

Inspector General

United States
Department of Defense



Air Force Electronic Systems Center's Use of
Undefinitized Contractual Actions

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Acronyms and Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DPAP	Office of Defense Procurement and Acquisition Policy
ESC	Electronic Systems Center
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IG	Inspector General
PNM	Price Negotiation Memorandum
UCA	Un definitized Contractual Action
U.S.C.	United States Code



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

August 18, 2010

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
(FINANCIAL MANAGEMENT AND COMPTROLLER)

SUBJECT: Air Force Electronic Systems Center's Use of Undefined Contractual
Actions (Report No. D-2010-080)

We are providing this report for information and use. We considered management comments when preparing the final report. This report is part of a congressionally mandated periodic review of DOD use of undefined contractual actions.

DOD Directive 7650.3 requires that recommendations be resolved promptly. The comments from the Director of Contracting, Headquarters Air Force Materiel Command; the Commander, Air Force Electronic Systems Center; and the Director of Contracting, Air Force Electronic Systems Center, were responsive. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

A handwritten signature in blue ink, reading "Richard B. Jolliffe", is positioned above the printed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Air Force Electronic Systems Center's Use of Undefined Contractual Actions

What We Did

Public Law 99-591, section 908(b), requires the DOD Inspector General to periodically audit Undefined Contractual Actions (UCAs) and submit a report to Congress. This is the first in a series of reports discussing DOD compliance with section 2326, title 10, United States Code.

We reviewed 41 UCAs with a total not-to-exceed value of about \$2.8 billion awarded by the Air Force Electronic Systems Center (ESC) from FY 2004 through August 14, 2009, to determine whether ESC personnel complied with the restrictions of the United States Code and appropriately justified and definitized UCAs at reasonable prices.

What We Found

ESC personnel did not consistently comply with statutory requirements for 34 of the 41 UCAs.

ESC personnel did not:

- adequately document the authorization to issue 1 UCA;
- properly prepare requests for authorization to issue 16 UCAs;
- definitize 12 UCAs within the 180-day time frame;
- support whether the contractor's reduced risk during the undefinitized period was reflected in negotiated profit for 25 UCAs; or
- obligate funds within allowable limits for 2 UCAs.

In addition, ESC contracting personnel inappropriately issued UCAs for late customer-defined requirements and additional UCAs for known or recurring acquisition requirements.

ESC personnel did not consistently comply with UCA restrictions because:

- they did not provide a signed UCA approval document;
- they did not follow statutory and DOD regulations for preparing requests to issue UCAs;
- Government changed requirements after the UCAs were issued;
- the contractor submitted inadequate proposals;
- they did not adequately document the determination of profit; and
- they issued UCAs unnecessarily because of poor acquisition planning.

As a result, the Air Force assumed increased risk in the award and negotiation process and may have paid excess profit.

What We Recommend

Air Force officials should develop procedures to ensure that UCA requests include the impact on agency requirements if contracting personnel do not issue a UCA, require better coordination with customers to identify changes in Government requirements, and require contracting personnel to adequately document the profit determination for UCAs. Air Force officials should develop procedures to avoid issuing UCAs to extend consecutive periods of performance on the same contract and to avoid issuing UCAs for known or recurring requirements.

Management Comments and Our Response

The Director of Contracting, Headquarters Air Force Materiel Command; and the Commander, and the Director of Contracting, Air Force Electronic Systems Center, agreed with our recommendations and provided responsive comments on the recommendations. No further comments are required. Please see the recommendation table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director of Contracting, Headquarters, Air Force Materiel Command		1.a, 1.b
Commander, Air Force Electronic Systems Center		2.a, 2.b
Director of Contracting, Air Force Electronic Systems Center		3.a–e

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Introduction

Objectives

We determined U.S. Air Force Electronic Systems Center's (ESC) compliance with restrictions on Unfinalized Contractual Actions (UCAs) imposed by section 2326, title 10, United States Code (10 U.S.C. § 2326 [2009]), "Unfinalized contractual actions: restrictions." We also determined whether ESC UCAs were appropriately justified and finalized at reasonable prices. This is the first in a series of reports discussing DOD compliance with 10 U.S.C. § 2326 (2009). See Appendix A for the scope and methodology and prior coverage related to the objectives.

Legislation and Congressional Report Requirement

The DOD Inspector General (IG) is required by Public Law 99-591, "A Joint Resolution Making Continuing Appropriations for Fiscal Year 1987, and for Other Purposes," section 908(b), to periodically conduct an audit of UCAs. DOD IG Report No. D-2004-112, "Unfinalized Contractual Actions," August 30, 2004, was our last audit of UCAs. Section 908(b) of Public Law 99-591 states:

Oversight by Inspector General.—The Inspector General of the Department of Defense shall—

- (1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and
- (2) after each audit, submit to Congress a report on the management of unfinalized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by unfinalized contractual actions.

Background

UCAs are agreements that allow a contractor to begin work and incur costs before the Government and the contractor have reached a final agreement on contract terms, specifications, or price. Contracting officers should use UCAs only when the negotiation of a definitive contractual action is not possible in sufficient time to meet the Government's requirement. The Government's requirement must also demand that the contractor be given a binding commitment so that contract performance can begin immediately.

UCA Restrictions

Section 2326, title 10, United States Code requires the request to the head of an agency for approval to issue a UCA contain the anticipated impact on agency requirements if a UCA is not used and establishes limitations on the obligation of funds, the finalization of terms, and allowable profit for UCAs. The Government limits the use of UCAs because these contracts place the Government at a distinct disadvantage in negotiating final prices.

UCAs for foreign military sales, purchases that do not exceed the simplified acquisition threshold, special access programs, and congressionally mandated long-lead procurement contracts are not subject to compliance with 10 U.S.C. § 2326. The Defense Federal Acquisition Regulation Supplement (DFARS) 217.7402, “Exceptions,” requires that contracting officers apply DFARS 217.74, “Unfinitized Contract Actions,” on UCAs for foreign military sales, purchases that do not exceed the simplified acquisition threshold, special access programs, and congressionally mandated long-lead procurement contracts to the maximum extent practicable. Both 10 U.S.C. § 2326 and the DFARS provide additional restrictions for the approval, definitization, obligation of funds, and determination of allowable contractor profit.

Specifically, we reviewed the following four areas to determine whether UCAs issued by ESC contracting personnel were in compliance:

- **Authorization to Use a UCA:** We evaluated whether contracting personnel issued UCAs only after obtaining proper authorization. Additionally, we reviewed the requests to issue a UCA to verify that the requests adequately addressed potential adverse impacts on agency requirements if a UCA was not issued.
- **Contract Definitization:** We evaluated whether ESC personnel definitized UCAs within 180-day time limits.
- **Allowable Profit:** We evaluated whether ESC contracting personnel’s determination of contractor profit reflected the work performed during the unfinitized period.
- **Compliance With Obligation Limitations:** We evaluated whether ESC contracting personnel obligated funding within allowable amounts.

In addition, we also reviewed UCAs to determine whether ESC personnel appropriately justified the UCAs and whether the UCAs were definitized at fair and reasonable prices.

Enhanced Reporting Requirements

On August 29, 2008, the Office of Defense Procurement and Acquisition Policy (DPAP) issued a memorandum that required semiannual reporting of DOD Service UCA usage to DPAP for actions with an estimated value of more than \$5 million. See Appendix B for a copy of the memorandum. DPAP introduced the enhanced reporting requirement in response to the Government Accountability Office (GAO) Report No. GAO-07-559, “Defense Contracting: Use of Unfinitized Contract Actions Understated and Definitization Time Frames Often Not Met,” June 19, 2007, and Public Law 110-181, “The National Defense Authorization Act for Fiscal Year 2008,” section 809, “Implementation and Enforcement of Requirements Applicable to Unfinitized Contractual Actions.”

DFARS Case Rulings

The 2007 GAO audit report resulted in DFARS case 2007-D011, which clarified that, per 10 U.S.C. § 2326, the direction at DFARS 217.74 provides the criteria (vice those in Federal Acquisition Regulation [FAR] 16.603-2, “Application”) for planning the definitization schedule for a letter contract. During July 2009, DFARS Case 2008-D034¹ expanded the definition of “contract action” in DFARS 217.74 to include change orders and other un-priced modifications. Previously, change orders and other un-priced modifications followed guidance to the maximum extent practicable.

United States Air Force Electronic Systems Center

The ESC mission is to “develop, acquire, modernize, and integrate net-centric command and control, intelligence, surveillance and reconnaissance capabilities, as well as combat support information systems; provide warfighting commanders with battlefield situational awareness and accurate, relevant, decision-quality information on a global information grid.” ESC does not design or manufacture equipment. In its systems acquisition mission, ESC serves as the manager. It determines the operational user’s needs, defines systems to best meet those needs, asks for proposals from industry, selects contractors, and monitors their progress. ESC manages more than 150 programs with an annual budget of approximately \$3 billion.

Electronic Systems Center UCA Usage (FY 2004–August 14, 2009)

We selected a nonstatistical judgment sample of 16 contracts that included 41² UCAs issued by ESC contracting personnel during FY 2004 through August 14, 2009, with a total dollar value of about \$2.8 billion. We initially identified letter contracts through queries of the Federal Procurement Data System-Next Generation (FPDS-NG). We then requested and ESC contracting personnel provided a list of UCAs issued from FY 2004 through August 14, 2009, from which we used our judgment to select additional letter and indefinite-delivery, indefinite-quantity contracts.³ See Appendix C for a list of UCAs reviewed. Table 1 lists the number of contracts, the number of UCAs, and the total not-to-exceed dollar value of the UCAs that we reviewed.

¹ DFARS Case D2008-D034 was open as of July 9, 2010.

² A nonstatistical judgment sample does not generalize to universe; therefore, audit results should not be projected across all ESC UCAs.

³ Our nonstatistical judgment sample did not include Foreign Military Sales contracts or change orders.

**Table 1. Nonstatistical Judgment Sample of ESC UCAs
FY 2004–August 14, 2009**

UCA Source	Number of Contracts	Number of UCAs	Not-to-Exceed Dollar Value
Letter Contracts	11	14	\$2,203,988,644
Indefinite-Delivery, Indefinite-Quantity Contracts	5	27	554,428,533
Totals	16	41	\$2,758,417,177

Review of Internal Controls

DOD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in ESC’s management of UCAs. ESC personnel did not consistently manage UCAs. Specifically, internal control weaknesses allowed ESC contracting personnel to issue UCAs based on inadequate requests and to not definitize UCAs within allowable time frames. Internal control weaknesses also allowed ESC contracting personnel to inadequately document how costs incurred during the undefinitized period impacted the contractor’s profit. In addition, ESC contracting personnel issued UCAs for late customer-defined requirements and for known or recurring acquisition requirements. As a result, delays in definitizing contracts may have weakened ESC’s position in price negotiations and increased the cost to the Government. Additionally, ESC contracting personnel did not adequately document allowable profit that may have resulted in excess profit for the contractors. Implementing Recommendations 1.a, 1.b, 2.a, 2.b, 3.a, 3.c, 3.d, and 3.e in the Finding will improve ESC management of UCAs. We will provide a copy of the report to the senior officials responsible for internal controls at Air Force Materiel Command and ESC.

