August 20, 2002

Environmental Programs

Naval Facilities Engineering Command Environmental Services Contracting

(D-2002-139)

Department of Defense
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Acronyms

CLEAN	Comprehensive Long-Term Environmental Action Navy
FAR	Federal Acquisition Regulation
IG DoD	Inspector General of the Department of Defense
NAVFAC	Naval Facilities Engineering Command
RAC	Remedial Action Contract
U.S.C.	United States Code

INSPECTOR GENERAL
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August 20, 2002

MEMORANDUM FOR NAVAL INSPECTOR GENERAL

SUBJECT: Report on Naval Facilities Engineering Command Environmental Services Contracting (Report No. D-2002-139)

We are providing this report for your review and comment. We conducted the audit in response to a complaint to the Defense Hotline concerning environmental services contracts of the Naval Facilities Engineering Command. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Assistant Secretary of the Navy (Research, Development, and Acquisition) comments were not responsive to Recommendation 1. We request that the Navy reconsider its position and provide comments on Recommendation 1., by September 20, 2002.

If possible, please provide management comments in electronic format (Adobe Acrobat file only). Send electronic transmission to the e-mail addresses cited in the last paragraph of the memorandum. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the classified SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Questions on the audit should be directed to Mr. William C. Gallagher at (703) 604-9270 (DSN 664-9270) (wgallagher@dodig.osd.mil) or Mr. Benjamin A. Mehlman at (703) 604-9291 (DSN 664-9291) (bmehlman@dodig.osd.mil). See Appendix E for the report distribution. The team members are listed on the back cover.

David K. Steensma

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Office of the Inspector General of the Department of Defense

Report No. D-2002-139 **August 20, 2002**
(Project No. D2001CB-0181.000)

Naval Facilities Engineering Command Environmental Services Contracting

Executive Summary

Who Should Read This Report and Why. DoD procurement, contracting, and environmental program professionals and policy makers should read this report. The report discusses the procurement, performance, and oversight of selected environmental services contracts at the Naval Facilities Engineering Command (NAVFAC).

Background. This audit was conducted in response to a complaint to the General Accounting Office concerning NAVFAC services contracts. The General Accounting Office referred the complaint to the Defense Hotline. The complaint alleged favoritism in the award of environmental services contracts, questioned the appropriateness of a NAVFAC facilities management contract, and alleged that the NAVFAC Atlantic Division illegally and improperly extended a 5-year environmental services contract for an additional 5 years.

Results. Favoritism in the award of environmental services contracts did not occur and the facilities management contract award was proper. However, there were problems with the extended time frames for contracts. The NAVFAC Atlantic Division did not comply with competition requirements in regulations when it improperly extended environmental services contracts N62470-93-D-3033 and N62470-97-D-5000, with a total estimated value of $325 million, for 5 years and 2 years, respectively. In addition, NAVFAC headquarters improperly exceeded regulatory 5-year contract limits by including a 7-year limit for four multi-award environmental services contracts with a total value of $758 million. Neither the extensions nor the 7-year limit was supported by adequate written justification or cost/price analysis. NAVFAC contracting officials made inaccurate interpretations of Federal Acquisition Regulation competition requirements. In addition, NAVFAC headquarters had not developed a strategy to award environmental services procurements and did not coordinate the 1998 multiple award procurement with all its Component divisions. As a result, the Navy did not obtain the benefits from competing the requirements for the environmental services.

Navy Comments and Audit Response. The Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) agreed to revise the NAVFAC Acquisition Supplement regarding authorizing and documenting exceptions to a 5-year limit for service contracts and to conduct a procurement management review of NAVFAC compliance with 5-year service contract requirements and competition on individual task orders. The Navy believes that the NAVFAC Acquisition Supplement

should be revised and that NAVFAC should verify compliance. The Navy agreed that NAVFAC should develop a structured approach to contracting for environmental remediation services at all NAVFAC Components and establish controls to ensure compliance with service contract requirements. NAVFAC will develop a multi-award contracting plan for future procurements that includes the ability of multi-award contractors to compete for available task orders in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2002 and require re-competition of the multi-award contracts every 5 years unless written documentation and approval is obtained for a longer period of performance. Also, NAVFAC will review four multi-award environmental remedial contracts to determine if adequate justification exists for a longer period of performance beyond 5 years, and if so, prepare formal written determination and approval.

Although revision of the NAVFAC Acquisition Supplement is a prudent action, we continue to believe that Navy Acquisition Procedures Supplement 5217.204 should be revised because the current Navy-wide guidance is subject to inconsistent application of the 5-year limitation by Navy contracting organizations. Also, we believe that a NAVFAC-performed assessment would lack the independence of an outside organization to verify future NAVFAC compliance. We therefore request additional Navy comments to the final report by September 20, 2002, regarding the Navy Acquisition Procedures Supplement and assessment recommendations.

Management Actions. In response to this audit, NAVFAC notified the two affected contractors on January 14 and 15, 2002, respectively, that it would not exercise further options for environmental remedial contracts N62470-93-D-3033 and N62470-97-D-5000 and would re-compete the contract requirements.

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Background

This audit was conducted in response to a complaint to the General Accounting Office concerning Naval Facilities Engineering Command (NAVFAC) services contracts. The General Accounting Office referred the complaint to the Defense Hotline. The complaint alleged favoritism in the award of environmental services contracts and that the NAVFAC Atlantic Division illegally and improperly extended a 5-year environmental services contract for an additional 5 years. The complaint also questioned the appropriateness of a NAVFAC Southwest Division award of a $250 million facilities management contract. See Appendix B for a summary of the Defense Hotline allegations and the audit response.

Environmental Services Contracting. NAVFAC environmental services contracts include Comprehensive Long-Term Environmental Action Navy (CLEAN) contracts and environmental Remedial Action Contracts (RACs).

Comprehensive Long-Term Environmental Action Navy Contracts. CLEAN contracts perform long-term environmental research to support NAVFAC compliance with the DoD installation restoration program and the Comprehensive Environmental Response Compensation and Liability Act of 1980. CLEAN services include investigations, studies, designs, assessments, and testing, and result in data and specifications used to outline performance requirements for subsequent environmental remediation. CLEAN contracts are awarded on a cost-plus-award-fee basis and are usually 10 years in duration. CLEAN contracts are designated as architect-engineer services and are not subject to 5-year limits for service contracts.

Remedial Action Contracts. NAVFAC RACs provide for remedial action services at environmentally contaminated sites. NAVFAC RACs are usually awarded on a cost-plus-award-fee basis with a 1-year base period and up to 4 option years. RACs are typically used to clean up contaminants in soils, sediments, groundwater, air, sludge, and surface water, or manmade structures such as underground storage tanks. Contaminants include petroleum, oils, and lubricants including gasoline, fuel oils, aviation fuel, waste oil, and diesel fuels. Other contaminants subject to cleanup may include solvents, metals, acids, bases, reactives, polychlorinated biphenyls, pesticides, and low-level radiological materials. NAVFAC prohibits incumbent or former CLEAN prime contractors from competing for RAC prime contract awards within the same engineering field division or activity.

NAVFAC Environmental Contract Funding. In FY 2001, NAVFAC budgeted $480.96 million for RAC and CLEAN contract obligations. NAVFAC has 20 active RACs and 15 active CLEAN contracts with a total not-to-exceed obligation value of $6.345 billion. The 20 active NAVFAC RACs have a not-to-exceed contract value totaling $3.6 billion. We reviewed the following six RACs with a not-to-exceed value of $1.08 billion.

Summary of Remedial Action Contracts Reviewed

Contract Solicitation No.	NAVFAC Division	Contractor	Award Date	NTE[1] Value (millions)
N62470-93-D-3033	Atlantic	J.A. Jones	July 1994	$ 75.0
N62470-97-D-5000	Atlantic	IT/OHM	Jan 1998	250.0
N62467-98-D-0995	Southern	CH2M Hill	June 1998	129.0
N68711-98-D-5713	Southwest	Foster Wheeler	June 1998	250.0
N62474-98-D-2076	Southwest	IT Corp.	June 1998	250.0
N62742-98-D-1808	Pacific	IT Corp.	June 1998	129.0
Total				**$ 1,083.0**

[1]Not-To-Exceed

The 6 RACs reviewed represented 31 percent of the total RAC not-to-exceed contract value of $3.6 billion.[1] See Appendix C for data on NAVFAC FY 2001 environmental contracting and details on the 20 ongoing RAC and 15 ongoing CLEAN contracts.

