Audit Report

OFFICE OF THE INSPECTOR GENERAL

CONTRACT AWARD DECISIONS RESULTING IN CONTRACT TERMINATION FOR DEFAULT

Report No. 96-105

April 29, 1996

Department of Defense

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Acronyms

ACRRP	Automated Contractor Responsibility Review Program
FAR	Federal Acquisition Regulation
WRALC	Warner Robins Air Logistics Center

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

April 29, 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE LOGISTICS AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Contract Award Decisions Resulting in Contract Termination for Default (Report No. 96-105)

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

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.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Terry L. McKinney, Audit Program Director, at (703) 604-9288 (DSN 664-9288), or Ms. Bobbie Sau Wan, Audit Project Manager, at (703) 604-9259 (DSN 664-9259). See Appendix H for the report distribution. The audit team members are listed inside the back cover.

David Steensma

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Deputy Assistant Inspector General
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Office of the Inspector General, DoD

Report No. 96-105 **April 29, 1996**
(Project No. 5CF-0056)

Contract Award Decisions Resulting in Contract Termination for Default

Executive Summary

Introduction. Before awarding a contract to a prospective contractor, the contracting officer must determine whether the prospective contractor possesses the technical, production, and financial resources to adequately perform the contract. The contracting officer may use a wide variety of information sources to make a determination regarding a prospective contractor's likely responsibility or lack of responsibility. If a contract is awarded to an irresponsible contractor, the Government is at risk of increased costs and hindered operations caused by contractor default. From FY 1993 through April 1995, DoD terminated for default 642 contracts valued at $223 million (see Appendix C).

Audit Objectives. The overall audit objective was to determine whether contracting officer determinations of responsibility of contractors addressed pertinent issues and were supported by facts available before the award of contracts. Specifically, the audit focused on contracts terminated either for default or convenience and determined whether the contract terminations could have been averted based on information available before contract award. The audit also evaluated how information on contractor defaults is collected for future use in determining a contractor's past performance. In addition, the audit assessed the adequacy of the management control program at DoD contract administration and buying commands as it applied to determinations of contractor responsibility.

Audit Results. Procedures for determining contractor responsibility, for contracts valued at $100,000 or greater, were generally adequate at 14 of the 15 buying commands reviewed. Additionally, management controls were adequate to ensure that contracting officer determinations of responsibility of contractors addressed pertinent issues and were supported by facts before contract award. As a result, the 14 buying commands avoided incurring excess costs caused by contracts being terminated for default (Finding A).

At Warner Robins Air Logistics Center, contracting officers awarded 24 contracts, valued at $34.1 million, to contractors without obtaining adequate information to support determinations of contractor responsibility or without adequately addressing adverse contractor information that was available before contract award. As a result, Warner Robins Air Logistics Center paid $13.5 million of unrecoverable unearned progress payments to defaulting contractors. Additionally, unquantified administrative costs were incurred, and operations were potentially hindered (Finding B).

Recommendations in this report, if implemented, will help establish procedures and strengthen controls over contracting officer determinations of contractor responsibility before contract award at Warner Robins Air Logistics Center. Appendix F summarizes the potential benefits of the audit.

Summary of Recommendations. We recommend that the Commander, Warner Robins Air Logistics Center, establish procedures to ensure that contracting officers award contracts only to responsible prospective contractors and that determinations of responsibility are fully supported and documented. We further recommend that contracting officer determinations of contractor responsibility be established as an assessable unit as part of the Warner Robins Air Logistics Center management control program. Additionally, we recommend that the Commander investigate the contract awards to nonresponsible contractors and, as indicated, take administrative action against personnel involved in those improper contract awards.

Management Comments. The Assistant Secretary of the Air Force (Acquisition) concurred, in general, with all of the recommendations, stating that Warner Robins Air Logistics Center issued guidance to procurement personnel on default terminations and established improved contract award procedures, and that contractor responsibility will be added to the self-inspection programs of appropriate organizations at Warner Robins Air Logistics Center. The Assistant Secretary added that Warner Robins Air Logistics Center has completed the investigation of the awarding of contracts that were terminated for default. However, the investigation concluded that administrative action against the personnel involved in the contract awards is not appropriate. A discussion of the responsiveness of management comments to the recommendations is in Part I of the report. The complete text of the managements comments is in Part III.

Audit Response. We are pleased that aggressive actions have been taken or are underway and consider the corrective actions to be responsive to the recommendations.

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Part I - Audit Results

Audit Background

Before awarding a contract to a prospective contractor, a contracting officer must determine whether the prospective contractor possesses the technical, production, and financial resources to adequately perform the contract. The contracting officer may use information obtained from a wide variety of sources to make a determination regarding a prospective contractor's likely responsibility or lack of responsibility (called nonresponsibility in the contracting field). The information sources include, but are not limited to, Defense Logistics Agency preaward surveys, Defense Contract Audit Agency reports, a listing of contractors excluded from procurement programs, records and experience data, and internal buying command audits and analyses. The contracting officer also may rely on previous experience with the prospective contractor, as well as information from other Government or private sources.

Contracts that end in termination or contractor bankruptcy are typically placed in a dormant or inactive status. Settlement of dormant contracts is contingent on specific actions beyond the administrative contracting officer's control, such as suits in Federal court, public law claims, bankruptcy settlements, and collection of unearned progress payments and reprocurement costs.

Timely performance of DoD contracts is essential to support the missions of the Military Departments. Thus, contracts ending in terminations for default, or terminations for convenience as a result of contractor default, adversely affect military readiness. Failure to effect a timely procurement of a relatively minor or low dollar component could impact a larger military program. From FY 1993 through April 1995, DoD terminated for default 642 contracts valued at $223 million (see Appendix C).

Audit Objectives

The overall audit objective was to determine whether contracting officer determinations of responsibility of contractors addressed pertinent issues and were supported by facts available before the award of contracts. Specifically, the audit focused on contracts terminated either for default or convenience and determined whether the contract terminations could have been averted based on information available before contract award. The audit also determined how information on contractor defaults was retained for future use in evaluating a contractor's past performance. In addition, the audit assessed the adequacy of the management control program at DoD contract administration offices as it

applies to the other stated audit objectives. See Appendix A for a discussion of the scope and methodology of the audit and our review of the management control program. See Appendix B for a summary of prior audit coverage related to the audit objectives.

