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DOD

DARPA's Use of 'Other Transactions' Isn't Properly Justified or Monitored, DOD IG Says

The Defense Department Inspector General has strongly criticized the Defense Advanced Research Projects Agency's use of "other transactions"--the flexible, noncontractual vehicles authorized by statute for use in defense research and development and prototyping efforts. The IG's criticism comes just as DARPA is seeking legislative authority to expand the use of such transactions to projects moving out of R&D and prototyping and into the acquisition phase (67 FCR 234).

In a March 28 report that examines 28 "other transactions" valued at \$1.2 billion, the DOD IG concludes that DARPA contracting officers did not:

- Sufficiently justify use of such transactions, which are to be used when standard contracts, grants, or cooperative agreements are not appropriate.

- Document the review of cost proposals to determine whether the nongovernment party was contributing the 50 percent cost share suggested by statute.

- Adequately monitor actual research costs associated with performance payable milestones.

More specifically, the IG finds that DARPA:

- Did not properly justify the use of 24 "other transactions." The contracting officers either merely cited the law, provided a general justification, or did not specifically state the reason why an other transaction was the more appropriate approach to take.

- Could expose DOD to cost shares higher than the recommended 50 percent because it:

- did not have any supporting documentation of contribution cost analysis in 20 out of 23 transactions

- did not determine the value of in-kind contributions in 13 out of 14 transactions

- did not determine the value of independent R&D contributions in 6 out of 7 transactions.

- Did not include a provision requiring the nongovernment parties to remit interest on appropriated funds kept in interest bearing accounts in 25 out of 28 transactions. As a result, DARPA forfeited interest of about \$1.9 million.

The 28 other transactions examined were selected randomly from the total of 75 "other transactions" entered into by DARPA from fiscal year 1993 through the first six months of FY 1995.

The problems occurred because DARPA did not comply with the law and with DOD guidance for selecting other transactions, the IG says. Further, no guidance exists for evaluating proposed contributions, for monitoring actual research costs, and for including an interest provision in other transactions agreements.

The IG recommends that DARPA's director issue policy guidance to improve the use of other transactions and to ensure that the DOD cost share does not exceed the statutory limit.

The IG points out that DARPA has used other transactions extensively, as opposed to cooperative agreements. The General Accounting Office reported that from FYs 1990 through 1994, DARPA issued 56 other transactions. In comparison, during the same period the Navy and Air Force issued no other transactions and 16 cooperative agreements.

Because the retention of patent rights is a major discriminator between cooperative agreements and other transactions, the justification for such transactions should, at a minimum, provide details on patent rights ownership and the reason why the nongovernment participants would not have accepted a cooperative agreement, the IG says.

Further, while a primary rationale for the use of other transactions is to attract companies that normally would not do business with the government due to restrictive procurement regulations, the IG reports that traditional DOD contractors were participants in 16 of the 28 other transactions reviewed.

With regard to final cost issues, the IG notes that DARPA officials believe that consortium participants will monitor each other to ensure that each contributes the agreed-upon share, thus relieving the government of the need to perform a final cost audit. However, because of the uncertainty of research efforts, the actual costs could deviate from initial cost estimates, the IG says.

For the 28 transactions reviewed, four agreements had a negotiated 50 percent cost share ratio between DARPA and the consortium. In addition, for 11 other agreements, DARPA negotiated a cost share ratio between 45 and 50 percent. If DARPA fully funds the research effort as agreed and actual cost varies, the cost share will not match the agreed ratio and adjustments will be necessary, the IG says. DARPA needs to conduct final cost audits to determine the actual cost of the research to ensure that its actual cost share did not exceed the statutory limit.

Problems With Contracts and Grants In addition, the IG recommends that guidance and procedures be established regarding the management of contracts, grants, and cooperative agreements.

After examining 18 contracts valued at \$368.4 million, and 15 grants valued at \$1 billion, the IG reports that:

- DARPA COs awarded 13 of the 18 contracts without documented cost reviews of contractor proposals, did not effectively use field pricing support, and approved precontract costs without adequate justifications.

- Grant officers unnecessarily advanced more than \$15 million to grantees, paid grantees \$1.2 million in unwarranted costs, failed to receive or trace interest payments from 12 grantees, and allowed grantees to accumulate unneeded cash reserves while falling behind projected work efforts.

The IG recommends that DARPA implement performance measures for contracting officials; enhance the use of pricing assistance from contracting officer technical representatives, administrative contracting officers, and the Defense Contract Audit Agency; and monitor costs associated with research efforts. Also, DARPA's acquisition management control system needs to be improved.

The report is titled "Award and Administration of Contracts, Grants, and Other Transactions by the Defense Advanced Research Projects Agency," (No. 97-114).