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Report No. D-2008-094

May 20, 2008

Inspector General

United States
Department of Defense



Air Force Air Combat Command Contracts

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Acronyms

99th CONS	99th Contracting Squadron
ACC	Air Combat Command
AFB	Air Force Base
ANC	Alaska Native Corporation
C.F.R.	Code of Federal Regulations
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
SMS	Strategic Message Solutions, LLC
TAPS	Thunderbirds Air Show Production Services



INSPECTOR GENERAL
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May 20, 2008

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)

SUBJECT: Report on Air Force Air Combat Command Contracts
(Report No. D2008-094) (U)

(U) We are providing this report for information and use. We considered management comments on a draft of this report in preparing the final report.

(U) Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

(U) We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Benjamin Mehlman at (703) 604-9291 (DSN 664-9291) or Ms. Susan J. Lippolis at (703) 604-9081 (DSN 664-9081). The team members are listed inside the back cover.

Paul J. Granetto
Principal Assistant Inspector General
for Audit

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Department of Defense Office of Inspector General

Report No. D-2008-094

May 20, 2008

(Project No. D2007-D000AB-0202.000)

Air Force Air Combat Command Contracts (U)

Executive Summary (U)

(U) Who Should Read This Report and Why? DoD and Air Force management personnel should read this report because it discusses the appearance of conflicts of interest regarding senior military personnel that affected the Government-contractor relationship. Air Combat Command personnel should read this report because it discusses contract procurement issues within Air Combat Command's 99th Contracting Squadron.

(U) Background. We began this audit as a result of a May 24, 2007, Defense Criminal Investigative Service Southwest Field Office request for our assistance in support of an investigation of allegations of unfair contract procurement and possible conflicts of interest. The Defense Criminal Investigative Service specifically requested we review eight contracts valued at \$57.2 million awarded by the Air Combat Command to support the Air Force Thunderbirds Air Show. The Thunderbirds, part of the Air Combat Command, are a United States Air Force Demonstration Squadron located at Nellis Air Force Base, Nevada. The Thunderbirds mission includes supporting Air Force retention and recruiting programs, as well as demonstrating to the public the professional competence of the Air Force members. The Thunderbirds represent the U.S. and its Armed Forces to foreign nations to promote international goodwill. Air Combat Command contracting support for the Thunderbirds is provided by the 99th Contracting Squadron, which provides contract planning and contract administration to the Nellis Air Force Base organization.

(U) Results. Air Combat Command and 99th Contracting Squadron officials violated the Federal Acquisition Regulation for seven of eight contracts reviewed. In two contracts, contracting officers awarded contracts on a sole-source basis without seeking competition. In six contracts,¹ a price reasonableness determination was not documented at the time of award. In an additional contract, the contracting officer awarded a contract on a best value basis without adequate documentation to support the best value decision. Also, on one of the contracts, the contracting officer did not include a standard Federal Acquisition Regulation clause limiting subcontracting when awarding a contract to an Alaska Native Corporation, thus allowing the contractor to subcontract 100 percent of the work. See the table on page 5 for a summary of the conditions found. As a result, Air Combat Command and 99th Contracting Squadron officials allowed contracts to be directed to specific contractors without obtaining the benefits of competition.

(U) We identified internal control weaknesses for Air Combat Command's 99th Contracting Squadron in that the contracting officer did not follow the Federal

¹ (U) Of the six contracts, five are 99th Contracting Squadron contracts and one is an Air Combat Command Contracting Squadron contract.

Acquisition Regulation for obtaining full and open competition through the use of competitive procedures, establishing price reasonableness, performing market research, or setting aside acquisitions for small businesses.

(U) On January 30, 2008, in a memorandum to the Secretary of the Air Force, the DoD Inspector General noted a completed investigation into alleged procurement irregularities, improper influence, and other misconduct involving a December 16, 2005, Thunderbirds Air Show Production Services contract award. The Inspector General noted that the Defense Criminal Investigative Service investigation concluded the award was tainted with improper influence, irregular procurement practices, and preferential treatment in possible violation of DoD 5500.7-R, "Joint Ethics Regulation,"² and standards of conduct applicable to Government-contractor relationships set forth in the Federal Acquisition Regulation. The Inspector General stated the Commander, U.S. Air Force Warfare Center displayed a pattern of behavior that gave an advantage to the selected contractor constituting preferential treatment. In response to an April 21, 2008, request of the Chairman and the Ranking Member, U.S. Senate Armed Services Committee, the Inspector General tasked the Directorate for Investigations of Senior Officials to further review Air Force senior official involvement in the Thunderbird Air Show Production Services contract matter.

(U) We recommend that the Assistant Secretary of the Air Force for Acquisition issue guidance to Air Force General Officers, military commanders, and Senior Executive Service members within the Air Force that reemphasizes the need to eliminate the appearance of conflicts of interest situations in Air Force contracting. We also recommend that the Commander, Air Combat Command improve contracting internal controls at the 99th Contracting Squadron. Refer to the Finding section for detailed recommendations.

(U) Management Comments and Audit Response. The Office of the Assistant Secretary of the Air Force concurred with our recommendations. The Air Force noted that guidance co-issued by the Secretary of the Air Force and the Air Force Chief of Staff on March 26, 2008; as well as guidance issued by the Assistant Secretary of the Air Force for Acquisition on April 2, 2008; and guidance from the Air Force Deputy Assistant Secretary (Contracting) issued on April 5, 2006, met the recommendation to reemphasize to senior Air Force military and civilian personnel the need to eliminate the appearance of conflicts of interest situations. The Air Force comments also noted that the Air Combat Command will provide internal control guidance by June 15, 2008, and subsequent training to reinforce the contracting officer's best value determinations, to reemphasize policies and procedures for dealing with improper conflicts of interest, and to promote full and open competition in the acquisition process.

(U) We believe the Air Force comments were responsive to our recommendations and to the issues identified in our report and no additional comments are needed. See the Finding section for a discussion of the management comments and the Management Comments section for the complete text of the comments.

² (U) Section 2635.101 of the Joint Ethics Regulation, "Basic obligation of public service," states that employees shall not use public office for private gain and shall act impartially and not give preferential treatment to any private organization or individual.

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Background (U)

(U) We began this audit as a result of a May 24, 2007, Defense Criminal Investigative Service Southwest Field Office request for our assistance in support of an investigation of allegations of unfair contract procurement and possible conflicts of interest regarding the Air Force Thunderbirds Air Show. The Defense Criminal Investigative Service specifically requested we review eight contracts valued at \$57.2 million.

(U) The Thunderbirds. The Thunderbirds, part of the Air Combat Command (ACC), are a United States Air Force Demonstration Squadron located at Nellis Air Force Base (AFB), Nevada. The Thunderbirds' mission includes supporting Air Force retention and recruiting programs, as well as demonstrating to the public the professional competence of the Air Force members. The Thunderbirds Squadron is composed of 8 pilots, 4 support officers, 3 civilians, and more than 130 enlisted personnel performing in 25 career fields and represent the U.S. and its Armed Forces in promoting domestic and international goodwill. The Thunderbirds report directly to the 57th Wing at Nellis AFB. ACC contracting support for the Thunderbirds is provided by the 99th Contracting Squadron (99th CONS), which provides contract planning and contract administration to the Nellis AFB organization.

(U) The Heritage Flight Program. The ACC established the United States Air Force Heritage Flight program in 1997 in support of the Air Force's 50th Anniversary. It involves state-of-the-art fighters flying in close formation with World War II and Korean War vintage fighters such as the P-51 Mustang and the F-86 Sabre. Its mission is to both safely and proudly display the evolution of United States Air Force airpower and to support the Air Force's recruiting and retention efforts. ACC funds and manages the program. Thunderbirds Air Shows may include a Heritage Flight program.

(U) Air Combat Command. The ACC, established June 1, 1992, at Langley AFB, Virginia, is the "primary force provider of combat airpower to America's warfighting commands. ACC operates fighter, bomber, reconnaissance, battle-management, and electronic-combat aircraft" with a mission "to support global implementation of national security strategy" and comprises more than 105,000 active-duty and civilian members. The command operates 15 major bases, including 13 non-ACC bases throughout the U.S. See Appendix B for an organization chart of ACC pertaining to the Thunderbirds and the 99th CONS.

(U) The 57th Wing. A 57th Wing fact sheet states that the wing, "is the largest composite wing in the Air Force. It provides advanced aerospace training to world-wide combat air forces and showcases aerospace power to the world while overseeing the dynamic and challenging flying operations at Nellis." The Thunderbirds report directly to the 57th Wing commander.

(U) The 99th Air Base Wing and the 99th CONS. The 99th Air Base Wing currently oversees daily base operations at Nellis AFB such as personnel, finance, civil engineering, and supply. The 99th CONS provides contract planning and contract support to the Nellis AFB organizations. The squadron provides

contingency support to Air Force worldwide deployments and is the largest base-level contracting squadron in the ACC.