Finding. ESC Management of Undefined Contractual Actions

ESC personnel did not consistently comply with statutory requirements for managing UCAs for 34 of the 41 UCAs we reviewed. For the 34 UCAs, valued at about \$2.6 billion, ESC personnel did not:

- adequately document the authorization to issue 1 UCA,
- prepare adequate requests for authorization to issue 16 UCAs,
- definitize 12 UCAs within the 180-day time frame,
- support whether the contractor's reduced risk during the undefinitized period was reflected in negotiated profit on 25 UCAs, and
- obligate funds within allowable limits on 2 UCAs.

In addition, ESC contracting personnel placed the Government at unnecessary risk when they issued 4 UCAs on 1 contract for requirements that the customer had not identified in a timely manner and 15 UCAs on 4 contracts for known or recurring acquisition requirements. However, ESC contracting personnel adequately documented their determination of price reasonableness for all 40⁴ definitized UCAs that we reviewed.

ESC contracting personnel were unable to properly document the authorization to issue 1 UCA because they were unable to locate the signed authorization document. ESC personnel issued 16 UCAs with inadequate authorization requests because they did not follow statutory and DFARS regulations to include a description of the anticipated effect on Air Force requirements if the UCA was delayed in the authorization request. ESC contracting personnel were not always able to definitize UCAs within allowable time frames because the Government changed requirements after ESC contracting personnel issued the UCA and because contractors submitted inadequate proposals. ESC contracting personnel issued UCAs that did not adequately support whether the contractor's reduced risk during the undefinitized period was reflected in negotiated profit because they did not include sufficient support that would allow an independent party to determine the basis for their profit determination. Further, ESC contracting personnel issued UCAs for requirements that the customer had not identified in a timely manner and issued additional UCAs for known or recurring acquisition requirements because of poor acquisition planning.

As a result, the ESC position in the price negotiation and contract award may have been weakened and delays in definitizing contracts may have increased the cost risk to the Government. Additionally, ESC contracting personnel's not adequately documenting allowable profit may have resulted in excess profit for the contractors.

⁴ One of the 41 UCAs was undefinitized as of April 23, 2010.

UCA Deficiencies

Our review of 41 UCAs issued by ESC contracting personnel identified a total of 56 deficiencies. UCA deficiencies consisted of five different types: unsigned authorization to issue a UCA, inadequate authorization requests, untimely definitization, insufficient documentation supporting the negotiated allowable profit rate, and obligating funds in excess of allowable amounts. See Appendix D for further details of the deficiencies. Table 2 identifies the reasons why we considered the UCAs deficient.

Table 2. Reasons Why UCAs Issued Were Deficient

Deficiency Reason	Number of Instances
Unsigned authorization	1
Inadequate authorization request	16
Untimely contract definitization	12
Insufficient documentation of negotiated profit rate	25
Obligation in excess of allowable amounts	2
Total*	56

*A UCA may have more than one deficiency.

ESC Compliance With Authorization Requirements

ESC contracting personnel obtained proper authorization before issuing UCAs for 40 of the 41 UCAs reviewed but were unable to provide a signed authorization for 1 UCA. In addition, for 16 UCAs, ESC personnel prepared requests to issue a UCA that did not comply with statutory and DOD regulations to include adequate explanation of the impact on Air Force requirements if they did not issue a UCA. Specifically, ESC personnel were unable to provide a signed approval document for 1 UCA and prepared requests to issue a UCA that did not discuss the adverse impact and cite specific impacts on agency requirements for 16 UCAs. Both 10 U.S.C. § 2326 and the DFARS provide guidance on issuing UCAs. Section 2326(a), title 10, United States Code, states:

The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

DFARS 217.7404-1, “Authorization,” requires that the contracting officer obtain approval from the head of the contracting activity before entering into a UCA and also requires that the request for UCA approval must include a full explanation of the need to begin contract performance before contract definitization. The head of the contracting activity delegates the approval to issue a UCA depending on the dollar value of the

action. Air Force Materiel Command issued guidance in 2007 that provided a uniform presentation for requests submitted to the head of the contracting activity for approval to use a UCA.

Obtaining Approval to Issue a UCA

ESC contracting personnel obtained proper authorization before issuing UCAs for 40 of the 41 UCAs that we reviewed. However, ESC contracting personnel were unable to provide a signed approval document to issue a UCA for contract FA8721-09-C-0001. ESC contracting personnel issued the UCA for system engineering and integration support on October 1, 2008, as a 2-month bridge contract to a Federally Funded Research and Development Center. ESC personnel provided an unsigned request to issue a UCA and stated that they had obtained approval, but were unable to locate the signed document. As a result we were unable to determine whether or not the UCA was approved at the proper level of authority.

Inadequate Description of Impact on Air Force Requirements

ESC contracting personnel issued 4 UCAs on 2 contracts and 12 UCAs on 1 contract that did not adequately describe, as required by 10 U.S.C. § 2326 and the DFARS, the adverse impact on Air Force requirements within the authorization request to issue a UCA. ESC personnel did not adequately describe in the request to issue a UCA the adverse impact on agency requirements when they issued UCAs on modifications PZ0008 and P00011 to contract FA8709-04-C-0011 and modifications PZ0008 and P00013 to contract FA8709-04-C-0010. ESC contracting personnel cited the reason for issuing the UCAs was for replanning and risk reduction activities. Contracting personnel discussed the adverse impacts on agency requirements within other contract documentation but should have disclosed the adverse impact on agency requirements within the authorization request. ESC contracting personnel issued the four UCAs before the Air Force Materiel Command issued guidance for uniform presentation in 2007.

ESC personnel prepared a single authorization request to issue 12 UCAs under contract FA8730-08-D-0001 for the procurement of the Digital Airport Surveillance Radar systems that did not specifically describe the adverse impact on agency requirements. ESC personnel listed the adverse impact to the contractor and increased system prices but did not specify the impact the increased prices and assembly line stoppage would have on Government requirements if a delay in beginning performance occurred. As a result, the UCA request was inadequate as sole support for determining whether or not ESC personnel should issue 12 UCAs with a combined not-to-exceed value of about \$30 million.

ESC Compliance With Definitization Requirements

ESC contracting personnel did not definitize 12 UCAs within the 180-day time frame specified by 10 U.S.C § 2326. ESC contracting personnel were unable to definitize seven UCAs within the allowable time frame because Government personnel changed requirements after ESC contracting personnel issued the UCAs. ESC

contracting personnel were also late to definitize three UCAs because the contractor submitted inadequate proposals. In addition, ESC contracting personnel did not definitize two UCAs because of changes in assigned contracting personnel.

Section 2326(b), title 10, United States Code, states:

A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

Section 2326(g)(2) defines a “qualifying proposal” as:

. . . a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

Of the 41 UCAs reviewed, ESC personnel exceeded the time limits for 12 UCAs, and 1 of the 12 UCAs was undefinitized as of April 23, 2010. See Appendix E for elapsed days until UCA definitization. On average, ESC contracting personnel took approximately 349 days to definitize the 12 late actions from receipt of a qualifying proposal and 442 days to definitize the 12 late actions from the date of award. For one UCA that ESC personnel had not definitized as of April 23, 2010, ESC contracting personnel received a qualifying proposal 178 days after award and the UCA remained undefinitized more than 532 days after receipt of a qualifying proposal.

During the periods that UCAs remain undefinitized, contract cost risk transfers from the contractor to the Government. ESC personnel should fund UCAs according to anticipated contractor expenditures so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding. Table 3 shows the reasons why contracting personnel did not definitize the 12 UCAs within the required time frame and the average number of days it took to definitize the UCAs.

Table 3. Average Delays in Definitization

Reason Definitization was Late	Number of UCAs¹	Average Days to a Qualifying Proposal²	Average Days From Proposal to Definitization²	Average Days From Issuance to Definitization²
Change in Government requirements	7	152 ¹	321 ¹	474 ¹
Inadequate contractor proposals	3	118	345	462
Re-assignment of the Contracting Officer	2	N/A ³	N/A ³	198

¹As of April 23, 2010.

²Values have been rounded

³Qualifying proposals received before UCA issuance in two cases.

Change in Government Requirements

ESC contracting personnel were unable to definitize seven UCAs within the 180-day requirement because personnel from various program offices and the Secretary of the Air Force changed requirements after ESC contracting personnel issued the UCA. After issuing a UCA, contracting personnel have little control over changing Government requirements. Each significant change in requirements requires the contractor to prepare or revise a proposal that contracting personnel must then review. During the undefinitized period the Government assumes greater contract cost risk. ESC contracting and program office personnel should better coordinate with customers and management to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative. ESC contracting personnel were unable to definitize the following 7 UCAs within the 180-day requirement because of changes in Government requirements.

Contract FA8708-06-D-0001

ESC contracting personnel were unable to definitize four UCAs for the Joint Surveillance Target Attack Radar System (Joint STARS) in a timely manner for the following 4 delivery orders.

Delivery Order 0008, Modification 02

ESC contracting personnel were unable to definitize modification 02 to delivery order 0008, with a not-to-exceed value of about \$52 million, within required time frames. ESC contracting personnel issued the modification on December 15, 2006, for Affordable Moving Surface Target Engagement, Advanced Radar Modes, and System Design and Development. However, the Chief of Staff of the Air Force terminated a portion of the program on September 11, 2007, causing several technical requirements to

change that contributed to the delay in definitization. As a result of the new requirement, ESC contracting personnel were unable to definitize the modification until September 28, 2007, 287 days after issuing the UCA.

Delivery Order 0008, Modification 17

ESC contracting personnel were unable to definitize modification 17 to delivery order 0008, with a not-to-exceed-value of about \$7.4 million, within required time frames. ESC contracting personnel issued the UCA on March 27, 2008, for the Joint STARS System Improvement Program II, Enhanced Land/Maritime Mode Initial Retrofit Program. However, in September 2008, the Air Force decided to reduce the retrofit requirement to one aircraft only and requested a revised proposal from the contractor. The change in requirement contributed to delaying the definitization. As a result, ESC contracting personnel were unable to definitize the UCA until June 5, 2009, 435 days after ESC contracting personnel issued the UCA, 214 days from issuance to qualifying proposal, and 221 days from qualifying proposal to definitization.

Delivery Order 0010, Modification 11

ESC contracting personnel were unable to definitize modification 11 to delivery order 0010, with a not-to-exceed value of about \$268 million, within required time frames. ESC contracting personnel issued the modification on May 9, 2008, for two Propulsion Pod System ship sets. The delay was due to the Assistant Secretary of the Air Force for Acquisition requesting a hold on advancing the modification until the completion of a study to determine airframe integrity. In addition, program personnel were also trying to secure funding during the delay. The contract was definitized on February 9, 2010, 641 days after ESC contracting personnel issued the UCA.

Delivery Order 0012, Modification 03

ESC contracting personnel were unable to definitize modification 03 to delivery order 0012, with a not-to-exceed value of about \$30 million, within required time frames. ESC contracting personnel issued the modification on May 13, 2008, for engineering services to retrofit the Joint STARS fleet with the contractors JT8D-219 Propulsion Pod System. Program office personnel stated in a November 2009 e-mail that they expected to expand the contract scope of work and that they planned to definitize the contract during June 2010. As of April 23, 2010, 710 days had elapsed since ESC contracting personnel issued the UCA.

Contract FA8726-06-C-0001

ESC contracting personnel were unable to definitize contract FA8726-06-C-0001, with a not-to-exceed value of about \$8 million, within the 180-day requirement. ESC contracting personnel awarded the contract on November 18, 2005, to procure, assemble, test, and conduct operational user and system administration training for the Joint Range Extension Transparent Multi-Platform Gateway Equipment Package. The letter contract definitization schedule estimated definitization on June 1, 2006.