Finding A. Buying Commands Determination of Contractor Responsibility Before Contract Award

Procedures for determining contractor responsibility before contract award, for contracts valued at $100,000 or greater, were generally reasonable and supported by adequate documentation at 14 of 15 buying commands reviewed. Procedures were in place to ensure that sufficient data on prospective contractors were obtained and used. Also, information on contractor performance was being collected for use in evaluating contractors for future awards. As a result, the buying commands avoided incurring excess costs caused by contracts being terminated for default.

Contracting Officer Determinations of Contractor Responsibility

The Federal Acquisition Regulation (FAR) 9.105-1, "Obtaining Information," states that before a prospective contractor is determined to be responsible, the contracting officer must possess or obtain information sufficient for the contracting officer to be satisfied that the prospective contractor meets the standards outlined in FAR 9.104-1, "General Standards." Furthermore, FAR 9.105-1 itemizes the sources of information that should be used by contracting officers when determining whether a prospective contractor is responsible. The sources include records and experience data; verifiable knowledge of personnel in the contracting office, audit office, contract administration offices, and other contracting offices; prospective contractors' financial data; preaward survey reports; and other sources such as suppliers, subcontractors, Government agencies, and business and trade associations.

Thus, for a contracting officer to determine that a prospective contractor is responsible, merely demonstrating a lack of adverse information is not sufficient. The contracting officer must obtain persuasive evidence to reasonably demonstrate that the prospective contractor possesses the resources, ability, and credibility to adequately perform the prospective contract.

Obtaining Information on Contractor Responsibility

Justifying and Documenting Determinations of Contractor Responsibility. Overall, contracting officers at 14 of the 15 buying commands reviewed obtained sufficient information to justify their determinations of prospective contractors responsibility before contract award. In 102 contract actions reviewed, contracting officers used several sources to obtain contractor information, which included information on the contractor business organization; past performance; and financial, production, and technical capabilities. Furthermore, the information that contracting officers used to support their determinations of contractor responsibility was documented in the contract files. Thus, in our opinion, contracting officer responsibility determinations at 14 commands were reasonably supported. The following table shows the most common sources that contracting officers used to obtain prospective contractor information.

Table 1. Sources Commonly Used by Each Organization to Obtain Information About Prospective Contractors

Organization	Number of Contracts Reviewed	DCMAO*	Contractor General File	Preaward Survey Monitor	Periodic Publications
Army	33	22	14	14	12
Navy	13	7	1	2	6
Air Force	11	4	0	11	0
Defense Logistics Agency	45	26	24	10	27
Total	**102**	**59**	**39**	**37**	**45**

*Defense Contract Management Area Operations

For a detailed listing of commands visited and contractor information sources commonly used by each command, see Appendix D.

Defense Contract Management Area Operations. A typical source of contractor information was a preaward survey report, usually prepared for the contracting officer by the cognizant Defense contract management area operations, an office of the Defense Logistics Agency. Contracting officers requested preaward surveys when information available to them was not sufficient to make a determination regarding contractor responsibility.

Preaward survey reports usually addressed a wide range of issues reflecting contractor financial, production, technical, and quality assurance capabilities. When no requirement existed for a preaward survey, contracting officers informally contacted the Defense contract management area operations for verbal advice on the status of prospective contractors. Contracting officers from virtually all 14 commands requested or contacted Defense contract management area operations offices to obtain contractor information before the award of 59 of 102 contracts reviewed.

Contractor General File. The command established a file called the contractor general file as a repository of information on contractors with which the command had conducted business in the past. The purpose of the file was to maintain copies of documents generated throughout the contracting process (from contract solicitation through contract administration and payment) so that information could be used in subsequent procurements should the contractor be used again (or be considered again). The file contained documents generated in the previous 3 years and included defective cost or pricing data, preaward surveys, reports of delivery discrepancy, reports of quality deficiency, requests for waiver or deviation, and any correspondence deemed pertinent concerning a contractor's past performance or ability to perform. Contracting officers used the contractor general file to support the award of 39 contracts at 7 buying commands.

Preaward Survey Monitor. The preaward survey monitor branch served as a liaison between the contracting officers and the Defense contract management area operations. Personnel at the preaward survey monitor branch maintained files containing copies of preaward survey reports performed by the Defense contract management area offices in the last 12 months concerning the command's contractors. Contracting officers would request a preaward survey through the preaward survey monitor. The preaward survey monitor would then check the existing file and determine whether a preaward survey request should be forwarded to the Defense contract management area operations. Also, personnel at the preaward survey monitor branch made telephone contacts to obtain pertinent information on the prospective contractor. The preaward survey monitor branch was involved in obtaining prospective contractor information for the support of 37 contract awards at 7 buying commands.

Periodic Publications. Contracting officers usually used two periodic publications, "Dun and Bradstreet" and "List of Parties Excluded From Federal Procurement or Nonprocurement Programs," to obtain information on contractors. "Dun and Bradstreet" provided financial information on private companies that might also include ratings of their financial health. "List of Parties Excluded From Federal Procurement or Nonprocurement Programs," issued by the General Services Administration, provided names of contractors excluded throughout the U.S. Government from receiving Federal contracts or

subcontracts. Contracting officers used information obtained from the periodic publications to support their contractor responsibility determinations for 45 contract awards at 8 buying commands.

Collection of Past Contractor Performance Data

The Law. Public Law 103-355, "Federal Acquisition Streamlining Act," established the requirement to consider contractor past performance as a relevant factor in evaluating whether a contractor should receive a Government contract award. To fully implement that initiative, agencies must establish past performance reporting systems by July 1, 1995, for contracts in excess of $1 million. The implementation date for the system for contracts valued in excess of $500,000 is July 1, 1996, and for contracts in excess of $100,000, January 1, 1999. The Federal Acquisition Circular 90-26 was issued to amend the FAR to implement requirements of the Federal Acquisition Streamlining Act on contractor past performance.

DoD Initiatives. The DoD has long recognized the importance of contractor performance as a factor in the procurement process. As contained in Inspector General, DoD, Report No. 94-079, "DoD Component Implementing Action Plans for Improving the Quality of Spare Parts," April 12, 1994, the Army, the Navy, the Air Force, and the Defense Logistic Agency had established their own systems for tracking contractor performance for use in the contract award process. The systems were part of the DoD action plan for continuously improving the quality of spare and repair parts. That action plan was in response to prior Inspector General, DoD, reports that identified large numbers of nonconforming parts. At the DoD organizations that we visited, those initiatives on contractor past performance were ongoing and the organizations were working toward meeting the requirements of the Federal Acquisition Streamlining Act.