(U) U.S. Air Force Warfare Center. The U.S. Air Force Warfare Center is located at Nellis AFB. The purpose of the U.S. Air Force Warfare Center is to ensure deployed forces are well-trained and well-equipped to conduct integrated combat operations. The U.S. Air Force Warfare Center is a primary subordinate unit reporting directly to the ACC. To execute its mission, the U.S. Air Force Warfare Center oversees operations of five wings, including the 53rd Wing at Eglin AFB, Florida; the 57th Wing, 98th Range Wing, and 99th Air Base Wing at Nellis AFB; and the 505th Command and Control Wing at Hurlburt Field, Florida.

(U) Alaska Native Corporation Contracting. Alaska Native Corporations (ANC) are authorized under section 8(a) of the Small Business Act, with the purpose of helping eligible small disadvantaged concerns compete in the American economy through business development. They are regulated in the Code of Federal Regulations (C.F.R.) Section 13, Part 124, 8(a), "Business Development/Small Disadvantaged Business Status Determinations," (2006). The Federal Acquisition Regulation (FAR) permits agencies to award contracts to an ANC on a sole-source basis if the Small Business Administration accepts the requirement on behalf of the ANC. Of the eight contracts we reviewed, the 99th CONS awarded three contracts to an ANC, which includes contract F44650-04-A-0001, contract FA4861-04-M-B272, and contract FA4861-06-C-B500.

Objective (U)

(U) Our overall audit objective was to determine whether contracts awarded by the 99th CONS and other identified ACC organizations met FAR, DoD, and Air Force requirements. We reviewed pre-award and post-award contracting and the use of special 8(a) provisions relating to ANCs. See Appendix A for a discussion of the scope of our audit and prior coverage relating to contracting with ANCs.

Review of Internal Controls (U)

(U) We identified internal control weaknesses for the 99th CONS as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. Contracting officials did not follow the FAR for obtaining full and open competition through the use of competitive procedures, establishing price reasonableness, performing market research, or setting aside acquisitions for small businesses. Implementing recommendations contained in this report will correct the internal control weaknesses we identified. A copy of this report will be sent to the senior official in charge of internal controls for ACC.

Air Combat Command Contracting (U)

(U) ACC and 99th CONS officials violated the FAR requirements in seven of eight ACC contracts reviewed. For example:

- (U) In two contracts, contracting officers awarded contracts on a sole-source basis without seeking competition.
- (U) In six contracts, a fair and reasonable price was not documented at the time of award. In a seventh contract, the contracting officer awarded a contract on a best value basis without adequate documentation to support the best value decision.
- (U) One small business ANC contract did not include a standard FAR clause limiting subcontracting, which allowed the firm to subcontract 100 percent of the work.

(U) The FAR violations occurred because contracting officials perceived that senior Air Force military officers and associated contractors had used the powers of their positions to impose their preference on the contracting officers to award the contracts to specific companies. For example, files for five of the eight contracts contained documentation to support the appearance of a conflict of interest in the Government-contractor relationship.¹ As a result, the ACC and the 99th CONS allowed contracts to be directed to specific contractors without obtaining the benefits of competition.

Thunderbirds Air Show Support Contracting (U)

(U) Thunderbirds Air Show Production Support Contracting. From June 2003 through March 2005, the Air Force, through the 99th CONS, entered into five contracts with four different suppliers to enhance the audio and visual experience of Thunderbirds Air Show spectators. The five contracts dealt primarily with such items as the procurement of sound equipment and a mobile on-site communications trailer, technical support to operate the sound equipment, and training of Thunderbirds personnel to use the equipment.

(U) During 2005, the Air Force consolidated the Thunderbirds audio and visual contract support into a single Thunderbirds Air Show Production Services (TAPS) support contract. The 99th CONS awarded the TAPS contract on December 14, 2005, to Strategic Message Solutions, LLC., (SMS). SMS was one of nine bidders for the contract. On January 17, 2006, SRO Media and Video West, Inc., filed a protest with the Government Accountability Office (GAO) challenging the impartiality of the bidding process leading to the TAPS award. SRO Media raised issues on the appearance of a conflict of interest involving

¹ (U) Our audit conclusion regarding the appearance of a conflict of interest was based on the application of FAR Part 3, "Improper Business Practices and Personal Conflicts of Interest" requirements. We did not examine possible conflicts of interest under the Joint Ethics Regulation and have provided our results to the Directorate for Investigations of Senior Officials for review as potential senior official misconduct.

SMS principals who were “either former Air Force personnel or have privileged relationships with the Thunderbirds.” The protest specifically noted the role of SMS President and the former ACC Commander as an SMS principal.² The protest also noted that the ACC Commander asked the SMS President to coordinate a new sound and music production for the Thunderbirds in 2004. On February 13, 2006, GAO dismissed the protest because the Air Force was terminating the contract. On February 16, 2006, the Air Force terminated the TAPS contract with SMS for convenience.³

(U) On February 27, 2006, SMS filed suit against the Air Force in U.S. District Court for declaratory judgment, injunctive relief, unjust enrichment, intentional interference with contractual relations, and defamation. Specifically, the plaintiffs requested a declaratory judgment reversing the nonmandatory Stop Work Order and the Termination for Convenience; an injunction to prohibit the Air Force from converting plaintiffs’ proprietary work product and materials and the Thunderbirds’ continued use of SMS work in the “Thunderbird Awakenings” music presentation. Additionally, the plaintiffs sought payment for the finished product, damages in excess of \$150,000, and attorneys’ fees and costs.⁴ The U.S. Assistant Attorney stated to us that the District Court dismissed the suit without prejudice on September 6, 2007, and SMS subsequently filed a claim with the Air Force for outstanding services. On September 10, 2007, the Air Force and SMS subsequently settled the contract. SMS received payments totaling \$2,581,844.

FAR Violations (U)

(U) Seven of eight ACC contracts reviewed were in violation of one or more FAR requirements including awarding contracts on a sole-source basis without seeking competition, not documenting at time of award that fair and reasonable prices or best value were achieved, and subcontracting of ANC contracts in excess of FAR-prescribed limits. The table on the next page summarizes the violations for each contract reviewed. (See Appendix C for a summary of FAR requirements over competition, best value, fair and reasonable price determinations, small business acquisitions, conflicts of interest, and other areas.)

² (U) One of the four SMS principals served as ACC Commander from November 2001 until his retirement on January 1, 2005. The SMS President also serves as a Heritage Flight Pilot.

³ (U) According to 99th CONS officials, TAPS-related work was subsequently brought “in-house” and performed by Air Force personnel at Hill Air Force Base, Utah.

⁴ (U) The SMS suit claimed that on April 13, 2005, at the direction of the then-Air Force Chief of Staff, SMS demonstrated a Thunderbirds Air Show audio visual concept, “THUNDERVISION,” to the then-Air Force Vice Chief of Staff and other senior Air Force officers. SMS claimed that the then-Air Force Vice Chief of Staff procured \$8.5 million and directed the SMS President and the then-Commander, U.S. Air Force Warfare Center to immediately execute the “THUNDERVISION” concept.

Contracts Reviewed Against FAR Requirements (U)

Contract Number (U)	Sole-Source Award Made Without Adequate Justification (U)	Fair and Reasonable Price or Best Value Decision Not Documented (U)	Subcontracting Limits Clause Not Included (U)
F44650-04-A-0001		X	
F26600-03-C-B004		X	
FA4861-04-M-B098		X	
FA4861-04-M-B272		X	X
FA4861-05-M-B100	X	X	
FA4861-05-M-B105	X	X	
FA4861-06-D-C001		X	
FA4861-06-C-B500			

(U) Competition Requirements. FAR Subpart 13.106-1(b)(1), “Soliciting from a Single Source,” states, “For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.”

(U) For two contracts, contracting officers violated FAR requirements and awarded contracts on a sole-source basis without providing adequate documentation for awarding a sole-source contract. For example, on contract FA4861-05-M-B100, awarded on February 16, 2005, and valued at \$40,000, the contracting officer conducted market research after the issuance of a request for quotation to the contractor and after the contractor delivered the product. The contracting officers showed a predisposition to award to a preferred contractor.

(U) In addition, on March 9, 2005, the contracting officer awarded contract FA4861-05-M-B105, valued at \$49,300, on a sole-source basis because the buyer did not have time to solicit proposals from other contractors due to the shortened period for executing the contract. The acceptance show is an annual event, where a demonstration is presented to senior Air Force officials at the beginning of the Thunderbirds show season. Had proper planning occurred throughout the acquisition process, there would have been no need to justify an urgent procurement for the rental of a large viewing screen and graphics package for the Thunderbirds acceptance show.