Congressional Limitation on RAC Funding. Section 8130 of the FY 2000 DoD Appropriations Act (Public Law 106-79) limited NAVFAC expenditures on RACs. The Act required that no more than 35 percent of funds provided in this Act may be obligated for RACs with a total value of $130 million or higher. As a result, NAVFAC reduced not-to-exceed obligation amounts for contracts N62467-98-D-0995 and N62742-98-D-1808 from $250 million each to $129 million each.

Competition in Contracting Act. The Competition in Contracting Act of 1984 requires Federal executive agencies to obtain full and open competition through the use of competitive procedures (section 2304, title 10, United States Code (10 U.S.C. 2304). The Federal Acquisition Regulation (FAR) Part 6 implements the Competition in Contracting Act and requires contracting officers to comply with a set of competitive procedures. Seven exceptions to using full and open competition are identified in 10 U.S.C. 2304(c) and in FAR

[1] We also reviewed one NAVFAC non-environmental facilities management contract noted in the Defense Hotline allegation, with a not-to-exceed value of $250 million. See Appendix B for a description of that contract.

Subpart 6.3, "Other Than Full and Open Competition." The seven exceptions include: only one responsible source and no other supplies or services will satisfy agency requirements; unusual and compelling urgency; industrial mobilization, engineering, developmental or research capability, or expert services; international agreement; authorized or required by statute; national security; and public interest. Documentation justifying the use of any of these exceptions is required.

Federal Acquisition Streamlining Act. The Federal Acquisition Streamlining Act of 1994 amended title 10, United States Code, to add statutory authority for agency heads to enter into multiple award delivery and task order contracts for the procurement of goods and services (10 U.S.C. 2304(a), et seq.). Multiple award contracts occur when two or more contracts are awarded from one solicitation. The Act establishes a general preference for using multiple awards and requires that implementing FAR guidelines establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property.

Service Contract Time Limitations. Several sections of the FAR and the Service Contract Act (41 U.S.C. 353(d)) set contract term limits for service contract procurements. FAR 17.204(e) provides that unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years for service contracts. Service Contract Act requirements at 41 U.S.C. 353(d), and FAR 16.505(c) and 22.1002-1, also limit service contract length to 5 years.

Objectives

The overall objective was to evaluate the procurement, performance, and oversight of environmental services contracts. We also determined whether the contracts complied with applicable laws and regulations on the use of contracted support services. We also reviewed the management control program as it applied to the audit objectives. See Appendix A for a discussion of the audit scope and methodology and the review of the management control program.

Naval Facilities Engineering Command Environmental Remedial Action Contracts

NAVFAC Atlantic Division improperly extended contracts N62470-93-D-3033 and N62470-97-D-5000, with a total not-to-exceed value of $325 million, for 5 years and 2 years, respectively. In addition, NAVFAC headquarters improperly exceeded the 5-year limit specified in the FAR by including a 7-year limit for four FY 1998 multi-award environmental RACs with a total not-to-exceed obligation value of $758 million. Neither the extensions nor the 7-year limit was supported by detailed written justification or cost/price analysis. This condition occurred because NAVFAC contracting officials made inaccurate interpretations of FAR competition requirements. In addition, NAVFAC headquarters had not developed a strategy to award environmental services procurements and did not coordinate the 1998 multiple award procurement with all its Component divisions. As a result, the Navy did not compete the requirements for available environmental services work after 5 years and DoD was not assured of the best value contractor to perform environmental remedial work.

Extension of Remedial Action Contracts

The NAVFAC Atlantic Division improperly extended environmental remedial contracts N62470-93-D-3033 and N62470-97-D-5000.

Contract N62470-93-D-3033. Contract N62470-93-D-3033, a 5-year, $75 million environmental services contract awarded by the NAVFAC Atlantic Division to the J.A. Jones Construction Services Company on July 1, 1994, initially included a 1-year base performance period plus four 1-year option periods. The contract provided for remedial action to clean up hazardous waste sites, predominately petroleum, oils, and lubricants located at Navy and Marine Corps east coast facilities in accordance with individual task orders. On March 10, 1999, NAVFAC issued modification P00022 extending the contract for an additional 5 years to June 30, 2004. As of September 30, 2001, contract N62470-93-D-3033 had 76 task orders valued at $48.7 million.

Contract N62470-97-D-5000. Contract N62470-97-D-5000, a 5-year, $250 million environmental services contract awarded by NAVFAC Atlantic Division to the OHM Remediation Services Corporation on January 22, 1998, initially included a 1-year base performance period plus four 1-year option periods. The contract provided for cleanup of Navy and Marine Corps east coast hazardous waste sites in accordance with individual task orders. On June 21, 1999, NAVFAC issued modification P00004 extending the contract for an additional 2 years to January 21, 2005. As of September 30, 2001, N62470-97-D-5000 had 74 task orders valued at $101.8 million.

Contract Extension Request. On November 3, 1998, the NAVFAC Atlantic Division environmental project manager recommended extending the two contracts to coincide with an expected NAVFAC-wide environmental remedial multi-award procurement in FY 2005. The recommendation referenced Marine Corps Air Station Cherry Point and Marine Corps Base Camp Lejeune requests dated August 19, 1998, and October 15, 1998, respectively, to extend contract N62470-93-D-3033. The points of contact for both Marine Corps requests stated they prepared the requests in response to an inquiry from the Atlantic Division environmental project office.

Contract Extension Justification. The extensions were not supported by a written justification or cost/price analysis and did not comply with FAR Subpart 6.3 and Competition in Contracting Act requirements. As a result, NAVFAC did not provide full and open competition to prospective competitors for available NAVFAC environmental services work.

Rationale for Extensions. The contracting officer for contract N62470-93-D-3033 stated the contract was extended to allow additional time to reach the not-to-exceed obligation limit and the need to allow time to transition future work to a consolidated re-procurement. The contracting officer for contract N62470-97-D-5000 stated the extension was a business decision to align the procurements for all Navy RACs.

Initial Competitions. The initial competitions for contracts N62470-93-D-3033 and N62470-97-D-5000 resulted in four technically qualified offerors for each solicitation. Thus, there is a reasonable expectation of multiple proposals if the requirements for follow-on contracts are competed.

Navy Acquisition Procedures Supplement. According to NAVFAC contracting personnel, Navy Acquisition Procedures Supplement 5217, "Special Contracting Methods," gives the contracting officer the authority to extend the contracts past the 5-year time limit. Navy Acquisition Procedures Supplement 5217.204(e) states, "The CCO [Chief of the Contracting Office] may approve contracts in excess of the limits specified in FAR 17.204(e), when not otherwise restricted." However, Navy Acquisition Procedures Supplement 5217.204(e) does not clearly state the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to the solicitation. Neither extension was supported by a detailed written justification nor approvals by the chief of the contracting office. We believe Navy Acquisition Procedures Supplement 5217.204(e) should be revised to fully document authorized exceptions to FAR 17.204(e).

NAVFAC Corrective Actions. In response to our audit, NAVFAC took specific action on contracts N62470-93-D-3033 and N62470-97-D-5000. On January 14, 2002, NAVFAC notified the J.A. Jones Environmental Services Company that the Government did not intend to exercise options to extend the term of contract N62470-93-D-3033 beyond June 30, 2002. On January 15, 2002, NAVFAC notified the OHM Remediation Services Corporation that the Government would not exercise options to extend the term of contract N62470-97-D-5000 beyond January 21, 2003. NAVFAC Atlantic Division plans to compete the work of both contracts in 2002 as part of a multi-award

procurement in conjunction with the NAVFAC Southern Division. The follow-on Atlantic Division RAC, while solicited in conjunction with the Southern Division RAC, will be awarded as a single award in the Atlantic Division's area of responsibility.

Multiple Award Remedial Action Contracts

NAVFAC headquarters improperly exceeded the 5-year limit specified by the FAR for multi-award indefinite delivery/indefinite quantity RACs N62467-98-D-0995, N62472-98-D-1808, N68711-98-D-5713, and N62474-98-D-2076 with a total not-to-exceed obligation value of $758 million.[2] In addition, multi-award contractors were not provided the ability to compete with each other for all available task orders.

