IG Recommendation A.2.e (Reference Draft Report: Page 12). Request the additional appropriation accounts needed through the USSOCOM Comptroller to carry out its mission effectively, including accepting reimbursement-funded MIPR and issuing related task orders.

USSOCOM Response to Recommendation A.2.e. Nonconcur. *See*, paragraph 1, page 1, under the section entitled “Comments on the Fundamental Premises to the Draft Report; and paragraph 1 under the section on page 3 entitled “USSOCOM Response to Finding A.1,” USSOCOM has been unable to determine a legal or regulatory basis for this requirement.

Timeline for Completion of Recommendation A.2.e. Not applicable.

DoD IG Recommendation A.2.f (Reference Draft Report: Page 12). Develop or update internal guidance for financial and contracting officials on accepting and processing MIPRs.

USSOCOM Response to Recommendation A.2.f. Partially concur. Even though USSOCOM has guidance on the MIPR process, USSOCOM is always trying to improve its existing processes and procedures.

Timeline for Completion of Recommendation A.2.f. Not applicable.

DoD IG Recommendation A.2.g. Provide training for financial and contracting officials on accepting and processing MIPRs.

USSOCOM Response to Recommendation A.2.g. Concur. USSOCOM has been providing training for the past two years. USSOCOM will continue to monitor external guidance and incorporate changes into the training as necessary.

Timeline for Completion of Recommendation A.2.g. Process Management Review of SOFSA scheduled for April 2007.

DoD IG Recommendation B (Reference Draft Report: Page 17). We recommend that the Commander, USSOCOM, require fee determining officials to document the rationale for changing the award fee from the Award Fee Evaluation Board's (AFEB) recommendation and explain the decision in the determination memorandums as required by Under Secretary of Defense for Acquisition, Technology, and Logistics Defense Procurement and Acquisition Policy, "Contract Pricing Reference Guide," Volume 4, Chapter 1, Section 1.4.2, and as stated in the award fee plan for contracts USZA22-03-D-0006 and USZA22-03-C-0056.

USSOCOM Response to Recommendation B. Concur. See, "USSOCOM Response to Finding B" on page 5 above.

Timeline for Completion of Recommendation B. This recommendation shall be incorporated into the next FDO decision memorandum.

DoD IG Recommendation C.1 (See Draft Report: Page 22). We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer, in coordination with the Under Secretary of Defense (Acquisition, Technology, and Logistics), use the interagency working group to resolve inconsistencies on the requirements for Determinations and Findings for Economy Act orders.

USSOCOM Response to Recommendation C.1. Not appropriate for SOCOM to comment.

Timeline for Completion of Recommendation C.1. Not applicable.

DoD IG Recommendation C.2 (Reference Draft Report: Page 22). We recommend that the Director, Special Operations Forces Support Activity:

DoD IG Recommendation C.2.a (Reference Draft Report: Page 22). Comply with 31 U.S.C. 1535, Department of Defense Instruction 4000.19, and Defense Federal Acquisition Regulation Supplement 217.504, which require that copies of Determination and Findings documents from requesting organizations be attached with MIPRs and be placed in contract files for the 2003 contract and any subsequent, related contracts.

USSOCOM Response to Recommendation C.2.a. Nonconcur. As discussed in paragraph 2, under the section on page 1 entitled "Comments on the Fundamental Premises of the Draft Report," the DoD IG has incorrectly applied a section of DFARS 217.500. The application section for this part states that the provisions of DFARS 217.5 only apply when work is being performed by or for non-DoD Agencies.

Timeline for Completion of Recommendation C.2.a. Not applicable.

DoD IG Recommendation C.2.b (Reference Draft Report: Page 23). Develop procedures and controls for properly maintaining all required MIPR documents, including copies of Determination and Findings, in the contract files.

USSOCOM Response to Recommendation C.2.b. Nonconcur. SOFSA already has procedures and controls for properly maintaining all required MIPR documents. *See*, “USSOCOM Response to Finding on Internal Controls” on page 2 and “USSOCOM Response to Finding A.2” on pages 3-4 for a detailed discussion on SOFSA accounting processes.

Timeline for Completion of Recommendation C.2.b. Not applicable.

DoD IG Recommendation C.2.c (Reference Draft Report: Page 23). Develop procedures and controls, such as a checklist, that will determine whether staff have developed and appropriately reviewed all required data and supporting documents before accepting a MIPR.