(U) Fair and Reasonable Prices. In six of eight contracts reviewed, a fair and reasonable price determination was not documented. FAR Part 15.402(a) states that, “Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.” For example, contract F26600-03-C-B004 of June 11, 2003, valued at \$978,172, included no documentation for determination of a fair and reasonable price for the basic contract award. (Further

discussion of lack of fair and reasonable price determinations for this and the other five contracts identified is included in Appendix D.) ACC contracting officers needed to better document their price reasonableness determinations and make price reasonableness decisions based on the results of detailed analysis rather than from unsupported statements and opinions. The FAR requires documentation to support a price reasonableness determination. Without this analysis, there is no way to gauge whether the expenditure of funds is in the most cost-effective manner to conserve limited resources.

(U) Best Value. Contract FA4861-04-M-B098, awarded March 4, 2004, was valued at \$11,142 for Thunderbirds sound equipment and on-site communication trailer technical support. The contracting officer awarded the contract on a best value basis without adequate documentation to support that decision. The contracting officer stated the contract price was fair and reasonable based on best value. FAR Part 13.106-3(a) states that “before making award, the contracting officer must determine that the proposed price is fair and reasonable.” Although this assertion was made, the information in the contract file was incomplete and did not contain any analysis to clearly support the contracting officers’ determination that the price paid was fair and reasonable.

(U) Alaska Native Corporation Contracting. One small business ANC set-aside contract did not include a standard FAR clause for subcontracting limits. Contract FA4861-04-M-B272, awarded on September 2, 2004, to Chugach McKinley, Inc., was valued at \$128,000. The absence of a contractor reference to FAR Clause 52.219-14, which limits the contractor to subcontract 49 percent of the cost of contract performance, allowed Chugach McKinley to subcontract 100 percent of work to Framework Sound, the vendor favored by Air Force senior officers. The Air Force award of the contract to Chugach McKinley occurred before the receipt of a Small Business Administration acceptance letter dated September 14, 2004, requiring the addition of FAR Clause 52.219-14 to the contract.

Perceived Air Force Senior Officer Influence (U)

(U) The ACC FAR contracting violations occurred because contracting officials perceived that senior Air Force military officers and associated contractors had used the powers of their positions to impose their preferences on the contracting officers to award the contracts to specific companies. For example, files for five of the eight contracts contained documentation to support the appearance of a conflict of interest from senior ranking Air Force officers that was contrary to FAR 3.101-1.

(U) Air Force Thunderbirds Contracting Relationships. As a result of the perceived influence of senior ranking Air Force officers on contracting officials, contracting officers awarded contracts to SMS and associated contractors that had ties to SMS. In addition, since the senior Air Force officers directed the work to be performed, contracting officers could not effectively perform their responsibilities to award contracts on a fair and reasonable basis in accordance with the FAR.

(U) Appearance of Conflict of Interest. Documentation in five of the eight contract files supported the appearance of a conflict of interest in the Government-contractor relationship. FAR Part 3.101-1, states “Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.” Potential conflicts of interest occurred for Thunderbirds Air Show audio and visual procurements. For example, on October 22, 2003, the SMS President e-mailed the ACC Commander, proposing conceptual changes to Thunderbirds music for the 2004 season and promising to start working on the project in January 2004. On October 25, 2003, the commander of ACC endorsed and forwarded the SMS President’s e-mail to the then-Air Force Chief of Staff who responded the same day, stating: “[Commander of ACC], Thanks. I’ve known [SMS President] a long time an [sic] no one cares more.”

(U) Senior ranking military officers were involved in directing the contracting process, which violates the general rule of FAR Part 3.101-1. For example, contract F26600-03-C-B004, modification P0001 of March 18, 2004, provided for enhancements and upgrades. A July 9, 2004, contract modification price negotiation memorandum to add \$289,286 to the existing \$978,172 contract noted that, “These enhancements were directed by ACC/CC [Commander, ACC], and the money earmarked for this purchase.” An internal 99th CONS July 15, 2004, review of the price negotiation noted that acceptance of the contractor proposal was not appropriate for an increase of almost one-third of the original contract cost. On August 4, 2004, the contracting officer addressed the review comments stating that the contract modification was a “highly political (four-star) direction for this change to occur.” We concluded that the ACC Commander’s apparent personal involvement in the contracting environment in this capacity constitutes an appearance of a conflict of interest and potential undue influence on the contracting officer.

~~(FOUO)~~ Another example of an appearance of a conflict of interest surrounding the 99th CONS was the award of contract FA4861-05-M-B105. The contract, valued at \$49,300, was awarded on March 9, 2005, to Sports Link, Ltd., for the rental of a large viewing screen and a graphics package for the 2005 Thunderbirds acceptance show. Documentation for contract FA4861-05-M-B105 contained three invoices, dated before contract award, for work performed by the contractor and completed in January 2005. In an undated memorandum to the 99th CONS, the Thunderbirds Squadron Commander stated that the “[SMS President] and [owner of Framework Sound, Inc.] were specifically tasked by AWC/CC [Commander, Air Force Warfare Center] to complete the task and have identified the sub-contractors with the specific technical and artistic skills required to satisfy the requirements.” We concluded that the commander of the Air Force Warfare Center’s direction for the award of this contract created the appearance of a conflict of interest because only a contracting officer has the authority to assign tasks against a contract. Further, the commander’s actions resulted in an unauthorized commitment, which required subsequent Government ratification in accordance with FAR Part 1.

Conclusion (U)

(U) ACC contracting officials allowed contracts to be directed to specific contractors without obtaining the benefits of competition. For eight contracts reviewed, ACC contracting officers did not document price reasonableness for six contracts at the time of award. In one additional instance, the contracting officer awarded a contract on a best value basis without adequate documentation to support the best value decision. In addition, the contracting office did not include a standard FAR clause limiting subcontracting in one small business ANC contract, which allowed the firm to subcontract 100 percent of the work to a contractor preferred by senior Air Force officers. In two instances the 99th CONS did not comply with FAR requirements by awarding Thunderbirds contracts on a sole-source basis without seeking competition.⁵ The ACC contracting practices allowed contracts to be directed to specific contractors without the use of competition.

Management Comments on the Finding and Audit Response (U)

(U) The Associate Deputy Assistant Secretary of the Air Force (Contracting), Office of the Assistant Secretary of the Air Force for Acquisition neither concurred nor non-concurred with the finding but noted several planned actions resulting from issues raised in the report. A complete text of the management comments is in the Management Comments section of this report.

(U) Air Force Comments on Internal Controls. The Air Force noted that the Office of the Assistant Secretary of the Air Force for Acquisition and the ACC would perform a procurement management review of the 99th CONS by June 15, 2008. The Air Force noted that the review findings will be used to revise and implement internal controls, training, and management policies and guidance.

The Air Force also noted several contracting oversight and source selection changes implemented across the Service after the contracting actions noted in the finding took place. The Air Force noted such procedural changes included expansion of the Service's Ombudsman program and mandatory legal reviews of key source selection documentation.

(U) Air Force Comments on Heritage Flight Program. The Air Force also noted that an internal audit of the Heritage Flight Program would begin on or about April 10, 2008, with the objective of determining whether ACC personnel effectively

⁵ (U) In four other instances, ACC contracting officers awarded sole-source contracts in a non-competitive environment within FAR requirements. In three of the four sole-source instances, contracts were awarded to Alaska Native Corporation contractors, which is permissible according to the FAR. In a fourth instance, awarding the contract on a sole-source basis was permissible according to FAR Part 13.106-1(b)(1).

managed selective aspects of the program including contracting processes and program participant appointments.⁶

(U) Air Force Comments on Report References to the ACC Organization. The Air Force noted that certain ACC organizational references in the draft report should be made more specific so as to avoid a perception that the audit findings apply to all contracting organizations across the ACC. The Air Force also noted that our audit was not accomplished on an ACC-wide basis. The Air Force provided us a matrix of specific technical comments in this regard.

(U) Audit Response. We agree with planned and implemented Air Force actions relating to contracting internal controls and the Heritage Flight Program. We have revised references to ACC organizations where warranted in the final report. While our audit was limited to eight contracts at two ACC contracting locations, the importance of the findings require specific corrective actions and should not necessarily be limited to specific ACC or Air Force contracting offices.

Recommendations, Management Comments, and Audit Response (U)

(U) 1. We recommend that the Assistant Secretary of the Air Force for Acquisition issue guidance to Air Force General Officers, military commanders, and Senior Executive Service members within the Air Force that reemphasizes the need to eliminate the appearance of conflicts of interest situations in Air Force contracting.

