AUDIT REPORT

IG-05-017

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SOLE-SOURCE CONTRACT ACTIONS CITING "ONLY ONE RESPONSIBLE SOURCE"

May 13, 2005

National Aeronautics and Space Administration

OFFICE OF INSPECTOR GENERAL

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SOLE-SOURCE CONTRACT ACTIONS CITING "ONLY ONE RESPONSIBLE SOURCE"

Executive Summary

The NASA Office of Inspector General conducted an audit to determine whether NASA effectively applied and managed awards of sole source contract actions citing "Only One Responsible Source." The specific audit objectives were to determine whether:

- Proposed actions were synopsized as required, and the Agency adequately addressed, documented, and dispositioned challenges received in response to the synopses.

- Justifications were adequately documented, supportable based on the results of the required market research, and properly reviewed and approved by the appropriate NASA officials prior to the award of the contract action.

- Best or promising practices exist that can be disseminated to assist the Agency in improving its competitive posture.

See Appendix A for a discussion of the audit scope and methodology.

Background. We conducted the audit at four NASA Centers: Goddard Space Flight Center (Goddard); NASA Headquarters (Headquarters); Johnson Space Center (Johnson); and the Stennis Space Center (Stennis). We conducted this audit because competition in contracting improves the efficiency and economy of the government, and competition is the preferred method of procurement in the Federal Government. As stated in NASA's "Competition Requirements Quick Reference Guide," competition can result in "lower prices, better products, safe effective performance, and can also provide innovative, commercial solutions . . ." to meet the Government's needs. Improper sole-source contracting deprives the Government of the benefits of competition.

Results. The use of sole-source awards citing one source as the authority was generally effective at the four NASA Centers we reviewed. We found that in most cases Agency procurement officials were diligent in promoting competition to the maximum extent practicable and adhered to Federal and Agency procurement regulations in justifying those specific contract actions for which competition was not possible.

We found that the contract actions we reviewed were generally synopsized (that is, publicly advertised) as required and that the Agency adequately addressed, documented, and dispositioned any challenges received in response to the synopses. However, we found that some synopses for the acquisition of commercial items provided unreasonably

short response times for vendors to reply to the synopsis notices or challenge the proposed sole-source procurements. Of the 68 contract actions reviewed, 27 were for the acquisition of commercial items. Of those 27, 7 (26 percent) provided what we consider unreasonably short synopsis response times based on the nature and complexity of those particular procurements (Finding A).

We found that the sole-source justifications we reviewed were generally well documented and supportable based on the results of the required market research. Also, all justifications we examined were reviewed and approved by the appropriate NASA officials prior to the award of the contract action. However, we found that many of the justifications we reviewed did not place sufficient emphasis on actions taken to remove or overcome barriers to future competition as Federal and Agency procurement regulations require. Specifically, of the 68 contract actions citing one source that we reviewed, 22 (32 percent) did not include substantive discussion in the Justifications for Other than Full and Open Competition (Justifications) regarding the Center's efforts to remove or overcome barriers to future competition (Finding B).

Of the 68 contract actions citing one source that we reviewed, only 4 (6 percent) of the actions, totaling approximately $824,000 (.06 percent of the total dollar value of the 68 actions reviewed), were not supported by sufficient Justifications in accordance with Federal and Agency procurement regulations. During the audit, management took action to correct the condition that led to the cited deficiencies. Details regarding this issue are included in Appendix B.

We did not identify any significant best or promising practices during this audit.

Summary of Recommendations. We recommend that the Assistant Administrator for Procurement (formerly the Deputy Chief Acquisition Officer/Director for Procurement) develop and issue guidance for the NASA procurement community for establishing reasonable response times in synopses for commercial procurements. We also recommend that the Assistant Administrator for Procurement: (1) direct that NASA Procurement Management Survey teams focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers; and (2) review the curriculum of Agency Contracting Officer's Training Representative (COTR) training courses to ensure that they adequately address the preparation of Justifications as well as the role of the technical Program office in taking action, when possible, to remove or overcome barriers to competition.

Management Comments. Management concurred with our recommendations and has taken or is taking appropriate corrective actions.

In response to our first recommendation, NASA's Assistant Administrator for Procurement issued Procurement Information Circular 05-05 entitled "Establishing Reasonable Response Times in Synopses for Commercial Procurements." The Procurement Information Circular provides guidance for the NASA procurement community regarding reasonable response times for the synopsis process, and advises

readers that the response time should be based on a combination of many factors, including but not limited to the complexity and dollar value of the procurement.

In response to our second recommendation, NASA's Assistant Administrator for Procurement requested that the head of the Procurement Management Survey team focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers. He also directed that NASA Procurement Officers at the Centers review the COTR training curriculum at their respective Centers to ensure that the curriculums adequately address preparation of Justifications as well as the role of the technical Program office in taking actions, when possible, to remove or overcome barriers to competition.

