

August 2, 2004



Acquisition

Contract No. N00024-02-C-6165 for
Consulting Services at the Naval
Shipbuilding, Conversion, and Repair
Facility
(D-2004-103)

Department of Defense
Office of the Inspector General

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Acronyms

DB&A	DeWolff, Boberg, and Associates
FAR	Federal Acquisition Regulation
NAVSEA	Naval Sea Systems Command
PEO	Program Executive Office
SUPSHIP	Supervisor of Shipbuilding, Conversion, and Repair



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

August 2, 2004

MEMORANDUM FOR NAVAL INSPECTOR GENERAL

SUBJECT: Report on Contract No. N00024-02-C-6165 for Consulting Services at the Naval Shipbuilding, Conversion, and Repair Facility (Report No. D-2004-103)

We are providing this report for review and comment. We performed this audit in response to a congressional request. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all issues be resolved promptly. As a result of management comments, we request that the Navy provide additional comments on Recommendation 3.b. We request that management provide the comments by October 1, 2004.

If possible, please send management comments in electronic format (Adobe Acrobat file only) to Audcm@dodig.osd.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).

Questions should be directed to Mr. Terry L. McKinney at (703) 604-9288 (DSN 664-9288) or Mr. Nick Como at (703) 604-9215 (DSN 664-9215). See Appendix F for the report distribution. The team members are listed inside the back cover.

By direction of the Deputy Inspector General for Auditing:

A handwritten signature in black ink, reading "David K. Steensma".

David K. Steensma
Assistant Inspector General
for Contract Management

Office of the Inspector General of the Department of Defense

Report No. D-2004-103
(Project No. D2004CF-0031)

August 2, 2004

Contract No. N00024-02-C-6165 for Consulting Services at the Naval Shipbuilding, Conversion, and Repair Facility

Executive Summary

Who Should Read This Report and Why? DoD organizations that are considering the award of a consulting services contract to improve employee efficiency and productivity should read this report in order to ensure applicable contracting rules are followed and to help preclude negative reaction from the workforce.

Background. The Naval Sea Systems Command awarded contract N00024-02-C-6165 to DeWolff, Boberg, and Associates on May 22, 2002, for an initial award amount of \$1,309,000. The current value of the contract, after nine modifications, is \$22,181,200. The Naval Sea Systems Command issued and administered modifications to this contract to conduct efficiency management and productivity improvement consulting services at the Supervisor of Shipbuilding, Conversion, and Repair Facility, Newport News, Virginia. The statement of work for this effort required the contractor to identify and analyze the causes of organizational and operational issues that were restricting the Newport News repair facility from achieving better productivity at an accelerated pace. During October 2003, Representative Jo Ann Davis and Senator George Allen requested that we review the concerns of a constituent. The complainant questioned how the contractor was uniquely qualified to justify a sole-source procurement, why the initial appropriated funding for this contract was changed, why the contractor was paid a generous contract price, and why the negative impact caused by contractor performance was not addressed. The complainant also alleged non-responsiveness by the Naval Sea Systems Command Inspector General and possible unnecessary access to proprietary data by the contractor.

In January 2004, we received a separate complaint involving the same contract. The complaint was provided by the Defense Hotline and addressed the justification of unusual and compelling urgency for a sole-source contract. In addition, the complainant alleged that the contractor failed to remit taxes and secure appropriate business licenses with the Commonwealth of Virginia and municipal authorities. Overall, the complainant(s) raised 10 allegations (7 in the Congressional Request and 3 in the Defense Hotline complaint) addressing the contract for efficiency management and productivity improvement consulting services.

Results. Regarding contract N00024-02-C-6165, the Naval Sea Systems Command did not execute effective contract planning and administration procedures outlined in the Federal Acquisition Regulations. Two of the 10 allegations questioned the Naval Sea Systems Command justification for awarding a sole-source contract citing only one responsible source and unusual and compelling urgency. These two allegations were substantiated in that the Navy did not meet the Federal Acquisition Regulations criteria to justify awarding a sole-source contract for consulting services citing that an urgent

requirement and only one responsible source existed. Advance planning would have eliminated the necessity for urgency. Furthermore, other potential firms were available to compete for the contract requirement. As a result, any financial benefits that could be achieved through competition were unattainable.

Because of the overall inappropriate contract planning and administration procedures employed with contract N00024-02-C-6165, the Commander, Naval Sea Systems Command should terminate all activity on this contract at the conclusion of work at the Newport News repair facility and compete subsequent contract requirements for consulting services. In addition, the Commander, Naval Sea Systems Command should issue written guidance to its contracting activities addressing the proper preparation of a justification and approval for other than full-and-open competition when contemplating the issuance of sole-source contracts and ensure that changes in contract scope generate new contracts.

For the remaining eight allegations, we found that five allegations questioning contract funding, the contract price, time expenditures and travel expenses, contractor performance, and the possible unnecessary access to proprietary data by the contractor were unsubstantiated. We substantiated two allegations questioning the contractor's business liabilities and state registration requirements. The contractor was taking steps to rectify these areas. We could not assess the legitimacy of the remaining allegation regarding nonresponsiveness by the Naval Sea Systems Command Inspector General based on the absence of facts and supporting data. However, we referred this allegation to the Deputy Inspector General for Inspections and Policy for further review. See the Finding section and the Congressional and Defense Hotline section of the report (Appendix C) for a discussion of the specific issues raised by the complainant(s).

Management Comments and Audit Response. The Director, Program Analysis and Business Transformation Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition agreed not to place new work on contract N00024-02-C-6165 upon the conclusion of work at the Newport News repair facility and agreed to compete future consulting work at other repair facilities. The Director agreed in principle that written guidance was necessary to address the preparation of a "Justification and Approval for Other than Full-and-Open Competition" document, but stated that adequate guidance currently exists and was properly implemented. The Director agreed to conduct refresher training that would highlight key points in justification and approval preparation. The Director did not agree that written guidance addressing changes in contract scope was necessary, and maintained that no requirement exists that a change in contract scope would require a new contract. We do not agree that a contracting officer's discretion is paramount in decisions involving contract scope changes and that written guidance addressing contract scope changes is still required. We request that the Director provide comments on the final report by October 1, 2004. See the Finding section of the report and Appendix E for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

Table of Contents

Executive Summary	i
Background	1
Objectives	2
Finding	
Contracting for Consulting Services	3
Appendixes	
A. Scope and Methodology	14
B. Congressional Requests	16
C. Responses to Allegations Raised in the Congressional Requests and the Defense Hotline Complaint	18
D. Chronology of Events for Contract N00024-02-C-6165	25
E. Navy Comments on the Report Finding and Audit Response	27
F. Report Distribution	30
Management Comments	
Department of the Navy	33

Background

Congressional Request. On October 28 and 31, 2003, Representative Jo Ann Davis and Senator George Allen requested that the Inspector General of the Department of Defense review the concerns of a constituent (see Appendix B for copies of the requests). The identical, anonymous complaints were submitted by the complainant to the representative and senator and alleged contract award and contractor performance improprieties involving a contract with DeWolff, Boberg, and Associates (DB&A) for consulting services conducted at the Supervisor of Shipbuilding, Conversion, and Repair (SUPSHIP) Facility Newport News, Virginia. Specifically, the complainant questioned how DB&A was uniquely qualified as to justify a sole-source procurement, why the initial funding for this contract was changed from shipbuilding and conversion funding to operation and maintenance funding, why the contractor was paid an overly generous contract price of \$7,000 per week per contractor employee, and why the negative impact of productivity and morale caused by the performance of the contractor was not addressed. The complainant further alleged nonresponsiveness by the Naval Sea Systems Command (NAVSEA) Inspector General and possible unnecessary access to proprietary data by DB&A. See Appendix C for a discussion of the specific issues raised.

Defense Hotline. On January 20, 2004, the Defense Hotline received a complaint involving a consulting services contract with DB&A at SUPSHIP, Newport News. The complaint addressed the justification of unusual and compelling urgency for a sole-source contract. In addition, the complainant alleged that DB&A “has continued to be defiant” with regard to remitting taxes and securing appropriate business licenses with the Commonwealth of Virginia and municipal authorities. See Appendix C for a discussion of the specific issues raised.

Consulting Services Contract. NAVSEA awarded contract N00024-02-C-6165 to DB&A on May 22, 2002, for an initial amount of \$1,309,000. The contract was a firm-fixed-price contract and was issued for efficiency management and productivity improvement consulting services. The original contract directed that consulting services be conducted at NAVSEA headquarters activities. As of February 2004, the contract had been modified nine times. The modifications represented administrative changes and increases in funding for the initial award, different functional areas, and different locations. Modification P00007, signed on August 15, 2003, for \$4,284,400, contracted for a 30-week efficiency study to upgrade the management operating system and culture at SUPSHIP, Newport News. Modification P00008, signed on September 4, 2003, added an additional 18 weeks and \$2,570,400 for consulting services at the Newport News repair facility.