(U) Air Force Comments. The Associate Deputy Assistant Secretary of the Air Force (Contracting), Office of the Assistant Secretary of the Air Force for Acquisition concurred with the recommendation. The Air Force noted that guidance co-issued by the Secretary of the Air Force and the Air Force Chief of Staff on March 26, 2008, as well guidance issued by the Assistant Secretary of the Air Force for Acquisition on April 2, 2008, and the Deputy Assistant Secretary (Contracting) on April 5, 2006, reemphasized to senior Air Force military and civilian personnel the need to eliminate the appearance of conflicts of interest situations. The guidance documents also emphasized ethical responsibilities while conducting procurements. The Air Force noted the Commander ACC had specifically distributed the March 26, 2008, memorandum to all commanders within ACC.

(U) Audit Response. Air Force comments to Recommendation 1. were responsive and conform to requirements; thus, no additional comments are needed.

(U) 2. We recommend that the Commander, Air Combat Command improve contracting internal controls by:

⁶ An Air Force official subsequently confirmed to us that an audit of the Heritage Flight Program had commenced.

(U) a. Emphasizing Air Combat Command contracting personnel better document their price reasonableness and best value determinations and make price reasonableness and best value decisions based on the results of detailed analysis;

(U) Air Force Comments. Responding for the Commander ACC, the Associate Deputy Assistant Secretary of the Air Force (Contracting), Office of the Assistant Secretary of the Air Force for Acquisition concurred with Recommendation 2.a., noting that June 26, 2006, guidance of the Deputy Assistant Secretary (Contracting) required review of fair and reasonable and best value determination be included and evaluated in all Air Force Contracting Compliance Inspection Checklists. Additionally, the Air Force noted that the ACC will issue guidance by June 15, 2008, to ensure that inspections take place and to reemphasize documentation requirements in squadron training.

(U) b. Maintaining policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence;

(U) Air Force Comments. The Associate Deputy Assistant Secretary concurred with Recommendation 2.b., noting that, by June 15, 2008, the ACC will re-emphasize existing policies and procedures for dealing with actual or apparent conflicts of interest.

(U) c. Promoting full and open competition in the acquisition process; and

(U) Air Force Comments. The Associate Deputy Assistant Secretary concurred with Recommendation 2.c., noting that, by June 15, 2008, the ACC will issue guidance to ensure that inspections for fair and reasonable price and best value determination be included and evaluated in all Air Force Contracting Compliance Inspection Checklists and be incorporated into squadron training.

(U) d. Consistently including all required Federal Acquisition Regulation requirements and clauses for Alaska Native Corporation contracts awarded under the Small Business Act.

(U) Air Force Comments. The Associate Deputy Assistant Secretary concurred with Recommendation 2.d., noting that, by June 15, 2008, the ACC will review to ensure all FAR requirements have been included for ANC contracts awarded under the Small Business Act and that this topic will be incorporated into squadron training.

(U) Audit Response. Air Force comments to Recommendations 2.a. through 2.d. were responsive and conform to requirements; thus, no additional comments are needed.

Appendix A. Scope and Methodology (U)

(U) We conducted this performance audit from July 2007 to April 2008 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 objectives.

(U) On May 24, 2007, the Defense Criminal Investigative Service requested our assistance in analyzing eight ACC contracts. Our overall audit objective was to determine whether contracts awarded by the 99th CONS and other identified ACC organizations met FAR, DoD, and Air Force requirements.

(U) We collected, reviewed, and analyzed those eight contracts, valued at \$57.2 million, and associated documentation awarded from June 2003 through December 2005. Specifically, we reviewed contract documentation such as the contract, contract modification, the statement of work, the price negotiation memorandum, source selection decision documents, and market research. We analyzed these contracts to determine whether the contract award was on a sole-source or competitive basis and whether the contract award was in accordance with the FAR. We reviewed and analyzed invoices to determine payment amounts to vendors for price reasonableness. We also examined selected associated contract documentation, including e-mails previously collected, and interviews performed by the Defense Criminal Investigative Service.

(U) We interviewed the staffs of the 99th CONS, Nellis AFB, Nevada, and Air Combat Command Contracting Squadron, Langley AFB, Virginia, to discuss contracting practices and procedures, and to obtain information pertaining to the ACC organizational structure, the 99th CONS, and the Thunderbirds. We also reviewed prior Defense Criminal Investigative Service interviews of contracting and Senior Air Force military personnel who were no longer available for an interview at the time of our audit. We used this information to corroborate information contained in the contract files.

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

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

Prior Coverage (U)

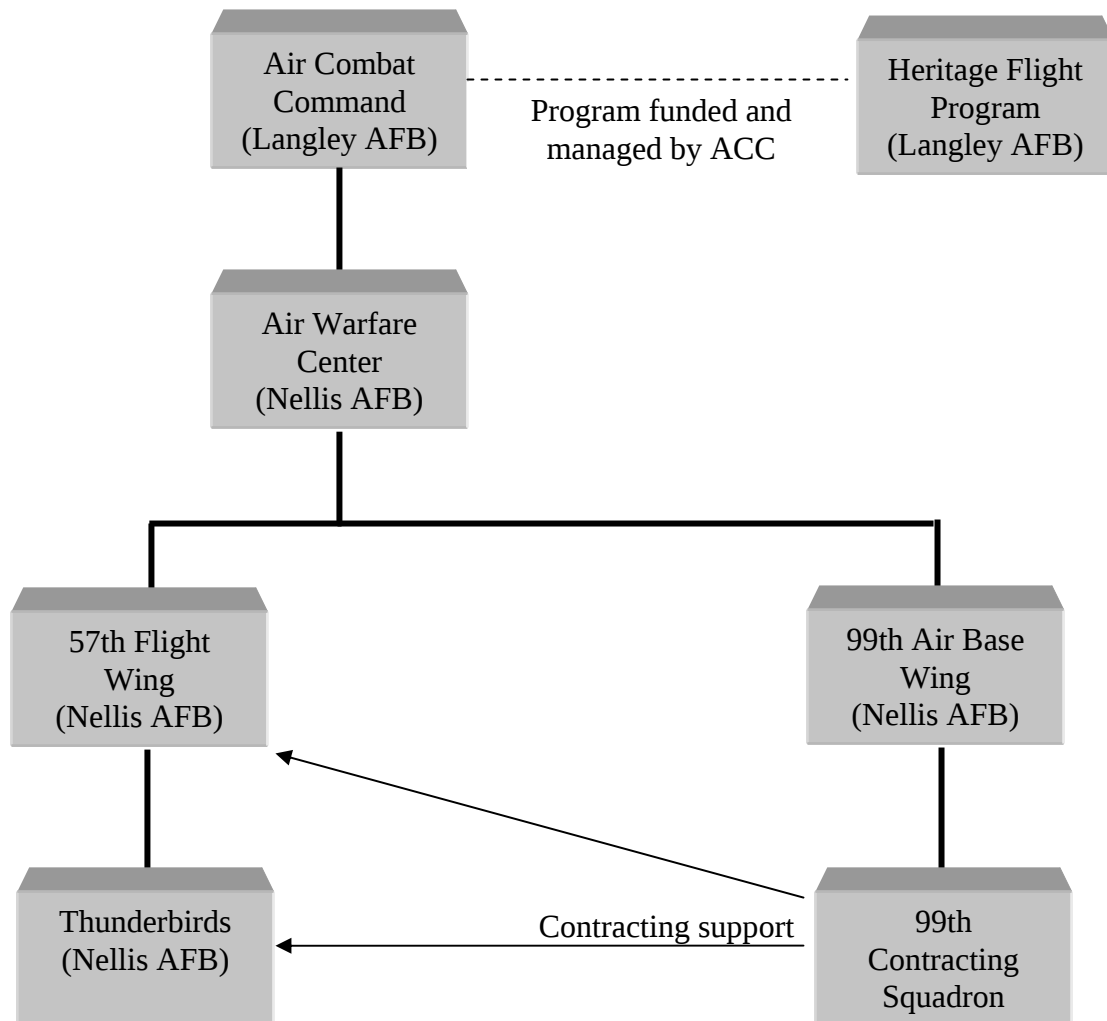
(U) During the last 5 years, GAO issued one report discussing the increased use of ANCs. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>.

GAO (U)

(U) GAO Report No. GAO-06-399, "Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight," April 2006

Appendix B. ACC Organization Chart (U)

(U) The ACC, headquartered at Langley AFB, Virginia, is a major command in the United States Air Force, with more than 105,000 active-duty members and civilians making up the ACC workforce. The ACC headquarters funds and manages the Heritage Flight Program. The U.S. Air Force Warfare Center is located at Nellis AFB, Nevada, and reports directly to ACC. Two of the five wings that the U.S. Air Force Warfare Center oversees are located at Nellis AFB, including the 57th Wing and the 99th Air Base Wing. The Thunderbirds Squadron, located at Nellis AFB, reports to the 57th Wing. A subordinate unit of the 99th Air Base Wing is the 99th CONS. The 99th CONS provides contract planning and contract support to Nellis' assigned units, including the 57th Wing and the Thunderbirds.