The complete text of management's response is in Appendix E.

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Acronyms Used in the Report

CO	Contracting Officer
COTR	Contracting Officer's Technical Representative
FAR	Federal Acquisition Regulation
NFS	NASA FAR Supplement

SOLE-SOURCE CONTRACT ACTIONS CITING "ONLY ONE RESPONSIBLE SOURCE"

Objectives

Our overall audit objective was to determine whether NASA effectively applied and managed awards of sole source contract actions citing "Only One Responsible Source." Our specific audit objectives were to determine whether:

- Proposed actions were synopsized as required, and the Agency adequately addressed, documented, and dispositioned challenges received in response to the synopses.

- Justifications were adequately documented, supportable based on the results of the required market research, and properly reviewed and approved by the appropriate NASA officials prior to the award of the contract action.

- Best or promising practices exist that can be disseminated to assist the Agency in improving its competitive posture.

We conducted the audit at four NASA Centers: Goddard Space Flight Center (Goddard); NASA Headquarters (Headquarters); Johnson Space Center (Johnson); and the Stennis Space Center (Stennis).

Background

The Competition in Contracting Act of 1984, with limited exceptions, requires full and open competition in Federal contracting. Full and open competition means that all responsible sources are permitted to submit offers on Government requirements. The Federal Acquisition Regulation (FAR) and NASA FAR Supplement (NFS) allow for exceptions to full and open competition, but such exceptions are to be limited and fully justified and approved. One such exception is based on only one responsible source being capable of providing the required goods or services. FAR 6.302-1, "Only One Responsible Source," states that the exception may be used when "the supplies or services required by the agency are available from one source . . . and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for." However, agencies must use prudent business judgment and adhere to procurement regulations when exercising the one source exception to full and open competition.

When a requirement is determined to be available from one source or a limited number of responsible sources, the procurement office, in collaboration with the responsible technical program office, must make a written justification for the proposed noncompetitive acquisition. The justification is known as the Justification for Other Than Full and Open Competition (Justification) and must be in writing as well as contain

sufficient facts and rationale that will support the use of the exemption cited. The Contracting Officer (CO) must certify the Justification as accurate and complete, to the best of his or her knowledge. Also, technical program personnel must certify the supporting data provided to the CO as a basis for the Justification. Further, approval and justification by additional NASA officials may be necessary, depending on the dollar value of the acquisition and individual Center policies. The thresholds for such approval and justification are in FAR 6.304 and NFS 1806.304-70, or individual Center policies. Procuring agencies are also required to publicly synopsize proposed sole-source contract actions under most of the statutory authorities permitting contracting without providing for full and open competition. In publicly synopsizing the requirement, the Government ensures that any responsive offers are able to compete for the requirement. Further, the public synopsis opens the procurement process to public scrutiny, under which the Government must have a justifiable reason for limiting competition.

Findings

A. Unreasonably Short Synopsis Response Times for Acquisitions of Commercial Items

Of the 68 contract actions reviewed at 4 Centers, 27 (40 percent) were for acquisition of commercial items. Of those 27 commercial items, the specified synopsis response times for 7 (26 percent) were unreasonably short, based on the nature and complexity of the procurements (see Table 1). The response times for those particular procurements were unreasonable because prospective businesses did not have enough time to make informed business judgments about whether to respond to the notices or challenge the Agency's stated intent to conduct the procurements on a sole-source basis. As a result of the short response times, competition may have been restricted by limiting the number of potential sources. Unreasonably short response times also create an appearance of unfairness, thus harming the integrity of the procurement process.

In the actions cited, the COs established the short response times based solely on the perceived urgency of the procurement, rather than establishing response times based on a thoughtful analysis of all of the particular circumstances, such as the nature and complexity of the procurement. In addition, the NASA Office of the Chief Financial Officer/Procurement Directorate (now the Office of Institutions and Management/Office of Procurement) did not provide any guidance regarding what constitutes a "reasonable" response time, thus leading to varying interpretations by the COs.

Table 1 summarizes, by Center, the number of contract actions reviewed as well as the number and dollar value of commercial acquisition actions with unreasonably short synopsis response times.