Acquisition Strategy for Multi-Award Contracts. The 1998 multiple award RACs were to provide environmental remediation services for the NAVFAC Pacific, Southwest, and Southern Divisions; and the NAVFAC Engineering Field Activity West. The awards were based on a single solicitation, multiple award, and best-value contracting method. The unsigned NAVFAC Acquisition Plan[3] designated the contracts as cost-plus-award-fee with a base term of 1 year with 6 option years. The plan also designated award of one contract for each of four regions. A contractor could win an award in multiple regions.[4] The plan made no mention of potential awardee competition for subsequent task orders within a region. NAVFAC contracting officials stated that each awardee would receive all task orders within the region awarded.

Justification for Contract Length. NAVFAC P-68, "Contracting Manual," March 1994, 17.204, "Special Contracting Methods," supplements the Navy Acquisition Procedures Supplement. The contracting manual states:

> NAVFAC Acquisition Proponent approval is required prior to issuance of a solicitation if the term of a contract exceeds five years (base year and four option periods). The request for approval shall explain how the procurement's competitive history and/or significant capital investment requirement indicates that a longer period of performance is necessary to establish or maintain competition.

NAVFAC headquarters personnel stated that since the Acquisition Proponent signed the source selection plan, which included the contract term, there was a formal approval of the change in term. However, neither the source selection plan nor the acquisition plan included discussion, as required by NAVFAC P-68, as to why a 7-year contract term was warranted or necessary to establish

[2] The initial not-to-exceed obligation limit was $250 million per contract, total $1 billion. NAVFAC later reduced not-to-exceed obligation amounts for two of the four contracts to $129 million each to comply with funding restrictions included in Section 8130 of the FY 2000 DoD Appropriations Act.

[3] NAVFAC could not locate a signed copy of the acquisition plan.

[4] One contractor, IT Corporation, won awards for both the NAVFAC Southwest and Pacific Divisions.

or maintain competition. NAVFAC did not comply with NAVFAC P-68, FAR Part 6, and FAR 17.204(e) because it did not have written justification for exceeding the 5-year time limit for service contracts.

NAVFAC Atlantic and Northern Division Contracts. The NAVFAC multi-award contracts did not consolidate RAC requirements across all NAVFAC Components. The NAVFAC Atlantic and Northern[5] Divisions acted independently of NAVFAC headquarters and other NAVFAC divisions in solicitation of RACs. The unsigned NAVFAC 1998 multi-award acquisition plan noted that no justification existed to extend the four RACs past their 1999 expiration. However, NAVFAC Atlantic Division and Northern Division environmental contracts, such as Atlantic Division RAC N62470-93-D-3033, which would also expire in 1999, were not included in the 1998 multi-award solicitation and not mentioned in the acquisition or source selection plans. In March 2000, independent of the multi-award procurement, the NAVFAC Northern Division separately awarded a 5-year RAC with a total not-to-exceed obligation value of $125 million.

NAVFAC Acquisition Strategy for Environmental Programs. On September 28, 2001, NAVFAC headquarters issued an acquisition strategy for environmental programs. The goal of the strategy was to incorporate a variety of contract tools to meet program requirements while addressing legislative mandates. The strategy noted that each major NAVFAC Component should maintain access to at least one cost-reimbursement RAC performed by a large business while increasing fixed-priced contract mechanisms and encouraging greater small business participation. The strategy also noted the need to expedite task order closeout in existing and expiring contracts and continue in-house execution of environmental planning and compliance. The acquisition strategy did not address how NAVFAC headquarters would consolidate its acquisition support strategy for environmental contracts across its Components or discuss use of environmental services multi-award contracting. In addition, the strategy did not thoroughly assess current services acquisition structure, processes, and roles, elements that recent General Accounting Office reports[6] found to be crucial to reengineering DoD approaches to purchasing services. We believe that NAVFAC headquarters should develop a structured approach to contracting for environmental remediation services at all NAVFAC Components including establishing controls to ensure compliance with requirements of the FAR and the Competition in Contracting Act.

Task Order Competition. The NAVFAC multi-award acquisition plan did not achieve the most competitive result, because it did not allow the multi-award contractors the ability to compete for individual task orders within a region. FAR Subpart 16.5 implements the Federal Acquisition Streamlining Act regarding multiple award contracts. FAR 16.505(b) states, "The contracting officer must provide each awardee a fair opportunity to be considered for each

[5] As part of a March 29, 2001, NAVFAC reorganization, the Northern Division became Engineering Field Activity Northeast, a component of the Atlantic Division.

[6] The Appendix A prior coverage section lists the two General Accounting Office reports.

order exceeding $2,500 issued under multiple delivery-order contracts or multiple task-order contracts," unless certain exceptions apply. These exceptions are:

- the agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;
- only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
- the order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or
- it is necessary to place an order to satisfy a minimum guarantee.

NAVFAC Multi-Award Acquisition. While the NAVFAC multi-award acquisition was within general FAR requirements, the selection of one contractor per region did not meet the intent of FAR Part 16.5 or the Federal Acquisition Streamlining Act since the acquisition strategy did not discuss or document any of the four exceptions to competing multiple task order contracts. At least three contractor offerors per region submitted technically acceptable proposals to the multiple award solicitation. Contractor interest would have justified alternative acquisition strategies supportive of FAR Subpart 16.5 including awarding multiple contracts within each region or on a nationwide basis, while allowing prospective contractors the option to select regions to compete for individual task orders.

National Defense Authorization Act for Fiscal Year 2002. Enactment of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, on December 28, 2001, requires DoD to increase competition on multiple award task order contracts. Section 803, "Competition Requirement for Purchase of Services Pursuant to Multiple Award Contracts," requires that no later than 180 days after the date of the enactment of the Act, the Secretary of Defense promulgate in the DoD Supplement to the FAR, regulations requiring competition in the individual task order purchases of services of greater than $100,000 made by DoD pursuant to multiple award contracts. The Act requires contracting officers to apply one of the four exceptions noted above before waiving competition.

Navy Procurement Management Review. The Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) (Acquisition and Business Management) performs periodic reviews of procurement performance management at Navy commands. The last such review of NAVFAC was reported on December 1, 1998. The report noted that NAVFAC was a highly decentralized organization that relied heavily on its Component divisions to know local customers, requirements, expectations, and levels of satisfaction. The 1998 report also noted that NAVFAC did not have a systematic approach to understanding the needs and requirements of customers

and found little evidence of NAVFAC headquarters measuring key acquisition processes such as acquisition plans, justifications and approvals, and business clearances. The report concluded that NAVFAC acquisition processes appeared to be accomplished intuitively rather than through analysis of workforce usage or contract workload metrics and trend data. The Assistant Secretary's office has scheduled the next review of NAVFAC procurement practices to commence in January 2004.

In response to the 1998 procurement management review, NAVFAC has performed annual internal reviews of procurement functions under the NAVFAC Performance Management and Assistance Program. The FY 2001 NAVFAC review summarized the results of 30 headquarters assessment visits to NAVFAC Components, including surveys of NAVFAC customers and procurement contracting staff. Areas for procurement contracting process improvement included standardizing business processes, business decision documentation, facilities support contracting, and pre- and post-negotiation memorandum documentation. We believe that the next procurement management review of NAVFAC performed by the Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) should examine compliance with 5-year service contract requirements and competition on individual task order purchases of services made pursuant to multiple-award contracts.

Summary

The NAVFAC Atlantic Division improperly extended two environmental remedial contracts with a combined value of $325 million. In response to our audit, NAVFAC took specific corrective action on the two contracts. NAVFAC headquarters improperly exceeded regulatory 5-year limits by including a 7-year limit for four FY 1998 multi-award RACs with a total not-to-exceed obligation value of $758 million. The RAC multi-award did not achieve the most competitive result, because NAVFAC did not coordinate the effort across all its divisions and did not allow winning contractors the ability to compete against each other for individual task orders within a region.

Navy Comments on the Finding and Audit Response

A summary of Navy comments on the finding and the audit response is in Appendix D.

Recommendations, Management Comments, and Audit Response

Revised Recommendations. As a result of Navy comments we revised Recommendations 2.b. and 2.c.