Appendix C. Code of Federal Regulations and Federal Acquisition Regulation Provisions (U)

(U) 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch. Section 2635.101(b)(7) and (b)(8) states employees shall act impartially and not give preferential treatment to any private organization or individual.

(U) Federal Acquisition Regulation Requirements. The FAR includes several provisions to ensure competition in contracting, determination of fair and reasonable prices, and avoidance of improper business practices and personal conflicts of interest. For example:

(U) FAR Part 1, “Federal Acquisition Regulation System.” Part 1 prescribes procedures for ratifying an unauthorized commitment. FAR Part 1.602-3(a) defines an unauthorized commitment as “an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.” FAR Part 1.602-3(b)(2) states, “The head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.”

(U) FAR Part 2, “Definitions of Words and Terms.” Part 2 defines words and terms that are frequently used in the FAR. FAR Part 2.101 defines an organizational conflict of interest as a situation where “a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”

(U) FAR Part 3, “Improper Business Practices and Personal Conflicts of Interest.” Part 3 prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence. FAR Part 3.101-1 states, “The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.”

(U) FAR Part 6, “Competition Requirements.” Part 6 prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, and other than full and open competition. FAR Part 6.101(b) states, “Contracting officers shall provide for full and open competition through the use of competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action.” FAR Part 6.204(a) states, “To fulfill statutory requirements relating to section 8(a) of the Small Business Act . . . contracting officers may limit competition to eligible 8(a) contractors.” FAR Part 6.301(c)(1) states that the lack of planning is not a viable excuse for awarding a contract on a sole-source basis.

(U) FAR Part 10, “Market Research.” Part 10 prescribes policies and procedures for conducting market research to arrive at the most suitable approach

to acquiring, distributing, and supporting supplies and services. FAR Part 10.001(a)(2) states, “Agencies must . . . conduct market research appropriate to the circumstances . . . before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold . . . on an ongoing basis.”

(U) FAR Part 13, “Simplified Acquisition Procedures.” Part 13 prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items the aggregate amount of which does not exceed the simplified acquisition threshold. FAR Part 13.003(a) states, “Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold.” FAR Part 13.104 states, “The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government.” FAR Part 13.106-1(b)(1) states, “For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.” FAR Part 13.106-3(a) states “Before making award, the contracting officer must determine that the proposed price is fair and reasonable.” FAR Part 13.106-3(a)(2)(i) states, “If only one response is received, . . . the contracting officer is to include a statement of price reasonableness in the contract file, and the contracting officer may base the statement on market research.”

(U) FAR Part 15, “Contracting by Negotiation.” Part 15 prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. FAR Part 15.101-1(c) states that tradeoffs are permitted “among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal.” FAR Part 15.402(a) states that “Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.” FAR Part 15.404-1(b)(2) describes the various methods a contracting officer may use when making a price reasonableness determination. FAR Part 15.406-3(a) states, “The contracting officer shall document in the contract file the principal elements of the negotiated agreement.”

(U) FAR Part 19, “Small Business Programs.” Part 19 implements the acquisition-related sections of the Small Business Act. FAR Part 19.202-6(a) states, “The fair market price shall be the price achieved in accordance with the reasonable price guidelines in 15.404-1(b).” FAR Part 19.502-2(b) states, “The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns . . . ; and (2) award will be made at fair market prices.” FAR Part 19.805-1(b) states, “Where an acquisition exceeds the competitive threshold, the SBA [Small Business Administration] may accept the requirement for a sole source 8(a) award if . . . SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation.” FAR Part 19.806(a) states, “The contracting officer shall price the 8(a) contract in accordance with Subpart 15.4.” FAR Part 19.806(b) states, “An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.”

Appendix D. Summary of Contracts Reviewed (U)

(U) We reviewed the contents of eight contract files to determine whether the contracts, as requested by Defense Criminal Investigation Service, were awarded according to the FAR. A summary of the results is provided below.

Contract Data (U)	Appearance of a Conflict of Interest (U)	Competitive Environment (U)	Price Reasonableness (U)
1. FA4650-04-A-0001: Heritage Flight–CASE, ¹ 10/1/03, \$3,675,140.88.	None. No contract file documentation indicating involvement of ranking military officers.	Not competed. However, award of contract sole-source to 8(a) ANC justified under FAR 19 and FAR 13.	No. The contracting officer did not include a price reasonableness determination.
2. F26600-03-C-B004: Comm. Trailer–STS, 6/11/03, \$978,172. Modification 3/18/04, \$289,002.71.	Yes. A senior ranking military officer appeared to influence the modification award.	Yes. Four companies solicited, resulting in two proposals received.	No. The contracting officer did not include a price reasonableness determination.
3. FA4861-04-M-B098: 2004 Music–Framework Sound, Inc., 3/4/04, \$11,142.	Yes. A senior ranking military officer appeared to influence the selection process.	Not competed. However, FAR Part 13.106-1(b)(1) permits a sole-source award under these circumstances.	No. The contracting officer did not include analysis to support the best value decision.
4. FA4861-04-M-B272: Update Old Trailer Equipment–Chugach McKinley, Inc., 9/2/04, \$128,000.	Yes. Senior ranking military officers appeared to influence the award.	Not competed. However, contracting office justified in awarding to 8(a) ANC, but not in allowing 100 percent of work to be subcontracted.	No. The contracting officer did not include documentation to support a price reasonableness determination.
5. FA4861-05-M-B100: 2005 Music–Framework Sound, Inc., 2/16/05, \$40,000.	None. No contract file documentation indicating involvement of ranking military officers.	No. Contractor executed work prior to completion of required market research.	No. Determination made after work had been completed.
6. FA4861-05-M-B105: Jumbo–Tron Rental and Graphics Package–Sportslink, 3/9/05, \$49,300.	Yes. Senior ranking military officer influenced the award of the contract.	No. Awarded on sole-source basis, not justifiable since market research revealed multiple contractors capable of satisfying requirements.	No. The contracting officer did not include documentation to support a price reasonableness determination.
7. FA4861-06-D-C001: TAPS–SMS, 12/16/05, \$9,985,158.77. Total contract value with options, \$49,925,795.	Yes. A senior ranking military officer influenced the award.	Yes. Competitive environment existed.	No. Best Value Contract. Source Selection Authority did not adequately justify.
8. FA4861-06-C-B500: Custodial Services–Chugach Industries, Inc., 10/25/05, \$2,152,293.82.	None. No contract file documentation indicating involvement of ranking military officers.	Not competed. Contracting office justified in awarding sole-source to 8(a) ANC under FAR 19 and FAR 6.	Yes. Preliminary PNM ² in contract file was sufficient.

¹ (U) CASE: Chenega Advanced Solutions and Engineering.

² (U) PNM: Price Negotiation Memorandum.

(U) Contract F44650-04-A-0001. The ACC Contracting Squadron awarded this contract to Chenega Advanced Solutions and Engineering, an ANC, on October 1, 2003, under a blanket purchase agreement to provide support to the Heritage Flight Program. The blanket purchase agreement included a ceiling of \$5,000,000; however, only \$3,675,140.88 was actually invoiced. The contractor was to notify the civilian Heritage Flight pilots of the air show, confirm the pilots' availability in accordance with the provided schedule, accept and resolve performance billing details, and pay the pilots within 30 days of approved receipts. The contractor was paid a fixed percentage of the amount billed by the pilots for reimbursement of expenses incurred to include ferry and actual flight duration at air shows.

(U) Price Reasonableness. The contract file did not contain documentation (such as a price negotiation memorandum) to establish how the contracting officer determined the prices paid were fair and reasonable. Without such documentation the Government cannot be assured that the prices paid were fair and reasonable.

(U) Contract F26600-03-C-B004. The 99th CONS awarded this contract to Solomon Technical Sales on June 11, 2003, in the amount of \$978,172 for the procurement of a mobile communications equipment trailer. The Thunderbirds Aerial Demonstration Squadron required this trailer to enhance the audio and visual experience for air show spectators. The 99th CONS issued a contract modification on March 18, 2004, in the amount of \$289,002.71 for further enhancements and upgrades to the communications trailer.

(U) Appearance of a Conflict of Interest. The contracting officer stated in a July 9, 2004, price negotiation memorandum for the modification that "These enhancements were directed by ACC/CC [Commander, ACC], and the money earmarked for this purchase." In accompanying review sheets, an appointed contracting office reviewer noted on July 15, 2004, that the customer review and acceptance of the contractor proposal were not appropriate for an increase of almost one-third the original contract cost. On August 4, 2004, the contract specialist addressed the reviewer's comments in the corrective actions section by writing, "highly political (four-star) direction for this change to occur." The commander of ACC's apparent personal involvement in the contracting environment constitutes an appearance of a conflict of interest and potentially undue influence on the contracting officer which is to be avoided under FAR 3.101-1.