Table 1. Contract Actions With Unreasonably Short Synopsis Response Times

Center	Actions Reviewed	Actions for Commercial Acquisition	Actions With Unreasonably Short Response Times	Value of Actions With Unreasonably Short Response Times
Goddard	23	5	0	$ 0
Headquarters	4	1	0	0
Johnson	30	12	2	429,259
Stennis	11	9	5	7,483,880
Total	**68**	**27**	**7**	**$ 7,913,139**

Examples of actions with unreasonably short synopsis response times are as follows:

- At Johnson, of 30 contract actions reviewed, 12 were for the acquisition of commercial items. Those 12 contract actions ranged in value from $100,000 to $145 million, and the synopsis response times ranged from 1 day to 21 days. Of the 12 commercial item contracts, 2 (17 percent) of the actions had response times

that were unreasonable. One contract action for testing of automated battery cells was valued at $137,259 and had a response time of 1 day. According to the CO, the contract supported the X-38 Program. The CO stated that because of the unique requirements of the X-38 Program, competition was impossible. The CO further stated that based on market research, historical data, and most importantly, the compressed schedule for supporting parachute drop tests for the X-38, a quick turnaround for many of their procurements was required. Another contract action to increase the number of software licenses was valued at $292,000 and had a synopsis response time of 5 days. The awarding CO for that action stated that the short response time was the result of pressure from NASA Headquarters to award the contract.

- At Stennis, of the 11 contract actions reviewed, 9 were for the acquisition of commercial items. Those 9 contracts ranged in value from $100,000 to $5 million, and the synopsis response times ranged from 5 days to 25 days. Of the nine commercial item contracts, five (56 percent) of the actions had unreasonably short response times. The five contract actions in question ranged in value from $100,000 to $5 million, with response times ranging from 5 days to 9 days. One contract action—for the acquisition of polar ozone and aerosol data—was valued at approximately $2 million and had a response time of 7 days. Another contract action—for high spatial resolution remote sensing data—was valued at $5 million and had a response time of 9 days. The CO stated that the short response times were based on a perceived likelihood that no companies would respond to the synopsis notice.

- In comparison, at Goddard and Headquarters, 6 of the 27 contract actions reviewed were for the acquisition of commercial items and all 6 synopses provided reasonable response times commensurate with the scope and complexity of those particular procurements. The six contract actions ranged in value from approximately $100,000 to $15 million, with response times ranging from 10 days to 21 days (a 19-day average).

The primary purposes of synopses are to improve industry access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. The FAR generally requires that agencies provide a synopsis response time of at least 15 days. However, FAR 5.203, "Publicizing and Response Time," allows CO discretion in limiting the response time in the synopsis process for the acquisition of "commercial items." A commercial item is defined in the FAR as "any item, other than real property, that is of a type customarily used by the general public or non-governmental entities for purposes other than governmental purposes and has been sold, leased, or licensed to the general public or has been offered for sale, lease, or license to the general public."

FAR 5.203 further states that, for commercial item acquisitions, synopsis and solicitation response times must afford potential offerors a "reasonable opportunity" to respond to each proposed contract action. The FAR and the NFS do not, however, specify what

constitutes a reasonable response time. Rather, the synopsis response time is left to CO discretion based on an analysis of the particular circumstances, such as the nature and complexity of the procurement.

To promote competition in contracting and to ensure the integrity of the procurement process, it is important that contracting officers establish reasonable response times in synopsis notices for all proposed procurements, including those for commercial items or services.

Recommendation for Corrective Action

1. **The Assistant Administrator for Procurement (formerly the Deputy Chief Acquisition Officer/Director for Procurement) should develop and issue guidance for the NASA procurement community for establishing reasonable response times in synopses for commercial procurements (for example, ranges of appropriate response times for various types of procurements based on the nature and complexity of the particular procurements).**

Management's Response. Management concurred with the recommendation and issued Procurement Information Circular 05-05, "Establishing Reasonable Response Times in Synopses for Commercial Procurements," on April 4, 2005. The Procurement Information Circular provides guidance for the NASA procurement community regarding reasonable response times for the synopsis process, and advises readers that the response time should be based on a combination of many factors, including but not limited to the complexity and dollar value of the procurement.

Evaluation of Management's Response. Management's actions are responsive to the recommendation, and we consider the recommendation closed for reporting purposes.

B. Inadequate Descriptions of Steps Taken to Remove or Overcome Any Barriers to Competition

Of 68 Justifications reviewed at 4 Centers, 22 (32 percent) did not adequately describe actions taken to remove or overcome any barriers to competition before any subsequent acquisition for the required supplies or services. Those 22 Justifications either did not address the issue or contained only generic descriptions, which did not demonstrate a meaningful effort for attempting to transition to full and open competition for future requirements.

Several Contracting Officer's Technical Representatives (COTRs) indicated that they were unaware of their role in actively seeking to remove barriers to future competition or that the requirement for documenting such efforts in Justifications. Because Center procurement offices did not institute sufficient management controls over the approval process for Justifications deficient in addressing efforts made to remove barriers to competition, Justifications that had inadequate discussions for removing barriers were approved. As a result, failure to actively seek opportunities for transitioning to a competitive environment for future acquisitions may result in unnecessary follow-on sole-source contract actions at a higher cost to the Government.

Table 2 summarizes, by Center, the number and dollar value of contract actions reviewed, as well as the number and dollar value of actions with inadequate descriptions.