1. We recommend that the Assistant Secretary of the Navy (Research, Development, and Acquisition):

a. Revise Navy Acquisition Procedures Supplement 5217.204 to clearly state the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to solicitation.

b. Examine, as part of the next procurement management review of Naval Facilities Engineering Command, compliance with 5-year service contract requirements and competition on individual task order purchases of services made pursuant to multiple award contracts.

Navy Comments. The Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) concurred in principle with Recommendations 1.a. and 1.b. The Navy stated that NAVFAC would revise its Naval Facilities Engineering Command Acquisition Supplement (formerly the NAVFAC Contracting Manual P-68) to clearly state the documentation requirements for service contract periods in excess of 5 years and that all approvals must be made prior to solicitation. The Navy believed that it would be more effective for the NAVFAC command-level procurement performance management assessment program, rather than a Secretariat-level assessment program, to verify NAVFAC compliance with 5-year service contract requirements and competition on individual task order purchases. The Navy noted that it would direct NAVFAC to carry out the assessment.

Audit Response. The Navy comments were partially responsive to the intent of Recommendation 1. The Navy did not comment specifically on Recommendation 1.a. to revise the Navy Acquisition Procedures Supplement 5217.204. While we agree with the proposed NAVFAC action to implement policy to clearly state documentation requirements for service contract periods in excess of 5 years, we believe the issue to be applicable on a Navy-wide basis and not limited to a single command. We therefore request additional Navy comments to the final report regarding implementation of Recommendation 1.a. on a Navy-wide basis.

A NAVFAC self-assessment, although an improvement, would not be more effective than an independent verification by an external organization of NAVFAC compliance with 5-year service contract requirements and competition on individual task orders. We therefore request additional Navy comments to the final report regarding methods to assure independent implementation of Recommendation 1.b.

2. We recommend that the Commander, Naval Facilities Engineering Command:

a. Develop a structured approach to contracting for environmental remediation services at all Naval Facilities Engineering Command Component divisions and establish controls to ensure compliance with requirements of the Federal Acquisition Regulation, the Competition in Contracting Act, and Section 803 of the National Defense Authorization Act for Fiscal Year 2002.

b. Develop a multi-award contracting plan for future procurements that includes the ability of multi-award contractors to compete for available task orders in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2002 and requires re-competition of the multi-award contracts every 5 years unless written documentation and approval is obtained for a longer period of performance.

c. Review and determine if adequate justification exists for a longer period of performance beyond 5 years under multi-award environmental remedial contracts N62467-98-D-0995, N62472-98-D-1808, N68711-98-D-5713, and N62474-98-D-2076, and if so, prepare formal written determination and approval. If adequate justification does not exist, the contract(s) shall be re-competed as soon as practicable.

Navy Comments. The Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) concurred in principle with Recommendation 2. The Navy stated that NAVFAC headquarters would meet with its engineering field activities in July 2002 to develop an environmental program acquisition strategy to establish a more effective approach to contracting for environmental remediation services and ensure compliance with applicable laws and regulations. The Navy suggested a wording addition to Recommendation 2.b. to require written documentation and approvals for periods of performance of greater than 5 years. The Navy also suggested a wording change to Recommendation 2.c. to require determination of adequate justification for a longer period of performance beyond 5 years for the four multi-award environmental remedial contracts. The Navy believed that NAVFAC had not addressed justification requirements required in Naval Facilities Engineering Command Acquisition Supplement 17.204. However, the Navy believed that the NAVFAC environmental remedial contracts reviewed were predominantly construction rather than service contracts and thus were an exception from the 5-year requirements in FAR 17.200.

Audit Response. The Navy comments were responsive. We revised Recommendations 2.b. and 2.c. based on the Navy comments. We do not agree with the Navy characterization of the NAVFAC environmental RACs we reviewed as predominantly construction contracts or that the contracts were an exception to the 5-year FAR and statutory requirements. For further discussion of Navy comments and our response on this issue see Appendix D.

Appendix A. Scope and Methodology

Scope

The audit examined NAVFAC documents prepared between July 1994 and January 2002 to evaluate the procurement, performance, and oversight of seven NAVFAC service contracts noted in, or related to, the Defense Hotline allegation. The seven contracts reviewed had a total not-to-exceed value of $1.333 billion. We also reviewed applicable laws and regulations that address the award, modification, and extension of environmental services contracts, interviewed NAVFAC contracting officials responsible for awarding and administering the contracts reviewed; and reviewed ethics compliance for Navy personnel and the management control program as it applied to audit objectives. We performed the review at NAVFAC headquarters and four NAVFAC contracting office field locations. We also reviewed the performance of two NAVFAC environmental services contracts at two Marine Corps bases.

Methodology

For contracts N62470-93-D-3033 and N62470-97-D-5000, we conducted site visits to NAVFAC headquarters and the NAVFAC Atlantic Division to determine why extensions of the contracts were made. We also conducted site visits to Resident Officer in Charge of Construction Offices and Marine Corps Environmental Affairs Division Offices at Marine Corps Base, Camp Lejeune, North Carolina, and Marine Corps Air Station, Cherry Point, North Carolina, to interview environmental personnel to determine their role in the extension of the contracts. For the FY 1998 single solicitation multi-award RACs N62467-98-D-0995, N62472-98-D-1808, N68711-98-D-5713, and N62474-98-D-2076, we identified, gathered, and analyzed existing requirements, policy, and guidance related to the contracts by conducting site visits or contacting NAVFAC headquarters and Southern, Pacific, and Southwest Divisions to determine why the multi-award contracts were issued for 7 years and why the resulting task orders were not competed among the multi-award contracts. For contract N68711-00-D-0701, we analyzed source selection documentation at NAVFAC headquarters and the NAVFAC Southwest Division to determine if specific criteria and rationale were used by NAVFAC to replace an initial source selection board. We evaluated management controls over the DoD environmental contracting program at the locations visited. Our review included DoD and Navy policy and procedures for program oversight and quality assurance. We also assessed compliance with governing guidance over service contracting.

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the DoD. This report provides coverage of the Defense Contract Management high-risk area.

Use of Computer-Processed Data. We relied on computer-processed data provided by the Navy. We used chronological contract spreadsheet and cumulative cost data extracted from NAVFAC databases. We crosschecked the information from two different data sources and verified the accuracy of contract data during site visits and interviews with key NAVFAC personnel. We did not find errors that would preclude use of the computer-processed data to meet the audit objectives or change the conclusions in this report.

Audit Dates and Standards. We performed this audit from September 2001 through March 2002 in accordance with generally accepted government auditing standards. Accordingly, we included tests of management controls considered necessary.

Contacts During the Audit. We visited or contacted individuals and organizations within DoD. Further details are available on request.

Management Control Program Review

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, and DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996, require 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 the Review of the Management Control Program. We reviewed the adequacy of NAVFAC management controls relating to environmental services contracting. Specifically, we reviewed NAVFAC management controls over procurement, performance, and oversight of environmental services contracts. We reviewed management's self-evaluation applicable to those controls.

Adequacy of Management Controls. We identified material management control weaknesses for NAVFAC as defined by DoD Instruction 5010.40. NAVFAC had not established management controls for documenting and justifying contract extensions past regulatory limits, and for competing resulting task orders from multi-award contracts. Recommendation 1., if implemented, will improve NAVFAC procedures for contract extensions and competing task orders. A copy of this report will be provided to the senior official responsible for management controls at NAVFAC headquarters.

Adequacy of Management's Self-Evaluation. NAVFAC did not identify environmental services contracting as an assessable unit and, therefore, did not identify or report the material management control weaknesses identified by this audit.

Prior Coverage

The General Accounting Office and the Inspector General of the Department of Defense issued four reports that discussed multiple award contracts or use of strategic planning for services. There was no prior audit coverage of NAVFAC environmental services contracting in the last 5 years.

General Accounting Office

GAO Report No. GAO-02-469T, "Defense Acquisitions: DoD Faces Challenges in Implementing Best Practices," February 27, 2002

GAO Report No. GAO-02-230, "Best Practices: Taking a Strategic Approach Could Improve DoD's Acquisition of Services," January 18, 2002

Inspector General of the Department of Defense (IG DoD)

IG DoD Report No. D-2001-189, "Multiple Award Contracts for Services," September 30, 2001

IG DoD Report No. 99-116, "DoD Use of Multiple Award Task Order Contracts," April 2, 1999

Appendix B. Summary of Allegations and Audit Results

The results of review of the allegations to the Defense Hotline claiming NAVFAC favoritism in awarding environmental services contracts are discussed below.