After ESC contracting personnel issued the UCA, program office personnel discussed additional requirements with the contractor that the contracting officer did not learn of

until shortly before definitization. The contracting officer needed to revise the contract to prevent going above the not-to-exceed price. Additionally, engineers from the program office determined that a piece of the system was obsolete and should be replaced with a newer one. Both changes delayed definitization because it required the contractor to submit additional proposals and make system manual revisions. As a result, ESC contracting personnel were unable to definitize the contract until August 31, 2006, 286 days after issuing the UCA and 220 days after receiving a qualifying proposal.

Contract FA8704-04-C-0003

ESC contracting personnel were unable to definitize contract FA8704-04-C-0003, with a not-to-exceed value of about \$7.2 million, within the 180-day requirement. ESC contracting personnel issued the UCA to procure Wide-Band Klystron Power Amplifier Kits. ESC contracting personnel secured an economy buy for 98 Wide-Band Klystron Power Amplifier Kits by partnering with program office personnel at Tinker Air Force Base on the purchase.

After ESC contracting personnel issued the UCA on June 30, 2004, Tinker Air Force Base program office personnel withheld funding and Government-furnished property because of performance issues with the subcontractor on a related contract for Narrow-Band Klystron Power Amplifier Kits. As a result, ESC contracting personnel lost the economy purchase and had to request a revised proposal from the contractor that caused a delay in the receipt of the qualifying proposal. The contractor provided the revised proposal 233 days after the UCA was issued. After receipt of the qualifying proposal, ESC contracting personnel definitized the contract within 47 days.

Contract FA8704-04-C-0011, Modification PZ0008

ESC contracting personnel did not definitize modification PZ0008 to contract FA8709-04-C-0011, with a not-to-exceed value of about \$8.1 million, within the required time frames. ESC contracting personnel issued modification PZ0008 on November 16, 2005, to the contractor for a 3-month extension of risk reduction activities for the Airborne and Maritime/Fixed Station Joint Tactical Radio System. ESC contracting personnel and Navy customers decided to subsume the original UCA issued by PZ0008 with modification P00011 in order to continue risk reduction activities on the Pre-System Design and Development effort for an additional 6 months. As a result, ESC contracting personnel were unable to definitize modification PZ0008 until they issued modification P00013 on September 27, 2006, 285 days after issuing modification PZ0008.

Inadequate Proposals

Contractors submitted inadequate proposals in response to the Air Force issuing a UCA, which also contributed to delays in definitization. The contractor proposals were inadequate because the contracting officer determined they did not contain sufficient information to enable DOD personnel to conduct complete and meaningful audits of the information contained in the proposal or the contracting officer determined the proposals contained questionable costs. Contractors responding to an urgent Government request often require input from multiple subcontractors. During the periods that UCAs remain

undefinitized, contract cost risk transfers from the contractor to the Government. The Government also pays the contractors for preparing the proposals. Air Force Materiel Command contracting personnel should develop a metric for measuring contractor responsiveness in preparing qualifying proposals. ESC contracting personnel were unable to definitize the following UCAs within 180 days because the contractor did not submit an adequate qualifying proposal as determined by the contracting officer in a timely manner.

Contract FA8807-05-C-0004, Modification P00018

The contractor submitted multiple incomplete and inadequate proposals for modification P00018 to contract FA8807-05-C-0004 that caused delays in definitization. Air Force Space and Missile Systems Center awarded the original contract on March 18, 2005. ESC contracting personnel awarded the sole-source modification on July 30, 2007, for full-rate production of the Combat Survivor Evader Locator handheld radios and associated equipment and spares. The contractor submitted a proposal on October 2, 2007, which the contracting officer rejected because it did not contain adequate cost and pricing data. The contractor submitted a revised proposal on January 18, 2008, which the contracting officer also rejected because of continued major inadequacies. As a result, ESC contracting personnel were unable to definitize the contract until 757 days after they issued the UCA, 212 days from contract award to receipt of a qualifying proposal, and 545 days from receipt of a qualifying proposal to definitization. The Defense Contract Audit Agency should perform a post-award review of the contract because of the difficulties in obtaining a qualifying proposal and definitizing this UCA.

Contract FA8726-09-C-0002

Two subcontractors submitted proposals for contract FA8726-09-C-0002 that the Defense Contract Audit Agency determined were unacceptable to negotiate a fair and reasonable price. The contract was a sole-source award for the Battlefield Airborne Communications Node. ESC contracting personnel issued the UCA to support an operational readiness demonstration of the system in overseas operations. As a result of the problems with subcontractor proposals, ESC contracting personnel were unable to definitize the UCA until 529 days after issuance.

Contract FA8721-09-C-0002

The contractor submitted a proposal for contract FA8721-09-C-0002 that the contracting officer determined included questionable costs. The contract was a sole-source award for systems engineering and integration support. The ESC contracting officer questioned specific costs in the contractor's proposal, specifically costs called Mission Oriented Investigation and Experimentation. As a result, this action took 303 days, 113 days from issuance to receipt of a qualifying proposal, and 190 days from qualifying proposal to definitization, to definitize.

ESC Compliance With Requirements to Reflect the Undefinitized Period on Allowable Profit

ESC contracting personnel issued 25 UCAs that did not include sufficient support that would allow an independent party to determine the basis for their profit determination. ESC contracting personnel were required to use a weighted guidelines method to develop a profit objective for 29⁵ of the UCAs reviewed. ESC contracting personnel used a Web-based tool to apply the weighted guidelines method for 24 of the UCAs. However, the Web based tool's output, DD Form 1547, "Record of Weighted Guidelines Application," was inadequate as sole support for profit determination because it did not clearly document how the undefinitized period was reflected in the contractor's profit or fee. The DD Form 1547 was inadequate because it did not clearly document:

- the degree to which costs were incurred prior to definitization,
- the risk factors assigned to the incurred cost and projected cost when the weighted guidelines application was used, and
- the resulting impact on the contractor's profit or fee.

In addition, ESC contracting personnel's discussions of profit determination in the price negotiation memoranda were insufficient to adequately document the degree to which costs were incurred before definitization or did not contain adequate documentation that supported how the undefinitized period was reflected in the contractor's profit or fee for 25 UCAs. During the undefinitized period the Government bears increased risk, and the contractor generally bears reduced risk. If the contractor's reduced risk is not reflected in the negotiated profit rate, then the Government could be paying too much profit to the contractor.

Requirements to Reflect Reduced Cost Risk in the Contractor's Profit or Fee

Both 10 U.S.C. 2326 and the DFARS provide guidance on profit determination, and the FAR provides guidance on documentation of the price agreement. Section 2326(e), title 10, United States Code, states:

The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

⁵ Eleven of the UCAs were exempt from the requirement to reflect the contractor's possible reduced cost risk in the allowable profit because: the contract type was cost-plus-award-fee so use of the weighted guidelines was not required (6), the contractor was a Federally Funded Research and Development Center so no profit was paid (2), and no profit was paid on the UCA (3). In addition, one of the UCAs in the audit sample was still undefinitized as of April 23, 2010.

DFARS 215.404-4, “Profit,” requires that contracting officers use a structured approach for developing a pre-negotiation profit or fee objective on any negotiated contract action when the contractor provides cost or pricing data, except for cost-plus-award-fee contracts or contracts with Federally Funded Research and Development Centers. DFARS 215.404-4 further states that the weighted guidelines method is the structured approach that must be used, with certain limited exceptions. FAR 15.406-3, “Documenting the Negotiation,” states that the price negotiation memorandum (PNM) is the required formal document in which the contracting officer must document the basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

In June 2007, GAO issued Report No. GAO-07-559 which criticized DOD for inadequately documenting the impact of costs incurred before definitization on profit and fee rates. In response to the report, the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, issued a memorandum dated August 29, 2008, that provided guidance to contracting officers regarding the requirements contained in DFARS 215.404-71, which advocates the lowering of contract type risk based on the amount of costs incurred before definitization. The memorandum required contracting officers to document the risk assessment in the contract file (Appendix B). Only 1 of the 29 UCAs that we reviewed for profit determination was issued after DPAP issued the August 2008 memorandum. When preparing the PNM for this UCA, ESC contracting personnel discussed the cost, management, and technical risks involved with the effort and stated that costs incurred before definitization were considered; however, they did not address the effect that the incurred costs had on the contract type risk assigned or on the contractor’s profit. As a result, we could not determine whether the UCA complied with 10 U.S.C. 2326(e) and the DPAP memorandum requirements.

DD Form 1547 Provided Inadequate Support for Profit Determination

ESC contracting personnel used DD Form 1547 that the weighted guidelines application generates as support for the profit determination. However, the form did not provide sufficient detail as sole support that the undefinitized period was a consideration in profit determination. The weighted guideline tool takes into consideration incurred costs, the undefinitized period, and the remaining portion of the contract to develop a profit objective. A composite contract type risk factor is developed after the contracting officer enters the incurred and projected costs into the application and assigns values to the contract risk factors. The weighted guidelines application then generates a total profit objective for the contract based on the factors entered by the contracting officer and the composite contract type risk factor generated by the application. The contracting officer uses the profit objective as the Government’s basis for negotiations with the contractor.

However, DD Form 1547 did not display all of the factors entered by the contracting officer. The form identified a profit factor but did not state the degree to which costs were incurred prior to definitization, the risk factors assigned to the incurred cost and projected cost, or the resulting impact on the contractor’s profit or fee. As a result, it is not possible to determine how the contracting officer considered the contractor’s possible

reduced cost risk unless the contracting officer documents the risk assessment in the contract file. Contracting personnel should document the costs incurred before definitization and their impact on profit determination in the PNM. Both the GAO and DOD IG recommended in previous reports that DOD revise the DFARS to include instructions on how to perform an assessment of any reduced cost risk on profit or fee during the undefinitized period.⁶ Following a meeting with Air Force Materiel Command Headquarters personnel, they provided an e-mail stating that personnel from the Secretary of the Air Force, Policy and Implementation, Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition), and DPAP have been discussing draft changes incorporating the recommendations.

Inadequate Documentation of Profit Determination in the PNM

ESC contracting personnel did not adequately document the degree to which costs were incurred before definitization in the PNMs for 15 of the 29 UCAs reviewed. Of the remaining 14 UCAs in which the PNMs included the cost incurred before definitization, we still were unable to determine the effect that the incurred costs had on the contractor's profit for 10 UCAs because the profit determination was only supported by the DD Form 1547, which did not provide sufficient detail for us to determine if profit was impacted. Without adequate discussion of the contracting officer's consideration of the cost incurred, we were unable to determine to what extent the undefinitized period was reflected in the contractor's profit. See Table 4 for the number of instances in which contracting personnel properly and improperly documented the costs incurred before definitization in the PNM.

Table 4. Documentation of Costs Incurred Before Definitization

Category	Number of Instances
PNM did not include a discussion of the costs incurred before definitization	15
PNM did include a discussion of the costs incurred before definitization	14
Discussion of incurred cost not applicable*	11
UCA undefinitized as of April 23, 2010	1
Total	41

*Eleven of the UCAs were exempt from the requirement to reflect the contractor's possible reduced cost risk in the allowable profit because the contract type was cost-plus-award-fee so use of the weighted guidelines was not required (6), the contractor was a Federally Funded Research and Development Center so no profit was paid (2), and no profit was paid on the UCA (3).