The Army, the Navy, the Air Force, and the Defense Logistics Agency have developed systems to collect, analyze, and evaluate contractor past performance data for use in future awards. Descriptions of each follow.

Performance Risk Assessment Group Program. The Army program that feeds on the Army's Contractor Information System generates a telephone book-type listing for each contractor that contains contract numbers, points of contact, and telephone numbers of contracting personnel who have first-hand knowledge of the contractor's past performance. The purpose of the system is

to provide contracting officers the opportunity to contact other buying commands and other contracting personnel regarding a contractor's past performance.

Navy Red-Yellow-Green System. The Navy system classifies the degree of risk to the Navy of receiving nonconforming products. A color is assigned to a contractor based on its historical product quality performance. The system identifies low-risk quality performers as "green." Moderate-risk quality performers are identified as "yellow," and high-risk quality performers are identified as "red."

Air Force Blue-Ribbon Program. The Air Force blue-ribbon contract program recognizes contractors who have maintained high levels of performance. In addition to recognition, a contracting team may award a contract to a blue-ribbon contractor whose price is higher than that of the lowest responsible offerer.

Defense Logistics Agency Model. The Defense Logistics Agency uses an automated system, known as the Automated Best Value Model, that collects and analyzes a contractor's past performance data for a specific period and translates the results into a numeric score that ranges from 0 to 100.

Although the systems described were not yet fully operational (because of the implementation dates established by the Act), contracting officers generally had started making use of information available in the systems to support their determinations of contractor responsibility.

Conclusion

The varied procedures that contracting officers used provided adequate information on prospective contractors. Recommendations for corrective action are not necessary because, overall, the 14 buying commands have procedures in place to ensure that contracting officers obtain sufficient contractor information for use in determinations of contractor responsibility.

Finding B. Warner Robins Air Logistics Center Contracting Officer Determinations of Contractor Responsibility

Contracting officers at Warner Robins Air Logistics Center (WRALC) awarded 13 contracts, valued at $16.2 million, to contractors without obtaining adequate information to support determinations of contractor responsibility. WRALC contracting officers awarded 11 additional contracts, valued at $17.9 million, despite adverse contractor information that was available before contract award. The inappropriate contract awards occurred because procedures were not in place to ensure that contracts were awarded only to contractors shown to be responsible by an adequate level of persuasive evidence and to ensure that adverse contractor information was not ignored. An overriding factor involved was the misperception that contractors with small business status should be given special consideration when determining contractor responsibility. As a result of contracts being awarded to contractors that were not responsible, 24 contracts were eventually terminated for default, resulting in the loss of $13.5 million of unrecoverable unearned progress payments that had been paid to the defaulting contractors. Additionally, administrative costs were incurred and operations were potentially hindered.

Contractor Responsibility

Contractor responsibility depends on many factors such as financial capability, experience, and business integrity. Because Government contracting officers must address a wide range of issues affecting contractor responsibility, the contracting officer must ensure that an adequate level of information is obtained on each prospective contractor before contract award. Accordingly, contracting officers should use a variety of information sources to ensure that a reasonable amount and quality of information is relied on in making their determinations of contractor responsibility.

For a contracting officer to determine that a prospective contractor is responsible, the contracting officer must do more than merely demonstrate a lack of adverse information. The contracting officer must obtain persuasive evidence to demonstrate that the prospective contractor possesses the resources, ability, and credibility to adequately perform the prospective contract.

Furthermore, if adverse contractor information exists, then the contracting officer can not make a determination that the contractor is responsible unless the contracting officer also has evidence that such adverse information is outweighed by enough current positive information to justify a determination of contractor responsibility.

We reviewed 27 contracts that had been terminated for default at WRALC. We reviewed the contract award documentation to determine whether the contracting officer determination of contractor responsibility was reasonable and adequately supported. We further determined whether any contracts were awarded despite the availability and knowledge of unresolved adverse contractor information. Additionally, we quantified monetary losses to the Government in the form of total unearned progress payments that were paid to contractors on the defaulted contracts.

Table 2 shows our findings at WRALC, along with the amount of unearned progress payments that were made before the contracts were terminated for default.

Table 2. Results of Review of 27 WRALC Contracts Terminated for Default

Audit Evaluation of Contracting Officer Determination of Contractor Responsibility	Number of Contracts	Total Contract Value (millions)	Total Unearned Progress Payments (millions)
Insufficient support	13	$16.2	$ 7.7
Adverse information	11	17.9	5.8
Adequate support	3	1.3	0
Total	**27**	**$35.4**	**$13.5**

For a summary of contracts reviewed at WRALC, see Appendix E. The results of our review are discussed in detail in the following section.

Contract File Evidence Supporting Determinations of Responsibility

WRALC contracting officers awarded contracts without taking adequate steps to ensure that the contractors were responsible. Of the 27 contracts we reviewed, valued at $35.4 million, WRALC contracting officers awarded 13 contracts, valued at $16.2 million, without obtaining adequate information to support their determinations of responsibility. The contract awards resulted in unrecoverable unearned progress payments totaling $7.7 million. Contracting officers said that contractors are generally determined responsible if their past delivery performance reflects a delinquency rate of less than 25 percent. No consideration is given to the size of the prospective contract award, potentially adverse financial indicators, or other factors that may affect the prospective award.

Automated Contractor Responsibility Review Program. In February 1988, WRALC initiated the use of the Automated Contractor Responsibility Review Program (ACRRP). The ACRRP is a centralized system for use in determining whether a prospective contractor is responsible. The ACRRP calculates a contractor delinquency rate based on contract schedules and actual deliveries. If the delinquency rate is calculated at 15 percent or less, the system generates an automated "award" recommendation.

Contracting officers generally regarded a contractor to be responsible when the delinquency rate was less than 25 percent and, therefore, routinely awarded contracts to those contractors with delinquency rates between 15 and 25 percent, as well as those given the ACRRP "award" recommendations. Contractors with delinquency rates higher than 25 percent required WRALC management approval to determine that the contractor was responsible.