Allegation 1. NAVFAC improperly extended contract N62470-93-D-3033.

Audit Results. The allegation was substantiated. The NAVFAC Atlantic Division extended contract N62470-93-D-3033 as well as contract N62470-97-D-5000 beyond the 5-year limit specified by the FAR. The extensions did not comply with FAR Subpart 6.3 and FAR 17.204(e). As a result, NAVFAC did not provide full and open competition to prospective competitors for available NAVFAC environmental services work. In response to our audit, NAVFAC took specific corrective action on contracts N62470-93-D-3033 and N62470-97-D-5000 (see Finding).

Allegation 2. NAVFAC officials showed favoritism toward one specified support services contractor.

Audit Results. The allegation was not substantiated. Our review found no evidence to support the allegation of NAVFAC favoritism and special treatment toward the specified contractor.

Allegation 3. NAVFAC inappropriately awarded (an unspecified) $250 million contract to a joint venture comprised of J.A. Jones Incorporated and CH2M-Hill Incorporated (Jones/Hill).

Audit Results. The allegation was not substantiated. The contract in question was NAVFAC Southwest Division facilities management contract N68711-00-D-0701. While some contract file documentation was not maintained as required by the FAR, we did not find any evidence to support that the final source selection decision was inappropriate or that the award was improper.

Contract Requirement. Contract N68711-00-D-0701 provides for base support functions for Navy installations located in California, Nevada, Arizona, and New Mexico. Base support tasks include providing facilities and public works related maintenance, operations, and repair and construction services including incidental planning and engineering on an as needed basis. The prime contractor receives a sliding management fee to subcontract the work requirements to small businesses. The contracting officer stated that the goal was for the prime contractor to subcontract 100 percent of the task orders. The annual firm-fixed-price/indefinite-quantity contract maximum dollar amount is not-to-exceed $50 million, with a total base year and four 1-year options not-to-exceed amount of $250 million.

Procurement Competition. Jones/Hill and Company A competed for the award. An initial source selection board located at the NAVFAC Engineering Field Activity West Oakland, California, began review of contract proposals on May 28, 1999. On April 20, 2000, the source selection authority, the NAVFAC Southwest Division Commander, dissolved the source selection board after rejecting a source selection board recommendation to select Company A. The source selection authority directed a second source selection board be convened at NAVFAC Southwest Division headquarters in San Diego, California, and that all source selection analyses and documentation be transferred to the second board. We found no documentation of specific NAVFAC source selection authority rationale, justification, or explanation relating to replacement of the initial source selection board and convening of a second board. On July 6, 2000, the second source selection board recommended Jones/Hill for contract award. The second board's recommendation noted that the Jones/Hill proposed small business contracting plan was superior. This conclusion was supported by three technical specialist analyses. On July 17, 2000, the source selection authority accepted the second board's recommendation without comment. On August 4, 2000, the Southwest Division awarded contract N68711-00-D-0701 to Jones/Hill.

Source Selection Criteria. The source selection authority documentation relating to replacement of the initial source selection board and convening of a second board did not fulfill the requirements of FAR 15.308, "Source Selection Decision," and the NAVFAC P-68 contracting manual. FAR 15.308 requires that source selection decisions be documented, and that documentation include the rationale for any business judgments and tradeoffs made or relied on by the source selection authority, including benefits associated with additional costs. The NAVFAC P-68 contracting manual notes that the source selection authority is responsible for ensuring that all aspects of the selection process are conducted properly, and that input from the source selection board, cost and/or price evaluation personnel, technical evaluation board, and the source selection authority personal determinations of the successful offeror should be documented in the source selection authority decision.

Functional Reviews of Offeror Small Business Plans. The primary issue in the differing evaluation conclusions between the two boards was rating the competitors' small business plans. During the term of the two source selection boards, three analyses of the competitors' small business contracting plans were performed. The Southwest Division small business specialist completed the first analysis on October 22, 1999. The Small Business Administration conducted a second analysis with reports issued on March 7, 2000, for Company A, and March 29, 2000, for Jones/Hill. The NAVFAC headquarters small business representative conducted a third analysis, which was not maintained in the contract files. All three analyses agreed that the Jones/Hill small business plan was superior.

Appendix C. Naval Facilities Engineering Command Environmental Services Contracts

In FY 2001, NAVFAC budgeted $480.96 million for RAC and CLEAN contract obligations. Table C-1 shows contract obligations by NAVFAC division and between RAC and CLEAN contracts. NAVFAC Southwest Division has the bulk of the total obligations for both RAC and CLEAN contracts, since this division also consists of Engineering Field Activity West, and thus is responsible for nearly all the naval facilities on the west coast. Also prominent is NAVFAC Atlantic whose purview covers all naval facilities on the east coast north of Charleston, South Carolina.

Table C-1. NAVFAC FY 2001 Environmental Contract Obligations

NAVFAC Division	Remedial Action Contracts (RACs) (millions)	Comprehensive Long-Term Environmental Action, Navy (CLEAN) (millions)	Totals (millions)
Atlantic	$ 52.98	$ 38.49	$ 91.47
South	37.07	28.71	65.78
Southwest	172.28	63.44	235.72
Pacific	47.22	20.57	67.79
NAVFACCO*	20.20	0	20.20
Totals	**$ 329.75**	**$ 151.21**	**$ 480.96**

* Naval Facilities Contracting Office, Port Hueneme, California

As shown in Table C-2, NAVFAC has 20 active RAC and 15 active CLEAN contracts with a total not-to-exceed obligation value of $6.345 billion. The 20 active RACs totaled $3.6 billion in not-to-exceed contract value. We reviewed six RACs valued at $1.08 billion.

Table C-2. NAVFAC Environmental Services Contracts

	Contract Solicitation No.	NAVFAC Division	Contractor	Award Date	NTE[1] Value (millions)
RACs	N62472-94-D-0398	Atlantic	Foster Wheeler	Mar 1995	$ 250.0
	N62472-94-D-0032	Atlantic	Foster Wheeler	Mar 2000	125.0
	N62470-93-D-3032	Atlantic	OHM Remediation	Aug 1993	250.0
	N62470-93-D-3033[2]	Atlantic	J.A. Jones	July 1994	75.0
	N62470-97-D-5000[2]	Atlantic	IT/OHM	Jan 1998	250.0
	N62467-93-D-0936	South	Bechtel Env'l.	Mar 1994	300.0
	N62467-93-D-1106	South	Morrison Knudsen	Mar 1994	300.0
	N62467-98-D-0995[2]	South	CH2M Hill	June 1998	129.0
	N44255-93-D-4050	Southwest	Ebasco (F. Wheeler)	June 1993	89.5
	N44255-95-D-6030	Southwest	Foster Wheeler	Nov 1995	290.5
	N68711-93-D-1459	Southwest	OHM Remediation	Feb 1994	310.0
	N68711-98-D-5713[2]	Southwest	Foster Wheeler	June 1998	250.0
	N62474-93-D-2151	Southwest	IT Corp.	Feb 1994	250.0
	N62474-98-D-2076[2]	Southwest	IT Corp.	June 1998	250.0
	N62742-93-D-0610	Pacific	OHM Remediation	Jan 1994	250.0
	N62742-98-D-1808[2]	Pacific	IT Corp.	June 1998	129.0
	N47408-95-D-0730	FACCO[3]	Battelle Mem. Inst.	Sep 1995	50.0
	N47408-92-D-3059	FACCO	Foster Wheeler	Jan 1992	25.0
	N47408-92-D-3045	FACCO	IT Corp.	July 1992	15.0
	N47408-92-D-3056	FACCO	IT Corp.	Mar 1992	10.0
CLEAN Contracts	N62472-90-D-1298	Atlantic	Tetra Tech NUS	Mar 1991	160.0
	N62472-92-D-1296	Atlantic	EA Eng.& Science	June 1991	100.0
	N62470-89-D-4814	Atlantic	Baker/TSA Inc.	Feb 1991	100.0
	N62470-95-R-6007	Atlantic	CH2M Hill	Jan 1996	125.0
	N62467-89-D-0317	South	HLA/ESE, Inc.	Sep 1990	175.0
	N62467-89-D-0318	South	Ensafe/ALN&HOS	Dec 1990	160.0
	N62467-94-D-0888	South	Tetra Tech NUS	Mar 1995	250.0
	N68711-89-D-9296	Southwest	Jacobs Engineering	May 1989	262.0
	N68711-92-D-4670	Southwest	Bechtel National	Apr1993	260.0
	N68711-96-D-7526	Southwest	Bechtel Env'l	Oct 1997	130.0
	N62474-88-D-5086	Southwest	Tetra Tech	June 1989	260.0
	N62474-94-D-7609	Southwest	Tetra Tech	Apr 1995	260.0
	N62474-89-D-9295	Southwest	URS Consultants	June 1989	166.0
	N62742-90-D-0019	Pacific	Ogden Env'l	Feb 1991	210.0
	N62742-94-D-0048	Pacific	Earth Tech	Aug 1995	129.0
Total					**$ 6,345.0**