ESC contracting personnel included a discussion of incurred costs before definitization in the PNMs of 14 of the 29 UCAs reviewed; however, in 10 of the 14 PNMs, the

⁶ GAO Report No. GAO-10-299, "DOD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvements," January 28, 2010, and DOD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004.

discussion did not directly address the effect of the incurred costs before definitization on contractor profit determination. Although the contracting officers may have documented the costs incurred during the undefinitized period and used the weighted guidelines application to develop a profit objective, they did not consistently document the resulting effect on the contractor's allowable profit. Air Force Materiel Command officials should revise the Air Force Materiel Command *Guide to Writing a Good Price Negotiation Memorandum (PNM) or Price Competition Memorandum (PCM)* to include requirements to document incurred costs, their effect on the profit/fee analysis, and a discussion about the inputs used for box 24 of the DD Form 1547.

Adequate and Inadequate Documentation of Profit Determination in the PNM

We reviewed the PNM for each of the 29 UCAs that were required to undergo a weighted guidelines analysis to determine if the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit was adequately documented. The following examples of adequate and inadequate documentation were found during the review.

Contract FA8708-06-D-0001, Delivery Order 0011, Modification 02

ESC contracting personnel prepared the PNM for contract FA8708-06-D-0001, delivery order 0011, modification 02 that adequately documented the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit. We considered the documentation to be adequate because it explained the amount of costs incurred before definitization and their effect on the contract type risk used in the weighted guidelines application, the reasons why the assigned risk factors deviated from the normal values, and the profit objective generated based on the incurred cost and risk factors. Specifically, the documentation explained that the contract type risk used in the weighted guidelines application was reduced because nearly 75 percent of the actual cost had been incurred prior to definitization, and the technical and management risk factors assigned were above normal due to the short delivery schedule. Also, because the Government's profit objective was sustained in negotiations, it can clearly be seen how the undefinitized period was reflected in the contractor's profit.

Contract FA8708-06-D-0001, Delivery Order 0008, Modification 17

ESC contracting personnel prepared the PNM for contract FA8708-06-D-0001, delivery order 0008, modification 17 that did not adequately document the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit. We considered the documentation to be inadequate for several reasons. First, contracting personnel included a statement that the Government used the weighted guidelines, but they did not provide details about the amount of costs incurred before definitization or provide any indication of costs incurred. Also, the PNM did not state the risk factors that the contracting officer assigned or the reasons why the negotiator chose the assigned values. Finally, the PNM did not state the effect of the incurred cost and the use of the weighted guidelines application on the contractor's profit. Management at ESC should revise the *Contract Specialist's Handbook* to include instructions on documenting in the profit section of the PNM how the undefinitized

period impacts the contractor's profit or fee and include instructions for contracting personnel to include and discuss inputs made to the contract type risk on the DD Form 1547.

ESC Compliance With Obligation Limitations for UCAs

ESC contracting personnel exceeded the limitations for obligating funds on UCAs for 2 of the 41 UCAs reviewed. Contracting officers are limited by 10 U.S.C. § 2326 in the amount of funds they may obligate on a UCA to 50 percent of the not-to-exceed-value prior to receipt of a qualifying proposal and to 75 percent after receipt of a qualifying proposal. Exceeding the allowable obligation thresholds puts the Government in a poor position to negotiate a contract at definitization because contractors are less inclined to submit a qualifying proposal when there is adequate funding available to continue the work.

Section 2326(b)(2) & (3), title 10, United States Code, states:

(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

Section 2326(g)(2), title 10, United States Code, states:

The term "qualifying proposal" means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

Overall, ESC contracting personnel properly obligated funds for UCAs with the exception of two UCAs. In one instance, contracting personnel mistakenly obligated 54 percent (rather than 50 percent) of the not-to-exceed price before receiving a qualifying proposal 6 months later. In the second instance, contracting personnel obligated 99 percent of the not-to-exceed price rather than the allowed 75 percent in order to continue to pay contractor personnel after definitization was delayed because of difficulties obtaining a qualifying proposal. Contracting personnel obligated funds in excess of the allowable 75 percent of the contract not-to-exceed amount to avoid

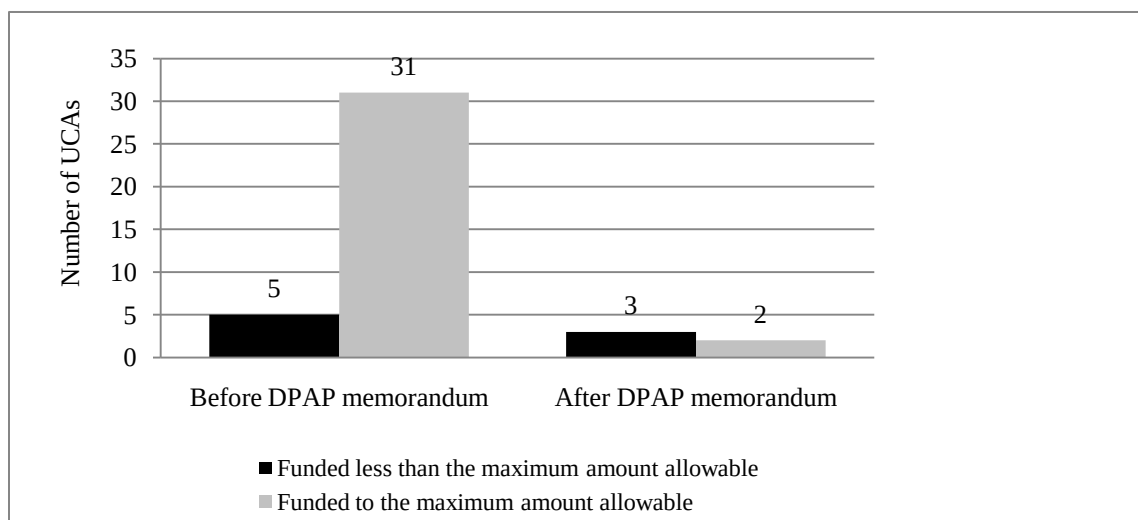
committing a possible Antideficiency Act violation. Neither of these instances was indicative of a Command-wide problem with the obligation of funding for UCAs; therefore, we are not making a recommendation on this issue.

Obligating Funds for UCAs

ESC contracting personnel took positive steps to comply with new requirements by not obligating the maximum permissible funding before definitization. The August 2008 DPAP memorandum, “Management Oversight of Undefined Contractual Actions,” instructed contracting officers to assess the contractor’s spend plan for the undefinitized period and obligate funding in an amount consistent with the contractor’s requirements for the undefinitized period. Further, contracting officers should avoid obligating the maximum allowable funding amount at the time of UCA award to discourage extended periods of performance before definitization. Funding UCAs according to anticipated contractor expenditures can aid in timely contract definitization.

ESC contracting personnel took steps to comply with the DPAP memorandum requirement to avoid obligating the maximum permissible funding at contract award. Before the memorandum, ESC contracting personnel commonly funded UCAs to the maximum amount allowed. ESC contracting personnel obligated funds for less than the maximum amount allowable for 5 of the 36 UCAs from our nonstatistical judgment sample that were issued before the DPAP memorandum and for 3 of the 5 UCAs that were issued after the DPAP memorandum. The contracting officer can strengthen the Government’s negotiation position by limiting funding to incremental amounts to help obtain a timely definitization. Figure 1 shows obligation amounts before and after the August 2008 DPAP memorandum.

Figure 1. Obligation Amounts Before and After the August 2008 DPAP Memorandum

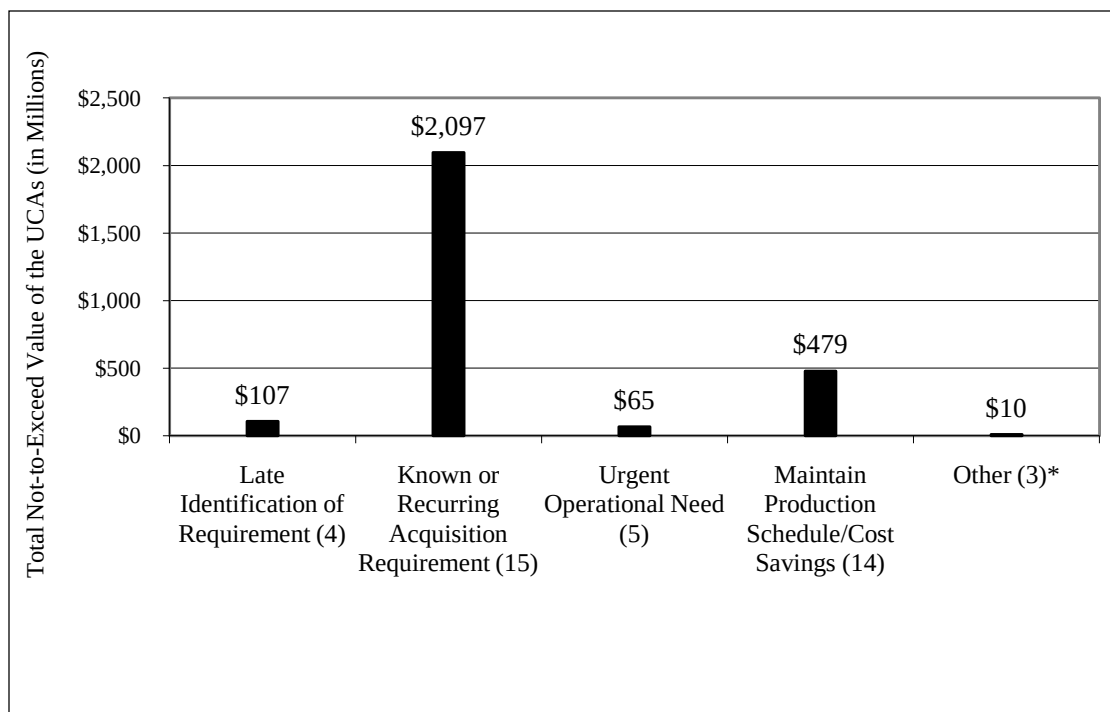


Inadequate Justification for Issuing UCAs

ESC contracting personnel placed the Government at unnecessary risk when they issued 4 UCAs on 1 contract for late identified requirements and 15 UCAs on 4 contracts for known or recurring acquisition requirements. DFARS 217.7403 limits the use of a UCA to situations when negotiating a definitive contract is not possible and the Government's interest demands contract performance begin immediately. ESC personnel's questionable use of UCAs transferred additional cost risk from the contractor to the Government. ESC contracting personnel should avoid issuing UCAs to extend consecutive periods of performance on the same contract and avoid issuing UCAs for known or recurring requirements because it is indicative of poor acquisition planning and a lack of communication.

In a December 2006 memorandum, the Assistant Secretary of the Air Force for Acquisition directed that contracting personnel should not use UCAs as a normal means of conducting business. The memorandum further directed that UCA use should be limited to circumstances where negotiation of a definitive contract is not possible to meet Air Force requirements when performance must begin immediately. However, ESC contracting personnel used UCAs to procure goods and services when contracting personnel should have been able to avoid issuing a UCA. Figure 2 shows the underlying factors behind ESC UCA usage.

Figure 2. Underlying Reasons Why ESC Issued UCAs



*Other reasons include using UCAs for the establishment of forward rate pricing agreements, lapse in contract coverage, and contractor estimating system problems.