The statement of work required DB&A to identify and analyze the causes of organizational and operational issues that were restricting the repair facility from achieving better productivity at an accelerated pace. In addition, the contractor was tasked to provide a better understanding of SUPSHIP, Newport News, and identify the true capacity of resources from processes to personnel. A chronology of events for contract N00024-02-C-6165 is contained in Appendix D.

Objectives

The audit objective was to examine whether the Navy executed effective contract planning and administration procedures. Specifically, we examined the type of contract used, funding and pricing issues, and evaluated the performance of the contractor. See Appendix A for a discussion of the audit scope and methodology.

Contracting for Consulting Services

Naval Sea Systems Command contracting officials did not meet Federal Acquisition Regulation criteria when they cited unusual and compelling urgency and only one responsible source to justify awarding a sole-source contract for consulting services to DeWolff, Boberg, and Associates. An urgent requirement did not exist and other potential firms were available to compete the contract requirement. Specifically, contracting officials did not:

- properly conduct acquisition planning,
- attempt to obtain competition for the original contract and its nine subsequent modifications,
- award modifications within the original scope of work, and
- adequately document contract decisions and rationales.

As a result, any financial benefits that could be achieved through competition were unattainable.

Budget Reduction Notification

On September 4, 2001, a joint memorandum from the Vice Chief of Naval Operations and the Assistant Secretary of the Navy for Research, Development, and Acquisition directed the Navy to find reductions in program costs, for contracted services, and staffing levels at System Commands and Program Executive Offices. According to the Deputy Executive Director of Corporate Operations at NAVSEA, this memorandum served as a catalyst for future directed reductions in contractor support services and civilian personnel accounts. In February 2002, a resource allocation display of the FY 2004 budget called for an 8 percent civilian personnel reduction that equated to a 20 percent reduction in civilian personnel end strength at NAVSEA and Program Executive Offices. In May 2002, the Chief of Naval Operations directed that NAVSEA “reduce overhead by 10 percent [and] return savings to fleet readiness and procurement accounts.”

According to the Deputy Executive Director, NAVSEA needed to quickly determine how to absorb the budget reductions in both contractor support services and civilian personnel accounts without sacrificing its product and quality of service, while concurrently absorbing increases in future workload. Although it is unclear when this budget reduction decision was made, NAVSEA decided to examine its organization to determine how to make it more productive and efficient.

Criteria

The Federal Acquisition Regulation (FAR) 6.302-2, “Unusual and Compelling Urgency,” states that when the need for supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full-and-open competition need not be provided for. The authority of unusual and compelling urgency applies in the situation where a delay in award of a contract would result in serious injury, financial or other, to the Government. Contracts awarded using the authority of unusual and compelling urgency shall be supported by written justification and approvals and require that agencies request offers from as many potential sources as is practicable under the circumstances. The Defense Federal Acquisition Regulation Supplement 206.302-2(b), “Unusual and Compelling Urgency,” elaborates by stating that the use of this authority may be appropriate when supplies, services, or construction are needed at once because of fire, flood, explosion, or other disaster.

FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements,” states that full-and-open competition need not be provided for when it is demonstrated that no other supplies or services will satisfy agency requirements or when the contractor displays a unique and innovative concept to fulfill the contract requirements.

Acquisition Planning

Unusual and Compelling Urgency. FAR 6.301(c)(1), “Policy,” states that contracting without providing for full-and-open competition shall not be justified on the basis of a lack of advance planning by the requiring activity. NAVSEA received notification as early as September 2001 regarding future reductions in the FY 2004 budget. We found no evidence that NAVSEA contracting officials took action to start planning a contract for efficiency management and productivity improvement consulting services, as prescribed in FAR 6.301(c)(1). NAVSEA stated in the original justification and approval document, signed May 10, 2002, that “efforts have been made to reduce expenditures, however efforts up to this point have not yielded the savings required . . .” After further questioning, NAVSEA contracting officials confirmed that these efforts were not related to a consulting services contract.

To meet contractor support service reductions in FY 2000 and beyond, NAVSEA stated that it established a contract efficiencies working group, which allowed a thorough requirements review to justify each amount and level of service, and looked at process improvements in their buying habits. To meet civilian personnel reductions in FYs 2003 and 2004, NAVSEA implemented strict no hiring policies and offered two voluntary separation incentive pay/voluntary early retirement authority opportunities. In March 2002, NAVSEA introduced the NAVSEA Placement Program, which still exists today. According to the Deputy Executive Director of Corporate Operations, this process was the key to reducing NAVSEA staff to the FY 2004 budget requirements. We raised the question as to

why NAVSEA needed to contract with DB&A for consulting services if the NAVSEA Placement Program was, indeed, the key to reducing NAVSEA staffing. According to the Deputy Executive Director, the NAVSEA Placement Program was an effective approach to downsize without any adverse actions on the workforce. He stated that, “The DB&A effort, on the other hand, was completely about efficiency and productivity improvements and nothing about downsizing. The DB&A effort was solely applied to find more efficient methods to perform our mission and increase our productivity.” Yet, NAVSEA contracting officials used the FY 2004 budget reductions as the justification to award a sole-source contract to DB&A, citing unusual and compelling urgency.

NAVSEA contracting officials did not take action in September 2001 to start planning a contract for efficiency management and productivity improvement consulting services. However, the contracting officials later contended that the requirement was considered urgent in May 2002. According to NAVSEA contracting officials, the Program Executive Office (PEO), Carriers (a primary customer of SUPSHIP, Newport News) recommended DB&A because it had prior involvement with the contractor on a similar scope award. The \$1,309,000 contract was awarded to DB&A on a sole-source basis citing unusual and compelling urgency. DB&A was also awarded four modifications (P00001 through P00004) dated June 3 through August 30, 2002, using the same justification and approval document. These modifications added funding, restated line items, performed an administrative change, and executed a portion of the option periods against the original contract.

Only One Responsible Source. The NAVSEA contracting office determined that modifications (P00005 through P00009) to contract N00024-02-C-6165 would be awarded on a sole-source basis before synopsisizing the modifications, later citing only one responsible source. We reviewed three synopses that the NAVSEA contracting officials prepared before issuing modifications that “. . . added new work and scope” to the original contract. Each synopsis stated, “The Naval Sea Systems Command (NAVSEA) intends to negotiate with and issue a sole-source modification to Dewolff, Boberg, and Associates . . .” However, the contracting officials explained that they decided to award the modifications on a sole-source basis after posting the synopses on the Federal Business Opportunities Web site and no other contractors expressed an interest to bid on the modifications.

Although NAVSEA appropriately stated in the synopsis that it intended to award a sole-source modification to DB&A, we interpreted the original determination to award the modifications on a sole-source basis to be inappropriate. The contracting office should not have predisposed this requirement for consulting services using the sole-source criteria. If the NAVSEA contracting office truly intended to compete contract N00024-02-C-6165, then the synopses would not have been prepared to award a sole-source modification to the contract.

Competition Requirements

Unusual and Compelling Urgency

The justification of unusual and compelling urgency does not eliminate the need to review other sources to fill the contract requirement. FAR 6.302-2(c)(2), “Unusual and Compelling Urgency – Limitations,” requires that agencies request offers from as many potential sources as is practicable under the circumstances. The May 10, 2002, justification and approval document stated that a formal market survey was not conducted because it was not practicable to establish further competition because DB&A was free of any conflict of interests relating to the nature of the services. However, the original business clearance memorandum, dated May 17, 2002, provided a review of contractors that perform similar services, which were available on various General Services Administration schedules, in order to show price reasonableness. Because the contract was not awarded until May 22, 2002, we question why NAVSEA did not conduct any market research when they learned there were other firms capable of performing the required work. We searched the General Services Administration Advantage! Web site in April 2004 and documented that 1,379 contractors could have performed consulting services for DoD. NAVSEA did not comply with FAR 6.302-2 because it failed to request offers from potential sources.

Only One Responsible Source

Synopsis. FAR 5.207, “Preparation and Transmittal of Synopses,” requires that a noncompetitive contract action synopsis should include, among other things, the intended source, a statement of the reasons justifying the lack of competition, and a statement that all responsible sources may submit a bid.