[1] Not to Exceed
[2] Contract selected for IG DoD review
[3] Naval Facilities Contracting Office, Port Hueneme, California

Appendix D. Navy Comments on the Finding and Audit Response

Navy Comments on Multiple Award Remedial Action Contracts. The Navy disagreed with the finding and discussion statements that NAVFAC headquarters improperly exceeded the 5-year limit specified in the FAR by including a 7-year limit for four FY 1998 multi-award environmental RACs and did not have written justification for exceeding the 5-year time limit for service contracts. The Navy believed that the NAVFAC RACs are predominantly construction contracts and thus were exempt from the 5-year requirements in FAR 17.200 and subject to the Davis Bacon Act and FAR 2.101 definitions of construction. The Navy stated that no written justification or approval of the 7-year term was necessary as the multi-award solicitation provided for full and open competition.

Audit Response. We do not agree with the Navy position that the NAVFAC environmental RACs are exempt from 5-year requirements. All seven NAVFAC contracts reviewed in this report are service contracts, and subject to FAR and statutory requirements. NAVFAC corrective actions relating to RACs N62470-93-D-3033 and N62470-97-D-5000 clearly indicated that the contracts were subject to FAR 17.204(e) and were service contracts. Also, the multi-award contracts included Service Contract Act clauses and did not include military construction funding. While the multi-award solicitation was for a 7-year term, the award was initially synopsized with a 5-year term. As noted in the report, reasoning and justification for the change to 7 years were not documented or approved.

Navy Comments on Task Order Competition. The Navy disagreed with the finding and discussion statements regarding the NAVFAC multi-award acquisition not meeting the intent of FAR Part 16.5 since the acquisition strategy did not provide contractors the ability to compete with each other for all available task orders. The Navy stated that FAR Part 16.504 requires the contracting officer to give preference to making multiple awards, but precludes a multiple award approach if only one contractor is capable of providing performance; task orders are so integrally related that only one contractor can perform the work; the cost of additional contract administration outweighs benefits; or more favorable terms or conditions can be provided through a single award. The Navy also stated that the contracting officer selected a cost-plus-award-fee contract type for the multi-award contracts because of significant contract performance uncertainties.

The Navy stated that the NAVFAC single solicitation approach was never intended as a multiple award for competing task orders under the contracts and that the multiple award cost-reimbursement contract type and unknowns associated with executing remedial actions negated the value of competing the task orders. In addition, the Navy stated that use of multiple contractors performing different phases of the four-phase remediation action process would

jeopardize regulatory coordination and increase overhead and administration costs. The Navy stated the four remedial phases are: remedial investigations, feasibility studies, records of decisions, and actual remediation.

Audit Response. We noted that the NAVFAC multiple award acquisition strategy was not intended to result in task order competition of the four contracts. We also noted that three technically acceptable contract offerors per region could have performed the requirement. As the FAR does not preclude application of cost-reimbursable type contracts for multi-award task orders, we disagree with the Navy conclusion that cost-reimbursement type contracts will negate the value of competing task orders.

Present Navy practices contradict the Navy's conclusion that the same contractor should perform each of the four remedial phases. The Navy performs remedial investigations, feasibility studies, and records of decisions through a separate CLEAN contract with RACs usually performing actual remediation. As noted in the report, the Navy bars CLEAN contractors from competing for RACs. As part of this audit we performed an on-site review of NAVFAC Atlantic Division implementation of RACs at Marine Corps Base, Camp Lejeune, North Carolina, and Marine Corps Air Station, Cherry Point, North Carolina. We concluded that multiple RAC contractors were already performing different remediation tasks under separate cost-reimbursement contracts at the same work locations. The use of multiple RAC contractors did not adversely affect on-sight oversight performed by the NAVFAC Resident Officer in Charge of Construction and the Marine Corps base Environmental Affairs Division.

Based on the facts presented above, we do not believe that the NAVFAC multiple awards met any of the exemptions noted in FAR 16.504. We believe that application and proper documentation of the four exceptions to task order competition noted at FAR 16.505, and in the National Defense Authorization Act for Fiscal Year 2002, will safeguard against potential RAC impracticalities and provide the contracting officer the ability to identify potential fixed-price task order opportunities to enhance future competition.

Navy Comments on CLEAN Contracts. The Navy commented on the report statement that NAVFAC CLEAN contracts are designated as architect-engineer services and are not subject to 5-year limits for service contracts. The Navy equated the RAC contracts as analogous to the CLEAN contracts as being exempted from 5-year limits.

Audit Response. While we agree that architect-engineering contracts are exempt from the 5-year requirement, we did not review any NAVFAC CLEAN contract and make no opinion as to whether the NAVFAC characterization of CLEAN contracts as architect-engineering contracts is accurate. We consider the seven RAC contracts reviewed as being subject to 5-year limits and not analogous to CLEAN contracts.

Navy Comments on NAVFAC Corrective Actions. The Navy noted that the follow-on Atlantic Division RAC, while solicited in conjunction with the Southern Division RAC, will be awarded as a single award in the Atlantic Division's area of responsibility after the contracting officer determined that multiple awards would not be in the best interests of the Government pursuant to FAR 16.504(c).

Audit Response. We revised the discussion to note the Atlantic Division RAC single award. We did not review the Atlantic Division RAC solicitation or the contracting officer determination. Thus, we make no opinion whether the contracting officer decision will achieve the most competitive result.

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller)/Chief Financial Officer
  Deputy Chief Financial Officer
  Deputy Comptroller (Program/Budget)
Deputy Under Secretary of Defense (Acquisition Reform)
Deputy Under Secretary of Defense (Installations and Environment)
Director, Defense Procurement

Department of the Army

Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Installations and Environment)
Assistant Secretary of the Navy (Research, Development, and Acquisition)
Naval Inspector General
Auditor General, Department of the Navy
Commander, Naval Facilities Engineering Command

Department of the Air Force

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

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 Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform
House Subcommittee on Technology and Procurement Policy, Committee on Government Reform

Department of the Navy Comments

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

JUL -9 2002

MEMORANDUM FOR THE DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

Subj: DEPARTMENT OF DEFENSE, OFFICE OF INSPECTOR GENERAL DRAFT AUDIT REPORT ON NAVAL FACILITIES ENGINEERING COMMAND ENVIRONMENTAL SERVICES CONTRACTING, 9 MAY 2002, (PROJECT NO. D2001CB-0181.000)

Encl: (1) Navy Response to subject DoDIG draft audit report
(2) Draft ASN(RD&A)ABM memo, subj: Environmental Services Contracting

Pursuant to the subject draft audit report, we are providing enclosure (1) in answer to your findings and recommendations on environmental services contracting of the Naval Facilities Engineering Command. We concur in principle with the recommendations.

As discussed in enclosure (1), we will send enclosure (2) to the Naval Facilities Engineering Command requesting that it: (i) include, as elements of the reviews it conducts under the Procurement Performance Management Assessment Program (PPMAP), verification of compliance with five-year service contract requirements, as well as competition on individual task order purchases of services made pursuant to multiple award contracts; and (ii) revise its Naval Facilities Engineering Command Acquisition Supplement to state clearly the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to solicitation.