Late Identification of Contractual Requirement

ESC contracting personnel issued UCAs for contractual requirements that were not identified in a timely manner for 4 of the 41 UCAs reviewed. ESC contracting personnel issued four UCAs on contract FA8706-06-D-0003 with a value of \$106 million. ESC contracting personnel issued the first UCA in December 2006, for Air and Space Operations Weapons System support, fielding, and system integration. ESC issued three more UCAs, in September 2007, October 2008, and February 2009, to extend the period of performance of the same or similar efforts when contracting personnel could have reasonably estimated contract prices as they had recently completed similar acquisitions. Contracting personnel attributed the use of a UCA to the late identification of the contractual requirement and the unknown costs attributable to system integration.

Contracts Issued for Known or Recurring Acquisition Requirements

ESC contracting personnel issued 12 UCAs on contract FA8730-08-D-0001 for known acquisition requirements. ESC contracting personnel awarded contract F19628-96-D-0038 on August 9, 1996, for Digital Airport Surveillance Radar. ESC contracting personnel planned to issue a follow-on contract in 2006. However, the program experienced delays because of developmental issues conflicting with aggressive scheduling efforts. ESC contracting personnel issued 12 UCAs on May 22, 2008, to procure the remaining systems. The cited reason was to avoid a production line shut down. ESC contracting personnel definitized 11 of the UCAs on September 30, 2008.

ESC contracting personnel issued a UCA on modification P00018 of FA8807-05-C-0004 for known acquisition requirements. ESC contracting personnel awarded the \$108 million UCA for lot 3 of full rate production for the Combat Survivor Evader Locator radios and accessories on July 30, 2007. As stated in the Request for Authorization to Issue a UCA, ESC personnel issued a Request for Proposal for lot 3 in November 2006. However, the contractor proposal and several subsequent revisions were determined to be inadequate. ESC contracting personnel issued the UCA to secure FY 2007 prices and to avoid a break in production between lots 2 and 3. The Combat Survivor Evader Locator procurement was a mature program in lot 2 of full rate production at the time of issuance and using a UCA transferred additional risk to the Government on a program that had been in full rate production since 2005.

ESC contracting personnel issued two UCAs for \$1.96 billion for recurring acquisition requirements. The contract was awarded to a Federally Funded Research and Development Center that has provided services to ESC for more than 50 years. ESC contracting personnel issued contract FA8721-09-C-0001 on October 1, 2008, as a bridge to cover the period between the end of contract FA8721-04-C-0001 and issuance of contract FA8721-09-C-0002 on December 1, 2008. The FAR requires the sponsor of the Federally Funded Research and Development Center, in this case the Office of the Secretary of Defense, to conduct a comprehensive review every 5 years to determine whether there is a continuing need for the Federally Funded Research and Development Center. Because DOD had not completed the 2008 review within the normal timeline,

ESC contracting personnel could not begin work on awarding a new contract. As a result, ESC contracting personnel issued a UCA to avoid a break in performance.

Documentation of Fair and Reasonable Prices

ESC contracting personnel adequately documented their determination of price reasonableness for all 40 definitized UCAs, with the exception of documenting the determination of profit as discussed in the report. FAR 15.403-3, “Requiring information other than cost or pricing data,” requires that the contracting officer obtain information that is adequate for evaluating price reasonableness. Further, FAR 15.406-3, “Documenting the negotiation,” states the contracting officer shall document fair and reasonable price in the contract file. We obtained and reviewed 16 contract files for 40 UCAs and determined the files contained adequate documentation, such as PNMs, business clearance memoranda, certificates of current cost or pricing data, and related audit reports, to document contracting officers’ determination of price reasonableness.

ESC contracting personnel adequately documented their determination of a fair and reasonable price. FAR 15.404-4, “Profit,” states that the contracting officer’s signature on the PNM documents the contracting officer’s determination that the statutory price or fee limitations have not been exceeded. Contracting officers signed the PNM for each of the 40 UCAs. According to the PNMs, contracting officers evaluated contractor proposals to determine that negotiated amounts were fair and reasonable. Table 5 shows the types of support contracting officers relied on when determining price reasonableness.

Table 5. Documentation to Support Determination of Price Reasonableness

Contractor Proposal Evaluated Against	Number of PNMs That Identified Evaluation
Defense Contract Audit Agency, Defense Contract Management Agency, and/or other audit agency audits	34
Technical evaluations	40
Forward pricing rate agreements or forward pricing rate recommendations	35

Further, the PNMs for 36 UCAs referenced compliance with FAR 15.403-4, “Requiring Cost or Pricing Data,” which outlines requirements for obtaining current cost or pricing data. The PNMs for 39 UCAs stated the contractor provided a certificate of current cost or pricing data.

Proactive Measures Taken

Except for the discrepancies discussed, ESC contracting personnel complied with restrictions on the inclusion of non-urgent spare parts and modification of the contractual scope on all of the 41 UCAs reviewed. ESC officials implemented and maintained oversight and tracking procedures that are helping ESC improve its management of UCAs. Oversight procedures include manual tracking of UCAs with automated

notifications to contracting personnel. ESC management also implemented a series of contract reviews that help ensure the adequacy and completeness of contract documentation. Although we identified deficiencies in this review, ESC had a management framework in place to implement and subsequently improve the management of UCAs.

Conclusion

ESC contracting personnel properly obtained the appropriate authorization to issue UCAs with one exception, adhered to the limitations on the obligation of funds with two minor exceptions, and adequately documented their determination of price reasonableness. However, we identified 56 instances where ESC personnel did not fully comply with UCA restrictions for the 41 UCAs that we reviewed. ESC personnel prepared requests to issue a UCA that alone provided insufficient detail to support the UCA request, did not definitize UCAs in a timely manner, and did not adequately document their consideration of contractor's reduced risk when determining contractor profit.

Recommendations, Management Comments, and Our Response

1. We recommend that the Director of Contracting, Headquarters Air Force Materiel Command:

a. Develop a metric for measuring contractor responsiveness in preparing qualifying proposals.

U.S. Air Force Materiel Command Comments

The Director of Contracting, Headquarters Air Force Materiel Command, agreed and commented that Air Force Materiel Command has developed a metric for measuring contractor responsiveness in preparing qualifying proposals. Air Force Materiel Command personnel have collected detailed undefinitized contractual action information on a monthly basis since January 2010. The data allow Air Force Materiel Command personnel to measure contractor responsiveness in preparing qualifying proposals by measuring the period of time between undefinitized contractual action issuance and receipt of a qualifying proposal.

b. Update the profit section of the Air Force Materiel Command *Guide to Writing a Good Price Negotiation Memorandum (PNM) or Price Competition Memorandum (PCM)* to include requirements to document incurred costs, their effect on profit and fee analysis, and a discussion about the inputs used for box 24 of the DD Form 1547.

U.S. Air Force Materiel Command Comments

The Director of Contracting, Headquarters Air Force Materiel Command, agreed and stated that additional emphasis is appropriate. Air Force Materiel Command contracting personnel will revise the Price Negotiation Memorandum/Price Competition Memorandum Guide to highlight and emphasize the relationship between incurred costs

and profit/fee and the need for adequate documentation. The Air Force Materiel Command *Guide to Writing a Good Price Negotiation Memorandum (PNM) or Price Competition Memorandum (PCM)* will be updated within 60 days to reflect this emphasis.

Our Response

The Director of Contracting's comments are responsive. No additional comments are required.

2. We recommend that the Commander, Air Force Electronic Systems Center:

a. Require that Air Force Electronic Systems Center program management and contracting personnel better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative.

Air Force Electronic Systems Center Comments

The Commander, Headquarters Electronic Systems Center, agreed and stated that policy will be issued by December 1, 2010, to instruct Electronic Systems Center personnel to better coordinate with customers to identify and document changes in Government requirements.

b. Develop procedures so that program offices avoid requesting that Electronic Systems Center contracting personnel issue undefinitized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements.

Air Force Electronic Systems Center Comments

The Commander, Headquarters Air Force Electronic Systems Center, agreed and stated that policy will be issued by December 1, 2010, instructing program office personnel to refrain from requesting that Electronic Systems Center contracting personnel issue undefinitized contractual actions for the purpose of extending consecutive periods of performance and for known or recurring requirements.

Our Response

The Commander's comments are responsive. No additional comments are required.

3. We recommend that the Director of Contracting, Air Force Electronic Systems Center:

a. Develop procedures in the contract review process to help ensure that each undefinitized contractual action request to the head of the contracting activity or delegate includes the adverse impact on agency requirements if contracting personnel do not issue an undefinitized contractual action.

Air Force Electronic Systems Center Comments

The Director of Contracting, Air Force Electronic Systems Center, agreed and stated that on December 15, 2009, the Electronic Systems Center Contracting Office issued procedures that required the use of the Air Force Materiel Command's Undefined Contractual Action Request Template from Air Force Materiel Command Federal Acquisition Regulation Supplement 5317.7404-1(e). The director noted that the template requires information on the mission impact if the use of an undefined contractual action is not approved.

b. Request the Defense Contract Audit Agency perform a post-award review of contract FA8807-05-C-0004 because of the difficulties in obtaining a qualifying proposal and definitizing the undefined contractual action.

Air Force Electronic Systems Center Comments

The Director of Contracting, Air Force Electronic Systems Center, agreed and stated that the contracting officer will be required to request that the Defense Contract Audit Agency perform a post-award review of contract FA8807-05-C-0004 by October 1, 2010.

c. Update the Air Force Electronic Systems Center *Contract Specialist's Handbook* with requirements for contracting personnel to include in the profit section of the price negotiation memorandum: incurred cost, contract type risk used for both the undefined period and remainder of the contract, and the impact that the use of the undefined contractual action had on the contractor's profit or fee. In addition, include instructions for contracting personnel to include and discuss inputs made to the contract type risk of DD Form 1547, "Record of Weighted Guidelines Application."

Air Force Electronic Systems Center Comments

The Director of Contracting, Air Force Electronic Systems Center, agreed and commented that the *Contract Specialist's Handbook* will be updated by October 1, 2010, to require that contracting personnel include incurred cost, contract type risk used for both the undefined period and remainder of the contract, and the impact that the use of the undefined contractual action had on the contractor's profit or fee in the profit section of the price negotiation memorandum. In addition, the *Contract Specialist's Handbook* will be updated by October 1, 2010, to instruct contracting personnel to include and discuss inputs made to the contract type risk of DD Form 1547, "Record of Weighted Guidelines Application."

d. Require contracting personnel to avoid obligating funds to the maximum amount allowable for all undefined contractual actions so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

Air Force Electronic Systems Center Comments

The Director of Contracting, Air Force Electronic Systems Center, agreed and commented that on March 17, 2010, the Deputy Assistant Secretary (Contracting) Assistant Secretary (Acquisition) issued policy requiring contracting officers to obligate funding consistent with the contractor's spend plan for the undefinitized period.

e. Develop procedures to avoid issuing undefinitized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements.

Air Force Electronic Systems Center Comments

The Director of Contracting, Air Force Electronic Systems Center, agreed and stated that procedures will be included in the policy to be issued by December 1, 2010, in response to Recommendation 2.b to refrain from issuing undefinitized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements.

Our Response

The Director of Contracting's comments are responsive. No additional comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from July 2009 through June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

GAO was conducting a review on the use of UCAs when our audit began. We limited our site selection to contracting offices that were not included in the GAO engagement.