Each synopsis stated that NAVSEA intended to issue a sole-source modification, which we contend may have deterred potential competitors. NAVSEA contended that language citing a sole-source contract modification is a customary practice. However, the examples that the contracting office provided incorporating this language typically were used for procuring specialized equipment from large defense contractors. Smaller firms may have the ability to fulfill the requirement for an efficiency study; however, they may not have submitted a bid because they were unaware that a sole-source synopsis may be competed. NAVSEA similarly inserted the following statement in the three synopses:

DBA has already begun the Command-wide study and as such holds significant knowledge of NAVSEA and affiliated Program Executive Office (PEO) procedures, contracts, policies, and organization. The scope of work requires that the contractor evaluate NAVSEA processes, program management functions and duties, and government and contractor manpower needs. As such, it is a requirement that the contractor be free from all potential conflict of interests, cannot be currently performing any other NAVSEA contract, and will be prevented from being awarded any future NAVSEA business. DBA is in a unique position of never having held a NAVSEA contract, other

than the current Command-wide Efficiency Management and Productivity Improvement Consulting Services contract and is excluded from performing any different type of future effort for NAVSEA.

According to that statement, the lack of competition was necessary due to the significant knowledge the contractor had of NAVSEA. If this were the case, this logic would apply to every follow-on contract, always rendering competition a moot concern.

As stated above, each synopsis stated that “. . . it is a requirement that the contractor be free from all potential conflict of interests, cannot be currently performing any other NAVSEA contract, and will be prevented from being awarded any future NAVSEA business. . . .” The legal counsel and Executive Director for Contracts, NAVSEA approved the use of this requirement in the contract. The contracting office explained that the contractor could perform efficiency studies for NAVSEA, but not dissimilar contracting work that would be enhanced from the knowledge acquired through the efficiency study. The contracting office stated that:

The contract contains a clause, which prohibits them [the contractor] from performing any other type of work for NAVSEA. For example, they would not be able to do program management or logistics work for us, but could hold another contract for other efficiency management efforts. . . . This effort required the contractor to analyze and provide recommendations about the level of contractor support services of the command. It would be a conflict of interest and inappropriate for any company, to on one hand have access to information describing the level of effort required to satisfy contracted out requirements and recommend to us to cut or keep a specific level of service, while on the other hand proposing on those same requirements. At the very least, this represents an unfair competitive advantage. . . . If this requirement were not in the contract, there would be nothing to prohibit them from suggesting that we eliminate their competitor’s contracts and keeping theirs.

However, the synopsis does not explain that the contractor would be able to perform additional consulting services-type efforts. Another contractor, specializing in consulting services, could have submitted an offer and could have been awarded additional NAVSEA consulting services contracts. However, without directly questioning the NAVSEA contracting office, a contractor would not have known it would not have been restricted from future consulting services contracts.

Contract Modifications. The NAVSEA contracting office prepared three synopses each time they “. . . added new work or scope” and posted them on the Federal Business Opportunities Web site. NAVSEA awarded multimillion-dollar modifications without conducting sufficient market research. Because DB&A would have been disqualified, according to the stated synopsis requirement *cannot be performing any other NAVSEA contract*, the command may also have awarded modifications instead of awarding new contracts for four modifications

(P00006, P00007, P00008, and P00009). To avoid this potential conflict, NAVSEA awarded a modification to the contract while changing the scope of the award.

Modification P00005. The first synopsis was entered into the Federal Business Opportunities Web site on June 28, 2002, and addressed the September 30, 2002, modification P00005, valued at \$10,963,400. The contracting office explained that it learned of this requirement in June 2002. NAVSEA had approximately 3 months to solicit potential consulting services firms and conduct sufficient market research. The contracting office stated, “. . . We synopsized P00005 a good amount of time before the mod, because we knew it was coming.” The contracting office relied solely on the Federal Business Opportunities Web site for interested contractors to contact NAVSEA. When no other contractors expressed an interest to fulfill the requirement of P00005, NAVSEA issued a justification and approval for other than full-and-open competition, citing only one responsible source. However, because the contracting office was aware of the impending requirement, it should have conducted appropriate competition procedures to encourage competition from other contractors.

We searched the General Services Administration Web site for consulting services firms that currently have a consulting services schedule. We determined that 1,379 contractors existed that could have possibly fulfilled the requirement.

Modification P00006. The second synopsis was placed on the Federal Business Opportunities Web site on January 16, 2003, and addressed the January 31, 2003, modification P00006. The contracting office explained that the requirement was generated during January 2003. This modification changed a portion of the location of the contract to Yorktown, Virginia. The major taskings in the statement of work for P00006 were similar to the taskings in the statement of work for the original contract. The major difference was including an additional line item changing the location of the contract. The new location was not within the scope of the original contract and including this requirement within this contract did not allow for proper competition. The contracting office should have excluded this modification requirement from this contract and awarded a new contract.

Modifications P00007, P00008, and P00009. The third synopsis was placed with the Federal Business Opportunities Web site on July 18, 2003, and addressed the August 15, 2003, modification P00007; September 4, 2003, modification P00008; and September 25, 2003, modification P00009.

Modifications P00007 and P00008. The Deputy, PEO, Carriers explained that a proper management operating system was not implemented at SUPSHIP, Newport News to ensure that ship overhaul and repair was conducted within time and budget constraints. Furthermore, NAVSEA was dissatisfied with the quality and timeliness of the SUPSHIP, Newport News workload. Therefore, the Deputy PEO requested that DB&A review the management operating system to enhance productivity. The Deputy PEO was familiar with DB&A and knew that NAVSEA currently held a contract with the company.

DB&A conducted an analysis at SUPSHIP, Newport News to determine whether it would be able to implement a new management operating system. The PEO, Carriers funded the DB&A survey that was conducted from October 28, 2002, through November 8, 2002. DB&A estimated a savings of \$23,795,540 through a reduction of Government billets and from increased contractor and Government productivity. DB&A also stated it could improve service and quality measures at SUPSHIP, Newport News.

Although the DB&A survey was conducted from October 28, 2002, through November 8, 2002, the modification implementing the SUPSHIP, Newport News effort was not effective until August 15, 2003. The Deputy, PEO, Carriers explained that the 9-month delay resulted from the large workload at SUPSHIP, Newport News. The Deputy, PEO, Carriers and the Deputy Commander, SUPSHIP, Newport News, decided when to implement the effort at the repair facility based on the most suitable time for the Newport News staff. However, the NAVSEA contracting office learned of the Newport News requirement in July 2003. In turn, PEO, Carriers did not appropriately inform the NAVSEA contracting office of the intended requirement. If PEO, Carriers notified NAVSEA in November 2002 of the potential requirement, NAVSEA could have competed the requirement.

Modification P00009. The contracting office explained that it did not synopsise P00009 because NAVSEA determined it to be within the same scope of work as P00007 and P00008. Furthermore, NAVSEA contended that the synopsis for P00007 and P00008 was “. . . sufficiently large enough (in terms of hours and estimated cost)” to include the work performed for P00009. However, P00007 and P00008 involved conducting, developing, and implementing specific tasks at SUPSHIP, Newport News while P00009 involved an analysis of current and future capabilities at SUPSHIP, Groton, Connecticut and SUPSHIP, Bath, Maine. The contracting office modified the statement of work to include the aforementioned analysis that was not originally included in any previous version of the statement of work.

The requirements for the SUPSHIP, Yorktown; SUPSHIP, Newport News; SUPSHIP, Groton; and SUPSHIP, Bath efforts were not included in the statement of work for the original contract. We believe that NAVSEA included this requirement as a modification to the original award in order not to violate the synopsis requirement that the contractor *cannot be currently performing any other NAVSEA contract*.

Furthermore, the justification and approval documents explain that market research was not conducted on any modification because “. . . it was not practicable to establish further competition . . .” due to the nature of the requirements. However, we contend that this is an important factor for utilizing the only one responsible source justification. Through market research, the assumption regarding the unique qualifications of the contractor would have been unveiled. If NAVSEA appropriately planned this contract within the early stages of the acquisition process, it could have initially synopsized this contract one time

stating a possible value of \$22 million with consulting services work performed at various locations. Potential contractors may then have been more inclined to compete for the requirement.

Contract Documentation

Justification and Approval for Other Than Full-and-Open Competition.

FAR 6.303-2(a), “Justifications – Content,” states that when an agency uses noncompetitive procedures to award a contract, it is required to execute a written justification and approval with sufficient facts and rationale to support the use of the specific authority cited. The most critical aspect of the justification of unusual and compelling urgency is quantifying the nature of the urgency. If any delay will place financial obligations on the Government, these costs must be estimated and the basis of the estimate explained in the justification. According to a DoD “Lessons Learned” from case law on urgency-based sole-sourced actions, November 20, 2002, all acquisition workforce personnel involved in preparing and certifying justification and approvals should understand the goods or services being acquired and ensure that recent market research has been performed and that thorough and complete justifications for sole-source actions were prepared in order to ensure that any protests received could be effectively refuted. As stated in a November 2001 article in *Washington Technology*, “Streamlining Procurements: Unusual and Compelling Urgency,” it is critical that the agency fully explain and justify its decision in the justification and approval document.

The May 10, 2002, justification and approval document, citing unusual and compelling urgency for the DB&A contract, was neither specific nor did it appear to justify the seriousness anticipated by the law and implementing regulations. The justification and approval included only the minimum information required by the FAR. The justification and approval offered no rationale for certifying the extent of harm to the Government, thus did not justify the use of the authority of unusual and compelling urgency.