(U) Price Reasonableness. The 99th CONS contracting officer did not include a price negotiation memorandum for the basic contract as required by FAR Parts 15.402(a) and 15.406-3. A price negotiation memorandum for the modification indicated there is no historical data to compare prices because of the uniqueness of the enhancements. The contracting officer must determine a price to be fair and reasonable in accordance with the FAR even though the products may be of a research and development nature. On July 15, 2004, an appointed contracting office reviewer concluded that "having the contractor provide a price breakout of the components would aid in determining mark up and potentially discourage unnecessary costs." We concluded that adequate documentation did not exist to support a price reasonableness determination.

(U) Contract FA4861-04-M-B098. The 99th CONS awarded this contract to Framework Sound, Inc., on March 4, 2004, in the amount of \$11,142 for sound equipment and on-site technical support for the Thunderbirds communication trailer.

(U) Appearance of a Conflict of Interest. In an undated memorandum for the record, the contracting officer stated, "This requirement was given as an extremely high priority as [Commander, U.S. Air Force Warfare Center] was personally involved." The commander of the Air Force Warfare Center's apparent personal involvement in the contracting environment constitutes an appearance of a conflict of interest, as defined in FAR Part 3.101-1.

(U) Price Reasonableness. The contracting officer stated in an undated memorandum for the record that the contract price is fair and reasonable based on best value. We disagree with this assertion because the contracting officer did not include any analysis in the file to support the best value decision.

(U) Contract FA4861-04-M-B272. The 99th CONS awarded this contract to Chugach McKinley, Inc., an ANC, on September 2, 2004, in the amount of \$128,000 for audio hardware and accessories and training of Thunderbirds personnel to use this equipment. Contracting officials awarded this contract to update equipment in the old communications trailer while the new one was being completed.

~~(FOUO)~~ **Appearance of a Conflict of Interest.** On May 11, 2004, the SMS President e-mailed the then-commander of the U.S. Air Force Warfare Center, criticizing the work of the F26600-03-C-B004 prime contractor, Solomon Technical Sales, in developing a new communications trailer. On August 27, 2004, the SMS President e-mailed the commander of the 57th Wing at Nellis AFB. The president of SMS stated he believed the prime contractor was not able to deliver the desired new Thunderbirds communications trailer and proposed an upgrade of the existing communication trailer until the new trailer was ready. The SMS President also suggested that Framework Sound, Inc., be awarded a contract to make the upgrades. The commander of the 57th Wing forwarded the e-mail on August 28, 2004, to the Director of Communications, ACC, Langley AFB, Virginia, and a 57th Wing Resource Advisor stating that, "This is what I want to do. The experts ([Owner of Framework Sound] and [SMS President]) say it is what we need and I believe them. I want to press asap." The commander of the 57th Wing, the ACC Director of Communications, and the resource advisor at the 57th Wing subsequently arranged on August 30, 2004, that \$120,000 in funding be set aside for the project.

(U) On September 2, 2004, the 99th CONS awarded a \$128,000 contract to Chugach McKinley, Inc., an ANC. Awarding a contract on a sole-source basis when the dollar value exceeds the competitive threshold of \$100,000 is permissible when the Small Business Administration accepts the requirement on behalf of the ANC. The 99th CONS awarded the contract before coordinating the award with the Small Business Administration. As such, a required contract clause that limits subcontracting by the prime contractor was not inserted into the contract. Chugach McKinley, Inc., subsequently subcontracted 100 percent of the work (\$120,000) to Framework Sound, Inc., while keeping an \$8,000 general and

administration fee as the prime contractor. We concluded that the commander of the 57th Wing and the ACC Director of Communications apparently used their positions to unduly influence the award of a contract to a preferred source. This preferential treatment and lack of impartiality violates FAR Part 3.

(U) Competitive Environment. In a September 10, 2004, memorandum to the Small Business Administration, the Director of Business Operations at the 99th CONS requested permission to award a contract to Chugach McKinley, Inc. The Small Business Administration accepted the requirement on September 14, 2004. However, contracting officials violated FAR Part 19 by awarding the contract on September 2, 2004, which was before Small Business Administration acceptance. The September 14, 2004, acceptance letter from the Small Business Administration to the 99th CONS required the contracting officer to include FAR Clause 52.219-14 to the contract, which limits the contractor to subcontracting 49 percent of the cost of contract performance. The contracting officer did not insert this clause into the contract because the contract had already been awarded and fully subcontracted to Framework Sound, Inc.

(U) Price Reasonableness. In a memorandum dated September 3, 2004, the contracting officer stated, "Based on conversations with Thunderbird technical personnel and my own knowledge of the procedures, I determine the price to be fair and reasonable." We do not believe the contracting officer's rationale in the memorandum for the record is sufficient documentation to support the price paid for this contract. The memorandum for the record did not include any in-depth analysis to reach this conclusion.

(U) Contract FA4861-05-M-B100. The 99th CONS awarded this contract on February 16, 2005, to Framework Sound, Inc., in the amount of \$40,000 to update and modify the 2004 Thunderbirds Music Program for the 2005 season.

(U) Competitive Environment. In a memorandum signed and dated February 16, 2005, the contract specialist stated the item was awarded to a single source using the authority in FAR Part 13.106-1(b)(1). However, the contract specialist did not provide rationale to support the determination for awarding the contract on a sole-source basis. In the same memorandum, the contract specialist stated market research was conducted by orally contacting two contractors, who then provided quotes. The contract specialist provided a request for quotation on February 2, 2005, to Framework Sound, Inc., for the 2005 Thunderbirds Music Program, with a delivery date of February 4, 2005. The contracting officer conducted market research after a request for quotation was issued to the contractor and after the contractor delivered the product.

(U) Price Reasonableness. The contract specialist stated in a memorandum for the record dated February 16, 2005, that \$40,000 was a fair and reasonable price based on the market research that was performed in accordance with FAR Part 13.106-3(a)(2)(i). However, the contract specialist knew the exact cost of the work before the market research was conducted.

(U) Contract FA4861-05-M-B105. The 99th CONS awarded this contract to Sports Link, Ltd., on March 9, 2005, in the amount of \$49,300 for the rental of a

large viewing screen and a graphics package for the 2005 Thunderbirds acceptance show.

(U) Appearance of a Conflict of Interest. The contract file contained three invoices, dated before the date of contract award totaling the signed contract amount of \$49,300. In an undated memorandum to the 99th CONS, a member of the Thunderbirds Squadron stated that the Commander, U.S. Air Force Warfare Center specifically tasked Framework Sound, Inc., to complete the work represented by the invoices. The Commander, U.S. Air Force Warfare Center's direction for the award of this contract created an appearance of a conflict of interest because only a contracting officer has the authority to assign tasks against a contract. Further, his actions resulted in an unauthorized commitment, which requires ratification in accordance with FAR Part 1.

(U) Competitive Environment. The 99th CONS officials made the award to Sports Link, Ltd., on a sole-source basis due to the unusual and compelling urgency of the requirement under the authority of FAR Part 13.106-1(b)(1). The buyer identified four other sources to determine whether they were capable of providing the large viewing screens, but due to the shortened time frame for executing the contract, the buyer did not have time to solicit proposals from the other contractors. FAR Part 6.301(c)(1) states that the lack of planning is not a viable excuse for awarding a contract on a sole-source basis.

(U) Price Reasonableness. In a memorandum for the record dated March 2, 2005, the contracting officer made the statement that the price paid was fair and reasonable based on market research. The contracting officer also stated that market research revealed the price would be in excess of \$100,000. The buyer performed market research the preceding day, indicating the price would not exceed \$50,000. The contracting officer made a price reasonableness determination based on inaccurate data. We conclude the contracting officer did an inadequate job documenting the price as fair and reasonable in accordance with FAR Part 13.106-3(a).

(U) Contract FA4861-06-D-C001. The 99th CONS awarded this contract to SMS on December 16, 2005, in the amount of \$9,985,158.77 for sound production presentation at Thunderbirds air shows. The contract was awarded as a basic contract with four option years. The total value of the contract, including all options, was \$49,925,795.

(U) Appearance of a Conflict of Interest. On January 30, 2008, the Inspector General, DoD issued a memorandum for the Secretary of the Air Force on a completed investigation into alleged procurement irregularities, improper influence, and other misconduct involving the December 16, 2005, contract award to SMS. The Defense Criminal Investigative Service investigation of SMS found that the December 2005 award to SMS was tainted with improper influence, irregular procurement practices, and preferential treatment in possible violation of DoD 5500.7-R, "Joint Ethics Regulation," and standards of conduct applicable to Government-contractor relationships set forth in the FAR. The memorandum stated the Commander, U.S. Air Force Warfare Center displayed a pattern of behavior that gave an advantage to SMS in competing for the contract and so constituted preferential treatment. Further, the commander enabled SMS to gain a

competitive advantage as a result of its participation in the demonstration project and the commander's involvement in the source selection process after earlier efforts to obtain a sole-source contract with SMS failed. FAR Subpart 3.101 states, "Government business shall be conducted in a manner above reproach . . . with complete impartiality and with preferential treatment for none." FAR Subpart 2.101 defines an "organizational conflict of interest," in part, as a situation where a person is unable to render impartial advice because of relationships with other persons.