In addition to showing delinquency rates and making automated recommendations, the ACRRP could be used to summarize manually inputted information, such as preaward survey recommendations, debarment or suspension status, and quality deficiency reports. Nevertheless, WRALC management directed contracting officers to accept the "award" recommendation as the sole basis for determining that a prospective contractor is responsible. According to discussions with WRALC contracting officers, the only element used to generate the automated recommendation, and the primary element considered by contracting officers in making responsibility determinations, was the ACRRP-calculated contract delinquency rate. No instructions were available for contracting officers who received an automated "award" recommendation on a prospective contractor, but, nonetheless, wished to determine the prospective contractor nonresponsible.

In June 1993, the Director of Contracting, WRALC, discovered that the ACRRP was generating inaccurate delinquency rate information and, consequently, was generating flawed recommendations. Therefore, the Director instructed all WRALC procurement personnel to disregard the ACRRP automated recommendations and reported delinquency rates until the system was corrected. Those corrections are still being made. The Director further instructed the WRALC procurement personnel to use the Mechanization of Contract Administration Services to obtain contract delinquency data. The Mechanization of Contract Administration Services is a DoD-wide automated information system that allows Military Department buying organizations direct access to on-line information about contractors and specific contracts. According to discussions with WRALC contracting officers, the Mechanization of Contract Administration Services system is used primarily to determine contract delinquency rates, which should be less than 25 percent for a prospective contractor to be deemed responsible.

Documentation of Determinations of Contractor Responsibility. WRALC had no policy or procedure requiring contracting officers to document their rationale for determining a prospective contractor to be responsible. Contracting officers said that the contracting officer signature on the contract constitutes, by itself, a determination of responsibility. According to the contracting officers, written documentation is required only when requesting a waiver of a negative preaward survey or ACRRP recommendation, or when the contracting officer makes a determination of nonresponsibility. We disagree with requiring only minimal documentation of contracting officer determinations of contractor responsibility. Such determinations should be fully supported by documentation showing the rationale with which a prospective contractor's responsibility is determined.

Contracting Officer Consideration of Adverse Contractor Information

Of the 27 contracts we reviewed that had been terminated for default at WRALC, 11 contracts had been awarded, valued at $17.9 million, despite unresolved adverse contractor information available to contracting officers before contract award. Those contract awards resulted in unrecoverable unearned progress payments totaling $5.8 million. Although adverse contractor information can sometimes be justified or explained, it is inappropriate to award a contract to a prospective contractor without documentation showing convincingly that such adverse information is no longer relevant to the prospective contractor's ability to perform the contract. Two contractors were

particularly illustrative of the inappropriate procedures used in determining contractor responsibility: M-Square Microtek, Inc., and Patty Precision Products, Inc.

M-Square Microtek, Inc. On January 23, 1990, the contracting officer awarded a $2.6 million contract to M-Square Microtek, Inc. (M-Square Microtek). The contracting officer also awarded a $492,212 contract to M-Square Microtek on January 31, 1990. Finally, the contracting officer awarded a third contract to M-Square Microtek for $173,250 on September 27, 1990. M-Square Microtek never performed on any of the three contracts and filed for bankruptcy on October 11, 1991. The Government lost $189,380 in unrecoverable unearned progress payments made to M-Square Microtek.

Expedited Award Procedures. WRALC contracting officers circumvented information-gathering procedures needed for determining contractor responsibility because they did not have time to complete a proper preaward survey. M-Square Microtek was a newly formed company on which no performance data were available. Therefore, in November 1989, the contracting officer requested a full preaward survey to be performed on all areas including production, quality assurance, and financial capability. That preaward survey was used as the basis for all three of the contracts awarded to M-Square Microtek. However, because the financial capability portion of the preaward survey was estimated to take 4 to 6 weeks to perform, the branch chief, who supervised the contract award process, canceled the financial capability portion of the preaward survey to expedite the award.

In response to concerns expressed by the Defense contract management area operations that had cognizance over the three M-Square Microtek contracts, the Defense Contract Audit Agency performed an audit on the contractor's financial condition. On May 24, 1990, the Defense Contract Audit Agency issued a "Report on Review of Financial Jeopardy" for M-Square Microtek, stating that the contractor's financial condition "raises substantial doubt about its ability to continue as a going concern." The report showed that as of December 31, 1989, M-Square Microtek was insolvent.

Had the branch chief permitted the contracting officer to obtain a preaward survey that included the financial capability portion, the financial data on M-Square Microtek's financial instability that the Defense Contract Audit Agency disclosed would have been known before any contracts were awarded to M-Square Microtek. Accordingly, those contract awards and subsequent terminations for default might have been averted.

Use of Internal Contract Information. For one contract awarded to M-Square Microtek, the contracting officer did not consider available adverse contractor information. Contract file documentation showed that the financial

information that was disclosed by the Defense Contract Audit Agency was available to the contracting officer on or before August 3, 1990. Furthermore, the contract file documentation showed that the contracting officer had available information showing that as of August 3, 1990, M-Square Microtek's eligibility for progress payments was suspended because the contractor had made only minimal progress on the contract. The contracting officer stated that she did not know about M-Square Microtek's financial difficulties because time constraints prevented her from properly reviewing available file documentation on existing contracts. Thus, despite the availability of significant adverse information, the contracting officer awarded a contract to M-Square Microtek on September 27, 1990.

Patty Precision Products, Inc. From January 24, 1990, through December 6, 1990, WRALC terminated for default seven contracts with Patty Precision Products, Inc. (Patty Precision Products), which were awarded from July 1985 through November 1990 and were valued at $28.1 million. Patty Precision Products made aircraft bomb racks.

Contracting Officer "Personal Knowledge." From July 1985 through June 1987, WRALC awarded three of the seven terminated contracts, valued at $11.8 million, without performing any inquiries or requesting any information regarding the contractor's responsibility. According to the contracting officer, he relied upon "personal knowledge" that Patty Precision Products was a "good contractor." Those three contracts, which were terminated for default, resulted in unrecoverable unearned progress payments totaling $7.4 million. Additionally, according to the contracting officer, the chief executive officer of Patty Precision Products was convicted of fraud charges, involving falsification of shipping records.

Contracting Officer Response to Negative Contractor Information. From September 1987 through November 1989, WRALC awarded four contracts, valued at $16.3 million, despite unresolved adverse contractor information existing before award. Those four contracts resulted in losses to the Government from unearned progress payments totaling $5.7 million.