The justification and approval documents citing only one responsible source were also neither specific nor did the justifications appear to be justified by the law and implementing regulations. The justification documents stated that DB&A:

... is solely qualified as it is currently in the process of performing this effort for NAVSEA. Since the goal of this effort is to provide recommendations to allow NAVSEA to eliminate duplicative engineering services and support, the cost and time delays associated with qualifying a new source would significantly put the success of this effort in jeopardy. ... DBA is uniquely qualified for this requirement insofar as they are free of any conflict of interests relating to the nature of the service ...

However, the explanation does not thoroughly explain the uniqueness of DB&A or why other consulting services contractors were not considered for the award. Furthermore, if the justification was based on reduction of duplication of costs or unacceptable delays to fulfill the requirements, then the document should quantify

the costs in terms of either time or money and provide the basis for these estimates. However, we did not find evidence of this information on any justification and approval citing only one responsible source.

Statement of Work. The statement of work for the consulting services contract did not explicitly address the actual intention of the contract. NAVSEA contended that the urgent need for the consulting services contract was to reach the FY 2004 budget reductions. Yet, the 3-page statement of work only alluded to that reason twice. It stated that the contractor would “identify the true capacity levels of resources” and the outlined approach shall have the critical success factor of “methods of determining resource requirements.” The seriousness of the justification of unusual and compelling urgency was not detailed in this statement of work, nor was the true required expectation of this contract articulated.

Modification. FAR Subpart 4.8, “Government Contract Files,” requires that the contract folder contain documentation supporting the corresponding modifications issued by that contracting office and complete background as a basis for informed decisions at each step in the acquisition process. However, the documentation concerning P00005 did not definitively explain why the firm-fixed-price contract was modified for \$10,963,400. The statement of work attached to this modification added, “Other ship designs and organizations . . . whose major functional process is designated as engineering . . .” The contracting office explained that this modification added organizational divisions to the engineering department that were not previously reviewed by DB&A. We questioned the contracting office about the specific areas that were added to the modification. The contracting official explained that DB&A reviewed an additional 12 divisions, or approximately 620 people, within engineering for P00005. Furthermore, “. . . they [DB&A] weren’t just looking at people but a management system, processes, and efficiency.”

Conclusion

NAVSEA inappropriately awarded a sole-source contract and modifications to DB&A, citing unusual and compelling urgency and only one responsible source, for efficiency management and productivity improvement consulting services. The contracting officials did not plan in advance for this contract requirement, despite early notification of FY 2004 budget reductions. The original award and the nine contract modifications were not competed, despite evidence of other contractors who could perform the work. Furthermore, the contract file documentation was insufficient. As a result, any financial benefits that could be achieved through competition were unattainable.

Management Comments on the Finding and Audit Response

The Director, Program Analysis and Business Transformation Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition provided comments on the finding section of this report. See Appendix E for a summary of Navy comments on the report finding and our response to those comments. See the Management Comments section of this report for the full text of Navy comments.

Recommendations, Management Comments, and Audit Response

We recommend that the Commander, Naval Sea Systems Command:

1. Terminate all activity on contract N00024-02-C-6165 after the conclusion of work at the Supervisor of Shipbuilding, Conversion, and Repair Facility, Newport News, Virginia.

Management Comments. The Navy concurred and stated that NAVSEA had already decided in October 2003 that no further services would be procured under contract N00024-02-C-6165. Further requirements for consulting services would be competitively acquired.

Audit Response. Although the Navy stated that, as of July 2004, no modifications had been added to contract N00024-02-C-6165 after October 28, 2003, the contract remains open and we have no assurance that additional modifications will not be added. During the audit, we were informed that subsequent consulting services were contemplated by NAVSEA at repair facilities located in Bath, Maine, and Groton, Connecticut, and contract N00024-02-C-6165 could have been modified to incorporate those additional locations. However, the action taken by the Navy not to award new work on contract N00024-02-C-6165 satisfies the intent of the recommendation.

2. Compete subsequent contract requirements for consulting services that are tentatively planned for other Supervisors of Shipbuilding activities.

Management Comments. The Navy concurred. On March 15, 2004, NAVSEA issued a competitive solicitation for additional consulting services. On June 1, 2004, a new contract was competitively awarded.

3. Issue written guidance to Naval Sea Systems Command contracting office personnel for:

a. Preparing a detailed and complete “Justification and Approval for Other Than Full-and-Open Competition” when contemplating the issuance of a sole-source contract.

Management Comments. The Navy concurred in principle, but stated that adequate guidance for the justification and approval preparation already existed and was available. However, the Navy agreed to conduct refresher training that would highlight key points in the justification and approval preparation. The Navy stated that it properly executed contract N00024-02-C-6165, using the exception to competition for unusual and compelling urgency. The Navy also stated that it properly executed modifications to contract N00024-02-C-6165, citing the appropriate authority in the FAR.

Audit Response. The proposed action to provide refresher training for the preparation of future justification and approval documents satisfies the intent of the recommendation. However, we do not agree that the Navy properly executed contract N00024-02-C-6165 using the unusual and compelling urgency exception to competition.

b. Ensuring that changes in contract scope will result in the need for a new contract.

Management Comments. The Navy nonconcurred and stated that no requirement exists to mandate that a new contract be awarded based on a change in scope. The Navy contended that the discretion of contracting officials is sufficient to determine whether a new contract or a modification to an existing contract is appropriate.

Audit Response. The Navy comments are nonresponsive. Contracting officials' discretion is limited to the scope of work under contract, and they do not have the discretion to unreasonably expand the scope of work via modifications. The initial value of contract N00024-02-C-6165 was \$1.3 million. The contract was modified nine times, bringing its value to more than \$22 million. The modifications covered over \$20 million in cost increases that added work at five different physical locations. We consider those changes in scope to be material, and the Navy should have considered awarding a new contract. Had the initial synopsis included an estimated total value of \$22 million, with work at multiple locations, potentially capable offerors may have been more inclined to submit bids on the synopsis, thus promoting full-and-open competition. We request that the Navy provide additional comments on Recommendation 3.b.

Appendix A. Scope and Methodology

We reviewed the allegations raised in congressional requests submitted by Representative Jo Ann Davis and Senator George Allen on behalf of a constituent claiming contract award and contractor performance improprieties involving contract N00024-02-C-6165 with DB&A for consulting services, with modifications conducted at SUPSHIP, Newport News. The complainant listed “pertinent information” statements and questions in the congressional request that addressed the DB&A effort at SUPSHIP, Newport News. The audit team then reviewed this information and packaged the alleged statements into five separate categories.

During the course of this review, we also received a Defense Hotline complaint that addressed the justification of unusual and compelling urgency for a sole-source contract and alleged that DB&A failed to remit taxes and secure appropriate business licenses with the Commonwealth of Virginia and municipal authorities. Although we received the Defense Hotline complaint subsequent to the commencement of this audit, we addressed the issues raised in the Defense Hotline complaint in this report.

We visited and interviewed program and contract personnel at NAVSEA; the NAVSEA Comptroller; the Inspector General, NAVSEA; command and management personnel at the PEO, Carriers and at SUPSHIP, Newport News; and DB&A employees. We obtained pertinent documents and discussed issues raised in the congressional requests and the Defense Hotline complaint. We also addressed NAVSEA contract planning and administration procedures and contractor performance.

We analyzed contract N00024-02-C-6165 and related modifications, valued at \$22,181,200, of which \$6,854,400 was expended for consulting services at SUPSHIP, Newport News. We further analyzed documents including the contract and modification statements of work, justifications and approvals for other than full-and-open competition, business clearance memorandums, pertinent contract clauses, General Services Administration contract pricing data, and commercial, non-Government DB&A contract documentation. In addition, we reviewed applicable sections of the FAR, the Joint Travel Regulations, the National Defense Appropriation Act for FY 2004, and portions of the Code of Virginia. We analyzed DB&A contract deliverables addressing SUPSHIP, Newport News performance as of January 2004 and invoices submitted for the SUPSHIP, Newport News effort. We obtained documentation supporting all nondisclosure agreements signed by DB&A employees. Finally, we verified grievances filed by the National Association of Government Employees union addressing unfair labor practices of the DB&A consulting services contract. The audit did not review this area of concern because the union was going through its own administrative procedures.

We performed this audit from December 2003 through May 2004 in accordance with generally accepted government auditing standards. Our scope was limited in that we did not review the NAVSEA management control program because it was not an announced objective.

Use of Computer-Processed Data. We did not use computer-processed data to perform this audit.

Government Accountability Office High-Risk Area. The Government Accountability Office has identified several high-risk areas in DoD. This report provides coverage of Defense Contract Management. Specifically, it addresses improving processes and controls to reduce contract risk when awarding contracts for consulting services.