Universe and Sample Information

We used the FPDS-NG database to identify a universe of UCAs to review. We identified action obligations coded as letter contracts that the Air Force issued during calendar years 2004 through 2008. We classified the action obligations by contract number and contracting office code to identify the contracting offices that issued the 15 largest aggregate UCA dollar values. We excluded two Air Force contracting organizations from consideration because GAO had an ongoing engagement with similar objectives at the sites. We identified ESC and Air Force Space and Missile Systems Center for review. We then conducted another search in FPDS-NG to identify additional UCAs issued by ESC contracting personnel from the beginning of FY 2004 to June 22, 2009. The FPDS-NG universe consisted of 324 ESC actions as of June 22, 2009, valued at about \$2.2 billion. From the UCAs issued by ESC, we selected a nonstatistical judgment sample of 12 letter contracts to review. In addition, ESC personnel provided a list of all UCAs issued by ESC contracting personnel from FY 2004 through August 14, 2009, that had a total not-to-exceed value of about \$5.8 billion. However, the list of UCAs provided by ESC contained UCAs issued outside the scope of our review and contained UCAs for foreign military sales and efforts supporting contingencies. Based upon the FPDS-NG data and the ESC data, we selected a nonstatistical judgment sample of 23 contracts for review. During the audit we eliminated 7 contracts from the scope because 2 were not UCAs, 3 were not physically located at ESC, and 2 were Foreign Military Sales contracts. Because 10 U.S.C. § 2326 (2009) exempts Foreign Military Sales from restrictions applicable to UCAs, we removed them from our nonstatistical judgment sample.

Our audit universe was initially limited to the contracts identified in FPDS-NG as letter contracts. Within FPDS-NG, we were unable to distinctively identify three types of UCAs called “provisioned item orders,” “indefinite-delivery, indefinite-quantity,” and “basic ordering agreements.” These types of UCAs were identified in a field the user or input staff modifies and were subject to individual manipulations of the field that make searching across the database unreliable. However, we later included delivery order type contracts identified by ESC contracting personnel. Our final nonstatistical judgment sample consisted of 41 UCAs: 14 UCAs on 11 letter contracts and 27 UCAs on

5 indefinite-delivery, indefinite-quantity contracts. See Appendix C for a list of UCAs that we reviewed.

Review of Documentation and Interviews

We downloaded and reviewed selected contracts and modifications from the Electronic Document Access database and obtained and reviewed contract documentation from ESC. We then combined all of the data to perform an analysis to determine compliance with 10 U.S.C. § 2326. We also determined through documentation analyzed and meetings attended whether the contracts underwent price reasonableness determinations before their definitization.

We interviewed contracting, procurement, and automation personnel covering award and definitization of letter contracts and related management control programs at the:

- Office of Defense Procurement and Acquisition Policy;
- Department of the Air Force, Policy and Implementation;
- United States Air Force Materiel Command; and
- Air Force Electronic Systems Center.

We reviewed documentation maintained by ESC contracting personnel to support letter contracts and delivery order contracts awarded or definitized from FY 2004 through August 14, 2009. We reviewed:

- UCA request and approval documentation,
- justification and approvals,
- statements of work,
- contract modifications,
- price negotiation memoranda,
- business clearance memoranda, and
- Defense Contract Audit Agency audit reports.

We evaluated documentation maintained by ESC against applicable criteria including:

- Statutes and Public Laws: Public Law 99-591, “A Joint Resolution Making Continuing Appropriations for Fiscal Year 1987, and for Other Purposes”; Public Law 110-181, “National Defense Authorization Act for Fiscal Year 2008”; 10 U.S.C. Section 2304, “Contracts: Competition Requirements”; 10 U.S.C. Section 2326, “Undefinitized Contractual Actions: Restrictions”;
- Federal Acquisition Regulation Requirements: FAR Subpart 6.3, “Other than Full and Open Competition”; FAR Subpart 15.4, “Contract Pricing”; FAR Subpart 16.6, “Time-and-Materials, Labor Hour, and Letter Contracts”; FAR Subpart 52.2, “Text of Provisions and Clauses”;
- Defense Federal Acquisition Regulation Supplement: DFARS 215.404, “Proposal Analysis”; DFARS 216.6, “Time-and-Materials, Labor Hour, and Letter Contracts”; DFARS 217.74, “Undefinitized Contract Actions”; DFARS case

2008-D034, “Management of Unpriced Change Orders”; DFARS case 2007-D011, “Letter Contract Definitization Schedule”;

- Air Force Federal Acquisition Regulation Supplement: Air Force Federal Acquisition Regulation Supplement Subpart 5316.6, “Time-and-Materials, Labor Hour, and Letter Contracts”; Air Force Federal Acquisition Regulation Supplement Subpart 5317.74, “Undefinitized Contract Actions”; Air Force Federal Acquisition Regulation Supplement Subpart 5301.90, “Clearance”;
- Memoranda: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, “Management Oversight of Undefinitized Contract Actions,” August 29, 2008; the Department of the Air Force Office of the Assistant Secretary Contract Policy Memo 08-C-11, “Mandatory Procedures for Undefinitized Contract Actions (UCAs),” October 14, 2008; Department of the Air Force, Policy and Implementation, Deputy Assistant Secretary (Contracting), Assistant Secretary (Acquisition) Policy Memo 08-C-05, “Head of Contracting Activity (HCA) Designation and General Contracting Authority,” September 25, 2008; and
- Air Force Materiel Command and ESC Guidance: Air Force Materiel Command Contracting, *A Guide to Writing a Good Price Negotiation Memorandum (PNM) or Price Competition Memorandum (PCM)*, May 2007; ESC Commander memorandum, “Delegation of Acquisition Authorities,” June 21, 2004; ESC Contracting memorandum, “Delegation on Head of Contracting (HCA) Authority at ESC,” October 1, 2008; and “Air Force Procurement Executive Office C2 & CS Delegations of Authorities,” matrix, September 27, 2007; *ESC Contract Specialist Handbook (Phase II)*, March 2008.

Use of Computer-Processed Data

We relied on computer-processed data from FPDS-NG to determine the contracting organizations to visit and to perform the audit nonstatistical judgment sample selection. We also used Electronic Document Access to obtain contract documentation. The data were not a basis for our conclusions or finding. To assess the accuracy of computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at visited contracting activities. We determined that data obtained through FPDS-NG and Electronic Document Access were sufficiently reliable to accomplish our audit objectives.

Use of Technical Assistance

We met with personnel from the DOD IG Quantitative Methods and Analysis Division and determined that we would use FPDS-NG data to select a nonstatistical judgment sample of contracting activities and then we would use FPDS-NG data in combination with contract data provided by the contracting activity to select a nonstatistical judgment sample of UCAs to review. Our nonstatistical judgment sample was limited to specific

contracts, and our results should not be projected across other ESC-issued contracts nor projected across Air Force-issued contracts.

Prior Coverage

During the last 5 years, GAO has issued two reports discussing DOD use of UCAs. Six years ago, the DOD IG issued a report discussing DOD use of UCAs. 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-10-299, “Defense Contracting: DOD Has Enhanced Insight into Unfinitized Contract Action Use, but Management at Local Commands Needs Improvements,” January 28, 2010

GAO Report No. GAO-07-559, “Defense Contracting: Use of Unfinitized Contract Actions Understated and Definitization Time Frames Often Not Met,” June 19, 2007

DOD IG

DOD IG Report No. D-2004-112, “Unfinitized Contractual Actions,” August 30, 2004

Appendix B. August 2008 Office of Defense Procurement and Acquisition Policy Memorandum*



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

AUG 29 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND LOGISTICS MANAGEMENT),
ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Management Oversight of Undefinitized Contract Actions

An undefinitized contract action (UCA) is one for which the contract terms, specifications, or price are not agreed upon before performance is begun. Examples include letter contracts or undefinitized orders issued against basic ordering agreements or task/delivery order contracts. A UCA is a valuable tool for meeting urgent requirements. However, without appropriate management and controls, these instruments can lead to increased cost risks for the Department.

A recent Government Accountability Office (GAO) review of DoD UCAs (GAO-07-559) identified a need for enhanced oversight. In addition, section 809 of the FY 2008 National Defense Authorization Act requires issuance of detailed instructions to ensure oversight of UCAs. Specific issues include appropriate use of UCAs; timely definitization; obligation amounts prior to definitization; and appropriate recognition in profit or fee of the contractor's reduced risk during the undefinitized period.

DFARS 217.74, Undefinitized Contract Actions, provides DoD policies and procedures for the appropriate use of UCAs and related approval requirements. When possible, to discourage extended periods of performance prior to definitization, contracting officers should avoid obligating the maximum permissible funding at the time of UCA award. Contracting officers should assess the contractor's spend plan for the undefinitized period, and obligate funds only in an amount consistent with the

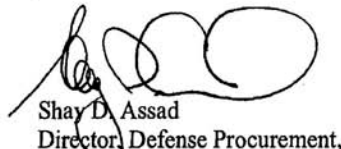


*Attachments to the memorandum have been removed from the report.

contractor's requirements for the undefinitized period. In general, when negotiating profit or fee, it is appropriate to apply the contract risk factor for cost reimbursement contracts to the actual cost of performance prior to definitization (DD Form 1547, Record of Weighted Guidelines Application, Block 24, Contract Type Risk). Contracting officers should note the guidance at DFARS 215.404-71-3(d)(2) which indicates that, when costs have been incurred prior to definitization, generally the contract type risk should be regarded to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, contracting officers may assign a value as low as 0 percent, regardless of contract type. Contracting officers must document the risk assessment in the contract file.

To provide enhanced management insight and oversight of UCAs, we have established the attached templates for UCA Management Plans and semi-annual Consolidated UCA Reports for UCAs with an estimated value of more than \$5 million. Together, the plans and reports provide information on key aspects of UCA use and management, including actions taken to ensure timely and effective definitization. Initial UCA Management Plans are due no later than 30 days after the date of this policy memorandum. The initial Consolidated UCA Reports are due on 31 October 2008. Plan Updates and Consolidated UCA Reports are due semi-annually thereafter.