Questions concerning this submittal should be directed to Mr. Bruce Lowrey at 703-602-2384.

William J. Schaefer
Deputy Assistant Secretary
of the Navy
Planning, Programming & Resources

DEPARTMENT OF THE NAVY RESPONSE
TO
DODIG DRAFT REPORT OF 9 MAY 2002
ON
NAVAL FACILITIES ENGINEERING COMMAND ENVIRONMENTAL SERVICES CONTRACTING (PROJECT NO. D2001CB-0181.000)

Recommendation No. 1 and DON Position -

Recommendation No. 1: We recommend that the Assistant Secretary of the Navy (Research, Development & Acquisition):

a. Revise the Navy Acquisition Procedures Supplement (NAPS) 5217.204 to clearly state the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to solicitation.

DON Position: Concur in principle. As discussed in the response to recommendation 2 (c.) below, NAVFAC believes that the RAC contracts are predominantly construction contracts based on the work performed and, like architect-engineer services, are excepted by FAR 17.200 from the five-year limits for service contracts. However, we will request NAVFAC via memo (draft copy enclosed), to revise its Naval Facilities Engineering Command Acquisition Supplement to state clearly the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to solicitation.

b. Examine, as part of the next procurement management review of Naval Facilities Engineering Command, compliance with 5-year service contract requirements and competition on individual task order purchases of services made pursuant to multiple award contracts.

DON Position: The Navy concurs in principle but believes that, instead of initiating reviews as part of the ABM-level Procurement Performance Management Assessment Program (PPMAP), it would be more effective for NAVFAC to include the verification of compliance with 5-year service contract requirements and competition on individual task order purchases of services made pursuant to multiple award contracts as part of the NAVFAC command-level PPMAP. An ASN(RD&A)ABM memo will be sent (draft copy enclosed) to directs NAVFAC to comply with this recommendation.

ENCL (1)

Final Report Reference

Recommendation No. 2, DoDIG Findings, and DON Position -

Finding #1:

Naval Facilities Engineering Command (NAVFACENGCOM) Headquarters improperly exceeded the five-year limit specified in the FAR by including a seven-year limit for four FY 1998 multi-award environmental Remedial Action Contracts (RACs) with a total not-to-exceed obligation value of $758 million.

Finding #1: DoDIG Report Citings

DoDIG Draft Report, page I, Executive Summary: The NAVFACENGCOM Headquarters improperly exceeded regulatory five-year contract limits by including a seven-year limit for four multi-award environmental services contracts with a total value of $758 million. Neither the extensions nor the seven-year limit were supported by adequate written justification or cost/price analysis.

DoDIG Draft Report, Page 1, Comprehensive Long-Term Environmental Action Navy (CLEAN) Contracts: CLEAN contracts are designated as architect-engineer services and are not subject to five-year limits for service contracts.

DoDIG Draft Report, Page 4: NAVFAC Headquarters improperly exceeded the five-year limit specified in the FAR by including a seven-year limit for four FY 1998 multi-award environmental RACs with a total not-to-exceed obligation value of $758 million. Neither the extensions nor the seven-year limit were supported by detailed written justification or cost/price analysis.

DoDIG Draft Report, Page 7, Justification for Contract Length: NAVFAC did not comply with NAVFAC P-68, FAR Part 6, and FAR 17.204(e) because it did not have written justification for exceeding the five-year time limit for service contracts.

Page 6

Finding #1: NAVFAC Comment

FAR 17.204(e) states:

> Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies.

Final Report Reference

Page 1

FAR 17.200 provides the scope of the subpart on options and states:

> Except as provided in agency regulations, this subpart does not apply to contracts for (a) **services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads or other kinds of real property**; (b) architect-engineer services; and (c) research and development services.

The DoDIG draft audit report states on page six that CLEAN contracts are designated as architect-engineer services and are not subject to five-year limits for service contracts. However, the DoDIG draft audit report applies FAR 17.204(e) to the RACs. The RAC contracts are predominantly construction contracts based on the work performed and, like the architect-engineer services, are not subject to five-year limits for service contracts. The majority of RAC work is subject to the Davis Bacon Act involving excavation, trenching, and heavy machinery operation. Environmental services are contracted separately under Long Term Monitoring (LTM) and Long Term Operation (LTO) acquisition strategies. FAR 2.101 defines construction as follows:

> "Construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels.

NAVFAC has complied with FAR Part 6 since the four RAC awards provided for full and open competition with all responsible offerors being allowed to compete under the solicitation. The offerors were advised in the solicitation that the contracts were for a base term of one year with six option years. Therefore, no written justification or approval should be necessary since the acquisition utilized full and open competition through the use of competitive procedures. On the finding of the seven-year limit not being supported by cost/price analysis, a formal cost analysis and evaluation of the proposals addressing the full seven-year anticipated period

of performance was performed under the source selection and was an evaluation factor in the best value source selection decision.

Finding #2:

NAVFACENGCOM Headquarters did not provide multi-award contractors the ability to compete with each other for all available task orders.

Finding #2: DoDIG Report Citings

DoDIG Draft Report, Page 6, Acquisition Strategy for Multi-Award Contracts: The awards were based on a single solicitation, multiple award, and best-value contracting method.

DoDIG Draft Report, Page 8, NAVFAC Multi-Award Acquisition: While the NAVFAC multi-award acquisition was within general FAR requirements, the selection of one contractor per region did not meet the intent of FAR Part 16.5 or the Federal Acquisition Streamlining Act since the acquisition strategy did not discuss or document any of the four exceptions to competing multiple task order contracts.

Finding #2: NAVFAC Comment

Pursuant to FAR 16.504(c), the Contracting Officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. FAR 16.504(c)(ii)(A) lists four factors the Contracting Officer should consider when determining the number of contracts to be awarded:

- The scope and complexity of the contract requirement.
- The expected duration and frequency of task or delivery orders.
- The mix of resources a contractor must have to perform expected task or delivery order requirements.
- The ability to maintain competition among the awardees throughout the contracts' period of performance.

FAR 16.504(c)(ii)(B) precludes the Contracting Officer from using the multiple award approach if:

- Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

- Based on the Contracting Officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

- The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

- The projected orders are so integrally related that only a single contractor can reasonably perform the work;

- The total estimated value of the contract is less than the simplified acquisition threshold; or

- Multiple awards would not be in the best interests of the Government.

NAVFAC has demonstrated its commitment to utilizing Multiple Award Contracts (MACs) to the maximum extent practicable, as described in the corporate acquisition strategy, and as evidenced by the recent award of several fixed-price environmental Multiple Award Contracts (EMACs). Task orders under these contracts have definitive Statements of Work, which allow them to be fixed-price and competed. However, the practice of competing task orders under cost-plus-award-fee RACs is impractical.

The Contracting Officer's decision in selecting the cost-plus-award-fee contract type for the four RACs was based on the unknown nature and extent of contamination at the many bases and sites intended for remediation and the significant contract performance uncertainties that existed which did not permit costs to be estimated with sufficient accuracy to use a fixed-price type contract. This is pursuant to FAR 16.301-2.

While the contracts were solicited under one solicitation, this procedural approach was never intended as a multiple award for competing task orders under the four RACs. The very nature of the work to be performed, as well as the cost reimbursement contract type, wherein all reasonable, allowable, and allocable costs are reimbursed, clearly negate the value of competing any work under such a contracting scenario.

Although the solicitation was issued under one solicitation number, the offerors were advised in the solicitation that they could submit proposals for any or all of the four regions and that an offeror could win an award in multiple regions. Conducting this acquisition under a single solicitation rather than four separate solicitations for the four separately awarded RACs was for the purpose of efficiency and acquisition streamlining. The offerors were advised of the Government's intent to make award of one contract for each of the four regions.

In addition, consideration needs to be given to the scope and complexity of the contract requirement under the RACs. The following additional factors relate to the impracticality in having multiple award RACs and competing task orders:

- It is impractical to compete remedial actions due to the inherent unknowns associated with executing the remedial action in the field. Fair evaluation and comparison of contractor proposals would be difficult with the cost increases due to encountering unknown conditions and contamination, which result in scope growth over original award amounts.

- Since the RACs are cost-reimbursement type contracts, the Government pays for all the proposal preparation costs associated under a task order, which includes the site visit, Program Management Office, etc. In addition to these direct costs, there would be increased administration costs incurred by the Government for multiple awards.

