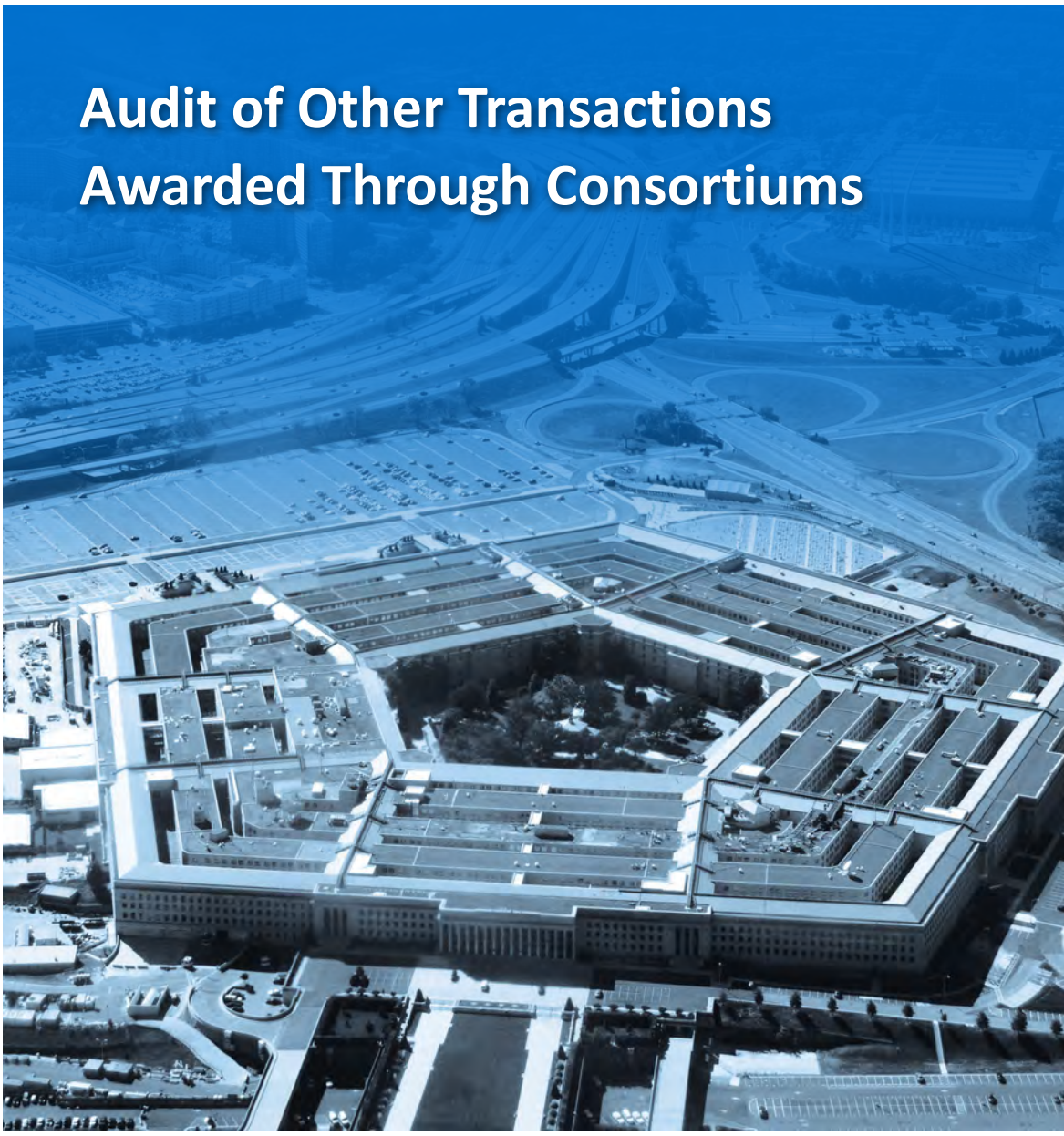
Report No. DODIG-2021-077

INSPECTOR GENERAL

U.S. Department of Defense

APRIL 21, 2021

Audit of Other Transactions Awarded Through Consortiums



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Results in Brief

Audit of Other Transactions Awarded Through Consortiums

April 21, 2021

Objective

The objective of this audit is to determine whether the DoD planned and executed other transactions (OTs) awarded through consortiums in accordance with applicable other transactional authority laws and regulations. We reviewed a non-statistical sample of 13 base OT awards, valued at $24.6 billion that were active in FYs 2018-2019.

Background

According to the United States Code (U.S.C.), the DoD can enter into transactions other than procurement contracts, grants, or cooperative agreements for basic, applied, or advanced research. OT authorities give the DoD the flexibility necessary to adopt and incorporate business practices that reflect commercial industry standards and best practices into its award instruments. OTs provide the DoD with technology solutions from traditional and non-traditional defense contractors. The DoD can award OTs through a consortium (two or more individuals, companies, or organizations), to allow the DoD and industry to communicate in one forum. A Consortium Management Organization (CMO) acts as the consortium's single point of contact and manages its membership. Usually, the DoD awards a base OT agreement to a CMO, selects a member to perform a project, and awards the project to the CMO. The CMO enters into a separate agreement with the member selected to perform the project. The Office of the Secretary of Defense requires contracting personnel to track OTs in the Federal Procurement Data System-Next Generation database.

Finding

DoD contracting personnel did not always plan and execute OTs awarded through consortiums in accordance with OT laws and regulations. Specifically, of the 13 base OT awards we reviewed, valued at $24.6 billion, DoD contracting personnel did not:

- properly track OTs awarded through consortiums and did not have an accurate count of OTs and associated dollar values because the Federal Procurement Data System-Next Generation was not set up to track consortium OTs or individual consortium projects and there was no guidance on how to award the projects to a consortium;
- consistently award OTs in accordance with applicable laws and regulations because there is little guidance or training on awarding consortium OTs; or
- have a consistent basis to negotiate CMO fees because there was no guidance in place for establishing these fees.

In addition, DoD contracting personnel did not ensure the security of controlled or restricted information being sent to the consortium because DoD contracting personnel relied on the CMOs to vet consortium members and ensure proper safeguarding of controlled and restricted data. Further, the DoD did not require consortium members to register in the System for Award Management (SAM). Additionally, DoD personnel were not performing security reviews of cumulative technical information provided to consortium members, and instead only performed security reviews on a per-project basis.

As a result, DoD officials do not have access to important information associated with OTs awarded through consortiums, such as which contractor received the OT award and the specific costs associated with funded OT projects. Without this information, the DoD does not have the necessary oversight of the projects it is funding, which may hinder its ability to make important real-time decisions that enhance mission effectiveness.

Results in Brief

Audit of Other Transactions Awarded Through Consortiums

Finding (cont'd)

Additionally, the DoD may not always obtain the best value or properly apply OT requirements to ensure DoD Components are responsibly investing in technologies that produce longstanding capabilities to support lethality within its current funding. Furthermore, not properly protecting sensitive prototype data could increase risk to our national security.

Recommendations

We recommend that the Principal Director, Defense Pricing and Contracting:

- Develop policies for awarding and tracking OTs when using a consortium and coordinate with the General Services Administration to update the Federal Procurement Data System-Next Generation to accurately capture OT data.
- Reinforce guidelines or provide best practices to ensure OTs awarded through a consortium use competition to the maximum extent practicable, and require contracting personnel to maintain documentation for major OT-related decisions.
- Clarify policy for determining the approval level required for project awards when using consortiums, and establish a process or best practice to address protests.
- Establish DoD-level training for awarding OTs through a consortium and a DoD-level agreement officer delegation and warrant process.
- Implement guidelines or best practices for contracting personnel to consider when negotiating consortium management fees.
- Establish controls to ensure proper vetting of consortium members and dissemination of solicitation information only to members with the proper security clearance.
- Develop procedures to require security reviews of the aggregate of solicitation information provided to members and SAM checks of individual members prior to project award.

Management Comments and Our Response

The Defense Pricing and Contracting Principal Director agreed with 12 of the 13 recommendations and partially agreed with one recommendation, stating that Defense Pricing and Contracting will update the OT Guide to address the recommendations. Management addressed all specifics of the recommendations and the recommendations are resolved but will remain open. We will close the recommendations when we verify that the Principal Director has implemented the corrective action plans.

Although not required to comment, the Director of Policy, Deputy Assistant of the Secretary of the Navy (Procurement) stated that the Marine Corps market research and review of consortiums that could meet their requirement provided a reasonable basis for not conducting formal competition, but they do not take exception to the report conclusions. We disagree with the Director's response that market research provides a reasonable basis for not conducting formal competition. The market research showed that there were enough qualified contractors for competition, but contracting personnel chose not to compete the agreement.

Please see the Recommendations Table on the next page for the status of recommendations.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Principal Director, Defense Pricing and Contracting	None	1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m	None

Please provide Management Comments by May 21, 2021.

Note: The following categories are used to describe agency management's comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.

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April 21, 2021

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISTION
AND SUSTAINMENT
UNDER SECRETARY OF DEFENSE FOR POLICY

SUBJECT: Audit of Other Transactions Awarded Through Consortiums
(Report No. DODIG-2021-077)

This final report provides the results of the DoD Office of Inspector General's audit. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

The Defense Pricing and Contracting Principal Director agreed to address all the recommendations presented in the report; therefore, we consider the recommendations resolved and open. As described in the Recommendations, Management Comments, and Our Response section of this report, we will close the recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendations are completed. Therefore, please provide us within 30 days your response concerning specific actions in process or completed on the recommendations. Send your response to either followup@dodig.mil if unclassified or rfunet@dodig.smil.mil if classified SECRET.

If you have any questions, please contact me at [redacted].

Theresa S. Hull
Assistant Inspector General for Audit
Acquisition, Contracting, and Sustainment

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Introduction

Objective

The objective of this audit is to determine whether the DoD planned and executed Other Transactions (OTs) awarded through consortiums in accordance with applicable other transactional authority (OTA) laws and regulations. We reviewed a non-statistical sample of 13 base OT awards, valued at $24.6 billion that were active in FYs 2018-2019. See Appendix A for our scope and methodology and list of prior audit reports.