Appendix B. Congressional Requests

JO ANN DAVIS FIRST DISTRICT, VIRGINIA COMMITTEES: ARMED SERVICES INTERNATIONAL RELATIONS GOVERNMENT REFORM CHAIRWOMAN, CIVIL SERVICE AND AGENCY REORGANIZATION SUBCOMMITTEE www.house.gov/joanndavis	Congress of the United States House of Representatives Washington, DC 20515-4601 October 28, 2003	WASHINGTON OFFICE: 1123 LONGWORTH HOUSE OFFICE BUILDING WASHINGTON, DC 20515 TELEPHONE: (202) 225-4281 DISTRICT OFFICES: 4904-B GEORGE WASHINGTON MEMORIAL HWY. YORKTOWN, VA 23692 (757) 874-8887 4500 PLANK ROAD, SUITE 105-A FREDERICKSBURG, VA 22407 (540) 548-1088 1623 TAPPANANNOCK BOULEVARD P.O. BOX 3106 TAPPANANNOCK, VA 22500 (804) 643-0668
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Honorable Powell Moore
Assistant Secretary for Legislative Affairs
Department of Defense
1300 Defense Pentagon
Washington, D.C. 20301

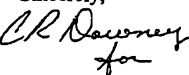
Honorable Moore:

Enclosed is a copy of correspondence I have received from my constituent, who wishes to remain anonymous, concerning problems at Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News.. I believe you will find the letter self-explanatory.

I would appreciate your reviewing the enclosed and providing me with any information that may be helpful to my constituent and keeping me informed about the progress of the case. Please direct your response to my office at 4904-B George Washington Memorial Highway, Yorktown, Virginia 23692.

I am grateful for any assistance you may be able to provide in this matter.

With kind regards, I remain

Sincerely,

Jo Ann Davis
Member of Congress

JAD:crd

enclosure(s)

OFFICE OF THE
SECRETARY OF DEFENSE
OCT 29 PM 3:36

GEORGE ALLEN
VIRGINIA

204 RUSSELL OFFICE BUILDING
WASHINGTON, DC 20510-4604

(202) 224-4024
(202) 224-5432 (FAX)

<http://allen.senate.gov/email.html>



COMMITTEES:
COMMERCE, SCIENCE, AND
TRANSPORTATION
FOREIGN RELATIONS
SMALL BUSINESS AND
ENTREPRENEURSHIP

United States Senate

October 31, 2003

Mr. Joseph Schmitz
Inspector General
United States Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-4704

Dear Mr. Schmitz:

Enclosed is correspondence from my constituent in reference to a matter involving your agency.

Your immediate attention and expeditious assistance with the requests and concerns expressed in this case would be greatly appreciated.

Please reply in duplicate to my office at 507 East Franklin Street, Richmond, Virginia 23219 and return the enclosure. Should you need to reach my office, please call (804) 771-2221. In your reply, please reference Newport News Shipbuilding.

Thank you so much for your assistance to my constituent.

With warm regards, I remain

Sincerely,

George Allen

GA/bz
Enclosure

☐ **CENTRAL VIRGINIA**
507 EAST FRANKLIN STREET
RICHMOND, VA 23219
(804) 771-2221
(804) 771-8313 (FAX)

☐ **HAMPTON ROADS**
222 CENTRAL PARK AVENUE, #120
VIRGINIA BEACH, VA 23462
(757) 518-1674
(757) 518-1679 (FAX)

☐ **WESTERN AND VALLEY**
3140 CHAPARRAL DRIVE, #C-101
ROANOKE, VA 24018
(540) 772-4236
(540) 772-6870 (FAX)

☐ **SOUTHWEST VIRGINIA**
332 CUMMINGS STREET, SUITE C
ABINGDON, VA 24210
(276) 676-2646
(276) 676-2588 (FAX)

☐ **NORTHERN VIRGINIA**
2214 ROCK HILL ROAD, SUITE 100
HERNDON, VA 20170
(703) 435-0039
(703) 435-3446 (FAX)

Appendix C. Responses to Allegations Raised in the Congressional Requests and the Defense Hotline Complaint

Sole-Source Procurement – Only One Responsible Source

Allegation 1. The complainant questioned the legality of a sole-source procurement, citing only one responsible source, for the DB&A award. Specifically, the complainant questioned how DoD procurement officials could “legally justify a sole-source procurement when literally dozens of companies within the United States provide this same type of [consulting] professional service.” The complainant further questioned the unique qualifications of DB&A for this award.

Audit Results. This allegation was substantiated and is addressed in the Finding section of this report.

Sole-Source Procurement – Unusual and Compelling Urgency

Allegation 2. The complainant questioned how NAVSEA justified a sole-source award to DB&A, citing unusual and compelling urgency. The complainant further questioned how the Navy justified that the “delay in award of a contract would result in serious injury, financial or other, to the Government.”

Audit Results. This allegation was substantiated and is addressed in the Finding section of this report.

Contract Funding

Allegation 3. The complainant questioned the type of Navy appropriated funding used to fund this contract. Specifically, the complainant stated that the justification and approval identified that Shipbuilding and Conversion, Navy funding would be used to fund this consulting services contract. However, the complainant alleged that Operations and Maintenance, Navy funding was used or the funding was changed from Shipbuilding and Conversion to Operations and Maintenance funding. The complainant further alleged that the original funding source, Shipbuilding and Conversion, Navy funding might have been illegally appropriated for the SUPSHIP, Newport News contract actions.

Audit Results. This allegation was unsubstantiated.

Although the July 2003 justification and approval indicated that the Shipbuilding and Conversion, Navy funding would be expended for the DB&A contract at SUPSHIP, Newport News, we verified that the justification and approval was erroneously prepared. The contracting officer explained that the justification and approval was prepared prior to the financial review conducted by the NAVSEA Comptroller. The comptroller determined that Shipbuilding and Conversion funding (applicable to expenditures necessary for the construction, acquisition, or conversion of vessels) was inappropriate and that the Operations and Maintenance, Navy funding should be expended. The original award document identified that Operations and Maintenance, Navy funding would be expended, as well as for the modifications that implemented the SUPSHIP, Newport News consulting services contract.

We also reviewed the payment notices that NAVSEA prepared when DB&A submitted an invoice for SUPSHIP, Newport News. These payment notices identified the appropriation code that cited the actual expended fund cite. We sampled five invoices and the corresponding payment notices between August and December 2003 and verified that DB&A was paid from the Operations and Maintenance, Navy fund. The Shipbuilding and Conversion, Navy fund was never used to pay for the DB&A consulting services effort at SUPSHIP, Newport News.

Contract Pricing

Allegation 4. The complainant questioned the weekly contractor rates paid on this contract at SUPSHIP, Newport News. The complainant alleged that the contract provisions provided for a “generous” contract price of \$7,000 per week, per contract employee.

Audit Results. This allegation was unsubstantiated.

Contract N00024-02-C-6165 was a commercial, firm-fixed-price contract and therefore exempt from the requirement to submit cost and pricing data, as prescribed in FAR 15.403-1, “Prohibition on Obtaining Cost or Pricing Data.” However, the NAVSEA contracting office did conduct an analysis to determine price reasonableness. Contracting office personnel prepared a rate comparison analysis by selecting a sample of General Services Administration schedules relating to consulting services. The weekly rates for the General Services Administration listed firms were comparable to the \$7,000 weekly rate established by DB&A, calculated using the hourly rate for each labor category and the percentage of the workload expended by each category. The business clearance memorandum for this modification listed four companies and concluded that the proposed price from DB&A represented a fair and reasonable price. We also reviewed five invoices between August and December 2003, correlating to the SUPSHIP, Newport News effort, and noted that the invoices did not break out additional expenses. The DB&A project manager at SUPSHIP, Newport News explained that hotel and travel expenses are not separately reimbursed by the

Navy, but are the financial responsibility of DB&A. Furthermore, DB&A provided pricing documentation to the contracting officer for three previous commercial, non-Government contracts in which they also charged \$7,000 per week.

Allegation 5. The complainant questioned the contractor travel costs to perform the contract at SUPSHIP, Newport News. The complainant alleged that DB&A personnel concluded each workweek at 11:00 a.m. on Friday; returned to their residences using Government reimbursed air travel; and, retained an open reservation status on unused hotel rooms, also reimbursed at Government expense.

Audit Results. This allegation was unsubstantiated.