- The overhead and administration costs incurred by the Government would be significantly impacted and increased due to multiple labor rates, overhead, invoices, audits, award fees (i.e. overhead audits, indirect rate adjustments, numerous award fee boards, negotiation of indirect rates, Contractor Purchasing System Review, Government property, etc.).

- State and federal (EPA) regulatory coordination would be jeopardized by multiple contractors performing different phases of a remediation action. Specific phases of a remediation process are remedial investigations, feasibility studies, Record of Decisions (ROD), and actual remediation. The remediation of sites at an

installation requires long-term cooperative relationships with contractors, regulators and other stakeholders throughout the process. Essential partnering relationships that develop between the contractor and the stakeholders (regulators, activity personnel, ROICCs, etc.) would be impossible to develop if there were multiple RACs at the same site.

- Cleanup of sites is often performed in incremental steps over several related project task orders. It is critical that the Contractor provide the necessary continuity from task order to task order in the process of cleaning up the site. This is impossible to achieve with multiple contractors.

- If even possible, excessive resources, time, money, and effort will be required in defining and writing scopes capable of being competed, establishing appropriate and fair evaluation factors, evaluating all proposals and documenting the selection. The result would be unacceptable delays in environmental cleanups and our ability to meet regulatory deadlines as well as an impact on our ability to make timely awards and obligation of funds.

- It is impractical to compete task orders based on the nature of the work. RAC contractors provide "construction" strategies to the CLEAN contractor and state and federal regulators during the feasibility study. Often the RAC contractor proposes innovative alternatives to be included in the ROD. Accordingly, competition would not be feasible.

Recommendation No. 2:

a. Develop a structured approach to contracting for environmental remediation services at all Naval Facilities Engineering Command component divisions and establish controls to ensure compliance with requirements of the Federal Acquisition Regulation, the Competition in Contracting Act, and Section 803 of the National Defense Authorization Act for Fiscal Year 2002.

DON Position: Concur in principle. As noted in the DoDIG draft audit report, NAVFAC Headquarters issued an acquisition strategy for environmental programs by letter dated 28 September 2001. However, the DoDIG identified shortcomings in the strategy and

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recommended additional areas to be addressed and considered. Based on the guidelines provided by the corporate environmental acquisition strategy, each EFD is required to develop and receive approval for its regional acquisition strategy. NAVFAC Headquarters will be coordinating an environmental conference in July 2002 with the EFDs (including acquisition, technical, and small business personnel) to further develop the acquisition strategy related to NAVFAC's Environmental Programs and will discuss and address the items identified in the DoDIG draft audit report. If required, the NAVFAC acquisition strategy and/or other appropriate mechanism will be revised to establish a more effective approach and controls to contracting for environmental remediation services ensuring compliance with applicable laws and regulations.

b. Develop a multi-award contracting plan for future procurements that includes the ability of multi-award contractors to compete for available task orders in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2002 and requires re-competition of the multi-award contracts every 5 years. Revised

DON Position: Concur in principle. NAVFAC has suggested a wording change to the recommendation to read as follows: "Develop a multi-award contracting plan for future procurements that includes the ability of multi-award contractors to compete for available task orders in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2002 and requires re-competition of the multi-award contracts every 5 years unless written documentation and approval is obtained for a longer period of performance." It should be noted that NAVFAC currently competes task orders under the EMACs, which are fixed-price contracts, in compliance with FAR 16.505. The RAC cost-plus-award-fee contracts are awarded by regions and are not awarded as multiple contracts for competition of task orders across the geographic regions since it would not be in the best interests of the Government based on information provided above.

c. Not exercise options for years 6 and 7 for Naval Facilities Engineering Command multi-award environmental remedial contracts N62467-98-D-0995, N62472-98-D-1808, N68711-98-D-5713, and N62474-98-D-2076, and re-compete the contracts at the expiration of 5 years or at meeting contract not-to-exceed amounts, whichever is sooner. Revised

DON Position: The Navy concurs in principle subject to a wording change to the recommendation to read as follows: "Naval

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Facilities Engineering Command should review and determine if adequate justification exists for a longer period of performance beyond five years under the multi-award environmental remedial contracts N62467-98-D-0995, N62472-98-D-1808, N68711-98-D-5713, and N62474-98-D-2076 and, if so, prepare formal written determination and approval. If adequate justification for extending beyond five years does not exist, the contract(s) should be re-competed as soon as practicable."

As mentioned above, the RAC contracts are predominantly construction contracts based on the work performed and, like the architect-engineer services, are excepted by FAR 17.200 from the five-year limits for service contracts. The Naval Facilities Engineering Command Acquisition Supplement (NFAS) (formerly NAVFAC P-68, Contracting Manual) does require NAVFAC Acquisition Proponent approval prior to issuance of a solicitation if the term of a contract exceeds five years (base year and four option periods), which appears to be applicable to all contracts. Also NFAS 17.204 states that the request for approval shall explain how the procurement's competitive history and/or significant capital investment requirement indicates that a longer period of performance is necessary to establish or maintain competition. The DoDIG audit report noted that neither the acquisition plan nor source selection plan discussed the criteria specified in NFAS 17.204. The Acquisition Proponent did sign the source selection plan, which included the contract term, and constructively approved the term exceeding five years; however, the written criteria specified in NFAS 17.204 was not addressed therein. Therefore, it would appear to be prudent to review and determine if adequate justification exists for a longer period of performance beyond five years under the aforementioned four multi-award environmental remedial contracts and, if so, prepare formal written determination and approval. If adequate justification for extending beyond five years does not exist, the contract(s) will be re-competed as soon as practicable.

DON Recommended Corrections to Draft DoDIG Report:

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DoDIG Draft Report, Page 17: Under the list of CLEAN Contracts, the Contractor name of "Abbes Fed. Prog." under Contract No. N62467-89-D-0317 for the South should be corrected to read "HLA/ESE, Inc.".

Revised

DoDIG Draft Report, Executive Summary, Results: Atlantic Division's (LANTDIV's) two environmental services contracts have an "estimated" value of $325 million vice a "total not-to-exceed" value.

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DoDIG Draft Report, Page 6, NAVFAC Corrective Actions: The draft report states that NAVFAC LANTDIV plans to compete the work of both contracts in 2002 as part of a multi-award procurement in conjunction with the NAVFAC Southern Division (SOUTHDIV). SOUTHDIV issued the solicitation with a separate solicitation number for SOUTHDIV and LANTDIV. The follow-on LANTDIV RAC will be awarded as a single contract award for work to be performed in LANTDIV's area of responsibility. The Contracting Officer has determined that multiple awards would not be in the best interests of the Government pursuant to FAR 16.504(c).

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MEMORANDUM FOR THE COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND (ACQ)

Subj: ENVIRONMENTAL SERVICES CONTRACTING

Ref: (a) DoDIG draft report dated 9 May 2002, subject as above

The reference (a) DoDIG draft audit report contained recommendations for ASN (RD&A) to: (1) Revise the Navy Acquisition Procedures Supplement (NAPS) 5217.204 to clearly state the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to solicitation and (2) examine, as part of its next procurement management review of the Naval Facilities Engineering Command, compliance with 5-year service contract requirements and competition on individual task order purchases of services made pursuant to multiple award contracts (MACs).

In its response to the DoDIG, the Navy concurred in principle with these recommendations provided that: (1) instead of revising the NAPS, NAVFAC would revise its Naval Facilities Engineering Command Acquisition Supplement to clearly state the documentation requirements for service contract periods in excess of 5 years and that all approvals must be made prior to solicitation, and (2) instead of initiating reviews as part of ASN(RD&A)'s Procurement Performance Management Assessment Program (PPMAP), NAVFAC will verify compliance with 5-year service contract requirements and competition on individual task order purchases of services made pursuant to MACs as part of reviews conducted under NAVFAC's version of PMAPP.

Pursuant to the Navy's response to the DoDIG, please revise the NAVFAC Acquisition Supplement to state the documentation requirements for contract periods in excess of 5 years and that all approvals must be made prior to solicitation, and verify compliance with 5-year service contract requirements and competition on individual MAC task order purchases as part of your annual PMAP reviews.

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Acquisition & Business Management

ENCL (2)

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