Background

Other Transactions

In accordance with section 2371, title 10, United States Code (10 U.S.C. § 2371 [2018]), the DoD can enter into transactions other than procurement contracts, grants, or cooperative agreements for basic, applied, or advanced research. OT authorities give the DoD the flexibility necessary to adopt and incorporate commercial industry standards and best practices into its award instruments. OTs provide the Government with access to state-of-the-art technology solutions from traditional and non-traditional defense contractors, through a multitude of potential teaming arrangements tailored to the particular project and needs. OTs are generally not subject to Federal laws and regulations governing procurement contracts, such as the Federal Acquisition Regulation (FAR). There are three types of OTs: research, prototype, and production.

Research OTs are for basic, applied, and advanced research projects. Research OTs are intended to spur dual-use research and development (R&D), taking advantage of economies of scale without Government regulatory overhead, which would make them non-competitive in the commercial (non-defense) sector. Traditional defense contractors are also encouraged to engage in research OTs if they seek to adopt commercial practices or standards, diversify into the commercial sector, or partner with non-traditional defense contractors.

Prototype OTs are used to acquire prototype capabilities and allow for those prototypes to transition into Production OTs or contracts. Per statute, successful Prototype OTs offer a streamlined method for transitioning into production without competition.[1] The Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD[A&S]) OT Guide defines a prototype project as a project that addresses a proof of concept, a model, reverse engineering to address

[1] Section 2371b, title 10, U.S.C., 2018, "Authority of the Department of Defense to carry out certain prototype projects."

obsolescence, a pilot, a novel application of commercial technologies for defense purposes, agile development, a demonstration of technical or operational utility, or combinations of these. In addition, a business process may be the subject of a prototype project.[2]

DoD contracting personnel can non-competitively award follow-on Production OTs from a Prototype OT agreement, as long as the Prototype OT was competitively awarded and successfully completed. Section 2371b, title 10, U.S.C., 2018, requires advanced consideration and notice when there is potential for a follow-on Production OT.[3]

Other Transaction Authority

Under 10 U.S.C. § 2371b (2018), the DoD has the authority to carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improve platforms, systems, components, or materials in use by the Armed Forces. To use this authority, one of the following conditions must be met.

- There is at least one non-traditional defense contractor or nonprofit research institution participating to a significant extent.
- All significant participants in the transaction other than the Government are small businesses or non-traditional defense contractors.
- At least one-third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Government.
- The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of such a transaction.[4]

While Research OTs do not have statutory approval thresholds or requirements, Prototype OTs are subject to statutory approval requirements at varying levels, established in 10 U.S.C. § 2371b (2018). Specifically, approval is required from:

- the Senior Procurement Executive for OT awards with a transaction value between $100 million and $500 million (including all options); and
- the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment for OT awards with transaction values over $500 million (including all options).[5]

[2] OUSD(A&S) OT Guide, November 2018.

[3] 10 U.S.C. § 2371b (2018).

[4] 10 U.S.C. § 2371b (2018). Section 2302(9), title 10, U.S.C., 2018, "Definitions," defines a nontraditional defense contractor as an entity that is not currently performing and has not performed, for at least a 1-year period preceding the solicitation of sources by the DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards.

[5] 10 U.S.C. § 2371b (2018).

DoD Guide for Other Transactions

OUSD(A&S) issued an OT Guide which provides advice and lessons learned on the planning, publicizing, soliciting, evaluating, negotiation, award, and administration of OT agreements.[6] While the OUSD(A&S) OT Guide includes references to the controlling statutory and policy provisions for DoD OT authority, the guide itself is not a formal policy document. The guide is intended for DoD contracting personnel and Government partners, including industry, academia, other Federal agencies, and state and local authorities seeking information on OT best practices and the DoD's objectives in leveraging OT authority.

Service-Level Other Transaction Guidance

The Military Services (the Services) have also issued supplemental guidance to the DoD-level guidance. Their supplemental guidance includes further delegation of OT approval authority, clarification on reporting requirements, requirements for an Agreements Officer (AO), and required OT training. In addition to Service-level guidance, individual program offices and contracting offices within the Services have also issued supplemental guidance and requirements such as execution guides, vetting procedures, training requirements, and levels of review.

Consortiums

The DoD can award OTs through a consortium, which allows the Government and industry to communicate in one forum. A consortium is an association of two or more individuals, companies, or organizations participating in a common action or pooling resources to achieve a common goal and can range from a handful to as many as 1,000 members. A consortium does not have to be a legal entity but must be legally bound through some form of teaming agreement or Articles of Collaboration. The legal document includes terms and procedures to govern the activities and relationships of the consortium and how it will interact as a group with the Government. The Government is not party to the teaming agreement or Articles of Collaboration documents and should not dictate the terms.

There is typically one person or organization managing the consortium, and that person or organization serves as the consortium's main contact for the Government. In most cases, a Consortium Management Organization (CMO) fulfills this role.[7] The CMO manages consortium membership by managing the application process and collecting the membership fee, if applicable. In addition, the CMO may host outreach events to encourage new organizations to become

[6] OUSD(A&S) OT Guide, November 2018. The November 2018 OT Guide supersedes prior guidance issued in January 2017 and August 2002. The audit team applied the appropriate guide for each sample item based on the effective date of the award.

[7] Our sample included one Government-managed Consortium, and 12 CMO-managed consortiums.

consortium members. The CMO communicates requirements from the Government to consortium members, is responsible for assisting consortium members in responding to Government solicitations, and collects responses and provides them to the Government. After award, the CMO is responsible for general oversight of project execution, including maintaining tracking documents, communicating any contractual concerns from the Government to the consortium members, and transmitting invoices from members to the Government.

Typically, the Government awards a base OT agreement to a CMO and then the Government selects a consortium member to perform a project. The Government awards the project to the CMO, not to the individual consortium member, as the CMO is the entity in contract with the Government. For each project award, the CMO enters into a separate agreement with the consortium member selected to perform the project. The agreement includes the responsibilities of the consortium member, the CMO, and the Government. The cost of each project includes the CMO management fee, which the Government pays the CMO based on an agreed-upon percentage of the total project amount.

Tracking Other Transactions

Public Law 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019," requires the Service Acquisition Executives of the Military Departments to collect data on the use of other transactions by their respective departments. Per public law, the data will be stored in a manner that allows the Assistant Secretary of Defense for Acquisition and other appropriate officials access at any time to update policy and guidance related to the use of other transactions.[8] The Office of the Secretary of Defense requires contracting personnel to track OTs in the Federal Procurement Data System-Next Generation (FPDS-NG).[9] According to FPDS-NG data, the DoD issued 673 OT actions, valued at $27.2 billion, in FY 2018; 1,280 OT actions, valued at $16.2 billion, in FY 2019; and 2,136 OT actions, valued at $15.8 billion, in FY 2020.

Senior procurement executives, directors, and relevant commanding officers are responsible for ensuring data required under Public Law 115-232 is accurate. Public Law 115-232 requires the Secretary of Defense to submit a report to the congressional committees on the DoD's use of the OT authority no later than December 31, 2018, and each December 31 thereafter through December 31, 2021. According to the legislation, the report will include a list of each active OT characterized by Service or agency, major command, contracting activity, award

[8] Public Law 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019."

[9] OUSD(A&S) Memorandum, "Reporting Other Transactions to the Federal Procurement Data System," September 7, 2018.

value, appropriation, budget line item, consortium, period of performance, dollars obligated, total expenditure for the reporting period, product service code, quantitates, awardees or vendor, purpose/program goal/description, and project status. The law also requires that if OTs include an option for follow-on production that it be clearly annotated in the report and include a description of the scope of the follow-on production, including estimated costs, period of performance, deliverables, delivery dates, and source of funding.

Security

The OUSD(A&S) OT Guide states that OTs can involve classified or controlled unclassified information. DoD contracting personnel are responsible for ensuring the agreement is conducted in compliance with DoD security requirements for classified or controlled unclassified information.[10] For example, DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," further requires the certification of qualified U.S. contractors with DoD Form 2345 for access to unclassified critical technical data with military or space application.[11] Further, to the extent the OT involves national security, DoD contracting personnel will ensure the agreement is written to allow for the ability to exclude suppliers. The OUSD(A&S) OT Guide, however, does not provide specific guidance for security reviews such as the vetting of consortium members or the safeguarding and security review of information provided to those consortium members.

Agreement Officer's Role With Other Transaction Authority

AOs are warranted individuals with the authority to enter into, administer, or terminate OTs. AOs must possess a level of responsibility, business acumen, and judgement that enables them to operate in the relatively unstructured environment of OTs. AOs need not be contracting officers, unless required by the Component's appointment process. In accordance with OUSD(A&S) guidance, organizations with OT authority ensure AOs are appropriately designated by the Head of Contracting Activity and receive the training needed to be successful. These DoD organizations are required to provide appropriate oversight and have processes in place to ensure that AOs do not bind the Government in OT agreements that exceed their warrant authority.[12]

[10] The OUSD(A&S) OT Guide states that the applicable DoD security requirements are DoD 5220.22-M and DD Form 441 for classified information and DoDI 8582.01, DoDM 5200.01 Volume 4, and NIST SP 800-171 for controlled unclassified information.

[11] DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," October 15, 2018.

[12] OUSD(A&S) memorandum, "Authority for Use of Other Transactions for Prototype Projects Under 10 U.S.C. § 2371b (2018)," November 20, 2018.

Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls.[13] We identified internal control weaknesses related to tracking OTs awarded through a consortium, awarding OTs in accordance with applicable requirements, negotiating CMO fees, and the security of the information provided to consortium members.

We will provide a copy of the final report to the senior official responsible for internal controls in the Office of the Under Secretary of Defense for Acquisition and Sustainment.

[13] DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013, reissued with Change 1 on June 30, 2020.

Finding

Other Transactions Need Additional Guidance and Oversight

DoD contracting personnel did not always plan and execute OTs awarded through consortiums in accordance with OT laws and regulations. Specifically, we reviewed 13 base OT awards, valued at $24.6 billion, and determined that DoD contracting personnel did not:

- Properly track OTs awarded through consortiums, and have an accurate count of OTs or the associated dollar values. This occurred because FPDS-NG was not set up to properly account for OTs awarded through a consortium or track the individual projects awarded through the consortiums. Further, there is no guidance on how contracting personnel should award or report the individual projects awarded through a consortium.
- Consistently award OTs in accordance with applicable laws and regulations. This occurred because the DoD is allowed flexibility for awarding OTs and there is very little guidance or training on awarding OTs through a consortium.
- Have a consistent basis for negotiating the CMO fees associated with managing a consortium. This occurred because there is no guidance on CMO fees and contracting personnel negotiate the fee as part of the award process.