Contract F09603-87-C-2166. Awarded in September 1987, contract F09603-87-C-2166 was valued at $9.4 million. The contracting officer requested and received a preaward survey that recommended "no award." The preaward survey report stated that the contractor had a 64-percent delinquency rate. Despite an in-house memorandum also urging "no award," the contracting officer requested a waiver of the negative preaward survey recommendation, stating that the contractor had a "written strategy" for completing the contract requirements. The Director of Contracting and Manufacturing approved the contracting officer's waiver request, and the contract was awarded to Patty Precision Products. The contract eventually was terminated for default, resulting in unrecoverable unearned progress payments of $0.7 million.

Contract F09603-89-C-0959. Awarded in February 1989, contract F09603-89-C-0959 was valued at $3.4 million. The ACRRP report contained a warning that most of the contractor's shipments were failing to reach their destinations. The contractor showed a 40- to 50-percent delinquency rate. However, the ACRRP report recommended award, and the contacting officer awarded the contract to Patty Precision Products. No documentation existed to indicate why the award recommendation was made. The contract was eventually terminated for default, resulting in unrecoverable unearned progress payments of $2.6 million.

Contract F34601-89-G-6653. Awarded in September 1989, contract F34601-89-G-6653 was valued at $1.5 million. The ACRRP report recommended "no award" and contained a warning about contract delinquencies. The contracting officer requested a waiver of the negative recommendation. The waiver request stated that Patty Precision Products had produced the product previously in accordance with the agreed-to delivery schedule and that WRALC would request that the administrative contracting officer give special attention to production surveillance for the contract. The acting branch chief approved the waiver, and the contacting officer awarded the contract. The contract was eventually terminated for default, resulting in unrecoverable unearned progress payments of $1.1 million.

Contract F09603-90-C-0274. Awarded in November 1989, contract F09603-90-C-0274 was valued at $2.0 million. The ACRRP report again recommended "no award," with a manually inputted notation stating, "DO NOT AWARD." The contracting officer requested a waiver of the negative ACRRP report. The waiver request stated that timely delivery of the contract requirement was essential and that Patty Precision Products had made some improvements on delivery problems on other contracts. The branch chief approved the waiver and the contacting officer awarded the contract. The contract was eventually terminated for default, resulting in unrecoverable unearned progress payments of $1.3 million.

Ignoring Adverse Information. In all of the above cases, the contracting officer was aware of adverse information about Patty Precision Products, but ignored it. If the contracting officer had appropriately determined Patty Precision Products to be nonresponsible, then the contract terminations for default might have been avoided. Additionally, requests for waivers of negative recommendations should have been denied when they did not have adequate documentation to support granting them.

Small Business Status of Prospective Contractors

The misperception existed that a prospective contractor's small business status must be considered when making a determination of responsibility. WRALC contracting officers said that they were often under the impression that they must award contracts to contractors with questionable responsibility because of pressure to meet WRALC small business goals. Although we found no documentation that specifically stated that a prospective contractor was determined responsible because of its small business status, all of the contracts we reviewed at WRALC, which were ultimately terminated for default, were with small businesses.

According to the WRALC attorneys, the small business status of a prospective contractor should not impact the contracting officer's determination of responsibility. If the contracting officer determines a contractor to be nonresponsible, the contractor may apply for a Certificate of Competency, which is issued by the Small Business Administration. The Certificate of Competency would essentially override the determination of nonresponsibility and would compel the contracting officer to award the contract. However, many contractors choose not to apply for a Certificate of Competency because of the Small Business Administration's highly invasive disclosure requirements. Additionally, many Certificate of Competency requests are denied. For example in FY 1994, there were 762 Certificates of Competency related to DoD contracts and only 227 were approved by the Small Business Administration. Thus, the contracting officer's determination of contractor responsibility should not be affected by the prospective contractor's small business status. However, contracting officer misperceptions regarding the role of small business status in making determinations of contractor responsibility may have inappropriately influenced those determinations and, consequently, allowed contract awards to nonresponsible contractors.

Management Control Program

Our review of the WRALC management control program indicated that the contractor responsibility determination function was not specifically designated as an assessable unit. Had it been so designated, management controls might have been in place that would have prevented the weaknesses we identified in the determination of contractor responsibility function. While we do not consider it necessary for DoD contracting offices to always identify the contractor responsibility determination function as an assessable unit in their management control programs, in light of our findings at WRALC, we believe

that the contractor responsibility determination function should be specifically addressed in the WRALC management control program to ensure effective implementation of corrective action.

Summary

Our review of 27 contracts terminated for default at WRALC showed that WRALC contracting officers should not have awarded 24 of the 27 contracts based on the information available. The contracting officers based their determinations that contractors were responsible on clearly inadequate information and often ignored adverse information that should have either elicited a nonresponsibility determination or alerted the contracting officer to the need for more information. When adverse contractor information identified that Government specialists recommended against award, contracting officers routinely requested, with management approving such requests, that recommendations against awards be waived, thereby allowing the questionable contract award to take place.

WRALC contracting officers were under the incorrect impression that a contractors' small business status should influence the determination of contractor responsibility. However, awarding a contract to a nonresponsible contractor does not benefit the Government or the contractor. Legal experts at WRALC told us that no legal basis exists for awarding a contract to a nonresponsible contractor, regardless of small business status.

Contract terminations for default are costly to the Government. Unearned progress payments cited in the finding are the most obvious result. Reprocurement costs and other Government administrative costs are other examples of the monetary impact caused by contract terminations for default. Additionally, contract requirements not being filled or being delayed may impact military readiness.

To avoid unnecessary costs to the Government and facilitate military readiness, WRALC needs procedures in place to ensure that contracts are awarded only to prospective contractors who are clearly demonstrated as being responsible. The contracting officer's rationale in determining the contractor to be responsible should be fully documented and auditable.

Government contracting officers are expected to award and administer contracts in a prudent manner. FAR 1.602-2, "Responsibilities," states, "Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting . . . and safeguarding the interests of the United States in its contractual relationships." FAR 9.104-1 and FAR 9.105-1 state specifically

that contracts must be awarded only to responsible contractors and describe the tools available to contracting officers for use in making determinations of contractor responsibility. In our opinion, all personnel, including management, involved with the contracting function and with specific contractual actions must share responsibility for complying with the FAR provisions and, accordingly, for minimizing potential monetary and military readiness risks. Thus, when the applicable FAR provisions are not followed and the Government is exposed to such unnecessary risks, the personnel involved with improperly awarding contracts or approving such improper contract awards should be held accountable and administrative action, as appropriate, should be taken against those individuals.