Please provide your UCA management point of contact as soon as possible to [REDACTED] who can be reached at [REDACTED]



Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachments:
As stated

Appendix C. Undefinitized Contractual Actions Reviewed

Electronic Systems Center's Use of Undefinitized Contractual Actions for FY 2004–August 14, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number ¹	Description of Supplies or Services Procured	Contract ² Type	Effective Date	NTE ³ Amount (millions)
1	FA8704-04-C-0003		Wide Band Klystron Power Amplifier Kits	FFP	6/30/2004	\$7.2
2	FA8720-04-C-0025		Testing for Joint Weather Impacts Systems	CPFF	9/1/2004	1.5
3	FA8721-09-C-0002		System engineering and integration support for Air Force Programs	CR	12/1/2008	1,900.0
4	FA8726-06-C-0001		Joint Range Extension Transparent Multi-Platform Gateway Equipment Package (JTEP) systems	FFP	11/18/2005	8.1
5	FA8726-09-C-0002		Operational Readiness Demonstration for the Battlefield Airborne Communications Node (BACN)	CPFF/FFP/CR/T&M	10/24/2008	47.8
	FA8721-08-D-0001					
6		DO-0001	Services and products for Counter Suicide Bomber Capability Systems	FFP/CPFF	7/9/2008	3.0
7		DO-0002	Support for Counter Suicide Bomber Capability Systems	T&M/CR	8/14/2008	1.4
8	FA8730-08-C-0002		Long-lead items and services for AutoTrac II System	FFP	3/6/2008	5.2
	FA8807-05-C-0004					
9		P00018	Combat Survivor/Evader Locator (CSEL) Radio Sets	FFP	7/30/2007	107.7
	FA8706-06-D-0003					
10		DO-0003	Air and Space Operations Center Weapons System Support and Fielding	CPAF	12/8/2006	33.0
11		DO-0003-02	Air and Space Operations Center Weapons System Support and Fielding	CPAF	9/7/2007	16.1
12		DO-0010-03	Air and Space Operations Center Weapons System Support and Fielding	CPAF	10/31/2008	23.1
13		DO-0017	Air and Space Operations Center Weapons System Support and Fielding	CPAF	2/27/2009	29.2

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

Electronic Systems Center's Use of Undefined Contractual Actions for FY 2004–August 14, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Effective Date	NTE Amount (millions)
	FA8720-04-D-0001					
14		DO-0001-02	Human Machine Interface improvements to Battle Control Systems-Mobile (BCS-M) Communications Switch System Initial Production Units (IPUs)	FFP	5/5/2005	1.2
	FA8708-06-D-0001					
15		DO-0004-01	Enhanced Land/Maritime Modes (ELMM) Risk Reduction Effort into the Joint Surveillance Target Attack Radar System (STARS) System Improvement Program II	CPIF	12/30/2005	3.8
16		DO-0008-02	ELMM/Affordable Moving Surface Target Engagement (AMSTE) System Design and Development (SDD) effort into the Joint STARS System Improvement Program II	CPAF	12/15/2006	52.1
17		DO-0008-16	ELMM/Advanced Radar Modes (ARM)/AMSTE SDD effort into the Joint STARS System Improvement Program II	CPIF	3/28/2008	65.6
18		DO-0008-17	ELMM and ARM Initial Retrofit Program	FPI(F)	3/27/2008	7.5
19		DO-0010-11	Two Propulsion Pod System ship sets	CPIF/FFP	5/9/2008	268.4
20		DO-0011-02	Software Upgrade effort into the basic Joint STARS System Improvement Program II Contract	CPIF	4/23/2007	2.0
21		DO-0012-03	Re-engine the Joint STARS System	CPIF	5/13/2008	30.9
22		DO-0018-03	Retrofit aircraft with SIPRNet Entry Site (SES), partial initial spares, trainers, and 5 months of contractor logistic support	FFP	11/30/2007	22.4
	FA8709-04-C-0010		15-month effort to define system interface requirements for Pre-SDD Phase of the Airborne and Maritime/Fixed Station Joint Tactical Radio System (JTRS) Program, and initial development			
23		PZ0005	Change in requirements for the JTRS	CPFF	5/11/2005	1.4

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

Electronic Systems Center's Use of Undefined Contractual Actions for FY 2004–August 14, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number ¹	Description of Supplies or Services Procured	Contract ² Type	Effective Date	NTE Amount (millions)
24		PZ0008	3-month extension of the contract	CPFF	11/16/2005	8.2
25		P00013	8-month extension of the contract	CPFF	3/31/2006	19.4
	FA8709-04-C-0011		Preliminary Design Review for Pre-SDD effort			
26		PZ0008	3-month extension of the contract	CPFF	11/16/2005	8.1
27		P00011	8-month extension of the contract	CPFF	3/14/2006	20.1
	FA8725-04-C-0007					
28		P00041	Requirements analysis, implementation review, training, drawing, technical order development, and acceptance testing for Dynamic Link Reconfiguration	CPAF	7/12/2007	9.4
	FA8730-08-D-0001		Digital Airport Surveillance Radar System			
29		DO-0001	Digital Airport Surveillance Radar System	FFP	5/22/2008	4.3
30		DO-0002	Digital Airport Surveillance Radar System	CR/LH	5/22/2008	.9
31		DO-0003	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.3
32		DO-0004	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.4
33		DO-0005	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.4
34		DO-0006	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.3
35		DO-0007	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.3
36		DO-0008	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.3
37		DO-0009	Digital Airport Surveillance Radar System	FFP	5/22/2008	3.4
38		DO-0010	Digital Airport Surveillance Radar System	CR/LH	5/22/2008	.3
39		DO-0011	Digital Airport Surveillance Radar System	FFP	5/22/2008	.02
40		DO-0012	Digital Airport Surveillance Radar System	FFP	5/22/2008	.2

Appendix C. Undefined Contractual Actions Reviewed (cont'd)

Electronic Systems Center's Use of Undefined Contractual Actions for FY 2004–August 14, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number ¹	Description of Supplies or Services Procured	Contract ² Type	Effective Date	NTE Amount (millions)
41	FA8721-09-C-0001		Architecture development, technical strategy, program strategy, program execution, and DOD enterprise systems engineering	CR	10/1/2008	60.0

¹DO: delivery order.

²FFP: firm-fixed-price; CPAF: cost-plus-award-fee; T&M: time-and-materials; CPFF: cost-plus-fixed-fee; CPIF: cost-plus-incentive-fee; CR: cost-reimbursement; FPI(F): fixed-price-incentive (firm); and LH: labor hour.

³NTE: not-to-exceed amount.

Appendix D. Deficiencies Identified

Detailed Results of Undefined Contractual Actions Reviewed

			Deficiencies in ESC Use of Undefined Contractual Actions				
UCA Number	Contract Number	Delivery Order/ Modification Number	Effective Date	Inadequate Request to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Profit Determination Documentation
1	FA8704-04-C-0003		6/30/2004		√		√
2	FA8720-04-C-0025		9/1/2004				√
3	FA8721-09-C-0002		12/1/2008		√		
4	FA8726-06-C-0001		11/18/2005		√		√
5	FA8726-09-C-0002		10/24/2008		√		√
	FA8721-08-D-0001						
6		DO-0001	7/9/2008				√
7		DO-0002	8/14/2008				√
8	FA8730-08-C-0002		3/6/2008		√		
	FA8807-05-C-0004						
9		P00018	7/30/2007		√	√	
	FA8706-06-D-0003						
10		DO-0003	12/8/2006				
11		DO-0003-02	9/7/2007				
12		DO-0010-03	10/31/2008				
13		DO-0017	2/27/2009		√		
	FA8720-04-D-0001						
14		DO-0001-02	5/5/2005				√

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of Undefined Contractual Actions Reviewed

UCA Number	Contract Number	Delivery Order/ Modification Number	Deficiencies in ESC Use of Undefined Contractual Actions				
			Effective Date	Inadequate Request to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Profit Determination Documentation
	FA8708-06-D-0001						
15		DO-0004-01	12/30/2005				
16		DO-0008-02	12/15/2006		√		
17		DO-0008-16	3/28/2008				
18		DO-0008-17	3/27/2008		√		√
19		DO-0010-11	5/9/2008		√		√
20		DO-0011-02	4/23/2007				
21		DO-0012-03	5/13/2008		√ +		
22		DO-0018-03	11/30/2007				√
	FA8709-04-C-0010						
23		PZ0005	5/11/2005				√
24		PZ0008	11/16/2005	√			√
25		P00013	3/31/2006	√			√
	FA8709-04-C-0011						
26		PZ0008	11/16/2005	√	√		√
27		P00011	3/14/2006	√			√
	FA8725-04-C-0007						
28		P00041	7/12/2007				
	FA8730-08-D-0001						
29		DO-0001	5/22/2008	√			√

Appendix D. Deficiencies Identified (cont'd)

Detailed Results of Undefined Contractual Actions Reviewed

UCA Number	Contract Number	Delivery Order/ Modification Number	Deficiencies in ESC Use of Undefined Contractual Actions				
			Effective Date	Inadequate Request to Issue a UCA	Definitization Untimely	Obligation Limits Exceeded	Inadequate Profit Determination Documentation
30		DO-0002	5/22/2008	√			
31		DO-0003	5/22/2008	√			√
32		DO-0004	5/22/2008	√			√
33		DO-0005	5/22/2008	√			√
34		DO-0006	5/22/2008	√			√
35		DO-0007	5/22/2008	√			√
36		DO-0008	5/22/2008	√			√
37		DO-0009	5/22/2008	√			√
38		DO-0010	5/22/2008	√			
39		DO-0011	5/22/2008	√			√
40		DO-0012	5/22/2008	√			√
41	FA8721-09-C-0001		10/1/2008	√ □		√	
Total				17	12	2	25

√ Discrepancy noted.

+ Undefined as of April 23, 2010.

□ Unsigned UCA authorization.

Appendix E. Definitization Elapsed Days for ESC UCAs

Electronic Systems Center's Definitization Details for FY 2004–August 14, 2009

Contract Number	Effective Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
FA8704-04-C-0003	6/30/2004	2/18/2005	4/6/2005	233	47	280
FA8720-04-C-0025	9/1/2004	9/30/2004	2/18/2005	29	141	170
FA8721-09-C-0002	12/1/2008	3/24/2009	9/30/2009	113	190	303
FA8726-06-C-0001	11/18/2005	1/25/2006	8/31/2006	66	220	286
FA8726-09-C-0002	10/24/2008	11/21/2008	4/6/2010	28	501	529
FA8721-08-D-0001						
DO-0001	7/9/2008	7/2/2008	9/30/2008	Received before UCA award date	N/A	83
DO-0002	8/14/2008	7/2/2008	9/30/2008	Received before UCA award date	N/A	47
FA8730-08-C-0002	3/6/2008	11/19/2007	9/4/2008	Received before UCA award date	N/A	182
FA8807-05-C-0004						
P00018	7/30/2007	2/27/2008	8/25/2009	212	545	757
FA8706-06-D-0003						
DO-0003	12/8/2006	11/29/2006	2/15/2007	Received before UCA award date	N/A	69
DO-0003-02	9/7/2007	6/29/2007	1/25/2008	Received before UCA award date	N/A	140
DO-0010-03	10/31/2008	9/26/2008	1/29/2009	Received before UCA award date	N/A	90
DO-0017	2/27/2009	1/30/2009	9/29/2009	Received before UCA award date	N/A	214
FA8720-04-D-0001						
DO-0001-02	5/5/2005	10/24/2005	2/23/2006	172	122	294
FA8708-06-D-0001						
DO-0004-01	12/30/2005	4/19/2006	6/30/2006	110	72	182
DO-0008						
DO-0008-02	12/15/2006	6/8/2007	9/24/2008	175	474	649
DO-0008-16	3/28/2008	2/15/2008	9/24/2008	Received before UCA award date	N/A	180

Appendix E. Definitization Elapsed Days for ESC UCAs (cont'd)

Electronic Systems Center's Definitization Details for FY 2004–August 14, 2009

Contract Number	Effective Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
DO-0008-17	3/27/2008	10/27/2008	6/5/2009	214	221	435
DO-0010-11	5/9/2008	10/24/2008	2/9/2010	168	473	641
DO-0011-02	4/23/2007	5/21/2007	11/14/2007	28	177	205
DO-0012-03	5/13/2008	11/7/2008	4/23/2010*	178	532	710
DO-0018-03	11/30/2007	3/28/2008	6/13/2008	119	77	196
FA8709-04-C-0010						
PZ0005	5/11/2005	5/10/2005	7/11/2005	Received before UCA award date	N/A	61
PZ0008	11/16/2005	4/28/2006	9/28/2006	163	153	316
P00013	3/31/2006	4/28/2006	9/28/2006	28	153	181
FA8709-04-C-0011						
PZ0008	11/16/2005	12/16/2005	9/27/2006	30	285	315
P00011	3/14/2006	4/24/2006	9/27/2006	41	156	197
FA8725-04-C-0007						
P00041	7/12/2007	5/10/2007	11/30/2007	Received before UCA award date	N/A	141
FA8730-08-D-0001						
DO-0001	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0002	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0003	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0004	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0005	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0006	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0007	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0008	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131

Appendix E. Definitization Elapsed Days for ESC UCAs (cont'd)

Electronic Systems Center's Definitization Details for FY 2004–August 14, 2009

Contract Number	Effective Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
DO-0009	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0010	5/22/2008	5/8/2008	7/31/2008	Received before UCA award date	N/A	70
DO-0011	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
DO-0012	5/22/2008	5/8/2008	9/30/2008	Received before UCA award date	N/A	131
FA8721-09-C-0001	10/1/2008	3/4/2009	8/6/2009	154	155	309

* UCA undefinitized as of April 23, 2010.

