

NAVAIR Can't Manage UCAs, According to DOD Inspector General

Written by Nick Sanders
Thursday, 23 June 2011 00:00

We've been toying with writing another article about the on-going DOD Oversight Wars, focusing (again) on Senator Grassley's attacks on the DOD Inspector General and the DOD IG's response to those attacks. But frankly, [POGO](#) is all over it and there's not much new to report. So instead we'll discuss a recent (June 8, 2011) DOD IG

[audit report](#)

that calls into question NAVAIR's management of Undefinitized Contract Actions (UCAs). What caught our eye was how the DOD IG pointed the finger of blame at NAVAIR's contractors.

The DOD IG reviewed 52 UCAs worth \$1.6 Billion at the Naval Air Systems Command (NAVAIR) and found the following—

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4 UCAs were inadequately justified in terms of urgency; i.e., why couldn't NAVAIR have just issued actual priced contracts?

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29 UCAs were not definitized within the statutory/regulatory timeframe (180 days)

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5 UCAs were definitized, but at unsupported contractor profit rates

As we noted above, what caught our eye was the IG's finding that 29 UCAs were definitized late "because the contractor submitted untimely or inadequate proposals, Government personnel changed requirements after UCA issuance, and additional contributing factors."

This is not the first time we've addressed Government management/administration of UCAs. See, for example, [this article](#) in which we generally discussed UCAs and reported that the U.S. Air Force was addressing the problem of untimely definitization of UCAs by better partnering with contractors through what it called a "proposal kick-off meeting" that was to be chaired by the cognizant Contracting Officer and supported by DCAA. We reported that DCAA

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issued MRD 10-PSP-016(R) that directed its auditors to “attend these meetings to obtain an understanding of the contractor’s proposal, including supporting data.” We also opined (as we usually do) on the Air Force’s approach, posting—

We generally endorse any process that would definitize UCAs within the required timeframes, but we wonder if the foregoing Air Force and DCAA direction might not be avoiding addressing the real problem—which is insufficient identification of Government requirements, and subsequent changes to those requirements—which prevents contractors from submitting timely and comprehensive proposals. (See the GAO reports linked above, which show the lack of defined requirements is a much a problem as any lack of cost or pricing data.) Focusing on enforcing timely contractor provision of requested data to support fact-finding and negotiations seems to be a fundamentally misplaced management emphasis—particularly since the Air Force is now endorsing DCAA’s arbitrary and punitive ‘denial of access to records’ process.

Obviously, then, we were already sensitized to any assertions that the root cause of untimely UCA definitization was untimely or inadequate contractor cost proposals. Indeed, as we reviewed this DOD IG audit report, we saw that (despite the IG’s soundbite quoted above) there were a number of causes for NAVAIR’s inability to timely definitized its UCAs.

For example, on page 13 of the audit report, the IG stated that there were “multiple contributing factors” including “a lack of contracting personnel to complete definitization, contractors not submitting adequate proposals in a timely manner, or Government personnel changing contract requirements after NAVAIR contracting personnel issued the UCA.” In addition, “the contractors’ proposal pricing updates and extended contract negotiations with Government personnel also impacted NAVAIR contracting personnel’s ability to definitize UCAs within the required time frames.” On page 21 of the audit report, the IG stated that another causal factor was “untimely Defense Contract Management Agency and Defense Contract Audit Agency response times.” In addition, “NAVAIR administration delays, and a contractor’s sale of part of its business” were also listed as causal factors.

The DOD IG audit report also reported the following:

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The contracting officer also stated that it took about 3 months to prepare the business clearance memorandum (BCM) for negotiations because of the contract specialist’s heavy workload and the need to examine a major subcontractor’s proposal for the UCA definitization.

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Contracting personnel also cited slow Defense Contract Management Agency and Defense Contract Audit Agency response times as a contributing factor for late definitization. NAVAIR contracting personnel explained that the two Government agencies were slow to submit questions to the contractor and that the questions submitted were vague. In addition, NAVAIR contracting personnel stated that the contractor was even slower to respond to the information requests and, ultimately, NAVAIR contracting personnel had to act as an intermediary between the two parties. As a result, NAVAIR contracting personnel definitized the UCA 588 days after receipt of a qualifying proposal.

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Contractors had to prepare and certify enormous amounts of cost or pricing data before definitization or altered the pricing of the proposal, which required additional Government review. Specifically, contractors updated or rescinded forward pricing rate agreements that were in place with the Defense Contract Management Agency during the undefinitized period or provided updated actual costs incurred that significantly changed the proposal price. NAVAIR contracting personnel also delayed negotiations to jointly definitize two UCAs that enabled the contractor to obtain better sub-vendor pricing for increased quantity.

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The contracting officer stated that the contractor withdrew from the agreement due to changes in its cost accounting system and disclosure statements. The contracting officer stated that negotiations were impacted because contracting personnel not only had to negotiate differences in direct inputs, such as for hours and materials, but also significant differences in rates. NAVAIR contracting personnel were required to update the negotiation position to reflect the Defense Contract Management Agency's December 16, 2009, forward pricing rate recommendation. The contracting officer also attributed late definitization to the program office's delayed release of its technical evaluation. As a result, NAVAIR contracting personnel definitized the UCA 252 days after receiving a qualifying proposal.

To be fair, the DOD IG also reported problems with contractors, including finding that "Contractors were slow to submit counteroffers and disagreed with Government personnel on contract terms, cost reasonableness, and profit." On page 22 of the audit report, the IG stated that, "NAVAIR contracting personnel did not receive adequate contractor proposals or timely submittals, which contributed to the late definitization of seven UCAs." The IG also reported that—

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The contractor proposals were inadequate because the contracting officers determined that they did not contain sufficient information to enable DoD personnel to conduct complete and meaningful audits or determined the proposals contained questionable costs. Contractors use of multiple subcontractors and proposal resubmissions also added time to the undefinitized period. Contractor proposal resubmissions sometimes required that Defense Contract Audit Agency personnel perform additional audit work. If the revised proposal is deemed inadequate then the revision process starts again. If the contractor does not submit a timely qualifying proposal, the contracting officer should suspend or reduce payments to the contractor in accordance with DFARS Subpart 217.74 and NAVAIR Instruction 4200.33D.

We are worried that the foregoing opinion—that if a contractor fails to submit a timely “qualifying” proposal then payments under the UCA should be reduced or suspended—fails to acknowledge the role that DCAA plays in determining proposal adequacy. Though the audit report stated that “contracting officers determined” the proposals lacked sufficient information to enable “complete and meaningful audits,” we all know that DCAA made that call for the CO. It is highly unlikely that any Contracting Officer is going to determine, on his or her own, whether a proposal is adequate for audit. That means that the DCAA auditor made the call. And in our experience, that DCAA auditor determination may not be as objectively based as one would care for.

In conclusion, as in the case of the GAO reports we have previously discussed, we don't agree that the more important causal factor for untimely UCA definitization is contractor proposal problems. Instead, the body of this DOD IG report revealed multiple causal factors—many of which one might reasonably think were up to the DOD oversight bureaucracy (including DCMA and DCAA) to fix.

So again, instead of beating-up defense contractors, we would suggest that the DOD IG focus on its own shop and recommend staffing enhancements and the streamlining of existing overly bureaucratic processes.