Recommendations, Management Comments, and Audit Response

B. We recommend that the Commander, Warner Robins Air Logistics Center:

1. Establish procedures for ensuring that contracting officers award contracts only to prospective contractors who are clearly demonstrated to be responsible, as outlined in the Federal Acquisition Regulation 9.104-1, "General Standards." Such procedures should ignore a prospective contractor's small business status, if any, and should consider only those factors that could reasonably be expected to affect the reliability, quality, and timeliness of contract performance.

2. Establish procedures for documenting, in a detailed and auditable manner, all contracting officer determinations of contractor responsibility. Such documentation should include preaward survey reports, audit reports, internal memorandums, records of conversation, and all other rationale from which a prospective contractor's responsibility is determined.

Assistant Secretary of the Air Force (Acquisition) Comments. The Assistant Secretary of the Air Force (Acquisition) concurred, stating that the Directorate of Contracting, Warner Robins Air Logistics Center, issued guidance letters on default terminations and contractor responsibility and that corrective action is considered to be complete. However, with respect to Finding B, the Assistant Secretary commented that it was premature to characterize as "unrecoverable" the $13.5 million of unearned progress payments paid under defaulted contracts and added that Warner Robins Air Logistics Center had referred those outstanding debts to Defense Finance and Accounting Service Columbus for collection actions.

Audit Response. We consider the corrective actions to be responsive to the recommendations. Regarding the comments on Finding B, we contacted the Debt Management Office, Defense Finance and Accounting Service Columbus, to determine whether any of the unearned progress payments referred for collection had been recovered. According to the cognizant Defense Finance and Accounting Service representative, at least $13.3 million of the $13.5 million unearned progress payments referred to in Finding B were owed by contractors that had since declared bankruptcy. The remaining $0.2 million had not been collected and the Defense Finance and Accounting Service representative stated that it was unlikely that any of that remaining amount would ever be collected. Therefore, we believe that, in all material respects, stating that the $13.5 million unearned progress payments is unrecoverable is accurate.

3. Designate contracting officer determinations of contractor responsibility as an assessable unit as part of the Warner Robins Air Logistics Center management control program.

Assistant Secretary of the Air Force (Acquisition) Comments. The Assistant Secretary of the Air Force (Acquisition) concurred, stating that, by March 29, 1996, contractor responsibility will be added to the self-inspection programs of appropriate organizations at Warner Robins Air Logistics Center.

Audit Response. We consider the corrective action to be responsive to the recommendation.

4. Investigate conditions that led to the awarding of contracts in violation of the Federal Acquisition Regulation at Warner Robins Air Logistics Center and, as warranted, take administrative action against personnel involved in the improper contract awards.

Assistant Secretary of the Air Force (Acquisition) Comments. The Assistant Secretary of the Air Force (Acquisition) concurred in principle, stating that Warner Robins Air Logistics Center has completed the investigation of the awarding of contracts that were terminated for default. However, Warner Robins Air Logistics Center concluded that administrative action against the personnel involved in the contract awards is not appropriate because the personnel used their best judgment in accordance with the policies existing at that time. The Assistant Secretary added that procedures are now in place to ensure that contracting officers award contracts only to prospective contractors that have been clearly demonstrated to be responsible.

Audit Response. The Air Force has investigated the inappropriate contract awards and made an assessment as to whether administrative actions are appropriate. Accordingly, we consider its actions to be responsive to the recommendation.

Part II - Additional Information

Appendix A. Scope and Methodology

Scope

Sample Selection and Audit Locations. We judgmentally selected 15 Army, Navy, Air Force, and Defense Logistics Agency contracting organizations (Appendix G). We reviewed a total of 129 contracts, each valued at $100,000 or more, that were terminated for default during FYs 1993 and 1994 and the first 7 months of FY 1995. At 3 of 15 contracting organizations, we reviewed a total of 59 contracts, valued at $100,000 or greater, that were terminated for convenience or canceled during that time period. We reviewed only those contracts valued at $100,000 or greater because FAR subpart 9.106-1, "Conditions for Preaward Surveys," limits contracting officer requests for preaward surveys under the $100,000 threshold.

Additionally, we expanded the scope of the audit at Warner Robins Air Logistics Center to include seven contracts awarded to Patty Precision Products, Inc., which were terminated for default from January through December 1990. We expanded the scope of audit because of the large total value of contract terminations for default for a single contractor. Although the seven contracts were awarded before our originally defined audit period, we found no evidence that WRALC had changed its contract award procedures significantly to preclude similar occurrences in the future.

We reviewed the sampled contractual actions to determine:

o whether contract terminations for default should have been foreseen and avoided based on information available before contract award,

o whether contracts reported as terminated for convenience and canceled during FYs 1993, 1994, and 1995 were legitimately not terminations for default,

o whether management controls covering contracting officer determination of contractor responsibility were effective, and

o whether contracting officers provided contract default information as required for inputting into an existing information system.

Audit Period, Standards, and Locations. This economy and efficiency audit was made from July through November 1995 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Office of the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary. We did not use statistical sampling procedures to conduct this audit. We relied on computer-processed data from the DoD Contract Action Reporting System to determine the contracting organizations to visit. Although we did not perform a formal reliability assessment of the computer-processed data, we determined that the contract numbers, award dates, contractors, and the contractors' small business status on the contracts reviewed generally agreed with the information in the computer-processed data. We did not find errors that would preclude use of the computer-processed data to meet the objectives of the audit or that would change the conclusions in the report. A complete list of organizations visited or contacted is in Appendix G.

Management Control Program

DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of the Management Control Program. We reviewed the adequacy of management controls relating to the determination of contractor responsibility at 15 buying commands. We also reviewed self-evaluation of its management control program by WRALC.

Adequacy of Management Controls. Management controls applicable to the determination of contractor responsibility at 14 buying commands were generally adequate in that we identified no material management control weaknesses. One buying command was identified as having inadequate management controls. Warner Robins Air Logistics Center did not have criteria or adequate procedures established for the determination of contractor responsibility. Recommendations B.1. and B.2., if implemented, will correct that weakness. The amount of potential monetary benefits associated with correcting the material weakness cannot be quantified (see Appendix F). A copy of the report will be provided to the senior official in charge of management controls for DoD.