Table 2. Contract Actions With Inadequate Descriptions of Steps Taken to Remove or Overcome Barriers to Competition

Center	Actions Reviewed	Value of Actions Reviewed	Actions with Inadequate Descriptions of Removing Barriers	Value of Actions With Inadequate Descriptions of Removing Barriers
Goddard	23	$ 43,839,533	0	$ 0
Headquarters	4	5,023,092	0	0
Johnson	30	635,735,540	16	97,021,532
Stennis	11	613,783,317	6	8,583,880
Total	**68**	**$1,298,381,482**	**22**	**$ 105,605,412**

Examples of Justifications with inadequate descriptions of removing barriers to competition are as follows:

- At Johnson, of the 30 Justifications reviewed, 16 (53 percent) either did not include a description of actions being taken to remove or overcome any barriers to competition or contained only generic statements. For example, one contract, valued at $28.9 million, was for continued engineering development and assessment of the Space Shuttle on-orbit guidance, navigation, and control systems. The Justification for the contract merely states, "The Aeroscience and Flight Mechanics Division will continue to look for ways to reduce barriers to

competition for future procurements." Likewise, the Justification for another contract, valued at $25.8 million, for parafoils and rigging services of recovery system parachutes states, "The removal of barriers to competition will be accomplished through searching the market availability when additional parafoil manufacture, packing, rigging, and testing are needed." The statements do not indicate substantive efforts for proactively removing or overcoming barriers to future competition.

- At Stennis, the Justifications for three contract actions awarded over a 14-month period (October 2001 through December 2002) for acquisition of remote sensing data each contain identical statements of the steps taken to remove or overcome barriers to competition: "We perform continuous market research to identify new sources of remotely sensed data. When other procurements of this type are required in the future, attempts will be made for full and open competition." The statement about future attempts does not indicate an approach that is proactive in identifying other potential sources for procurements of this nature.

In the interest of maximizing competition in contracting, the FAR requires that agencies document in Justifications the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required. While the FAR recognizes that sole-source procurements are sometimes unavoidable, the requirement to address efforts for removing barriers to future competition is intended to ensure that agencies diligently seek ways of transitioning from a sole-source situation to full and open competition for future requirements.

FAR 6.303-2, "Content," requires that each Justification include "a statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required." For example, a Justification for a sole-source procurement of proprietary software might read as follows:

> The required software is proprietary to ABC Company and, therefore, no other vendor can provide it for the Government's use. However, the Agency is currently planning to transition its systems to an open architecture environment, which will eliminate our dependence on proprietary software from ABC Company. The transition is expected to be completed by the end of Fiscal Year 2007, which will allow us to conduct the follow-on procurement for the required software using full and open competition.

To avoid unnecessary follow-on sole-source contract actions at a higher cost to the Government, Agency technical and procurement personnel should actively seek opportunities for transitioning to a competitive environment for future acquisitions and document those efforts in Justifications.

Recommendation for Corrective Action

2. **The Assistant Administrator for Procurement should:**

   a. **Direct that Procurement Management Survey teams focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers.**

Management's Response. Management concurred with the recommendation, stating that the head of the Procurement Management Survey team was requested to focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers.

Evaluation of Management's Response. Management's actions are responsive to the recommendation. We consider the recommendation closed for reporting purposes. However, we will spot check future survey team reports to ensure that the topic of removing barriers to competition is being sufficiently addressed.

   b. **Review the curriculum of Agency COTR training courses to ensure that they adequately address the preparation of Justifications as well as the role of the technical Program office in taking action, when possible, to remove or overcome barriers to competition.**

Management's Response. Management concurred with the recommendation. The Deputy Chief Acquisition Officer/Assistant Administrator for Procurement directed that NASA Procurement Officers at the Centers review the COTR training curriculum at their respective Centers. Specifically, Center Procurement Officers were directed to ensure that their respective COTR training curriculums adequately address preparation of Justifications as well as the role of the technical Program office in taking actions, when possible, to remove or overcome barriers to competition.

Evaluation of Management's Response. Management's actions are responsive to the recommendation. We consider the recommendation resolved, but the recommendation will remain open for reporting purposes pending completion of the Center Procurement Officers' review and completion of any necessary corrective action resulting from those reviews.

Appendix A. Scope and Methodology

Scope and Methodology

We performed the review at four NASA Centers: Goddard, Headquarters, Johnson, and Stennis. At the four Centers, we examined all contract actions from fiscal year 2001 through fiscal year 2003 that cited the only one responsible source exception. Our selection of Centers was based on the significant number and dollar value of actions at each location. We also considered other recent field work conducted at the Centers as part of our overall series of audits relating to competition in contracting. Our overall universe consisted of each Center's contract actions and the dollar values displayed below.