In addition, DoD personnel did not ensure the security of controlled or restricted information. This occurred because DoD personnel relied on CMOs to vet consortium members and ensure proper safeguarding of controlled and restricted data. Further, the DoD does not require that consortium members be registered in the System for Award Management (SAM) and there is no requirement to perform a security review of the accumulation of military prototype technical information disseminated to consortium members.

As a result, DoD officials do not have access to important information associated with OTs awarded through consortiums, such as which contractor received the OT award and the specific costs associated with funded OT projects. Without this information, the DoD does not have the necessary oversight into the projects it is funding, which may hinder its ability to make important real-time decisions that enhance mission effectiveness. Additionally, the DoD may not always obtain the best value or properly apply OT requirements to ensure DoD Components are

responsibly investing in technologies that produce longstanding capabilities to support lethality within its current funding. Furthermore, not properly protecting sensitive prototype data from our adversaries could increase the risk to our national security.

Tracking Other Transactions

The DoD did not properly track and could not readily account for all OTs awarded through consortiums. Public Law 115-232 requires the Services and Defense Agencies to collect data on the use of OTs.[14] The Assistant Secretary of Defense for Acquisition is required to analyze and leverage the data collected to update policy and guidance related to OTs.[15] Further, OUSD(A&S) requires contracting officials to track OTs in the FPDS-NG.[16] The DoD could not properly track OTs awarded through consortiums because FPDS-NG was not set up to properly account for OTs awarded through a consortium or track individual projects awarded through consortiums. Furthermore, DPC did not issue guidance on how the Services should award or report OTs using consortiums. Since FPDS-NG was not properly set up to account for OTs awarded through consortiums, DPC personnel stated that they implemented interim procedures for collecting consortium-related data to allow for timely reporting.

Federal Procurement Data System Tracking

The DoD did not properly track and did not have an accurate count of all OTs awarded through consortiums in FPDS-NG. There are two types of OTs: stand-alone OTs, and OTs awarded through consortiums. A stand-alone OT is a single OT project awarded directly to the contractor performing the work, whereas OTs awarded through consortiums are an OT base agreement awarded to a management organization with the intent to award several OT projects through the organization to the members of the consortium. FPDS-NG does not provide the capability to differentiate between a stand-alone OT and an OT awarded through consortiums or track the individual projects awarded through the consortiums. For a consortium, the contracting office awards a base OT agreement, with either an estimated ceiling, unlimited value, or no value, to a CMO. However, there was no consistency on how to report the value in FPDS-NG,

The DoD did not properly track and did not have an accurate count of all OTs awarded through consortiums in FPDS-NG.

[14] Public Law 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019."

[15] The Assistant Secretary of Defense for Acquisition falls under the Under Secretary of Defense for Acquisition and Sustainment. The Principal Director, Defense Pricing and Contracting, falls under the Assistant Secretary of Defense for Acquisition.

[16] Office of Under Secretary of Defense Memorandum, "Reporting Other Transactions to the Federal Procurement Data System," September 7, 2018.

and each contracting office may report the information differently. For the most part, contracting personnel report the estimated ceiling as the OT value in FPD-NG, even though the actual value may never reach that amount. However, one OT in our sample had no ceiling or estimate included in the base agreement. Contracting personnel reported the dollar value in FPDS-NG as $999,999,999. The actual value of the projects awarded under the OT was $41.6 million, but, with no ceiling, had the potential to reach any amount. In another example, contracting personnel reported an agreement value in FPDS-NG as $10 million when the actual agreement had no ceiling value or estimate. The value of the projects awarded under the OT was higher than the reported amount, at $11.3 million, in the first year.

When contracting personnel enter the base agreement awarded to a consortium into FPDS-NG with the estimated value, it appears to be a stand-alone agreement, or one OT project. However, there can be multiple projects awarded to consortium members through the base agreement and there is no consistency in how contracting personnel award the OTs or report that information in FPDS-NG. Specifically, contracting offices awarded projects as either task orders or modifications to the base agreement and each did so differently, as shown in the following examples.

- Most Navy contracting offices awarded projects as task orders to one member; however, one Army contracting office issuing task orders awarded a single project to up to six different members. The members all completed different work on the project, but contracting personnel included it all in one task order.
- Other contracting offices awarded projects as a modification to the base agreement and some modifications included information related to multiple projects. To help track the OT projects awarded through a consortium when using modifications, some contracting personnel maintained internal tracking spreadsheets on individual hard drives or share drives and not as part of the official agreement files.
- Contracting personnel at one site stated that they were working toward awarding each project as an individual task order instead of modification for better tracking. Another contracting office in our sample changed how contracting personnel awarded projects off of the base agreement, from awarding projects as modifications to awarding projects as delivery orders for better tracking purposes.
- At another contracting site, contracting personnel issued each project awarded through the base OT its own separate contract number instead of awarding projects through modifications or delivery orders. In FPDS-NG, each project appeared to be a stand-alone OT and not an OT awarded

through a consortium. Without the internal contracting office tracking spreadsheet, there was no way in FPDS-NG to know that contracting personnel awarded the projects under the same base agreement.

Furthermore, since contracting personnel awarded projects to consortium members under the base agreement by using task orders or modifications, there was no way to tell how many OT projects contracting personnel awarded in FPDS-NG. In addition, when a contracting office awarded an OT through a consortium, the award went to the CMO and not the member performing the work. Therefore, in FPDS-NG, there was no way to know which contractor performed the work.

This occurred because FPDS-NG was not set up to properly account for OTs awarded through a consortium and the DoD and the Services did not issue any guidance on how contracting personnel should award or report the individual projects awarded through consortiums. As a result, the numbers reported in FPDS-NG were not accurate, as shown in the following sample items.

- Seven Army sample items valued at $22.4 billion in FPDS-NG were actually 503 OT projects awarded through seven consortiums, with a value of $8 billion.
- Three Department of the Navy sample items valued at $1.1 billion in FPDS-NG were actually 72 OT projects awarded through three consortiums, with a value of $95 million.
- Three Air Force sample items valued at $1.1 billion in FPDS-NG were actually 143 OT projects awarded through three consortiums, with a value of $627 million.

Our sample of 13 base OTs awarded through consortiums, valued at $24.6 billion in FPDS-NG, were actually 718 OT projects awarded through consortiums, with a value of $8.7 billion.

In total, our sample of 13 base OTs awarded through consortiums, valued at $24.6 billion in FPDS-NG, were actually 718 OT projects awarded through consortiums, with a value of $8.7 billion based on the information in the agreement files. Therefore, the number of OT projects awarded was much higher than the number reported based on how contracting personnel input the awards into FPDS-NG. Further, since contracting personnel typically input the totals at the estimated ceiling amount, the actual dollar value was lower than what appeared in FPDS-NG. In addition, one agreement for $2 billion was shown twice in FPDS-NG due to an error that occurred when the agreement was entered into the site's contracting system, and which contracting personnel could not change after award. That error alone overstated the value in FPDS-NG by $2 billion and appeared to be two OT agreements instead of one.

Public Law 115-232 requires the Assistant Secretary of Defense for Acquisition to analyze and leverage the data collected to update policy and guidance related to the use of OTs.[17] Without accurate information reported in FPDS-NG, Assistant Secretary of Defense for Acquisition personnel cannot make appropriate decisions on policy and guidance for OTs. Although the intent of OTs is to allow flexibility, the DoD needs consistent procedures for awarding and tracking OTs for more accurate reporting. Therefore, Defense Pricing and Contracting (DPC) should develop policies outlining how the Services should award and track OT projects when using consortiums, and whether contracting personnel should award projects using delivery orders, modifications, or some other method, when awarding projects to consortiums. Further, DPC should work with the General Services Administration to update FPDS-NG to more accurately capture data related to OTs awarded through consortiums.

Annual Report to Congress

Public Law 115-232 also requires that beginning on December 31, 2018, the Secretary of Defense will submit a report on the DoD's use of OT authority, covering the preceding fiscal year, to the congressional defense committees no later than December 31 each year.[18] Each report is required to summarize and display the data collected on the nature and extent of the use of the authority, including summary and detail information showing organizations involved, quantities, and amounts of payment; purpose, description, and status of projects; and highlights of successes and challenges using the authority, including case examples. DPC is the office responsible for preparing the report. DPC personnel did not complete the FY 18 report, due December 31, 2018, until November 2019. The FY 2019 report was not complete until April 2020. Therefore, the congressional committees are not receiving timely information to make appropriate decisions on the use of OTs.

The congressional committees are not receiving timely information to make appropriate decisions on the use of OTs.

DPC personnel noted the complexities of compiling the information requested for the report, since FPDS-NG does not capture all of the required information. Personnel had to perform manual data calls to the DoD Components to collect the information for the report. The FY 18 report also stated that the DPC is working with the Components to establish standard reporting formats to improve future collection of OT data. The planned format is intended to improve transparency

[17] Public Law 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019."
[18] Public Law 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019."

and accountability for OT use by establishing an OT identifier numbering system to increase visibility and tracking of OT actions, including consortium arrangements. DPC personnel stated that they are working on a better way to track consortiums in FPDS-NG, but noted that most changes in FPDS-NG take about 1 year, and they did not anticipate any changes in the near future.

The audit team had similar issues obtaining a universe of OTs awarded through a consortium. We could not obtain a universe through FPDS-NG, and therefore sought this information from each of the Services. The Air Force tracks OTs awarded through consortiums outside FPDS-NG in their SharePoint site and was able to provide us with a universe. However, the Army and Navy did not maintain this information. To obtain a universe, Army and Navy personnel had to reach out to each of their contracting offices to determine which OTs reported in FPDS-NG were OTs awarded through consortiums. Due to the method for awarding OTs through consortiums, contracting personnel had to maintain their own tracking spreadsheets to track projects awarded to consortiums. However, contracting personnel made tracking errors that could have created inaccuracies in the information reported to DPC. For example, contracting personnel for one agreement mistakenly reported an extra project for $50 million on their internal tracking spreadsheet for a base OT. When asked about the project, since the OT files did not include supporting information, contracting personnel stated it was an error and removed the project from their tracking spreadsheet. In addition, for the same agreement, the values in the tracking spreadsheet did not match the information in the contract files. Specifically, the agreements officer overstated the approved value in the spreadsheet by $25.3 million compared to the agreement files and understated the obligated value by $17.3 million. At another site, contracting personnel listed the value of one project on their tracking spreadsheet at $37,695; however, based on the agreement files, the actual value of the project was approximately $37 million.