DB&A employees do depart SUPSHIP, Newport News, on Friday, at approximately mid-day. As this contract is a firm-fixed-price award, the Friday mid-day departure issue is not relevant because FAR 16.202-1, "Firm-Fixed-Price Contracts-Description," explains that DB&A must assume maximum risk and full responsibility for all costs and resulting profits and losses. Furthermore, the contractor holds the incentive to control costs and perform effectively. The DB&A project manager stated that DB&A employees frequently expend more than 40 hours per week on-site at SUPSHIP, Newport News. Travel and hotel expenses incurred by DB&A employees are not separately reimbursed by the Navy but are the responsibility of DB&A. In addition, the Joint Travel Regulations limitations on travel and hotel expenses are not applicable to DB&A as the regulations do not apply to employees of the contractor under contract with DoD. Finally, the DB&A project manager provided us a copy of his hotel receipt for the week ending January 30, 2004, which reflected that he terminated his rental of the room on Friday of that week.

Contractor Performance

Allegation 6. The complainant stated that performance by DB&A on this consulting services contract has negatively impacted productivity and morale. The complainant alleged that the SUPSHIP, Newport News supervisors were excessively engaged with the contractor, which resulted in impeding Navy repair performance. The complainant further alleged that contractor deliverables were meaningless, did not accurately measure employee productivity, and were not utilized.

Audit Results. This allegation was unsubstantiated.

We interviewed 5 department heads and 13 division or branch managers representing 4 departments at SUPSHIP, Newport News. The managers interviewed were responsible for management of about 49 percent of the total SUPSHIP, Newport News workforce. The managers interviewed contended that performance of DB&A uniformly ranged from excessively burdensome to appalling. Managers estimated that time expended collecting performance data on SUPSHIP, Newport News employees initially ranged between 4 and 8 hours

daily. Managers stated that the average time expended throughout the workday documenting employee performance currently consumes between 2 and 3 daily work hours. The reduced managerial involvement did not reduce the vitriolic feelings that SUPSHIP, Newport News managers and employees have maintained. The managers stated that their involvement with DB&A personnel has severely compromised their normal duties and responsibilities.

Although the majority of SUPSHIP, Newport News management considered the DB&A contract to be meaningless, NAVSEA and PEO, Carriers (a primary customer of SUPSHIP, Newport News) appraised the DB&A effort to be worthwhile. On March 10, 2004, SUPSHIP, Newport News presented a quarterly briefing that reported performance improvements from the start of the DB&A consulting services effort in August 2003, to February 2004. Noted SUPSHIP, Newport News department improvements included:

Engineering - Delinquent drawings decreased by 49 percent; correspondence backlog items decreased by 24 percent; the number of past due items dropped from 618 to 245; while the open and closed cycle times decreased by 44 percent and 73 percent, respectively. In addition, the department improved the integrity of its defect rate data, which provided leverage over Northrop Grumman (the prime shipbuilding, repair, and conversion contractor at SUPSHIP, Newport News) to fix the process.

Quality Assurance - Records reviewed per person increased by 56 percent and the average daily records completed increased by 46 percent. The department changed its quality assurance techniques, which will allow them to complete 147 audits in 2004, when they were unable to complete 27 audits in 2003. In addition, the department has implemented quality metrics that will facilitate a review of all attributes of the surveillance process on a quarterly basis.

Logistics - A type and quantity review of material ordered was completed 8 months ahead of schedule. The contract closeout backlog dropped to zero, and the tasks completed per hour increased by 67 percent.

Contracts - The contract action backlog decreased by 25 percent, while average daily output increased by 35 percent. In addition, contract actions completed per person increased by 50 percent.

The Deputy Supervisor, SUPSHIP, Newport News, stated that DB&A has provided them with a solid foundation for continuous improvement. The deputy further stated that DB&A has provided a methodical, structured approach that will benefit SUPSHIP, Newport News, and the Navy in the long run.

Miscellaneous Allegations

The complainant also raised individual issues not related to the above allegations, and are as follows:

Allegation 7. The Inspector General, NAVSEA was contacted and made aware of the issues cited in this complaint but discouraged the complainant to take further action on them.

Audit Results. The allegation could not be assessed during the audit based on the absence of facts and supporting data. However, we referred this allegation to the Deputy Inspector General for Inspections for further review and analysis because they are the appropriate office to review an allegation of this type.

The NAVSEA Hotline office had no record of the call addressing the DB&A contract, did not recall a voice mail addressing the complaint, and noted that there was no possibility of reviewing prior voice messages placed with the Inspector General's office in mid-September 2003. In addition, the complainant alleged that the Inspector General, NAVSEA received a copy of the same congressional request that initiated this audit. The office did receive a copy of the complaint and began an inquiry. When the Inspector General, NAVSEA learned that we initiated an audit on the same congressional request, he suspended their inquiry on December 11, 2003.

Allegation 8. Contractor personnel have access to proprietary and automated data of Northrop Grumman (the contractor of SUPSHIP, Newport News) and of the repair facility employees. The complainant alleged that access to this information affords DB&A the opportunity to corrupt the data and manipulate the SUPSHIP, Newport News performance metrics.

Audit Results. This allegation was unsubstantiated.

We determined that DB&A employees could potentially view proprietary data while performing work on the contract at SUPSHIP, Newport News. DB&A employees signed a nondisclosure agreement with Northrop Grumman and NAVSEA, and the agreements are on file at the respective locations. For example, the two-year Northrop Grumman agreement stipulated that Northrop Grumman must provide written consent for any DB&A employee to have future employment with a direct Northrop Grumman competitor. Furthermore, employees with a security clearance also signed a nondisclosure agreement with the Government, and those employees requesting access to the SUPSHIP, Newport News network signed a network agreement. This limited network access entitled DB&A employees to use only those assets for which are required to perform their professional duties. The DB&A employees signed these agreements to ensure the protection of the proprietary data of Northrop Grumman and the repair facility employees. In addition, the SUPSHIP, Newport News employees interviewed provided no indication that DB&A employees took the opportunity to corrupt or manipulate data or performance metrics.

Taxes and Business Licenses

Allegation 9. The complainant alleged that DB&A “has continued to be defiant with regard to remitting taxes and securing a business license.” The complainant further alleged that DB&A admitted that it owes taxes to the City of Newport News for work conducted 3 years ago but the company has not been billed. Also, DB&A has not remitted taxes for current work.

Audit Results. This allegation was substantiated.

Contract N00024-02-C-6165 stated that the DB&A “. . . contract price include all applicable federal, state and local taxes and duties.” The contract further required that, “The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.” Contracting office personnel explained that compliance with Federal, State and local laws regarding doing business in Virginia was the responsibility of the contractor and not the contracting officer.

DB&A claimed that it was unaware, not defiant as the allegation indicated, that conducting business in the City of Newport News, Virginia, required securing a business license and remitting city taxes. DB&A further explained that the City of Newport News assessed the company \$23,298.78, comprised of \$16,215.62 for taxes assessed in license year 2000, plus \$7,083.16 for penalties and interest. The contractor recently paid the license year 2000 back taxes and is conferring with the City of Newport News for relief from the penalty and interest charges. In addition, DB&A hired CT Corporation, a firm specializing in assisting out-of-state companies with state licensing matters, to obtain the necessary Virginia and city licenses and registrations in order to comply with state laws. Finally, DB&A explained that it is evaluating 2001 through 2004 license years to determine applicable taxes with the Commissioner of the Revenue, Newport News.

State Registration

Allegation 10. The complainant alleged that DB&A had not registered with the State Corporation Commission in the Commonwealth of Virginia, a prerequisite for a firm to conduct business in Virginia. The complainant further alleged that failing to register with the State Corporation Commission, to secure a Certificate of Authority, was an intentional plan to avoid payment of taxes to the Commonwealth of Virginia.

Audit Results. This allegation was substantiated.

Virginia law states that all foreign corporations, companies not incorporated in the Commonwealth of Virginia, must obtain a Certificate of Authority before conducting business within Virginia. DB&A did not obtain a Certificate of Authority with the State Corporation Commission before conducting business in Virginia. However, the company stated that it was unaware of the state licensing requirements and the state tax liability. We could not determine whether DB&A

intentionally did not obtain a certificate to avoid the payment of taxes to Virginia. However, DB&A is now making every effort to comply with Virginia laws. As stated above, DB&A retained the services of CT Corporation to assist them in obtaining proper Virginia licenses and registrations, including the Certificate of Authority.