Center	Actions	Value
Ames Research Center	6	$ 5,906,793
Dryden Flight Research Center	6	26 749,365
Glenn Research Center	31	224,697,725
Goddard Space Flight Center	25	44,984,188
Headquarters	4	5,023,092
Johnson Space Center	34	987,453,138
Kennedy Space Center	7	2,067,751,415
Langley Research Center	12	29,115,539
Marshall Space Flight Center	23	864,812,937
Stennis Space Center	13	618,988,317
Total	**161**	**$4,875,482,509**

After analyzing the data in the table, we made our sample selection. The four locations selected awarded 76 (47 percent) of the total number of contract actions and $1.7 billion (34 percent) of the total dollars of NASA contract actions during the sampled time frame. We initially intended to review all 76 of the contract actions; however, during site visits we determined that 8 actions were miscoded, closed out, or were involved in criminal investigative proceedings. After eliminating those 8 actions from our sample, we ultimately reviewed a total of 68 contract actions that cited only one responsible source. The total actions we reviewed included 23 actions at Goddard, 4 actions at Headquarters, 30 actions at Johnson, and 11 actions at Stennis.

We reviewed pertinent Federal, Agency, and Center-specific laws, policies, and procedures pertaining to contracting without full and open competition. For each contract action sampled, we reviewed pertinent contract file documentation, including the Justification and the results of any market research conducted by the procurement team. We interviewed COs and other procurement officials for the selected contract actions. We also interviewed COTRs, as necessary.

Appendix A

Scope Limitation

Our review focused on the more substantive required elements of the Justification that are critical for supporting a decision to award noncompetitively, such as whether the Justification included a:

- description of the action being approved;
- description of the supplies or services required to meet the Agency's needs;
- demonstration of the proposed contractor's unique qualifications;
- description of efforts made to solicit from other sources, including whether a synopsis of the proposed action was published;
- description and result of the market research conducted;
- list of sources that express an interest in the acquisition; and
- statement of other facts that support the decision to restrict competition, such as an explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available;
- CO and COTR certification that the justification is accurate and complete.

We did not focus on the less substantive required Justification elements such as whether the Justification specifically identified the Agency and the contracting activity, specifically identified the document as a "Justification," or identified the specific statutory authority [that is, "section 2304(c)(1), title 10, United States Code"] for the action. While important, those elements do not go to the heart of demonstrating the propriety of the sole-source action. Therefore, while some of the Justifications we reviewed were deficient in addressing those elements, we did not consider them to be material deficiencies for purposes of our audit.

Use of Computer-Processed Data

To identify the universe of contract actions at the four Centers, we initially used computer-processed data from the NASA Procurement Management System maintained at NASA Headquarters. We compared that data with data the individual Centers provided from their Acquisition Management Systems and determined that the listings the Centers provided were the most recent. During contract file reviews, we compared the contract numbers and dollar values from the system-generated list with the file documentation. Nothing came to our attention that caused us to question the validity of the number of contract actions citing the only one responsible source exception for the sample period.

Management Controls Reviewed

We reviewed management controls over the award of the noncompetitive contract actions at the four Centers. We determined that, generally, the management controls were adequate. However, improvements could be made at all four Centers (see the findings in the main body of the report). Management controls will be strengthened by implementing the recommendations in this report.

Audit Work

We performed this audit from January through December 2004 in accordance with generally accepted government auditing standards.

Appendix B. Details Regarding Four Contract Actions With Deficient Sole-Source Justifications

The majority of contract actions that we reviewed at the four Centers appeared reasonable and were justified in writing in accordance with the FAR and NFS. Of the 68 contract actions citing one source that we reviewed, 4 (6 percent) of the actions, totaling approximately $824,000, were not supported by sufficient Justifications in accordance with the FAR and NFS.

The four Justifications were deficient because COs and technical personnel at Goddard and Johnson did not include adequate support, as the FAR requires. Each of the four Justifications related to contract actions of relatively small dollar value (ranging from $95,000 to $337,770), for which the Justification review and approval requirements are less rigorous. The Procurement Officer and Competition Advocate do not review and approve Justifications for actions valued at $500,000 or less; rather, justifications under that dollar threshold require only CO and COTR certification. Although only 6 percent of the entire sample universe (68 actions) of the Justifications reviewed were deficient, the deficiency rate increased to 14 percent (4 of 28) for actions valued at $500,000 or less.

The following table summarizes, by Center, the number and dollar value of contract actions reviewed as well as the number and dollar value of actions with deficient Justifications.