DPC personnel stated that they implemented an interim solution pending the FPDS-NG update to meet congressional reporting requirements. Specifically, the Air Force established a SharePoint page to allow for continuous data collection and reporting. DPC provided this reporting template to the Services and Components for tracking and reporting all congressionally mandated reporting elements.

Awarding Other Transactions

DoD contracting personnel did not always award OTs in accordance with applicable laws and regulations. Specifically, DoD contracting personnel did not always compete base OT awards to the maximum extent practicable or maintain documentation to support that the agreement met the requirements to use an OT and other contracting decisions. In addition, DoD contracting personnel did not uniformly implement how they applied approval authority levels required for OTs. Furthermore, contracting personnel did not always include language to allow for agency-level protests. This occurred because DPC provided little guidance for awarding OTs through consortiums and the guidance for applying the approval authority thresholds is unclear. Further, there is no DoD-level training specific to awarding OTs using consortiums, and no DoD-level requirements to be an AO for OTs.

DoD contracting personnel did not always award OTs in accordance with applicable laws and regulations.

Competitive Award and Documentation of Other Transactions

DoD contracting personnel did not always compete base OTs to the maximum extent practicable as required by 10 U.S.C. § 2371b (2018) and did not always maintain documentation to support the use of an OT or award decisions.[19]

For example, Marine Corps contracting personnel did not use competitive procedures when they awarded a base OT agreement to one CMO. Specifically, Marine Corps contracting personnel researched the capabilities of eleven different consortiums and compared the capabilities with the technology focus areas planned for the base OT agreement. From that comparison alone, without any pricing information, Marine Corps personnel contacted the CMO that managed the two consortiums that met their technology focus area needs and established a base agreement. Marine Corps contracting personnel did not issue a solicitation to request proposals from the CMO. A proposal would have given the CMO a chance to tell the Government what they could provide and how much it would cost; however, Marine Corps contracting personnel made the decision based on their own research, making this a sole-source award with no justification in the contract files.

Contracting personnel made the decision based on their own research, making this a sole-source award with no justification in the contract files.

[19] 10 U.S.C. § 2371b (2018).

In addition to the lack of competitive procedures or justification for that decision, Marine Corps contracting personnel did not maintain any documentation to support that the agreement fell within the authority to use an OT or to support any other contracting decisions. The only documentation maintained was the market research spreadsheet and the base agreement. The agreement files should contain documentation to support the use of the OT authority typically with either an acquisition approach or determinations and findings, which outline how the specific agreement will comply with those laws and regulations. Also, the contract file had no evidence of higher-level reviews and approvals, including legal reviews of the selection process.

Although there is no requirement to maintain specific documentation in an agreement file, the guidance does require documentation to support the rationale for Government investment decisions. The OUSD(A&S) OT Guide allows agencies flexibility for awarding OTs; however, this process was not fair or transparent and there was no supporting documentation in the agreement files to justify the decisions made.[20] Competition is a way to see all available options and potentially reduce the price paid by the Government. Without competition or supporting documentation, the Government may not have received the best value or justified the use of the OT authority. The OUSD(A&S) OT Guide did not provide guidance related to the award of the base OT agreements. Therefore, DPC should reinforce guidelines or provide additional best practices to ensure OTs awarded through consortiums use competition to the maximum extent practicable, as required. DPC should further implement additional guidance or best practices that ensure contracting personnel maintain documentation for major decisions made to support the award of an OT agreement in the OT agreement file.

Other Transaction Approval Authority

DoD contracting personnel did not uniformly implement the application of approval authority levels required for OTs. Section 2371b, title 10, U.S.C, 2018 implements approval levels required for awarding OTs, and OUSD(A&S) issued further guidance on those requirements.[21] However, the guidance is unclear and contracting personnel implemented it differently and based the level of approval on their interpretation of the guidance.

Section 2371b, title 10, U.S.C., 2018 includes the approval authority required based on the value of a transaction for a prototype project, and any follow-on production contract or transaction awarded pursuant to subsection (f). Section 2371b, title 10, U.S.C., 2018, subsection (f) states a transaction includes all individual prototype

[20] OUSD(A&S) OT Guide, November 2018.

[21] 10 U.S.C. § 2371b (2018).

sub-projects awarded under the transaction to a consortium.[22] According to 10 U.S.C. § 2371b (2018), a transaction for a prototype project valued at from $100 million to $500 million (including all options) must be approved by the senior procurement executive for the agency, and transactions over $500 million (including all options) require approval by OUSD(A&S). A November 20, 2018 OUSD(A&S) memorandum also outlines the approval levels, adds that transactions up to $100 million must also be approved by the senior procurement executive, and states that authorities are non-delegable above $100 million; therefore, the Services can delegate approval authority for transactions under $100 million. The memorandum also provides further guidance on how the OTs will be measured for the purposes of assessing compliance with the authority.[23] The memorandum states that OTs will be measured based on the value of each transaction, rather than the total value of all OTs that might be executed in a prototype project. That is, a prototype project may consist of multiple transactions to the same or different parties, each of which contracting personnel shall consider separately when considering dollar thresholds. Transaction value shall include all options with prices established in the OT as awarded, as well as the amount associated with any cost-sharing borne by the contractor. Regardless of value, a separate OT approval will be required for each phase and separately within a phase for each transaction.

DoD contracting personnel interpreted this guidance differently and sought approval for OTs awarded through consortiums multiple ways.

DoD contracting personnel interpreted this guidance differently and sought approval for OTs awarded through consortiums multiple ways, including: (1) approval based on the estimated dollar value for the entire base OT; (2) per project awarded under the base OT; (3) each phase of a project awarded under the base OT; or (4) approval per performer when multiple performers were awarded the same prototype project under the base OT. The following examples illustrate some of the multiple interpretations of the guidance.

- Air Force contracting personnel obtained approval for the total ceiling value of the base OT agreement, which included an estimate for all projects to be awarded under that base agreement. Specifically, Air Force contracting personnel obtained approval for a base OT agreement with a ceiling of $1.41 billion, approved by the Under Secretary of Defense

[22] Section 2371b, title 10, U.S.C., 2018, was updated on December 12, 2017, by Public Law 115-91, "National Defense Authorization Act for Fiscal Year 2018," by changing the wording "for a prototype project" to "for a transaction for a prototype project" and adding "A transaction includes all individual prototype sub-projects awarded under the transaction to a consortium of United States industry and academic institutions."

[23] OUSD(A&S) memorandum, "Authority for Use of Other Transactions for Prototype Projects Under 10 U.S.C. § 2371b (2018)," November 20, 2018.

for Research and Engineering. Therefore, this contracting office did not obtain approval at the transaction or project level, but rather, for all potential projects they planned to award under this base agreement.

- Army contracting personnel obtained approval for one project awarded under a base OT agreement. Specifically, contracting personnel obtained approval for a 3-year, cost plus fixed fee project awarded to one consortium member for $490 million from the Senior Procurement Executive, in accordance with the thresholds established in 10 U.S.C. § 2371b (2018). Therefore, this contracting office obtained approval for the entire project as one transaction.
- Army contracting personnel obtained approval for the first phase of a three phase project. Specifically, contracting personnel awarded a prototype OT to a consortium member with three phases planned; each phase contingent on the successful completion of the previous phase. Contracting personnel obtained approval for only phase one of the project valued at $7.3 million, and approved by the Senior Contracting Official, per the May 2, 2019 Army Delegation of Authority.[24] The value of phase two was estimated at $102 million and phase three was estimated at $117 million, for a total project value of $226 million. Therefore, had Army contracting personnel interpreted the guidance differently and obtained approval for the entire project, it would have required the approval of the Senior Procurement Executive , in accordance with the thresholds established in 10 U.S.C. § 2371b (2018).[25]
- Army contracting personnel obtained three separate approvals for three transactions awarded under one project, instead of obtaining approval for the total value of the project. Specifically, three consortium members were selected to work on separate solutions for the same prototype project with the intent to select at least one member to continue on to additional phases once phase one was complete. Each proposal was less than $50 million for all three phases, and therefore, approved by the Senior Contracting Official, per the May 2, 2019 Army Delegation of Authority. However, if Army contracting personnel had obtained approval for the entire prototype project to include awards to all three separate consortium members, the total project value would have exceeded $50 million, and required approval by the Head of the Contracting Activity, per the delegation.

[24] By Delegation of Authority dated April 18, 2019, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) delegated this authority to the Head of Contracting Activity (HCA) for the Army Contracting Command (ACC). By Delegation of Authority dated May 2, 2019, the HCA-ACC further delegated this authority to the Senior Contracting Official (SCO), ACC- New Jersey. This Delegation of Authority states that approval for proposed transactions of greater than $50 million to $100 million is delegated to the HCA while $50 million or less is delegated to the SCO.

[25] 10 U.S.C. § 2371b (2018).

Therefore, DoD guidance is unclear on how contracting personnel should determine the value of an OT project and the level of approval required. Along with the DoD not properly tracking or having a true count or dollar value of all OTs awarded through consortiums, projects may not always be approved at the same authority level, preventing DoD leadership from having the intended visibility over OTs. Therefore, DPC should clarify its policy for determining the approval level required for project awards when using consortiums and ensure the guidance is uniformly applied and implemented by contracting personnel.

Projects may not always be approved at the same authority level, preventing DoD leadership from having the intended visibility over OTs.

Protests of Other Transactions

DoD contracting personnel did not always include language or clauses to allow for agency-level protests. Additionally, the DoD does not have a protest process in place for OT awards. Current DoD guidance states that while bid protests are rare for OTs, agencies should be mindful of the possibility. The OUSD(A&S) OT Guide states that agency-level protests are possible if the agency chooses to include language in solicitations that describe the procedures; however, there is no requirement to include this language.

For example, Army contracting personnel did not include agency-level protest language in the solicitation for a base OT agreement, initially valued at $2 billion and later increased to $10.2 billion. Following award of this agreement, an unsuccessful offeror protested the terms of the solicitation, stating that it improperly provided for the award of an OT agreement rather than a procurement contract, among other complaints. Army contracting personnel determined that this solicitation did not allow for agency-level protests, and responded by issuing a letter to the protestor that provided an explanation of the competitive procedures used, feedback on the protestor's unsuccessful proposal, and addressed the protestor's other concerns. However, the protestor went on to submit a formal protest to the Government Accountability Office (GAO), which the GAO later dismissed. In its decision, the GAO concluded that it generally does not review solicitation or award protests for OT agreements, and that the protest was untimely.