Appendix D. Chronology of Events for Contract N00024-02-C-6165

September 4, 2001	A Joint Memorandum from the Vice Chief of Naval Operations and the Assistant Secretary of the Navy for Research, Development, and Acquisition directing the Navy to find reductions in program costs.
February 2002	A resource allocation display of the FY 2004 budget called for an 8 percent civilian personnel reduction that equated to a 20 percent reduction in civilian personnel end strength at NAVSEA and Program Executive Offices.
May 2002	The Chief of Naval Operations directed that NAVSEA “reduce overhead by 10 percent [and] return savings to fleet readiness and procurement accounts.”
May 10, 2002	First justification and approval for other than full-and-open competition, citing unusual and compelling urgency.
May 22, 2002	NAVSEA awarded contract N00024-02-C-6165 to DB&A for efficiency management and productivity improvement consulting services.
June 3, 2002	NAVSEA awarded modification P00001 for additional funding for contract N00024-02-C-6165.
June 28, 2002	First synopsis submitted by NAVSEA to the Federal Business Opportunities Web site expressing their desire to continue with the efficiency management and productivity improvement consulting services contract.
July 2, 2002	NAVSEA awarded modification P00002 for an item revision and additional funding for contract N00024-01-C-6165.
August 5, 2002	NAVSEA awarded modification P00003 for an administrative change for contract N00024-02-C-6165.
August 30, 2002	NAVSEA awarded modification P00004 for item revisions and additional funding for contract N00024-02-C-6165.
September 16, 2002	Second justification and approval, citing only one responsible source.
September 30, 2002	NAVSEA awarded modification P00005 for additional man weeks of effort and full funding for the entire award for contract N00024-02-C-6165.

Appendix D. Chronology of Events for Contract N00024-02-C-6165 (Cont'd)

January 16, 2003	Second synopsis submitted by NAVSEA to the Federal Business Opportunities Web site expressing their desire to continue with the efficiency management and productivity improvement consulting services contract.
January 17, 2003	Third justification and approval, citing only one responsible source.
January 31, 2003	NAVSEA awarded modification P00006 for additional manweeks of effort for contract N00024-02-C-6165.
July 18, 2003	Third synopsis submitted by NAVSEA to the Federal Business Opportunities Web site expressing their desire to continue with the efficiency management and productivity improvement consulting services contract.
July 31, 2003	Fourth justification and approval, citing only one responsible source.
August 15, 2003	NAVSEA awarded modification P00007 for additional manweeks of effort for contract N00024-02-C-6165.
September 4, 2003	NAVSEA awarded modification P00008 for item revisions and additional funding for contract N00024-02-C-6165.
September 25, 2003	NAVSEA awarded modification P00009 for additional funding for contract N00024-02-C-6165.

Appendix E. Navy Comments on the Report Finding and Audit Response

Exception to Competition

Management Comments. The Navy stated that it is a customary practice to begin acquisition planning as soon as a requirement has been identified. Acquisition planning occurred for contract N00024-02-C-6165. Efforts to internally resolve budget reductions failed; thus, the Navy determined that contractual support would be required. In May 2002, the Navy based urgency for the contract upon “the need to contract to increase budgetary savings by the end of the then fiscal year to comply with Section 802 of the 2001 National Defense Appropriation Act.” DB&A was selected because of its prior work with an affiliated PEO and that no other source could meet all of the requirements within the required time frame. The Navy contended it was unable to award a contract via competitive means and still meet the imposed budgetary deadlines.

Before increasing the scope of contract N00024-02-C-6165, the Navy prepared justification and approval documents citing only one responsible source. Further, the urgency associated with the initial award was no longer the case. DB&A was awarded subsequent modifications to the contract because of its “intimate knowledge of NAVSEA, its processes and systems . . .” Considering another source would involve a significant duplication of effort with no apparent benefit.

Audit Response. Despite internal attempts to rectify mandated budget reductions (between September 2001 and May 2002), the Navy was aware of the impending reductions 9 months before awarding to DB&A the contract citing unusual and compelling urgency. The Navy stated that an inadequate period of time remained to solicit, evaluate, and award a contract through competitive means after internal attempts to enact budget reductions failed. However, FAR 6.301 does not allow an urgent justification based upon the lack of advance planning.

The Navy did not thoroughly explain why DB&A was the only responsible source or why other consulting service contractors were not considered for the award. If the DB&A award was no longer considered urgent when the Navy awarded subsequent modifications, we question why the consulting services in those modifications were not competed, especially when contracting officials were aware of the need for those services. If the Navy believed that modifications to the DB&A award were considered logical follow-on efforts, then it should have measured the cost avoidance or demonstrated that competition would result in unacceptable delays in fulfilling the agency’s needs. The Navy states in the justification and approval documents that “there are no duplication of costs,” but the Navy did not explain which costs could have been duplicated or identify the

substantial nature of the costs. Furthermore, although justification and approval documents state “. . . that qualifying a new source would significantly put the success of this effort in jeopardy,” the Navy did not identify potential problems if the effort did not succeed.

Synopsis of Requirements

Management Comments. The Navy stated that the synopses were worded appropriately and in accordance with FAR provisions. Furthermore, it is incumbent upon those seeking business to inquire as to additional business opportunities. The Navy noted that it did not receive any inquiries on the synopses.

Audit Response. As stated in the report, FAR 5.207 requires that a noncompetitive contract action synopsis should include, among other things, the intended source, a statement of the reason justifying the lack of competition, and a statement that all responsible sources may submit a bid. However, the wording contained in the synopses, such as the implied prohibition of future NAVSEA business, was restrictive and may have dissuaded consulting service firms from inquiring about those synopses. Furthermore, expecting a potential contractor, especially a small consulting firm, to question the meaning of a perceived restriction in the synopsis is beyond the intended purpose of synopsizing a contract requirement.

Market Research

Management Comments. Although the Navy agreed that market research was not conducted for contract N00024-02-C-6165, there was no assurance at the time of the initial award that other companies would be able to satisfy all of the contract requirements. Market research need not be conducted on contracts with urgent requirements and that it is a standard practice to rely on the required synopses to notify potential offerors of the requirements. Although similar consulting service companies were used to determine that DB&A prices were reasonable, this does not indicate that those companies were capable of meeting the contract requirements.

Audit Response. FAR 6.302-2 does *not* state or imply that market research need not be conducted on contract actions designated as urgent. FAR 6.302-2(c)(2), “Limitations,” states that agencies must request offers from as many potential sources as is practicable under the circumstances. If NAVSEA considers it to be a standard practice to rely only on the synopsis to notify potential offerors of a pending contract requirement, then NAVSEA is implementing only one of the eight possible techniques in the FAR addressing thorough market research. Furthermore, a 3-month period elapsed between the initial synopsis and modification P00005, allowing NAVSEA sufficient time to conduct thorough market research. Instead, NAVSEA awarded another sole-source modification, citing only one responsible source. The Navy did not ascertain the capabilities of

the contractors it used to determine price reasonableness. Market research would have identified potential competitive sources for the contract requirements.

Modifications

Management Comments. The Navy stated that the report misinterpreted the synopsis language that stated DB&A “cannot be currently performing any other NAVSEA contract.” The word “other” referred to other work and not to other contracts. Furthermore, the company is “excluded from performing any different type of future effort for NAVSEA” and that follow-on efforts would be permitted without organizational conflicts of interest arising.

Audit Response. The three synopses, addressing requirements in modifications P00005 through P00009, contain the following sentence: “As such, it is a requirement that the contractor be free from all potential conflicts of interest, cannot be currently performing any other NAVSEA contracts, and will be prevented from being awarded any future NAVSEA business.” During the audit, NAVSEA contracting officials did explain that the purpose of that sentence was to prevent a potential conflict of interest. However, the sentence could restrict competition. We did not draw the distinction between “other” types of work and “other” contracts. Thus, we cannot be assured that potential offerors would have drawn the distinction that NAVSEA intended.

The final synopsis, addressing modifications P00007 through P00009, states that DB&A “. . . is excluded from performing any different type of future effort for NAVSEA.” That exclusion, according to NAVSEA contracting officials, only applies to DB&A, not to potential offerors. The phrase “. . . and will be prevented from being awarded any future NAVSEA business” is included in all three synopses and applies to all offerors. Including that phrase restricts competition. As a means of remaining with the same contractor, NAVSEA inappropriately used modifications for new work instead of awarding separate competitive contracts.

Appendix F. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Director, Defense Procurement and Acquisition Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Director, Program Analysis and Evaluation
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Department of the Army

Auditor General, Department of the Army

Department of the Navy

Commander, Naval Sea Systems Command
Supervisor of Shipbuilding, Conversion and Repair
Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

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

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House Committee on Government Reform
House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform
House Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform
House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform

Department of the Navy Comments



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
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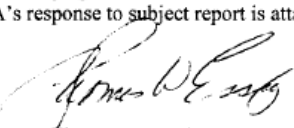
MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDITING,
CONTRACT MANAGEMENT DIRECTOR,
DEPARTMENT OF DEFENSE INSPECTOR GENERAL

Subj: REPORT ON CONTRACT NO. N00024-02-C-6165 FOR CONSULTING
SERVICES AT THE NAVAL SHIPBUILDING, CONVERSION, AND REPAIR
FACILITY (PROJECT NO. D2004CF-0031)

Ref: (a) DoDIG Memo of 24 May 04

Encl: (1) NAVSEA response

The reference (a) Memorandum requested that we provide comments to subject report by June 23, 2004. I understand that due to a delay in receipt of a hardcopy of the report until June 9, 2004 that Terry McKinney agreed to Ruth Wolfe's request for an extension until July 2, 2004. NAVSEA's response to subject report is attached in Enclosure (1).