Contract Actions With Deficient Justifications

Center	Actions Reviewed	Value of Actions Reviewed	Actions With Deficient Justifications	Value of Actions With Deficient Justifications
Goddard	23	$ 43,839,533	1	$ 165,000
Headquarters	4	5,023,092	0	0
Johnson	30	635,735,540	3	658,944
Stennis	11	613,783,317	0	0
Total	**68**	**$1,298,381,482**	**4**	**$ 823,944**

To ensure that sole-source contract actions are proper, each action must be supported by a detailed written Justification that clearly demonstrates that the one source exception is necessary and appropriate for that particular action. The FAR includes specific areas that must be addressed in a Justification before the Agency proceeds with a proposed sole-source procurement. FAR 6.303-2 identifies 12 specific elements that must be addressed in a Justification (see Appendix C for Justification content requirements).

The four Justifications with material deficiencies are described below.

- At Goddard, a contract modification, valued at $165,000, for continued membership in a Government/University consortium called Mid-Atlantic Crossroads was not synopsized as FAR Subpart 5.2 requires. That condition occurred because the CO for the action improperly cited FAR 5.202(a) (11) as an applicable exception to the synopsis requirement. The exception in FAR 5.202(a) (11) is based on the proposed contract action being made "under the terms of an existing contract that was previously synopsized . . ." (for example, acquired under the terms of a previously synopsized option). However, such was not the case for that action—the continued membership period acquired by the modification was a new scope added to the original contract and required a new synopsis. In addition to the problem relating to the lack of a synopsis for the action, FAR 6.303-2 requirements were not met because the Justification was not signed or certified by either the CO or the responsible NASA technical program personnel. The CO stated that the signature page for the Justification was misplaced. The CO also confirmed that market research was not conducted, but stated that he thought the sole-source rationale was reasonable at the time.

- At Johnson, three Justifications did not include one or more substantive elements that FAR 6.303-2 requires. Although the Justifications lacked key information, the COs certified them as accurate and complete. The Johnson contract actions with deficient justifications are described below.

  - The Justification for a contract valued at $337,770 for pyrotechnic initiator assemblies did not identify any sources that expressed in writing an interest in the acquisition and did not address other facts supporting the use of other than full and open competition. In addition, the description of market research in the Justification consisted of only one brief sentence ("Initiator Assemblies are unique pyrotechnic devices available from one source B.F. Goodrich"). The CO who awarded the contract stated that the elements in the Justification were inadvertently omitted. The CO also stated that because the procurement was directly related to the Shuttle Program and selected vendors must be certified, he felt reasonably sure no other sources had expressed an interest in the acquisition.

  - The Justification for a contract valued at $226,174 for a thermal ionization mass spectrometer did not include a description of market research, an estimated value, a demonstration of the proposed contractor's unique qualifications, or a listing of sources that expressed an interest in the acquisition. The CO who awarded the contract did not recall the

circumstances of the contract but agreed that the Justification was abbreviated. The CO stated that some extenuating circumstance must have existed for omitting the elements because the action required legal review and approval, and would otherwise not have been approved.

- The Justification for a contract valued at $95,000 for structural engineering support for the Space Station Crew Return Vehicle (X-38) Program did not include a description of market research, a demonstration of the proposed contractor's unique qualifications, or a listing of sources that expressed an interest in the acquisition. The CO who awarded the contract stated that the contract was for a follow-on acquisition and that she believed that the market research was addressed by describing the duplicative cost ($1.5 million) and schedule delay (6 months) that would have resulted if the Government tried to compete the procurement.

While existing management controls for Justifications of larger dollar value actions appear to be effective, additional controls were needed for CO accountability in ensuring that required information is included in all Justifications, including those for actions valued at below the $500 thousand threshold, before COs certify and approve the documents. CO accountability is important to ensure that proposed sole-source contract actions are proper and comply with Federal and Agency regulations.

We communicated these specific deficiencies to Agency management during our audit debriefing. Agency management implemented corrective action to ensure the completeness of justifications at or below the $500,000 review threshold. Because management addressed our concerns and took responsive corrective action, we did not make any recommendations for this condition.

Appendix C. Competition Requirements

Both the FAR and NFS address competition requirements. Those requirements are summarized below.

FAR 6.303-1, "Requirements"

(a) A CO shall not commence negotiations for a sole-source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in 6.302, the use of such actions in writing;
(2) Certifies the accuracy and completeness of the justification; and
(3) Obtains the approval required by 6.304.

(b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(c) Justifications required by paragraph (a) of this section may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

(d) If the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition in an acquisition that would otherwise be subject to the Trade Agreements Act, the CO must forward a copy of the justification, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

FAR 6.303-2, "Content"

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

(7) A determination by the CO that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market research conducted and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) CO certification that the justification is accurate and complete to the best of the CO's knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (for example, verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and that form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

Appendix D. Contract Actions Reviewed

The sole-source and limited competition contract actions, citing the "one source" exception that we reviewed at Goddard, Headquarters, Johnson, and Stennis are listed below.