Department of the Air Force Comments



DEPARTMENT OF THE AIR FORCE WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

JUL 18 2010

MEMORANDUM FOR DOD OFFICE OF THE INSPECTOR GENERAL

FROM: SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: Management Comments for DoD Inspector General Draft Report, Air Force
Electronic System's Center Use of Undefined Contractual Actions (Project No.
D2009-D000CG-0248.000), your Memo dated 10 Jun 2010

Attached are specific management comments from the Director of Contracting,
Headquarters Air Force Materiel Command and the Commander of the Electronic Systems
Center outlining corrective actions being taken to address the findings and recommendations
contained within the subject draft report.

If you have any questions or concerns with the comments, please contact [REDACTED]
[REDACTED] SAF/AQCP, [REDACTED].

A handwritten signature in cursive script, reading "R. Correll for", is positioned above the printed name and title.

ROGER S. CORRELL
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachments:

1. AFMC/PK Memorandum, 2 Jul 10
2. ESC/CC Memorandum, 30 Jun 10



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MATERIEL COMMAND
WRIGHT-PATTERSON AIR FORCE BASE OHIO

2 July 2010

[REDACTED]
Program Director, Acquisition and Program Management
Inspector General, Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-4704

Dear [REDACTED]

— This is the Director of Contracting, Headquarters Air Force Materiel Command (AFMC/PK) response to the DoD Office of Inspector General draft report “Air Force Electronic Systems Center’s Use of Undefinitized Contractual Actions” (Project Number D2009-D000CG-0248.000) dated June 10, 2010.

AFMC/PK has completed its review of the draft report and in general, concurs with the Director of Contracting, Headquarters Air Force Materiel Command recommendations. We have already taken steps to improve AFMC/PK’s management of Undefinitized Contractual Actions (UCAs) including increased management attention and reporting. As part of the Contracting Innovation Group, I have also established a joint government/industry working group focused on UCA pricing issues with the goal of reducing UCA definitization timelines. Increased AFMC/PK UCA emphasis has resulted in a significant reduction in the number of AFMC UCAs (from 224 in FY08Q3 to 108 in May 10) and the number of overage UCAs (from 104 in FY08Q3 to 78 in May 10). AFMC/PK responses to the applicable recommendations are attached.

— We appreciate the opportunity to review this draft report and provide our comments.

Sincerely,

MICHAEL A. GILL, SES
Director of Contracting

— Enclosure:
As Stated

**Air Force Electronic Systems Center's Use of
Unfinitized Contractual Actions**
Project Number D2009-D000CG-0248.000

**Director of Contracting, Headquarters Air Force Materiel Command
(AFMC/PK) Comments to the
Department of Defense
Office of Inspector General Recommendations**

Recommendation 1: Develop a metric for measuring contractor responsiveness in preparing qualifying proposals.

Refers to
Recommendation
1.a on page 22.

AFMC/PK Response: Concur. AFMC/PK has been collecting detailed UCA information monthly since January 2010. Prior to this the data was collected quarterly. The data includes: date UCA awarded; date qualifying proposal due; and date qualifying proposal received. This data represents contractor responsiveness in preparing qualifying proposals by measuring the period of time between UCA issuance and receipt of a qualifying proposal.

Recommendation 2: Update the profit section of the Air Force Materiel Command *Guide to Writing a Good Price Negotiation Memorandum (PNM) or Price Competition Memorandum (PCM)* to include requirements to document incurred costs; their effect on profit and fee analysis; and a discussion about the inputs used for box 24 of the DD Form 1547.

Refers to
Recommendation
1.b on page 22.

AFMC/PK Response: Concur. AFMC/PK agrees that additional emphasis is appropriate. Currently, there is no single document containing the policies and procedures to document incurred costs, their effect on profit and fee analysis, and a discussion about the inputs used for box 24 of the DD Form 1547. This information is addressed in various policy memorandums, users guide, and WGL tool help screens. AFMC/PK will revise the PNM/PCM Guide to highlight and emphasize the relationship between incurred costs and profit/fee and the need for adequate documentation. The AFMC *Guide to Writing a Good Price Negotiation Memorandum (PNM) or Price Competition Memorandum (PCM)* will be updated within 60 days to reflect this emphasis.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS ELECTRONIC SYSTEMS CENTER (AFMC)
HANSCOM AIR FORCE BASE MASSACHUSETTS

MEMORANDUM FOR INSPECTOR GENERAL, Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-4704

JUN 30 2010

FROM: ESC/CC
9 Eglin Street
Hanscom AFB, MA 01731

SUBJECT: Management Comments for DoD Inspector General Draft Report,
Air Force Electronic Systems Center's Use of Undefined Contractual Actions
(Project No. D2009-D000CG-0248.000)

1. We concur with the findings and recommendations in the DoD Inspector General Draft Report of Audit, Air Force Electronic Systems Center's Use of Undefined Contractual Actions and are taking corrective actions. Specific management comments are attached.

2. If you have any questions or concerns with our comments, please contact [REDACTED]
ESC/FMPA, [REDACTED]

TED F. BOWLDS
Lieutenant General, USAF
Commander

Attachment:
Management Comments

cc:
ESC/CA

MANAGEMENT COMMENTS

DRAFT REPORT OF AUDIT D-2009-D000CG-0248.000, Air Force Electronic Systems Center's Use of Unfinalized Contractual Actions, Electronic Systems Center, Hanscom AFB, MA (Project No. D2009-D000CG-0248.000)

Implementation of the following recommendations will improve ESC's management of Unfinalized Contract Actions (UCAs).

Recommendation 2. The DoD IG recommends that the Commander, Air Force Electronic Systems Center:

Recommendation 2.a, Page 22 Require that Air Force Electronic Systems Center program management and contracting personnel better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative.

MANAGEMENT COMMENT to Recommendation 2.a: Concur. The Commander, Electronic Systems Center concurs with the recommendation. Policy will be issued instructing ESC program management and contracting personnel to better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative. **ESTIMATED COMPLETION DATE: 1 Dec 10 OPEN**

Recommendation 2.b, Page 22 Develop procedures so that program offices avoid requesting that Electronic Systems Center contracting personnel issue unfinalized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements.

MANAGEMENT COMMENT to Recommendation 2.b: Concur. The Commander, Electronic Systems Center concurs with the recommendation. Policy will be issued instructing program offices under ESC to avoid requesting that ESC contracting personnel issue unfinalized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements. **ESTIMATED COMPLETION DATE: 1 Dec 10. OPEN**

Recommendation 3. The DoD IG recommends that the Director of Contracting, Air Force Electronic Systems Center:

Recommendation 3.a Develop procedures in the contract review process to help ensure that each unfinalized contractual action request to the head of the contracting activity or delegate includes the adverse impact on agency requirements if contracting personnel do not issue an unfinalized contractual action.

MANAGEMENT COMMENT to Recommendation 3.a: Concur. The Director of Contracting, Air Force Electronic Systems Center concurs with the recommendation. On 15 Dec 09 ESC/PK issued procedures on the use and management of Unfinalized Contract Actions which included the requirement to utilize AFMC's UCA Request Template at AFMCFARS 5317.7404-1(e). The template requires information on the mission impact if a UCA is not approved. **COMPLETION DATE: 15 Dec 09. CLOSED.**

Recommendation 3.b: Request the Defense Contract Audit Agency perform a post-award review of contract FA8807-05-C-0004 because of the difficulties in obtaining a qualifying proposal and definitizing the undefinitized contractual action.

MANAGEMENT COMMENT to Recommendation 3.b: Concur. The Director of Contracting, Air Force Electronic Systems Center concurs with the recommendation of a post-award review of the contract and will require the contracting officer to request the Defense Contract Audit Agency to perform a post-award review of contract FA8807-05-C-0004 because of the difficulties in obtaining a qualifying proposal and definitizing the undefinitized contractual action. **ESTIMATED COMPLETION DATE: 1 Oct 10.**
OPEN

Recommendation 3.c: Update the Air Force Electronic Systems Center *Contract Specialist's Handbook* with requirements for contracting personnel to include in the profit section of the price negotiation memorandum: incurred cost, contract type risk used for both the undefinitized period and remainder of the contract, and the impact that the use of the undefinitized contractual action had on the contractor's profit or fee. In addition, include instructions for contracting personnel to include and discuss inputs made to the contract type risk of DD Form 1547, "Record of Weighted Guidelines Application."

MANAGEMENT COMMENT to Recommendation 3.c: Concur. The Director of Contracting, Air Force Electronic Systems Center concurs with the recommendation and has directed the update of the Air Force Electronic Systems Center *Contract Specialist's Handbook* with requirements for contracting personnel to include in the profit section of the price negotiation memorandum: incurred cost, contract type risk used for both the undefinitized period and remainder of the contract, and the impact that the use of the undefinitized contractual action had on the contractor's profit or fee. In addition, instructions will be included for contracting personnel to include and discuss inputs made to the contract type risk of DD Form 1547, "Record of Weighted Guidelines Application." **ESTIMATED COMPLETION DATE: 1 Oct 10.** **OPEN**

Recommendation 3.d: Require contracting personnel to avoid obligating funds to the maximum amount allowable for all undefinitized contractual actions so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

MANAGEMENT COMMENT to Recommendation 3.d: Concur. The Director of Contracting, Air Force Electronic Systems Center concurs with the recommendation. On 17 Mar 10 SAF/AQC issued policy regarding undefinitized contract actions that requires contracting officers to only obligate funds consistent with the contractor's spend plan for the undefinitized period. **COMPLETION DATE: 17 Mar 10** **CLOSED**

Recommendation 3.e: Develop procedures to avoid issuing undefinitized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements

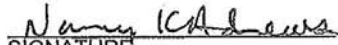
MANAGEMENT COMMENT to Recommendation 3.e: Concur. The Director of Contracting, Air Force Electronic Systems Center concurs with the recommendation. Procedures to avoid issuing undefinitized contractual actions to extend consecutive periods of performance on the same contract and for known or recurring requirements will be included in Policy to be issued in response to Recommendation 2.b.
ESTIMATED COMPLETION DATE: 1 Dec 10. OPEN

ACTION OFFICER: DONNA BEAUDOIN
SYMBOL/TEL: ESC/PKC, [REDACTED]


SIGNATURE

DATE: 24 Jan 2010

2-LTR LEVEL: NANCY ANDREWS, SES
SYMBOL/TEL: ESC/PK, [REDACTED]


SIGNATURE

DATE: 24 Jan 2010

ESC Commander:
TED F. BOWLDS, Lieutenant General, USAF
SYMBOL/TEL: ESC/CC, [REDACTED]


SIGNATURE

DATE:

FREEDOM OF INFORMATION ACT

The disclosure/denial authority prescribed in AFPD 65-3 will make all decisions relative to the public release of this report.



Inspector General Department of Defense