Contracts subject to the FAR and Defense Federal Acquisition Regulation, unlike OTs, have a formal protest process in place that typically goes through the GAO, or directly to the U.S. Court of Federal Claims. FAR-based contracts must also include two contract clauses in the solicitation that reference the protest process. The OUSD(A&S) OT Guide states that the GAO has limited jurisdiction to review

OT decisions, and protests to the GAO on OT awards are rare. Protests to the U.S. Court of Federal Claims are also possible, but rare. Since OTs are not subject to the FAR, the DoD does not require the inclusion of specific protest clauses or language within the OT solicitation process. However, per 10 U.S.C. § 2371b (2018), prototype OTs are a streamlined method for transitioning into production without competition. Without guidance to include necessary agency-level protest language in solicitations and by not addressing concerns from potential offerors, contracting personnel may not have a fair and transparent process for awarding OTs and may limit competition. Such guidance would ensure the process is fair regarding scrutiny, while not limiting the flexibility allowed by the use of OTs. Therefore, DPC should assess and determine whether it will require the inclusion of basic protest language in OT solicitations and establish processes or best practices to address OT protests.

Without guidance to include necessary agency-level protest language... contracting personnel may not have a fair and transparent process for awarding OTs and may limit competition.

Agreements Officer Training and Warrant Requirements

DoD contracting personnel did not always award OTs in accordance with applicable laws and regulations because the DoD lacks sufficient training for awarding OTs through consortiums and there are no DoD-level requirements for training or warranting AOs. OTs provide DoD contracting personnel valuable flexibility when awarding through consortiums, but there is very little training to ensure consistency throughout the DoD.

Section 2371, title 10, U.S.C., 2018, requires the DoD to ensure that personnel involved in the award or administration of OTs are afforded opportunities for adequate education and training and requires the establishment of minimum levels and requirements for acquisition certification programs.[26] Section 2371, title 10, U.S.C., 2018, is specific only to research OTs, and there are no specific training requirements for prototype OTs. However, the Defense Acquisition University (DAU) offers Continuous Learning Course (CLC) 066 "Other Transactions," previously DAU CLC 035 "Other Transaction Authority for Prototype Projects."[27] DAU also offered CLC 102 "Administration of Other Transactions" until October 10, 2018. Available DAU OT training only includes a small section on OTs awarded through consortiums; however, there is no training that focuses solely on OTs awarded through a consortium. While the U.S.C. requires training

[26] 10 U.S.C. § 2371b (2018).

[27] DAU CLC 066 replaced DAU CLC 035.

to be available, there is not a DoD-level requirement to take the training. The OUSD(A&S) OT Guide does not provide guidance on required AO training.[28] Therefore, the DoD is relying on the Services to determine the process for appointing AOs and required training.

The Army was the only Service to provide a Service-wide training requirement for two DAU OT courses, DAU CLC 035 and CLC 102. The Army issued the guidance on October 2, 2018, but DAU retired CLC 102 on October 10, 2018, making the guidance outdated. While the Army required the two DAU courses, some Army AOs listed training courses that were not the Army-required courses. Therefore, Army contracting personnel did not ensure that AOs took required training prior to appointment. Air Force and Navy personnel did not have any Service-wide training requirements, but some commands within those Services issued specific AO training requirements or other optional training.[29]

Furthermore, the OUSD(A&S) OT Guide states that an AO is a warranted individual with authority to enter into, administer, or terminate OTs and that each DoD Component with contracting authority that enters into OTs should establish a formal process for selecting and warranting AOs. This process should ensure that AOs have demonstrated expertise in executing, managing, or administering complex acquisition instruments, and can function in a less structured environment where prudent judgment is essential. The OUSD(A&S) OT Guide does not state specific AO eligibility criteria or state whether a separate AO warrant is required. The Air Force Materiel Command issued a memorandum with minimum requirements for AOs and AO warrants including the requirement for a separate AO warrant, but another Air Force office in our sample did not have any additional guidance for becoming an AO.

Without overall DoD training and guidance specific to consortiums and AO requirements, AOs will continue to award OTs that are not in accordance with applicable laws and regulations through consortiums. Implementing DoD-level training and AO requirements will help bring more consistency to the OT process, without impacting the flexibility of using OTs. Personnel awarding and administering OTs need proper warranted authority to enter into OTs, and proper training. Therefore, DPC should establish DoD-level training specific to awarding OTs through consortiums, ensuring that AOs receive training to demonstrate expertise in executing, managing, and administering complex

[28] OUSD(A&S) OT Guide, November 2018.

[29] The Air Force issued a new policy memorandum in August 2020, after we conducted our review that implemented requirements for AOs. Specifically, the memorandum stated that to be appointed as an AO, the candidate must be a warranted contracting officer and must complete DAU course CLC 066, Other Transactions.

acquisition instruments, and can function in less-structured environments where prudent judgment is essential. Further, DPC should implement DoD-level guidance establishing a standard AO delegation and warrant process.

Consortium Management Fees

DoD contracting personnel have no consistent basis for negotiating CMO fees, amounting to millions of dollars, associated with managing a consortium. This occurred because there is no guidance on CMO fees including the negotiation of fees as part of the award process. CMOs provide a service to the Government in exchange for a fee when the DoD awards an OT using a consortium. The CMO is generally responsible for managing and recruiting members, acting as the point of contact between the Government and members, administering day-to-day activities and managing oversight functions. CMOs can manage more than one consortium. We reviewed 13 base OT agreements awarded to four different CMOs and one Government-managed consortium, and each had a different management fee structure.

DoD contracting personnel have no consistent basis for negotiating CMO fees, amounting to millions of dollars, associated with managing a consortium.

Contracting personnel negotiate the fee with the management organization to include in the base contract. Based on our review of the sample agreements with the different CMOs, the fee structures vary, even between consortiums managed by the same CMO. The fees may include a flat-rate start-up fee, be a set percentage rate or fluctuate based on project or dollar amount, include incentive fees, or be re-negotiated throughout the agreement. In some instances, the CMO earns the fee at the beginning of a project; for others, the contracting office pays the CMO fee based on the contractor meeting certain milestones established for the project.

For example, one CMO managed six of the consortiums in our sample, and each had a different fee structure. The following shows some of the different fee structures under the one CMO.

- For one agreement, the management organization earned a 5.6 percent fee. This agreement did not include a ceiling or total estimate for all projects to be awarded. However, we reviewed 4 of 33 projects awarded under this base agreement and the CMO has already earned $2.9 million on those 4 projects.
- A second agreement included a 4.9 percent fee, earning 3 percent upon award and the remaining 1.9 percent over the life of the project based on milestones. The ceiling price for this base agreement is $100 million; therefore the CMO has the potential to earn $4.9 million in fees.

- Another agreement included a 6 percent fee with a portion of the fee paid at award and the remaining fee throughout milestone completion based on the individual terms of each prototype project. The original ceiling of the agreement was $100 million. However, contracting personnel increased the ceiling to $500 million, and then to $1.4 billion. Contracting personnel renegotiated the consortium management fee twice along with the ceiling increases, first from 6 percent to 3.5 percent and then again down to 2.5 percent. With a 2.5 percent fee, the CMO has the potential to earn at least $35 million; however, that amount could be more since the initial fees were a higher percentage.
- The fourth agreement included a 1.55 percent fee. While much lower than the other agreements managed by the CMO, the base agreement has an estimated value of $10 billion. Even at only 1.55 percent, the management organization has the potential to earn $155 million in fees.

In another example, a base agreement included a 5 percent flat fee that contracting personnel can renegotiate yearly. Contracting personnel later renegotiated the fee to a 5 percent fee or a 3.5 percent fee per project, dependent on the effort. In addition, the CMO will receive individual payments for the first 3 years of the agreement at $575,000 for FY 2018, $375,000 for FY 2019, and $275,000 for FY 2020, totaling $1.2 million. This project did not include a ceiling or total estimate for all projects. However, we reviewed 5 out of 29 projects awarded for this base agreement and the CMO received a total of $9.8 million for those 5 projects at the time of the review, in addition to the flat rate payments totaling $1.2 million.

Furthermore, another base agreement included a fixed fee of 4.5 percent per project, with two potential incentive fees of 0.5 percent each, for a total potential of 5.5 percent. The agreement stated that the CMO would earn the first incentive fee if they awarded the project within 45 days and the second incentive fee if they completed the project on time. The contracting office modified the base agreement to increase the ceiling to $400 million and modified the fee structure as well. Under the new fee structure, the CMO would earn a base fee of 4.5 percent with an additional 1 percent incentive for projects awarded up to $100 million for a total potential of 5.5 percent. Therefore, the CMO could potentially earn $5.5 million in fees for projects up to $100 million. For projects above $100 million, the CMO could earn a base fee of 4 percent per project and an additional 1 percent incentive fee for projects completed on time, for a total potential of 5 percent. If the agreement reaches the full $400 million, the CMO could earn another $15 million, for a total fee of $20.5 million.

Additionally, a base agreement with a different CMO included a 4.3 percent fee per project. Contracting personnel stated that the CMO later volunteered to adjust the fee down to 3.8 percent; however, there was no documentation to support this adjustment. The total estimated amount of all projects under this base agreement is $2 billion over a 10-year term; therefore, based on the 3.8 percent fee the CMO could potentially earn $76 million in fees. We reviewed 4 out of 84 projects awarded and the CMO earned $7 million in fees for the 4 projects we reviewed.

Based on the 3.8 percent fee the CMO could potentially earn $76 million in fees.

The CMOs earn millions of dollars in fees to manage the consortiums, and the DoD did not issue any requirements or guidance related to establishing the fees. Without any guidance or requirements, there is no consistency in how the fees are established and it is up to individual contracting office negotiations. Based on the 13 base OT agreements in our sample, contracting personnel awarded management fees from 1.5 percent to 6 percent. While there will be some variation and contracting personnel should be able to negotiate the terms based on each agreement, some basic guidelines or best practices will help ensure the Government is getting the best value when awarding to a CMO – for example, to set an acceptable range of percentages for fees or to require fee payments after the successful completion of milestones. Therefore, DPC should implement guidelines or best practices for contracting personnel to consider when negotiating consortium management fees to ensure the DoD receives the best value when working with a CMO.