NASA Center	Contract Number	Value	Short Synopsis Response Times	Inadequate Description of Steps Taken to Eliminate Barriers to Competition	Deficient Justifications
Goddard	NAS5-00211	$ 2,032,082			
	NAS5-01074	11,349,697			
	NAS5-01092	349,309			
	NAS5-01096	2,890,356			
	NAS5-01108	678,420			
	NAS5-01113	1,086,638			
	NAS5-01128	597,000			
	NAS5-01128 Mod 3	165,000			X
	NAS5-01155	917,480			
	NAS5-02005	749,530			
	NAS5-02032	15,000,000			
	NAS5-02049	500,000			
	NAS5-02050	500,000			
	NAS5-02062	908,184			
	NAS5-02088	224,520			
	NAS5-02089	119,835			
	NAS5-02090	650,000			
	NAS5-02131	3,000,000			
	NAS5-02155	316,000			
	NAS5-03012	320,880			
	NAS5-03016	360,000			
	NAS5-03075	134,202			
	NAS5-03117	990,400			
Subtotal	23	$ 43,839,533		0	1
Headquarters	NASW-00042	$ 1,981,039			
	NASW-00045	2,350,301			
	NASW-00046	441,752			
	NASW-02023	250,000			
Subtotal	4	$ 5,023,092		0	0
Johnson	NAS9-19549 Mod 102	$ 9,705,158		X	
	NAS9-00076	25,780,389		X	
	NAS9-01008	32,568,721			
	NAS9-01048 Mod 1	292,000	X	X	

NASA Center	Contract Number	Value	Short Synopsis Response Times	Inadequate Description of Steps to Eliminate Barriers to Competition	Deficient Justifications
Johnson (continued)	NAS9-01054	5,917,095		X	
	NAS9-01060	2,800,000		X	
	NAS9-01069	28,850,414		X	
	NAS9-01078	337,770		X	X
	NAS9-01080	420,588		X	
	NAS9-01103	3,063,977		X	
	NAS9-01120	9,500,000		X	
	NAS9-01121	9,500,000		X	
	NAS9-01128	95,708		X	
	NAS9-01129	8,000,000			
	NAS9-01130	1,690,986			
	NAS9-01131	2,575,134			
	NAS9-01177	2,677,453			
	NAS9-01179	95,000		X	X
	NAS9-01183	14,602,730			
	NAS9-02003	226,174		X	X
	NAS9-02028	9,625,000			
	NAS9-02055	137,259	X	X	
	NAS9-02063	300,000		X	
	NAS9-02071	299,988			
	NAS9-02099	202,703,268			
	NAS9-02100	15,056,766			
	NAS9-02098	145,000,000			
	NAS9-03044	10,097,059			
	NAS9-03045	93,700,000			
	NAS9-03046	116,903			
Subtotal	30	$ 635,735,540	2	16	3
Stennis	NAS13-00035	$ 197,290			
	NAS13-01044	100,000	X	X	
	NAS13-650 Mod 121	564,226,758			
	NAS13-02013	5,000,000	X	X	
	NAS13-02014	40,533,081			
	NAS13-02045	2,040,480	X	X	
	NAS13-03002	123,400	X	X	
	NAS13-03020	1,100,000		X	
	NAS13-03030	92,345			
	NAS13-03029	149,963			
	NAS13-03035	220,000	X	X	
Subtotal	11	$ 613,783,317	5	6	0
Total	68	$1,298,381,482	7	22	4

Appendix E. Management's Response

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

April 13, 2005

Reply to Attn of: Deputy Chief Acquisition Officer/Assistant Administrator for Procurement

TO: W/Assistant Inspector General for Auditing

FROM: HK/Director, Contract Management Division

SUBJECT: Office of Procurement Response to OIG Draft Audit Report on Sole-Source Contract Actions Citing "Only One Responsible Source", Assignment Number A-04-009-00

Enclosed is our response to the subject draft audit report dated March 16, 2005.

Please call Lou Becker at 202-358-4593 if you have any questions or need further coordination on this matter.

James A. Balinskas

Enclosure

Recommendation 1:
The Deputy Chief Acquisition Officer/Director for Procurement should develop and issue guidance to the NASA procurement community for establishing reasonable response times in synopses for commercial procurements (for example, ranges of appropriate response times for various types of procurements based on the nature and complexity of the particular procurements).

Response:
Concur. Procurement Information Circular (PIC) 05-05 titled Establishing Reasonable Response Times In Synopses For Commercial Procurements has been posted. The PIC provides guidance for the NASA procurement community regarding reasonable response times for the synopsis process, and advises that the response time should be based on a combination of many factors, including but not limited to the complexity and dollar value of the procurement.

Based on the action taken, request this recommendation be considered closed.

Recommendation 2 a:
The Deputy Chief Acquisition Officer/Director for Procurement should direct that Procurement Management Survey teams focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers.