~~(FOUO)~~ **Competitive Environment.** The 99th CONS awarded this contract in a competitive environment where nine proposals were received. The contracting officer utilized the FedBizOpps Web site (the Government point-of-entry for procurement opportunities over \$25,000) to identify possible vendors for this procurement. Contracting officials were inconsistent when applying methodologies in rating the proposals. For example, MC 2, a competitor, was considered unresponsive to the request for proposal because it failed to provide financial records when requested. However, when SMS was requested to provide financial records, the SMS President stated, "SMS acknowledges receipt of amendment #02 to the RFP, but as you know, SMS was specifically created for the primary purpose of delivering THUNDERVISION to the USAF. As such this newly created entity does not have the detailed financial records sought in Amendment 02. [sic]"

b(4) ~~(FOUO)~~ The contracting office rated [REDACTED] the same as another competitor, [REDACTED] in past performance evaluations. In evaluation of the three required past performances, [REDACTED] received two "somewhat relevant" and one "very relevant" past performance ratings. [REDACTED], on the other hand, received two "relevant" and one "very relevant" past performance ratings. [REDACTED] were given significant confidence ratings in the final past performance evaluation.

~~(FOUO)~~ **Price Reasonableness.** In the Source Selection Decision document, dated December 13, 2005, the Source Selection Authority made the determination that SMS provided the best value to the Government. According to the Source Selection Decision document, the price-cost rating factor should contribute substantially to the decision. The only difference between [REDACTED] and [REDACTED], aside from price, was the ratings they received in the strategic insight factor. The strategic insight factor for [REDACTED] was rated blue/low risk while [REDACTED] was rated yellow/moderate risk. However, yellow/moderate was defined as a correctable condition in the Proposal Analysis Report. The Source Selection Authority did not adequately justify why a \$25 million premium for the services of SMS was determined to be the best value. Further, the SMS proposal price of \$49.9 million was \$20 million more than the ceiling of the Government estimate.

(U) SMS Payment Requests. On December 16, 2005, the day of the TAPS contract award, SMS electronically submitted a \$1,990,000 prompt payment request through the U.S. Government's Wide Area Work Flow System (the System). The request was rejected by the System. On December 20, 2005, 4 days after the TAPS contract award, SMS successfully re-submitted the \$1,990,000 claim, which the System accepted for processing. The claim represented 50 percent of the value of TAPS contract line item 0001 for product

design and development. The contracting officer approved the payment in the System after receiving authorization from the Thunderbirds Commander that the commander had reviewed SMS-submitted theatrical design, story boards, and support draft plan as called for in line item 0001. SMS received payment on December 28, 2005.

~~(FOUO)~~ The contracting officer unilaterally terminated the TAPS contract for convenience on February 16, 2006. [REDACTED]

b(5)

[REDACTED] The contracting officer noted SMS did not submit a settlement proposal and consequently, on April 17, 2006, he extended the settlement proposal deadline to May 18, 2006.

~~(FOUO)~~ [REDACTED]

(U) TAPS contract modification P00001, signed and dated September 10, 2007, by the Air Force and SMS confirmed the right of SMS to retain the \$1,990,000 for services performed. The Air Force also agreed to pay SMS \$274,927 for submitted termination expenses and an additional \$316,917 for contract line item 0001 deliverables and related materials.

(U) Contract FA4861-06-C-B500. The 99th CONS awarded this contract to Chugach Industries, Inc., an ANC, on October 25, 2005, in the amount \$2,152,293.82. The 99th CONS awarded this contract for base-wide custodial services at Nellis AFB, Nevada.

Appendix E. Report Distribution (U)

Office of the Secretary of Defense

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

Joint Staff

Director, Joint Staff

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

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

Combatant Command

Inspector General, U.S. Joint Forces Command

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

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

Department of the Air Force Comments (U)



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

APR 07 2008

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ATTN: DEPUTY INSPECTOR GENERAL FOR AUDITING

FROM: SAF/AQC

SUBJECT: Air Force Response to Department of Defense Inspector General (DoDIG)
Draft Report, Project No. D2007-D000AB-0202, Air Force Air Combat Command
Contracts

This is in reply to your memorandum requesting that the Assistant Secretary of the Air Force provide comments on the subject draft report dated 12 March 2008. Responses to your recommendations are found below:

DoDIG Recommendation 1: The Assistant Secretary of the Air Force for Acquisition should:

a. Issue guidance to Air Force General Officers, military commanders, and Senior Executive Service members within the Air Force that reemphasizes the need to eliminate the appearance of conflicts of interest situations in Air Force contracting.

Air Force Response: Concur. Guidance was issued on 26 Mar 08 (attachment 1) to Air Force General Officers, military commanders, and Senior Executive Service members within the Air Force. The Secretary of the Air Force and Chief of Staff of the Air Force issued this guidance to ensure senior leadership at all levels within the Air Force clearly understand the need to eliminate any appearance of conflicts of interest situations or improper influence within the Air Force. With respect to ACC specifically, the Commander of ACC has further distributed this information to all Commanders in ACC to ensure the widest dissemination and understanding. Additional guidance was sent to all contracting personnel by SAF/AQ on 2 Apr 08 (attachment 2). Prior to issuance of this report but after the events described, Deputy Assistant Secretary (Contracting) also issued guidance 5 Apr 06 (attachment 3) to all contracting personnel emphasizing the need to eliminate the appearance of conflicts of interest.

Action Completed.

DoDIG Recommendation 2: The Commander, Air Combat Command improve contracting internal controls by:

a. Emphasizing Air Combat Command contracting personnel better document their price reasonableness and best value determinations and make price reasonableness and best value decisions based on the results of detailed analysis.

Air Force Response: Concur. Prior to issuance of the DoDIG draft report, these documentation procedures were addressed in the Deputy Assistant Secretary (Contracting)/ (DAS(C)) Policy Memorandum, dated 26 June 2006 (attachment 4). To ensure that contracting officers include documentation of price reasonableness and best value determinations and make price reasonableness and best value decisions based on the results of detailed analysis, DAS(C) required review of these determinations be included in all Air Force Contracting Compliance Inspection Checklist. Additionally, Air Combat Command will issue guidance to ensure inspections have taken place, reemphasize documentation requirements during squadron's next training day, and incorporate this topic in squadron's annual refresher training program and areas cited will become a recurring topic at all future command contracting conferences.

Estimated Completion Date: 15 June 2008

b. Maintain policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Air Force Response: Concur. Air Combat Command will reemphasize existing policies and procedures for dealing with the actual or apparent improper conflicts of interests during squadrons next training day, and to direct incorporation of the training into squadron's annual refresher training program.

Estimated Completion Date: 15 June 2008

c. Promoting full and open competition in the acquisition process.

Air Force Response: Concur. To ensure that contracting officers are promoting full and open competition DAS(C) required review of these determinations to be included on all Air Force Contracting Compliance Inspection Checklist. Air Combat Command will issue guidance to ensure inspections have taken place, reemphasized during squadrons next training day, and incorporate in squadron's annual refresher training program.

Estimated Completion Date: 15 June 2008

d. Consistently including all required Federal Acquisition Regulation requirements and clauses for Alaska Native Corporation contracts awarded under the Small Business Act.

Air Force Response: Concur. Air Combat Command will review to ensure compliance that all required Federal Acquisition Regulation requirements and clauses have been included for Alaska Native Corporation contracts awarded under the Small Business Act. Additionally this topic will be included into the squadrons next training day.

Estimated Completion Date: 15 June 2008

3

SAF/AQC and ACC/A7, have established an independent team to perform a procurement management review at the 99th CONS. This team consists of senior contracting official from other MAJCOMS and Secretariat personnel including SAF/GC legal representative. The team will review contract files to ensure the situations identified have been corrected and will also perform a thorough review of the rest of the squadron. Findings will be used to revise/implement internal controls, training, and management policies and guidance. The teams review should be completed and a report finalized by 15 June 08.

Additionally, at the request of ACC Commander, an audit announcement to ACC/A3 and ACC/A7 for the Heritage Flight Program will begin on or about 10 Apr 08. The overall audit objective is to determine whether ACC personnel effectively managed selected aspects of the Heritage Flight Program and review areas will include but not limited to program participant appointments and contracting processes.