Security for Other Transactions Awarded Through Consortiums

DoD personnel did not ensure the security of controlled or restricted information provided to consortium members. This occurred because DoD personnel relied on CMOs to vet members and ensure proper safeguarding of controlled and restricted data. Further, the DoD does not require consortium members to be vetted for security purposes prior to becoming a member of a consortium, or to be registered in SAM. Additionally, DoD personnel are not always reviewing the accumulation of technical information disseminated to consortium members, and in many cases only performing security reviews on a

DoD personnel did not ensure the security of controlled or restricted information provided to consortium members.

per-project basis for OTs awarded through consortiums. As a result, there is a risk that sensitive information could be distributed to those that do not meet applicable security requirements.

Security of Controlled and Restricted Information

DoD contracting personnel relied on CMOs to ensure consortium members met the applicable security requirements and completed applicable forms prior to the CMO providing controlled or restricted data needed to bid on a project. DoD contracting personnel stated that they do not oversee which members are receiving the information to ensure recipients meet applicable requirements. For example, the Air Force issued a request for proposal for a prototype OT project that stated, due to the nature of the data being provided in the attachments to the request, that prospective consortium members must have a completed and approved DD Form 2345 to receive the attachments. A DD Form 2345, required by DoD Directive 5230.25, certifies that a consortium member is a qualified U.S. contractor and can obtain access to restricted data to bid or perform on a contract with a U.S. Government agency. However, Air Force contracting personnel relied on the CMO to ensure required security requirements were in place, stating that the CMO is responsible for verifying the DD Form 2345 prior to dissemination, and the Air Force does not receive a copy of the form until the proposal is submitted. Further, the DoD does not require that consortium members are vetted for security purposes prior to becoming a member of the consortium, and only one of the five CMOs in our sample performed such vetting.[30] Specifically, one CMO required the DD Form 2345 as part of the application process.

In another example, DoD contracting personnel released an Annual Technology Plan which included information for all potential projects for the fiscal year. The document was considered to be sensitive and marked as distribution-restricted to U.S. Government agencies and their contractors. Project awards are made to the CMO on behalf of the consortium member that will be completing the project. Because the Government does not contract directly with consortium members, it is unclear whether consortium members are considered Government contractors. While the program office performs a security review of the consolidated plan prior to release, it is relying on the CMO to ensure consortium members have met the applicable security requirements and completed applicable forms prior to the CMO providing controlled or restricted data in order to bid on a contract.

[30] The five CMOs include four CMOs and one Government-managed consortium.

Since the DoD did not establish controls or provide oversight of consortium member vetting, there is a risk that sensitive information could be distributed to those that do not meet applicable security requirements.

Since the DoD did not establish controls or provide oversight of consortium member vetting, there is a risk that sensitive information could be distributed to those that do not meet applicable security requirements. DPC should establish requirements to vet consortium members upon membership to identify which members meet applicable security requirements for future opportunities. In addition, DPC should establish controls to ensure that CMOs only disseminate controlled and restricted information to consortium members with proper security clearance.

System for Award Management Checks

In addition, DoD guidance does not address the requirement for OT consortium members to register in SAM, the system DoD contracting personnel use to confirm contractor information, such as exclusions from receiving Government contracts.[31] In one example, Army contracting personnel awarded an OT project to a foreign contractor in New Zealand without a SAM profile or AO and security office approval of the foreign company. Specifically, the Army base OT agreement stated that consortium members must have a current SAM profile, that all projects were restricted to U.S. contractors, and that foreign nationals required AO and security office approval, in accordance with DoD Directive 5230.25. However, Army contracting personnel identified that the foreign contractor did not have a current SAM profile and awarded the contract without any additional procedures in place to replace the lack of a SAM profile, and without AO approval or a security office review.

While most DoD AOs in our sample did check SAM prior to award, we found an example where an OT was awarded to a foreign member that was not registered in SAM. Without DoD requirements in place to check SAM or perform some verification or check of the contractor, there is a risk that the DoD will award OTs to consortium members that are excluded or do not meet applicable requirements to conduct business with the Government. DPC should provide guidance requiring contracting personnel to check SAM prior to the award of an OT through a consortium, to determine and document if a contractor is registered in SAM and not on the excluded parties list. For those contractors that are not registered in

[31] A company might be excluded from receiving Government contracts if it owes the Government money, violated certain Federal laws, or violated national security protocols.

SAM, DPC should provide additional review requirements that must be performed and documented prior to award to ensure consortium members are able to do business with the Government.

Aggregate Security Reviews

DoD personnel generally did not perform aggregate reviews of technical information disseminated to consortium members, and instead performed security reviews on a per project basis for OTs awarded through a consortium. Specifically, the DoD established base OT agreements with CMOs to award all OT projects for a particular focus area through the consortium managed by the CMO. Therefore, those consortium members received all solicitations and supplementary information for that focus area. DoD personnel provided a significant amount of information when issuing solicitations for prototype OTs needed to formulate a potential solution. Specifically, DoD personnel provided consortium members with a problem statement, area of need or interest, or capability gap with enough information to clearly articulate the need and allow for a wide range of innovative solutions.

DoD personnel generally did not perform aggregate reviews of technical information disseminated to consortium members, and instead performed security reviews on a per project basis.

For example, one CMO posted all project solicitation documentation to its public website. Each solicitation document included information relating to the current state of technology, critical technology gaps, project criteria, and funding profiles for a given project. While Navy contracting personnel determined that this information did not need to be released with limited distribution, the aggregate of all of the posted solicitation documentation shows a clear picture of Government interests in the electromagnetic spectrum, trusted microelectronics, and strategic missions hardware environments. Navy contracting files did not contain evidence of aggregate reviews of solicitation information.

In addition, some program offices consolidated all solicitations into a summary document that included potential projects for the fiscal year and provided it to consortium members. However, DoD personnel only performed security reviews of the individual project solicitations and did not review the summary document that included the aggregate of solicitation information being disseminated to all consortium members over time. For example, Army program personnel prepared an Objective Requirements Document (ORD) for the Aviation and Missile Technology Consortium OT. The ORD included each technology gap, technical requirement, and funding amount to be pursued in the fiscal year. Each requirement in the ORD included a background, purpose, proposed scope

of work, schedule, cost estimate, other relevant project details, data rights requirements, and points of contact for that requirement. Contracting personnel provided the ORD to the CMO, which sent it to all consortium members, posted it to the consortium's members-only website, and provided it with each solicitation. Several of the projects awarded under this OT were classified. Program, contracting, and security personnel stated that they had an Operational Security (OPSEC) Board that reviewed the ORD to ensure it did not include information from the Military Critical Technologies List but were not performing a full security review of the ORD or the aggregate of solicitations generated from it.[32] However, since then Army personnel noticed the potential for security risks and became concerned that the compilation of requirements could be sensitive as the consortium grew and more requirements were added. As a result, contracting and security personnel at this office stated that they began having the OPSEC Board review the compiled ORD requirements prior to release, and identify any potential sensitive information revealed by the compilation of information.

While the DoD does not require the review of aggregate solicitation information provided through consortiums, one program office determined that security review of the aggregate of information was necessary when consolidated summary information was provided and determined that the compiled information was sensitive. Army contracting personnel identified the potential for security risks and implemented an OPSEC Board review of the compiled information prior to release to identify potential sensitive information revealed by compilation as a best practice solution. Without requirements in place to review the aggregate of all solicitation information for prototypes, the DoD is unable to determine whether security risks exist associated with all members of a consortium receiving these voluminous planning documents. DPC should develop procedures to require security reviews of solicitation and supplementary information to include the aggregate of all the information provided in the solicitations to ensure potential sensitive information is not revealed by the compilation of information.

Without requirements in place to review the aggregate of all solicitation information for prototypes, the DoD is unable to determine whether security risks exist associated with all members of a consortium receiving these voluminous planning documents.

[32] The Military Critical Technologies List (MCTL) is a detailed compendium of information on technologies which the DoD assesses as critical to maintaining superior U.S. military capabilities. The MCTL contains definitions of thresholds that make technology critical to military operations, and the acquisition of any of these technologies by a potential adversary would lead to the significant enhancement of the adversary's military-industrial capabilities, to the detriment of U.S. security interests.

Conclusion

The intent of OTs is to allow DoD contracting personnel more flexibility and to seek opportunities with non-traditional defense contractors. However, additional controls are needed to ensure DoD contracting personnel plan and execute OTs awarded through consortiums in accordance with Federal laws and DoD policy, and to ensure the DoD can effectively track and oversee those OTs. The DoD can implement additional guidance, best practices, and training to ensure the Government obtains the benefits of using OTs, while still allowing the intended flexibility. Otherwise, DoD contracting personnel will continue to improperly track and award OTs awarded through consortiums. As a result, the DoD is providing an inaccurate count of OTs and the associated dollar values to OUSD(A&S) and Congress and cannot provide proper oversight of projects and funding to make necessary decisions and policy revisions. Additionally, the Government may not be obtaining the best value or properly applying OT requirements. Furthermore, CMOs earn millions of dollars for their role in the consortium process and the DoD needs additional procedures to ensure the Government achieves a fair price when using a CMO and achieving the best value. Lastly, the DoD must implement controls to ensure proper security over the information contracting personnel disseminate to CMOs and consortium members. While some information by itself may not be a threat to security, consortium members see an aggregate of information related to military prototype projects. Not protecting sensitive information could cause harm to national security and reveal the direction the DoD is heading with the prototype projects being developed.

Management Comments on the Finding and Our Response

Although not required to comment, the Director of Policy, Deputy Assistant of the Secretary of the Navy (Procurement) provided the following comments on the finding. For the full text of the Director's comments, see the Management Comments section of the report.

Director of Policy, Deputy Assistant Secretary of the Navy (Procurement) Comments

The Director stated the market research conducted by the Marine Corps and its review of consortiums that could meet the Marine Corps requirement provided a reasonable basis for not conducting formal competition. The Director also stated that the Department of the Navy does not take exception to the report conclusions.