USSOCOM Response to Recommendation C.2.c. Partially concur. Even though SOFSA has adequate procedures and controls in place, USSOCOM is always reviewing them to see if any changes need to improve them. *See*, “USSOCOM Response to Finding on Internal Controls” on page 2 and “USSOCOM Response to Recommendation A.2.f.” on page 8.

Timeline for Completion of Recommendation C.2.c. Not applicable.

DoD IG Recommendation C.2.d (Reference Draft Report: Page 23). Define roles and responsibilities of financial and contracting officers involved in the MIPR process to properly enforce Federal and DoD guidance.

USSOCOM Response to Recommendation C.2.d. Nonconcur. *See*, “USSOCOM Response to Finding on Internal Controls.” In summary, SOFSA has always had a clearly defined process of financial controls and contracting procedures. Internal SORR and Special Operations and Logistics Center Procurement Directorate reviews of the SOFSA contracting process have clearly demonstrated the SOFSA Director and staff diligence in ensuring compliance with current directives and procedures and the redirection of the receipt and obligation of customer funds at SOFSA.

Timeline for Completion of Recommendation C.2.d. Not applicable.

DoD IG Recommendation C.2.e (Reference Draft Report: Page 23). Develop or update internal guidance and training on how to accept and process MIPRs, including the requirement for Determination and Findings.

USSOCOM Response to Recommendation C.2.e. Partially concur. *See*, “USSOCOM Response to Recommendation A.2.f.” on page 8 regarding internal guidance. USSOCOM has been providing training for the past fifteen years. USSOCOM will continue to monitor external guidance and incorporate changes into the training as necessary. Finally, with respect to the nonconcurrency portion of this recommendation, *see*, paragraph 2 under the section on page 1 entitled “Comments on the Fundamental

Deleted

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C.2.d.

Premises of the Draft Report.” There is no requirement for a D&F for internal DoD MIPRs.

Timeline for Completion of Recommendation C.2.e. Not applicable.

DoD IG Recommendation C.3 (Reference Draft Report: Page 23). We recommend that the Assistant Secretary of the Air Force for Acquisition revise the Air Force Federal Acquisition Regulation Supplement, section 5317.5, “Interagency Acquisitions Under the Economy Act,” to comply with the Defense Federal Acquisition Regulation Supplement, subpart 217.504, “Ordering Procedures.”

USSOCOM Response to Recommendation C.3. Not appropriate for SOCOM to comment.

Timeline for Completion of Recommendation C.3. Not applicable.

ATTACHMENT 1

From: DoD OIG - (b)(6), OSD-ATL [mailto:DoD OIG - (b)(6)@osd.mil]
Sent: Tuesday, October 31, 2006 3:43 PM
To: USSOCOM - (b)(3), 10 CIV USSOCOM HQ
Cc: DoD OIG - (b)(6), OSD-ATL
Subject: Economy Act Determination

USSOCO

Per your request, here is an email confirmation of our discussion on Economy Act Determinations.

Your two questions, as I understand them are:

1. With regard to FAR 17.5, DFARS 217.5, and DODI 4000.19, at what level do Economy Act Determinations need to be approved?

As stated in FAR 17.503(c), "The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency."

This level of approval is not changed under DFARS 217.5, however, this DFARS subpart does reference DODI 4000.19 with regard to support agreements between the Services and non-DoD Agencies. Paragraph 4 of the DODI 4000.19 sets forth the approval levels for those support agreements.

2. Is an Economy Act Determination required for acquisitions that remain within DoD?

Since such acquisitions remain within the Agency (Department of Defense), no Economy Act Determination is required. This is further supported by DFARS 217.500(b) which states "Unless more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DoDI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency."

Please contact DoD OIG: (b)(6) if you have any further questions regarding this matter.

DoD OIG - (b)(6)
OSD (AT&L), DPAP, DARS
Voice: 703-602-DoD
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Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Readiness and Operations Support prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

Wanda A. Scott

DoD OIG: (b)(6)

A large black rectangular redaction box covers the majority of the page content below the name 'Wanda A. Scott'. The text 'DoD OIG: (b)(6)' is visible in the top-left corner of this redacted area.

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Inspector General
Department of Defense

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