We noted numerous references within the report that refer to "ACC and 99th CONS". In light of the fact that the audit was not accomplished on an ACC wide basis and to avoid creating an inaccurate perception that the findings apply to all contracting organizations across the command, we request that certain organizational references be made more specific. We have attached a comment matrix (attachment 5) to assist you in assuring the report is as accurate as possible when referring to the organizations involved.

Finally, there were several other contracting and oversight changes implemented after the contracting actions that were reviewed in this inspection. These include expansion of the Ombudsman program (to include use by government employees), mandatory legal reviews of key source selection documentation and legal participation during the clearance process, mandatory clearance reviews by SAF/AQC when the MAJCOM senior contracting official is the SSA, and revisions to several of the source selection procedures. The Air Force IG conducted a review of Air Force source selections in FY 07 and found all but one office were complying with the new source selection procedures with no trends that were identified. The one office found deficient made the required changes and is now compliant.

Questions your staff may have concerning the responses to recommendations may be directed to Mr. Gregory Snyder, SAF/AQCP, commercial (703) 588-7007 or DSN 425-7007.



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

Attachments:

1. SECAF/CSAF Senior Leader Responsibilities in Ethics Memo, 26 Mar 08
2. SAF/AQ Senior Leader Responsibility in Ethics Memo, 2 Apr 08
3. SAF/AQC Conflicts of Interest Memo, 5 Apr 06
4. SAF/AQC Policy Memo, 26 Jun 06
5. Comment Matrix

Attachment
5 omitted

Attachment
5 omitted



THE SECRETARY OF THE AIR FORCE
CHIEF OF STAFF, UNITED STATES AIR FORCE
WASHINGTON DC



March 26, 2008

MEMORANDUM FOR AIR FORCE SENIOR LEADERS

SUBJECT: Senior Leader Responsibilities in Ethics

As senior leaders, we collectively set the Air Force's ethical tone and serve as the example for all Air Force members and employees. It is imperative that we be constantly mindful of the impact, both intended and unintended, our words and actions may have on others, particularly our subordinates. Accomplishing the mission or achieving a desired outcome can never come at the expense of the law, applicable regulations, or our Core Values. Yet, when we say or imply we want something done, some may infer that we want it done at all costs and without objection or the raising of issues.

We need to be particularly vigilant of our actions in contract matters. We are accountable to the American people as stewards of public funds. We must maintain appropriate relationships with those who hope to enter into contracts with the Air Force and those who already have contracts. We must scrupulously avoid the appearance of impropriety or favoritism. Our efforts to restore public confidence and ensure openness and transparency in the acquisition process are undermined when individuals are given special access or treatment by senior leaders based on prior professional or personal relationships. Senior leader involvement in the acquisition process, even when unintended, that results in improper influence or unfair outcomes is unacceptable and violates our Core Values. I ask that every senior leader pay close attention to the rules under which we must conduct procurements. And if you are not sure about the rules, ask.

We must create an environment where our people feel they can convey "bad news" to us without fear of ridicule or retribution and reward our folks for standing up to pressures of improper influence in the contracting process. When we fail in this aspect of leadership, we not only deprive ourselves of total situational awareness, but we generate cynicism and distrust among subordinates and the next generation of Air Force leaders. Your continued vigilance in this regard will help ensure that proper focus is maintained.


Michael W. Wynne
Secretary of the Air Force


T. Michael Moseley
Chief of Staff

ATCA 1



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

OFFICE OF THE ASSISTANT SECRETARY

2 APR 2008

MEMORANDUM FOR ALL CONTRACTING PERSONNEL

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

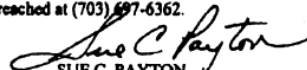
SUBJECT: Senior Leader Responsibilities in Ethics

One of my first acts as your Senior Procurement Executive was to issue the 7 Sep 06 Memo on Procurement Responsibilities (attachment 1). I remain committed to the focus of that memo and I continue to be impressed with the level of integrity, professionalism, and dedication of our contracting workforce. Within this context, I want to draw your attention to the SECAF/CSAF memo that was issued to Senior Leaders on 26 Mar 08 (attachment 2). The SECAF and I continue to look to you to be the "safety valve" governing the integrity of proper relationships between the Air Force and Industry. We are relying on you to make your voices heard in regards to contracting regulations or acquisition policy. In situations when leadership direction seems to conflict with acceptable procurement methods, you must aggressively bring the issues forward for resolution. There will be times when customers, seeking a capability or service in an urgent manner, pursue solutions that are not authorized and may be detrimental to our Air Force. We have established processes for meeting urgent or rapid acquisitions; follow them carefully and make award only after all appropriate justifications and approvals are obtained. All official communication concerning ongoing contract actions shall be overseen by a warranted contracting officer.

Situations may also arise with members of industry that are "friends" or recently separated members of the Air Force. There may be perceived pressures or they may seek preferential treatment when it comes to visitation, access to information, or contracting opportunities. The rules are very clear, we treat all potential competitors equally and no special privileges are granted on the basis of previous affiliation with the Air Force.

You are one of the few functional professionals in the Air Force that have a personal legal liability for the work you do. Your warrant is the certification that you are qualified in the job the Air Force has asked you to do. Treasure and protect your unique professional responsibility. I call your attention to the contracting ethics video from Mr Charlie Williams that is located on SAF/AQC's web site.

If you believe the chain of command or anyone else is placing undue pressure or vectoring you in a manner that is inappropriate, I want you to contact Mr. Williams or me directly. There will be no retribution and an intervention will be made. Mr. Williams can be reached at (703) 588-7004, or e-mail Charlie.Williams@pentagon.af.mil, and I can be reached at (703) 697-6362.


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

Attachments:
1. SAF/AQ Memo 7 Sep 06
2. SECAF/CSAF Memo 26 Mar 08
cc:
Heads of Contracting Activities
SAF/ACE



AQC On Point

Mr. Charlie E. Williams, Jr.

CONFLICTS OF INTERESTS

5 Apr 06

Government and contractor relationships are always a matter for public scrutiny. As contracting officials, we must avoid situations where actual, potential or even the appearance of conflicts of interest could lead someone to question the objectivity and fairness of Air Force contracting actions.

Our work depends on maintaining the trust and confidence of the public and we absolutely must understand the expectations for our conduct as Government contracting professionals. To this end, DOD employees are subject to criminal conflict of interest laws and regulations that prohibit employees from participating personally and substantially in an official capacity on any assignment where they, certain family members, or in some cases others with whom they are personally connected could improperly benefit.

It can be difficult at times to determine what conduct constitutes a conflict of interest, but we all must be vigilant in recognizing these situations. I am especially concerned about avoiding appearances of conflicts of interest. If you believe that because you or your family members do not have a financial interest in an action, it is acceptable to participate in that matter, you may be wrong. Under the Joint Ethics Regulation, (DoD 5500.7-R), we are obligated to consider whether our actions may cause someone to question our ability to maintain impartiality in the performance of our official duties. For example, interactions concerning official matters with ex-spouses or acquaintances such as close neighbors, friends, or past supervisors may create an appearance problem.

I want everyone to perform their duties without a doubt in anybody's mind that our decisions are made for the right reasons and are not based on personal or financial ties. In many cases, potential conflicts are easily mitigated through recusal. If you need advice on a particular situation, contact your local ethics advisor. Additional information is available at the SAF/GC website: www.safgc.hq.af.mil/ethics.htm.



Charlie E. Williams, Jr.
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

ATCH 3



Office Of The Assistant Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

JUN 28 2006

Contract Policy Memo 06-C-01

MEMORANDUM FOR ALMAJCOM/FOA/DRU (CONTRACTING)

FROM: SAF/AQC

SUBJECT: Compliance Inspection Checklists

In accordance with AFI 65-201, I am directing all MAJCOM A7Ks, PKs and DRU Senior Contracting Officials incorporate the attached 7 areas with associated questions to your assessable units as part of your compliance inspections and any other contracting reviews. If your checklist already covers these areas, no further action will be required.

DoD (AT&L) has requested that the services perform a self-assessment in the GAO High Risk Areas by 31 Jul 06. Because many of you already have those areas addressed, SAF/AQCP will be contacting your staff to see what results were found when you last reviewed those areas. An overall assessment is what we are looking for, not by location or program specific.

Additionally, AQCP will be following up with you to initiate a standardized MAJCOM compliance inspection checklist. While this is a standardization effort, each MAJCOM will be able to add any additional areas or MAJCOM specific questions to the standardized checklist. This will enable us to better understand the health of the contracting workforce and will greatly expedite inquiries to specific DoD and Congressional concerns. Your assistance in this matter is greatly appreciated.

If you have any questions please contact my POC on this issue, Mr Greg Snyder at DSN 425-7058 or gregory.snyder@pentagon.af.mil.


CHARLIE E. WILLIAMS, JR.
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachment:
Mandatory Assessable Areas During Compliance
Inspections

ATCH 14

Team Members

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

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Inspector General
Department of Defense

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