Adequacy of Management Self-Evaluation. WRALC officials did not identify determinations of contractor responsibility as an assessable unit and, therefore, did not identify or report the material management control weaknesses identified by the audit. Recommendation B.3, if implemented, will correct that weaknesses.

Appendix B. Summary of Prior Audits and Other Reviews

During the last 5 years, the Office of the Inspector General, DoD, has issued two reports that discuss the adequacy of preaward documentation and the need for contractor past performance as a factor in contract award evaluation.

Inspector General, DoD, Report No. 94-079, "DoD Component Implementing Action Plans for Improving the Quality of Spare Parts," April 12, 1994. The subject report states that one of the objectives presented in the DoD action plan for continuously improving the quality of spare and repair parts is to encourage the use of quality factors in the source selection process. The Army, the Navy, the Air Force, and the Defense Logistics Agency implemented the objective, and each of them developed an automated system that collects, analyzes, and evaluates contractor past performance data for use as an evaluation factor in awarding contracts. A recommendation was made to the Army, the Navy, the Air Force, and the Defense Logistics Agency to identify and designate one system as the standard DoD vendor rating system. The Military Departments generally concurred with the recommendation, but the Defense Logistics Agency nonconcurred. The Defense Logistics Agency stated that standardizing the vendor rating system would be inappropriate and would limit flexibility. The Deputy Under Secretary of Defense (Logistics) considered the issue complex and proposed that further review be conducted by the DoD Past Performance Council so that a recommendation can be made. The Past Performance Council plans to report on their review in the summer of 1996.

Inspector General, DoD, Report No. 93-093, "Procurement Procedures Used by the Single Manager for Conventional Ammunition," April 28, 1993. The subject report states that contracting officers at the Army Armament, Munitions, and Chemical Command awarded eight contracts to financially distressed companies. The contract awards were made despite the fact that preaward information was available indicating that the prospective contractors were financially unstable. The awards resulted in a $17.5 million unrecoverable loss to the Government from unliquidated progress payments that the contractors owed at contract termination. A recommendation was made to the Army and the Defense Logistics Agency that policies and procedures be established requiring contracting officers to perform reviews of preaward financial capability surveys recommending award to verify that the facts contained therein adequately support the recommendations. The Army partially concurred, stating that conducting additional detailed in-house reviews of prospective contractors' financial responsibility would be a duplication of Defense Contract Management Command efforts. The Defense Logistics Agency nonconcurred with the recommendation; however, revision made to the Defense Logistics Agency publication, "Guide to Analysis of Financial

Appendix C. Summary of Contracts Terminated for Default

	FY 1993		FY 1994		FY 1995[1]		Totals	
Organization	Number of Contract Actions	Value	Number of Contract Actions	Value	Number of Contract Actions	Value	Number of Contract Actions	Value
Army	126	$ 20,189,885	130	$35,905,571	30	$ 933,542	286	$ 57,028,998
Air Force	81	18,543,091	34	6,015,070	2	681,823	117	25,239,984
DLA[2]	51	18,886,114	31	8,226,020	23	14,970,370	105	42,082,504
Navy	44	64,084,183	47	24,474,571	20	10,987,632	111	99,546,386
Other	5	148,154	16	(804,259)	2	107,232	23	(548,873)
Total	**307**	**$121,851,427**	**258**	**$73,816,973**	**77**	**$27,680,599**	**642**	**$223,348,999**

[1]Actions and values for 1995 only include the first 7 months of FY 1995.

[2]Defense Logistics Agency.

Appendix D. Information Sources That Commands Commonly Used in Determining Contractor Responsibility

Location	Number of Contracts Reviewed	DCMAO*	Contractor General File	Preaward Survey Monitor	Periodic Publications
Army					
Communications-Electronics Command	12	7	2	11	4
Crane Army Ammunition Activity	3	2	2	0	0
Tank-automotive and Armaments Command	18	13	10	3	8
Subtotal for the Army	**33**	**22**	**14**	**14**	**12**
Navy					
Naval Aviation Supply Office	3	3	0	1	0
Fleet and Industrial Supply Center	3	0	0	0	2
Naval Surface Warfare Center-Crane	4	3	1	1	3
Naval Facilities Engineering Command	2	0	0	0	1
Naval Air Systems Command	1	1	0	0	0
Subtotal for the Navy	**13**	**7**	**1**	**2**	**6**
Air Force					
Ogden Air Logistics Center	11	4	0	11	0
Subtotal for the Air Force	**11**	**4**	**0**	**11**	**0**
Defense Logistics Agency					
Defense General Supply Center	12	8	10	5	10
Defense Fuel Supply Center	14	7	12	0	14
Defense Personnel Support Center	12	7	2	0	0
Defense Industrial Supply Center	1	1	0	0	
Defense Construction Supply Center	6	3	0	5	3
Subtotal for the Defense Logistics Agency	**45**	**26**	**24**	**10**	**27**
Total	**102**	**59**	**39**	**37**	**45**

*Defense contract management area operations.

Appendix E. Summary of Contracts Reviewed at Warner Robins Air Logistics Center

Contractor	Contract No.	Value	Termination Date	Unearned Progress Payments
Insufficient Support				
Patty Precision	F0960386G0246	$ 5,469,068	Jun. 1990	$1,711,653
Patty Precision	F0960387C4184	4,691,425	Oct. 1990	4,164,257
M-Square Microtek	F0960390C0823	2,625,000	Aug. 1993	80,030
Patty Precision	F0960385C4397	1,686,607	Oct. 1990	1,467,796
M-Square Microtek	F0960390C0904	492,212	Aug. 1993	94,350
Witco Engineering	F0960389D2129	205,830	Aug. 1994	23,188
Thompson Numeric	F0960390C1847	205,500	Feb. 1994	113,928
Komwave Corp.	F0960392C1541	189,660	Feb. 1994	
AIW-Alton Inc.	F0960391C1887	175,360	Sept. 1993	
Apex Mfg. Co.	F0960391C0849	141,658	Jun. 1993	
Thompson Numeric	F0960391C0615	132,500	Mar. 1993	
Salj Industries	F0960391C1213	120,000	Sept. 1993	
Komwave Corp.	F0960391C1168	102,750	Sept. 1993	
Subtotal		**$16,237,570**		**$7,655,202**
Negative Information				
Patty Precision	F0960387C2166	$ 9,381.876	Dec. 1989	$ 697,715
Patty Precision	F0960389C0959	3,413,859	Nov. 1990	2,576,584
Patty Precision	F3460189G6653	1,476,800	Aug. 1990	1,107,179
Patty Precision	F0960390C0274	1,985,175	Oct. 1990	1,290,908
A V W Electronic	F0960393C1171	501,920	Aug. 1994	
Mil-Craft Mfg.	F0960390C2547	296,121	Jul. 1994	
Alltop Inc.	F0960391C0611	254,520	Feb. 1994	20,091
Bertot Industries	F0960391C0991	190,560	Jul. 1994	1,553
M-Square Microtek	F0960390C2494	173,250	Sept. 1993	15,000
HAC Corporation	F0960388C2623	111,900	Jun. 1993	69,560
ARAM Precision	F0960392C0270	108,921	Jan. 1993	
Subtotal		**$17,894,902**		**$5,778,590**