Our Response

We do not agree that the market research conducted provided a reasonable basis for not conducting formal competition in this case. Marine Corps market research showed that there were enough qualified contractors for competition but contracting personnel chose not to use competition. Section 2371b, title 10, U.S.C., 2018, requires competition to the maximum extent practicable and the Marine Corps provided no documentation explaining how the decision was made to award the agreement as sole-source to one consortium, despite identifying multiple consortiums that could have potentially performed the work.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Principal Director, Defense Pricing and Contracting:

a. Develop policies outlining how the Services should award and track other transaction projects when using a consortium, and whether contracting personnel should award projects using delivery orders, modifications, or some other method, when awarding projects to a consortium.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will take steps to ensure tracking across DoD and update the OT Guide to address policies and procedures relevant to awarding OT projects under a consortium.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive and validate that the updates were made to the OT Guide and tracking information.

b. Coordinate with the General Services Administration to update the Federal Procurement Data System-Next Generation database to more accurately capture data related to other transactions awarded through consortiums.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC is seeking change to FPDS-NG through GSA to allow for consistent recording and tracking of OTs, including those issued through a consortium. DPC will amend the current data collection tool and implement data collection changes until FPDS-NG is updated.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive and validate the changes to the current data collection tool and the request for changes to FPDS-NG.

c. Reinforce guidelines or implement additional best practices to ensure other transactions awarded through consortiums use competition to the maximum extent practicable as required.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will update the OT Guide to reinforce the use of competition through an assessment of the competitive requirements used in OT consortiums to determine if competition is encouraged to the maximum extent practicable.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive and validate the updates to the OT Guide.

d. Implement additional guidance or best practices that ensure contracting personnel maintain documentation for major decisions made to support the award of an other transaction agreement in the other transaction agreement file.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will update the OT Guide to ensure guidance adequately addresses requirements. Further, DPC will ensure that the OT Guides requires the OT files contain sufficient documentation and rationale to explain major OT award decisions.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive and validate the updates to the OT Guide.

e. Clarify its policy for determining the approval level required for project awards when using consortiums and ensure the guidance is uniformly applied and implemented by contracting personnel.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will update the OT Guide. Specifically the OT Guide will clarify how to determine if approval of transactions awarded under consortium OTs are consistent with established dollar approval thresholds to ensure contracting personnel uniformly follow the process.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive and validate the updates to the OT Guide.

f. Assess and determine whether it will require the inclusion of basic protest language in other transaction solicitations and establish processes or best practices to address those protests of other transaction agreements.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will assess and determine whether protest language should be included in OT solicitations and if so, include revised language in the OT Guide update.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once DPC determines whether the language will be included in OT solicitations and if so, we will validate the updates to the OT Guide.

g. Establish Department of Defense-level training specific to awarding other transactions through consortiums that ensures Agreements Officers receive training to demonstrate expertise in executing, managing, and administering complex acquisition instruments, and can function in a less structured environment where prudent judgment is essential.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will work with DAU to establish training for awarding OTs and include specific training for awarding OTs through consortiums.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once DPC provides documentation demonstrating that it established specific training.

h. Implement Department of Defense-level guidance establishing a standard Agreements Officer delegation and warrant process.

Defense Pricing and Contracting Comments

The DPC Principal Director partially agreed with the recommendation and stated that DPC can provide overarching guidance, but the guidance must also permit DoD Component flexibility to manage the delegation and warranting process. DPC will collaborate with DoD Components to establish overarching standards for AO delegation and warranting procedures that maintain flexibility for Component workforce development and include those standards in the OT Guide update.

Our Response

Comments from the Principal Director addressed the specifics of the recommendation for overarching standards while maintaining flexibility for Component workforce development; therefore, the recommendation is resolved but will remain open. We will close the recommendation once DPC establishes the standards and we validate the updates to the OT Guide.

i. Implement guidelines or best practices for contracting personnel to consider when negotiating consortium management fees to ensure the Department of Defense receives the best value when working with a consortium management organization.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will update the OT Guide to provide guidance and best practices for evaluating proposed fee structures under consortiums.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive and validate the updates to the OT Guide.

j. Establish requirements to vet consortium members upon membership to identify which members meet applicable security requirements for future opportunities.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will address this issue to ensure consortium members meet applicable security requirements while continuing to attract non-traditional defense contractors.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we receive details on how consortium members will be vetted to validate that those requirements meet applicable security requirements.

k. Establish controls to ensure that the consortium management organization only disseminates controlled and restricted information to consortium members with proper security clearance.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will address the issue to ensure consortium members meet applicable security requirements.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we can validate that the controls DPC implement will ensure CMOs control dissemination of information to only members with proper security clearance.

l. Provide guidance requiring that contracting personnel check the System for Award Management prior to the award of an other transaction through a consortium, to determine and document if a contractor is registered in the System for Award Management and is not on the excluded parties list. For those contractors not registered in the System for Award Management, provide additional review requirements that must be performed and documented prior to award to ensure they are able to do business with the Government.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and state that while the consortium manager is required to be registered in SAM there is no requirement for consortium members to be registered. DPC will develop guidance requiring AOs to check SAM prior to OT prototype project awards to determine and document that consortium members are registered in SAM and not on the excluded parties list. If consortium members are not registered in SAM, DPC will provide additional review requirements to be performed and documented prior to award.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we can validate the guidance and requirements.

m. Develop procedures to require security reviews of solicitation and supplementary information, including the aggregate of all information being provided in the solicitations to ensure potential sensitive information is not revealed by the compilation of information.

Defense Pricing and Contracting Comments

The DPC Principal Director agreed with the recommendation and stated that DPC will develop procedures to promote security reviews of the solicitation package to prevent revealing potentially sensitive information.

Our Response

Comments from the Principal Director addressed all the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we can validate the procedures.

Appendix A

Scope and Methodology

We conducted this performance audit from September 2019 through February 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To complete the audit, we evaluated active OTs awarded through consortiums in FYs 2018 and 2019. We obtained a universe of OTs awarded through consortiums using FPDS-NG and then working with Service points of contact. The Army and Navy did not track which OTs were awarded through consortiums; therefore, we obtained a universe of all active OTs in FYs 2018 and 2019 from FPDS-NG and requested that the individual contracting offices identify which of those OTs were awarded through consortiums. The Air Force tracked which OTs contracting personnel awarded though consortiums through their SharePoint site and provided a universe of all active OTs awarded through consortiums in FYs 2018 and 2019. We combined the information provided to generate our universe of OTs awarded through consortiums active in FY 2018 and 2019.[33]

From our universe, we selected a non-statistical sample of the following 13 consortiums for review.

- Three Navy OT base agreements. Two were the highest dollar values awarded by the Navy, and one was the highest dollar value awarded by the Marine Corps.
- Three Air Force OT base agreements that were the highest dollar values awarded by the Air Force.
- Seven Army OT base agreements. Three were the highest dollar values awarded by the Army, two were the highest dollar values at different contracting sites, one was the highest dollar value from a consortium that was not already a part of our sample, and one was a consortium managed by the Government instead of a management organization.

We selected a higher number from the Army since the Army awarded a much higher number of OTs than the Navy or the Air Force. A base OT agreement awarded to a CMO can include multiple OT projects awarded under the base

[33] Since we identified errors with tracking in FPDS-NG and we worked with points of contact to help obtain a list of all OTs awarded through a consortium, there is a chance that we did not obtain a full universe.

agreement; therefore, we also selected a non-statistical sample of 57 individual OT projects based on auditor judgment awarded through the selected sample consortiums for review.

For each OT in our sample, we performed an in-depth review to determine whether contracting offices properly awarded and executed OTs in accordance with applicable laws and regulations. Specifically, we reviewed Federal and DoD criteria and guidance, as well as Service-specific procedures for awarding OTs through a consortium. We conducted site visits, interviewed contracting personnel, and reviewed OTA files to determine compliance with those procedures. We also reviewed OT file documentation to determine how contracting personnel maintain the files, what personnel and facility security requirements are in place to protect information released to members of consortiums, and if contracting personnel performed necessary oversight to ensure milestones were completed before making payments. Additionally, we conducted site visits, interviews, and reviewed documentation to determine the roles and responsibilities of consortium management groups, how the consortiums operate, and how consortium management group fees are structured and paid. Lastly, we conducted interviews and reviewed documentation to determine how personnel track OTs awarded through consortiums, and if available OT training met the intent of the U.S.C.

We reviewed the following Federal and DoD criteria.

- 10 U.S.C. § 2371, "Research Projects: Transactions other than contracts and grants," January 14, 2019
- 10 U.S.C. § 2371b, "Authority of the Department of Defense to carry out certain prototype projects," January 14, 2019
- Public Law 115-91, "National Defense Authorization Act for Fiscal Year 2018," December 12, 2017
- Public Law 115-232, "John S. McCain National Defense Authorization Act for Fiscal Year 2019," August 13, 2018
- "Other Transactions Guide" issued by the Office of the Under Secretary of Defense for Acquisition and Sustainment, November 2018
- "Other Transactions Guide for Prototype Projects" issued by the Office of the Under Secretary of Defense for Acquisition and Sustainment, January 2017
- Office of the Under Secretary of Defense Memorandum, "Authority for Use of Other Transactions (OT) for Prototype Projects Under 10 U.S.C. § 2371b," November 20, 2018
- Office of the Under Secretary of Defense Memorandum, "Reporting of DoD Use of OTs for Prototype Projects," March 19, 2019

- Office of the Secretary of Defense Memorandum, "Definitions and Requirements for Other Transactions Under Title 10, United States Code, Section 2371b," November 20, 2018
- Office of the Under Secretary of Defense Memorandum, "Reporting Other Transactions to the Federal Procurement Data System," September 7, 2018

Use of Computer-Processed Data

We used computer-processed data throughout the audit; however, we did not rely solely on the data and confirmed the accuracy of the data through source documentation. Specifically, we used data from FPDS-NG to obtain a universe of all active OTs in FYs 2018 and 2019 and worked with each Service to narrow the list down to OTs awarded through consortiums. The audit team selected a non-statistical sample of 13 base agreements and 57 associated projects to determine whether the DoD planned and executed OTs awarded through consortiums in accordance with applicable OTA laws and regulations.

We evaluated the OT agreements by reviewing Federal, DoD, and Service-level criteria, base agreement awards, and project level awards. Based on our reviews, we determined that the data used to identify the universe of FYs 2018 and 2019 OTs was not reliable for identifying the total number of agreements awarded through consortiums or the total agreement values. Therefore, we only relied on computer-processed data to assist in selecting the sample of base agreements to review.

Prior Coverage

During the last 5 years, the GAO issued two reports discussing the DoD's use of other transaction authority and the Army Audit Agency issued one report discussing Army use of other transaction authority.