Thomas W. Essig
Director, Program Analysis and Business
Transformation

Copy to:
RDA Congressional
AAUSN-NAVIG

**NAVAL SEA SYSTEMS COMMAND COMMENTS TO DODIG AUDIT REPORT ON
CONTRACT NO. N00024-02-C-6165 FOR CONSULTING SERVICES AT THE
NAVAL SHIPBUILDING, CONVERSION, AND REPAIR FACILITY
PROJECT NO. D2004CFR-0031**

1. Recommendation 1: "We recommend that the Commander, Naval Sea Systems Command terminate all activity on contract N00024-02-C-6165 after the conclusion of work at Supervisor of Shipbuilding, Conversion, and Repair Facility, Newport News, Virginia."

Navy response: Concur. Action taken prior to inception of this audit. In October 2003, prior to the announced date of the DoDIG effort, 3 December 2003, and before the contacts made to the members of Congress, 28 October 2003, NAVSEA had already decided that no further services would be procured under contract N00024-02-C-6165 and that any further requirements would be competitively acquired. Activity under the contract since that point has been limited to modifications of existing requirements; no new work has been ordered.

2. Recommendation 2: "We recommend that the Commander, Naval Sea Systems Command compete subsequent contract requirements for consulting services that are tentatively planned for other Supervisors of Shipbuilding activities."

Navy response: Concur. Action taken prior to inception of this audit. On 15 March 2004, NAVSEA issued a competitive solicitation to cover future needs in this area. On 1 June 2004, Contract N00024-04-C-5112 was competitively awarded as the result of this process.

3. Recommendation 3: "We recommend that the Commander, Naval Sea Systems Command issue written guidance to Naval Sea Systems Command contract office personnel for:

- a. Preparing a detailed and complete 'Justification and Approval for Other than Full-and-Open Competition' when contemplating the issuance of a sole-source contract;**
- b. Ensuring that changes in contract scope will result in the need for a new contract."**

Navy response:

3a: Concur in principle. Adequate guidance for the preparation of Justification and Approvals (J&As) exists and was available to procurement personnel. However, NAVSEA will conduct refresher training to highlight key points in J&A preparation. NAVSEA correctly executed the basic contract using the exception to competition at Federal Acquisition Regulation (FAR) 6.302-2 citing unusual and compelling urgency. It was not until May 2002 that NAVSEA senior leadership determined that additional steps, over and above the internal budget cuts, would be required to increase budgetary savings by the end of the fiscal year. Once the requirement became known, the source was selected based on their level of knowledge and familiarity with NAVSEA business processes and culture; the experience and capabilities necessary to fulfill the requirements in a short time frame. Prior to adding any additional scope for conducting the same process at different locations, NAVSEA executed J&As to cover the additional effort in accordance with the appropriate authority cited in the FAR.

3b: Non-concur. There is no requirement in either statute or regulation requiring that a change in contract scope result in a new contract. Provided that the proper procedures are followed when a new procurement action becomes known, e.g., synopsis and J&A, the discretion of contracting officials is sufficient to determine whether a new contract or a modification is appropriate.

4. Conclusion:

Because NAVSEA followed the established legal process in executing appropriate discretion, the only question that remains is one of judgment: whether the conclusions reached by the designated agency officials lacked a rational basis. Where, as here, there are no clearly postulated objective criteria, the consideration when reviewing the exercise of judgment is not whether another person could decide the matter differently but is, instead, whether the decision under review was arbitrary, capricious, or otherwise an abuse of the discretion granted.

Comments on Report Findings:

The Draft Audit Report may not have taken into consideration many of the subtleties relative to the subject procurement and the following comments are provided:

Exception to Competition:

The Audit Report found that Contracting Officials did not adequately conduct acquisition planning, thereby putting itself in a position through poor planning where sole source procurement was the only option. As the Report indicates, the FAR expressly states that poor planning is not a valid basis for an "urgent and compelling" exception to the competition requirements. However, quite simply, this was not the case. It is customary practice to begin acquisition planning as soon as a requirement has been identified; this occurred here. As the Audit Report noted, NAVSEA attempted to resolve the mandated budget cuts internally; however, these efforts alone were not adequate. It was not until May 2002 that NAVSEA senior leadership determined that additional steps would be required, namely, the acquisition of contracted support.

Thus, the basis for urgency - the need to contract to increase budgetary savings by the end of the then fiscal year to comply with Section 802 of the 2001 National Defense Appropriation Act - did not become apparent until May. It was not a lack of advanced planning. Because the mandated reductions were to take effect in the near future, NAVSEA determined that it would not be able to solicit, evaluate, and award a contract through competitive means and still meet the imposed deadlines. Therefore, NAVSEA executed the contract using the exception to competition at FAR 6.302-2, citing an unusual and compelling urgency. DeWolff, Boberg and Associates (DBA) was chosen as the source because through earlier work with one of NAVSEA's affiliated Program Executive Offices it had developed a level of knowledge and familiarity with NAVSEA business processes and culture that provided it experience and capabilities necessary to fulfill the requirement in the short time frame. No other source was known that could meet all of the requirements of the solicitation in the time frame required.

Prior to adding any additional scope to the contract, contracting officials obtained a properly executed J&A using the exception to competition at FAR 6.302-1, "Only Responsible Source and No Other Supplies or Services." The urgency associated with the initial award was no longer the case. This

J&A followed all requirements of controlling statutes and regulations in regard to sole source acquisitions and approval thresholds. Again, it was based on DBA's having an intimate knowledge of NAVSEA, its processes and systems, such that it alone among contractors already working with NAVSEA could perform the effort on a timely basis. The company was performing similar efforts at different locations; considering another source would involve a significant duplication of efforts with no apparent benefit. In addition, Contractors already working with NAVSEA would be affected by an Organizational Conflict of Interest: in performing the efficiency study services they would have improper access to information or be potentially biased in their work under the efficiency study contract.

Synopsis of Requirements:

The Audit Report asserts that the synopses of new procurement modifications to the contract were somehow inappropriate. As the Report indicates, FAR 5.207 requires that synopses of intended sole source acquisitions identify the agency's intended sole source and the basis for the position that only one source is capable. NAVSEA was compliant in publicly providing the required information on their intended strategy, it is incumbent on those seeking business to inquire as to additional business opportunities. No inquiries were received. If the requirements of FAR 5.207 deter interested potential sources they do so in every case. These regulations apply irrespective of the nature of the goods or services being acquired.

Market Research:

The Audit Report accurately states that formal market research was not conducted. However, it should be noted that at the time of the initial award NAVSEA had no idea if other companies were, in fact, able to satisfy all of the requirements free of any organizational conflicts of interest. When procurements are urgent, market research need not be conducted; a point made clear at FAR 6.302-2. In the case of the new procurement modifications, where NAVSEA used the exception at FAR 6.302-1, it is standard practice to rely upon the required synopses to notify potential offerors of the requirement. No source expressed an interest in these requirements as a result of these synopses.

Further, the Audit Report bases a finding that other sources were available on the Business Clearance Memorandum's including a comparison of other contractors' pricing to determine price reasonableness. NAVSEA used instantly available rates taken from published GSA schedules to determine that DBA prices were reasonable pursuant to FAR 15.4. NAVSEA used these companies because they offered similar consulting services, not because these other sources were capable of meeting all the requirements in question. The mere fact that other companies are listed under a GSA program does not mean they can perform the work and meet all of the schedule, organizational conflict of interest, and other solicitation requirements. Further, this listing does not mean that the properly executed J&As citing "Unusual and Compelling Urgency" or "Only Responsible Source and No Other Supplies or Services" exceptions to competition were invalid. This position is reinforced from the recent competitive acquisition for this effort, where only two firms offered proposals and that one firm that competed against DBA was not among the GSA Advantage! Contractors.

Modifications:

The Audit Report's assessment that modifications were used in lieu of new separate contracts to avoid violating the requirement that DBA "cannot be currently performing any other NAVSEA contract" misses the point. The synopsis language excluding current performance of other NAVSEA contracts was intended to prevent a potential conflict of interest. While not worded as clearly as it could have been, this intent is clear when the synopsis is read in its entirety. "Other" in this case means other work, not other contracts. As stated in the final sentence of the synopsis, the company "is excluded from performing any **different type** [emphasis added] of future effort for NAVSEA". Follow-on efforts, whether embodied in stand-alone contracts or as new line items in an existing contract would be permitted, as no organizational conflicts of interest would arise. This is consistent with DBA's receiving the competitive award for the follow-on contract on 1 June 2004.

Team Members

The Office of the Deputy Inspector General for Auditing of the Department of Defense, Contract Management prepared this report. Personnel of the Office of the Inspector General of the Department of Defense who contributed to the report are listed below.

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