Appendix E. Summary of Contracts Reviewed at Warner Robins Air Logistics Center

Contractor	Contract No.	Value	Termination Date	Unearned Progress Payments
Adequate Support				
White Glove Svc.	F0965092C0009	$ 955,521	Jul. 1993	
Howden Fluid Sys.	F0960389C0352	251,850	Dec. 1992	
Independent Sys.	F0960392C0318	101,672	Jun. 1993	
Subtotal		**$ 1,309,043**		
Total		**$35,441,515**		**$ 13,433,792**

Appendix F. Summary of Potential Benefits Resulting From Audit

Recommendation Reference	Description of Benefit	Type of Benefit
B.1.	Management Controls. Establishes procedures for ensuring contractor responsibility before contract award, thereby reducing risk of contract termination for default.	Undeterminable.*
B.2.	Management Controls. Strengthens controls over contracting officer determinations of contractor responsibility by requiring such determinations to be supported by verifiable and auditable documentation.	Undeterminable.*
B.3.	Management Controls. Increases knowledge of procurement personnel regarding contractor responsibility issues and indicators of potential problem contractors.	Undeterminable.*
B.4.	Economy and Efficiency. Deters improper contract awards to non-responsible contractors.	Undeterminable.*

*Quantifying the exact amount of future cost avoidance associated with strengthening management controls over contracting officer determinations of contractor responsibility is not possible.

Appendix G. Organizations Visited or Contacted

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller), Washington, DC

Department of the Army

Auditor General, Department of the Army, Washington, DC
Communications-Electronics Command, Fort Monmouth, NJ
Crane Army Ammunition Activity, Crane, IN
Tank-automotive and Armaments Command, Warren, MI

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller), Washington, DC
Naval Aviation Supply Office, Philadelphia, PA
Fleet and Industrial Supply Center, Philadelphia, PA
Naval Air Systems Command, Washington, DC
Naval Facilities Engineering Command, Charleston, SC
Naval Surface Warfare Center, Crane, IN

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller), Washington, DC
Warner Robins Air Logistics Center, Air Force Materiel Command, Robins Air Force Base, GA
Ogden Air Logistics Center, Air Force Materiel Command, Hill Air Force Base, UT

Defense Organizations

Headquarters, Defense Logistics Agency, Alexandria, VA
- Defense Construction Supply Center, Columbus, OH
- Defense Fuel Supply Center, Alexandria, VA
- Defense General Supply Center, Richmond, VA
- Defense Industrial Supply Center, Philadelphia, PA
- Defense Personnel Support Center, Philadelphia, PA

Appendix H. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
  Deputy Comptroller (Program/Budget)
Assistant to the Secretary of Defense (Public Affairs)

Department of the Army

Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Commander, Naval Facilities Engineering Command
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Commander, Warner Robins Air Logistics Center
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
  Inspector General, National Security Agency

Non-Defense Federal Organizations

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division, General Accounting Office

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security

Part III - Management Comments

Assistant Secretary of the Air Force (Acquisition) Comments

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

21 MAR 1996

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

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

SUBJECT: Report on Contract Award Decisions Resulting in Contract Termination for Default (Project No. 5CF-0056)

This is in reply to your request for Air Force comments on the subject report.

The Air Force concurs with Finding B and with Recommendations B.1., B.2., and B.3, and concurs in principle with Recommendation B.4.

Regarding the draft report's observation in Finding B of a "misperception that contractors with small business status should be given special consideration when determining contractor responsibility," WR-ALC advises that although there may have been a misperception, there was no policy in place that small businesses should be given special consideration in the face of negative information. Any such perception on the part of contracting officers would have been erroneous.

Regarding Finding B's statement that there was a loss of $13.5 M of unrecoverable, unearned progress payments on 24 contracts, WR-ALC advises that it is premature to say that these are "unrecoverable." Eleven of the 24 contracts had no progress payments; of the remaining 13, where contractors failed to respond to demand for recoupment, WR-ALC reports that collection actions were referred to DFAS Columbus.

On Recommendations B.1. and B.2., WR-ALC/PK has issued guidance letters on Default Terminations and Contractor Responsibility; action is considered to be complete. Copies have been furnished to your office. On Recommendation B.3., contractor responsibility will be added to the self-inspection programs of appropriate organizations at WR-ALC. Estimated completion date is 29 March 96.

The Air Force concurs in principle with Recommendation B.4. WR-ALC advises that it has completed its investigation into conditions that led to terminations for default on the cited contracts. However, they do not believe that administrative action is appropriate. We agree, given that AFLC policy in effect at the time was being interpreted as giving the ACRRP recommendation primary weight in the responsibility determination. The four cases where decisions were made several years ago by senior management were based on their best judgment

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at the time, and do not now warrant administrative action. Procedures are now in place to ensure that contracting officers award contracts only to prospective contractors who have clearly been demonstrated to be responsible; final incorporation of these procedures will take place by 31 March 96.

As a final comment, we note that 82% of the $34.1 Million of cited contract terminations were awarded to just one contractor on seven contracts, with award dates ranging from FY85 through FY90. That one contractor's failure caused the lion's share of the terminated value.

IRA L. KEMP
Associate Deputy Assistant Secretary
(Contracting)
Assistant Secretary (Acquisition)

cc:
SAF/FMPF
AFMC/PK
WR-ALC/PK

Audit Team Members

This report was produced by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

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