GAO

Report No. GAO-20-84, "DoD's Use of Other Transactions for Prototype Projects has Increased," November 2019

> The GAO found that the DoD significantly increased its use of agreements known as other transactions for prototype projects from FYs 2016 through 2018. DoD data shows that companies typically not doing business with the DoD participated in 88 percent of the other transactions awarded during this time. In nine of the eleven prototype other transactions the GAO reviewed, DoD contracting personnel followed their components' established review policies before awarding other transactions.

Report No. GAO-16-209, "Federal Acquisitions, Use of 'Other Transaction' Agreements Limited and Mostly for Research and Development Activities," January 2016

The GAO found that Congress has authorized eleven Federal agencies to use other transaction agreements to help meet project requirements and mission needs. Ten of the eleven agencies have issued guidance to implement their authority, while the last agency is in the process of developing guidance. Most agencies cited flexibility as a primary reason for their use of other transaction agreements, and use agreements mostly for research, development, and demonstration activities. Other transaction agreements were a small proportion of most agencies' contracting and financial assistance activities for FYs 2010 through 2014.

Army

Report No. A-2020-0038-BOZ, "Other Transaction Authority Control Environment," February 27, 2020

The Army Audit Agency found that other transaction agreements did not always have appropriate safeguards to protect Government interests. AOs generally used proper designation authorities and addressed intellectual property rights. However, the agreements needed safeguards to ensure AOs or their representatives assessed and mitigated risks to make sure contractors could meet technical, schedule, and cost expectations; made sure contractors met security requirements; and ensured that invoices were supported and properly approved before payment.

Management Comments

Defense Pricing and Contracting

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

ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR PROGRAM DIRECTOR, ACQUISTION, CONTRACTING, AND SUSTAINMENT, OFFICE OF THE INSPECTOR GENERAL

SUBJECT: Response to the Department of Defense Inspector General's Audit of Other Transactions Awarded Through Consortiums (Project No. D2019-D000AX-0203.000)

This memorandum provides Defense Pricing and Contracting's (DPC) response to the subject report recommendations. DPC concurs with 12 of the 13 recommendations and partially concurred with one, as summarized in the attachment. We coordinated with the Military Services to prepare the consolidated responses and will work to update the Other Transactions Guide to address the recommendations.

My point of contact for this matter is [redacted], who may be reached at [redacted] or [redacted].

TENAGLIA .JOHN.M. [redacted] Digitally signed by TENAGLIA.JOHN.M. [redacted] Date: 2021.03.18 18:06:11 -04'00'

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

Defense Pricing and Contracting (cont'd)

Attachment

Defense Pricing and Contracting (DPC) Response to DoD IG Draft Audit of Other Transactions Awarded Through Consortiums (Project No. D2019-D000AX-0203.000)

Recommendation 1.a.: Develop policies outlining how the Services should award and track other transaction projects when using a consortium, and whether contracting personnel should award projects using delivery orders, modifications, or some other method, when awarding projects to a consortium.

Response: Concur. DPC will take appropriate steps to ensure tracking across the Department. The DoD Other Transaction (OT) Guide will be updated to address policies and procedures relevant to awarding OT projects under a consortium, recognizing different strategies may be appropriate for each OT project under a consortium to maintain the flexibility intended with the use of OTs.

Recommendation 1.b.: Coordinate with the General Services Administration (GSA) to update the Federal Procurement Data System-Next Generation (FPDS-NG) database to more accurately capture data related to other transactions awarded through consortiums.

Response: Concur. The Department is seeking a modification through GSA to change FPDS-NG to update the system to allow for consistent recording and tracking of OTs, including OTs issued under the Consortium model to capture the data related to OTs through consortiums. FPDS-NG changes have to be advocated for by the Department's Integrated Acquisition Environment representative and are resource-constrained and prioritized Federal-wide. As these modifications are being made to FPDS-NG, we will amend our current data collection tool and implement the necessary data collection changes until FPDS-NG can be updated.

Recommendation 1.c.: Reinforce guidelines or implement additional best practices to ensure other transactions awarded through consortiums use competition to the maximum extent practicable as required.

Response: Concur. The DoD OT Guide will be updated to reinforce the use of competition consistent with 10 U.S. Code 2371b through an assessment of the competitive requirements used in OT consortia to determine if competition is being encouraged to the maximum extent practicable.

Recommendation 1.d.: Implement additional guidance or best practices that ensure contracting personnel maintain documentation for major decisions made to support the award of an other transaction agreement in the other transaction agreement file.

Response: Concur. The DoD OT Guide will be updated to ensure guidance adequately addresses these requirements, and the OT file should contain sufficient documentation and rationale to explain major decisions made for award of an OT.

1

Defense Pricing and Contracting (cont'd)

Attachment

Recommendation 1.e.: Clarify its policy for determining the approval level required for project awards when using consortiums and ensure the guidance is uniformly applied and implemented by contracting personnel.

Response: Concur. The DoD OT Guide update will clarify how determinations for approval of transactions awarded under consortium OTs are accounted for consistent with established dollar approval thresholds to ensure a uniform process is applied by contracting personnel.

Recommendation 1.f.: Assess and determine whether it will require the inclusion of basic protest language in other transaction solicitations and establish processes or best practices to address those protests of other transaction agreements.

Response: Concur. DPC will assess and determine whether inclusion of protest language in solicitations for OTs needs to be changed, and, if so, include revised language in the DoD OT Guide update.

Recommendation 1.g.: Establish Department of Defense-level training specific to awarding other transactions through consortiums that ensures Agreements Officers receive training to demonstrate expertise in executing, managing, and administering complex acquisition instruments, and can function in a less structured environment where prudent judgment is essential.

Response: Concur. Consistent with the Under Secretary of Defense for Acquisition and Sustainment's Back to Basic initiative, DPC will work with DAU to establish training for awarding OTs, and include specific training for awarding OTs through consortia where appropriate.

Recommendation 1.h.: Implement Department of Defense-level guidance establishing a standard Agreements Officer delegation and warrant process.

Response: Partially concur. DPC can provide overarching guidance, but the guidance must also permit Component flexibility to manage their delegation and warranting process. The Components have the authority and establish delegation and warranting procedures. This is inherent in each agency's acquisition authority and responsibility for workforce development warranting requirements. However, DPC will collaborate with DoD Components to establish overarching standards for the delegation and warranting procedures of Agreements Officers, but maintain flexibility for Component workforce development. The resulting standard will be included in the DoD OT Guide update.

Recommendation 1.i.: Implement guidelines or best practices for contracting personnel to consider when negotiating consortium management fees to ensure the Department of Defense receives the best value when working with a consortium management organization.

Response: Concur. The OT Guide update will provide guidance and best practices to effectively evaluate proposed fee structure under a consortium.

Defense Pricing and Contracting (cont'd)

Attachment

Recommendation 1.j.: Establish requirements to vet consortium members upon membership to identify which members meet applicable security requirements for future opportunities.

Response: Concur. DPC will address this issue to ensure consortium members meet applicable security requirements, while also considering the need to continue to attract Non-traditional defense contractors using our OT authorities.

Recommendation 1.k.: Establish controls to ensure that the consortium management organization only disseminates controlled and restricted information to consortium members with proper security clearance.

Response: Concur. See response to recommendation 1.j.

Recommendation 1.l.: Provide guidance requiring that contracting personnel check the System for Award Management prior to the award of an other transaction through a consortium, to determine and document if a contractor is registered in the System for Award Management and is not on the excluded parties list. For those contractors not registered in the System for Award Management, provide additional review requirements that must be performed and documented prior to award to ensure they are able to do business with the Government.

Response: Concur. As the recipient, the consortium manager is required to be registered in the System for Award Management (SAM); however, there is no requirement for a consortium member to be registered. DPC will develop guidance requiring the Agreements Officer to check SAM prior to the award of an OT prototype project through the consortium manager to determine and document the consortium member is registered in SAM, and not on the excluded parties list. For those that are not registered in SAM, we will provide additional review requirements that need to be performed and documented prior to award to ensure they are able to do business with the Government.

Recommendation 1.m.: Develop procedures to require security reviews of solicitation and supplementary information, including the aggregate of all information being provided in the solicitations to ensure potential sensitive information is not revealed by the compilation of information.

Response: Concur. DPC will develop procedures to promote security reviews of the solicitation package to prevent revealing potentially sensitive information; see the responses to Recommendations 1.k and 1.l.

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Department of the Navy

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

From: Director of Policy, Deputy Assistant Secretary of the Navy (Procurement)
To: U.S. Department of Defense Inspector General

Subj: DEPARTMENT OF THE NAVY RESPONSE TO DRAFT REPORT FOR THE AUDIT OF OTHER TRANSACTIONS AWARDED THROUGH CONSORTIUMS (PROJECT NO. D2019-D000AX-0203.000)

Ref: (a) [redacted] email, same subject, dated 18 February 2021 with attachment

The Department of the Navy appreciates the opportunity to review the draft report, Audit of Other Transactions Awarded Through Consortiums, provided by reference (a). We believe that the extensive market research conducted by the United States Marine Corps and their review of current consortia that could meet their requirement, provided a reasonable basis for not conducting formal competition. That notwithstanding, we do not take exception to the conclusions in your document.

RANDOLPH.DENISE.LEE.[redacted] Digitally signed by RANDOLPH.DENISE.LEE.[redacted] Date: 2021.03.10 08:26:11 -05'00'

Denise L. Randolph

Acronyms and Abbreviations

A&S	Acquisition and Sustainment
AO	Agreements Officer
CMO	Consortium Management Organization
DAU	Defense Acquisition University
DPC	Defense Pricing and Contracting
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
OPSEC	Operational Security
OT	Other Transaction
OTA	Other Transactional Authority
OUSD	Office of the Under Secretary of Defense
SAM	System for Award Management
U.S.C.	United States Code

Whistleblower Protection
U.S. Department of Defense

Whistleblower Protection safeguards DoD employees against retaliation for protected disclosures that expose possible waste, fraud, and abuse in government programs. For more information, please visit the Whistleblower webpage at http://www.dodig.mil/Components/Administrative-Investigations/Whistleblower-Reprisal-Investigations/Whisteblower-Reprisal/ or contact the Whistleblower Protection Coordinator at Whistleblowerprotectioncoordinator@dodig.mil

For more information about DoD OIG reports or activities, please contact us:

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