Response:
Concur. The head of the Procurement Management Survey team has been requested to focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers. A copy of the message is attached.

Based on the action taken, request this recommendation be considered closed.

Recommendation 2 b:
The Deputy Chief Acquisition Officer/Director for Procurement should review the curriculum of Agency COTR training courses to ensure that they adequately address the preparation of Justifications as well as the role of the technical Program office in taking action, when possible, to remove or overcome barriers to competition.

Response:
Concur. The Deputy Chief Acquisition Officer/Assistant Administrator for Procurement has sent an email to all Procurement Officers (copy attached) to review the COTR training curriculum at their Centers to ensure that they adequately address the preparation of Justifications, as well as the role of the technical Program office in taking action, when possible, to remove or overcome barriers to competition. They were requested to explain what they did to determine the curriculum is adequate in this area, or what actions they

will take to ensure the training addresses these concerns. Although the Procurement Officers were asked to respond NLT May 18, 2005, a response from LaRC has already been received (a copy of their response is attached). The contract LaRC has with Training Resource Consultants Inc. to provide training is applicable to five Centers. In addition, TRC conducts COTR Certification and COTR Refresher classes at Headquarters and Johnson under a GSA Schedule contract. In summary, we believe the content of the training most of the centers are receiving adequately addresses the preparation of Justifications as well as the role of the technical Program office in taking action, when possible, to remove or overcome barriers to competition.

Based on the action taken, request this recommendation be considered closed.

Enclosure 1- Letter to Survey Team referenced in response to Recommendation 2a.

Monica,
Recently, the Office of the Inspector General completed an audit of Sole-Source Contract Actions Citing "Only One Reasonable Source". One of the recommendations resulting from the audit was for the Deputy Chief Acquisition Officer/Director for Procurement to direct that Procurement Management Survey teams focus and report on the documentation of efforts made to remove or overcome any barriers to competition in future reviews conducted at NASA Centers. I have reviewed this recommendation with Tom Luedtke. He concurred, and requested that I send this message asking that the survey team focus on the OIG recommendation on all future reviews.

Your cooperation on this matter is appreciated. If you have any questions, please call me at 358-4593. Thank you.

Regards,
Lou

Enclosure 2- Letter referenced in response to Recommendation 2b.

Procurement Officers,

As we have discussed in the past, the area of Competition in Contracting remains a significant area of concern; not just for the contracts folks, but for the technical community as well. Each of us has an obligation to seek ways to remove barriers to future competition. Competition in contracting improves the efficiency and economy of the government, and competition is the preferred method of procurement in the Federal Government. As stated in NASA's "Competition Requirements Quick Reference Guide," competition can result in "lower prices, better products, safe effective performance, and can also provide innovative, commercial solutions to meet the Government's needs. Improper sole-source contracting deprives the Government of the benefits of competition.

The OIG has recently issued a draft audit report on Sole-Source Contract Actions Citing "Only One Responsible Source". Included in the report is a recommendation for the Deputy Chief Acquisition Officer/Director for Procurement (now the Assistant Administrator for Procurement) to review the curriculum of Agency COTR training courses to ensure that they adequately address the preparation of Justifications as well as the role of the technical Program office in taking action, when possible, to remove or overcome barriers to competition.

I understand the COTR training courses are designed to be flexible enough to allow centers to tailor the training to their needs, but they should all address (1) what actions the Program office can take to remove or overcome barriers to competition, and (2) the preparation of JOFOCs. Please review the training to ensure that the COTRs understand the need/importance of competition, have the tools to maximize its use, and when competition is not feasible, as a last resort, that they understand how to put together an adequate JOFOC. We should be doing everything possible to achieve competition, but should also realize that it's not an "all or nothing" proposition – if full competition is not feasible, then limited competition is still preferable to sole source. Please provide a statement as to why you believe your COTR training adequately addresses these areas. If it doesn't, please identify what actions/changes you will incorporate to insure they are addressed in future training.

Your response should be forwarded to Lou Becker at the above email address NLT May 18, 2005. The responses will be consolidated, and forwarded to the OIG for further review. It is quite likely the OIG will follow-up with several of you to verify you really did review the training course, and made changes to it where necessary (kind of a "trust but verify").

If you have any questions, please call Lou at (202) 358-4593. Thank you for your cooperation in this matter.

Tom

LaRC response referenced in response to Recommendation 2b.

The NASA Langley Research Center uses Training Resource Consultants, Inc. for the purpose of providing COTR Certification training and COTR Refresher training.

The COTR Certification training and COTR Refresher training classes were awarded to Training Resource Consultants, Inc. on January 22, 2002 using competitive procedures. TRC competed against 15 other companies and was awarded the contract NAS3-02119 on best value procedures.

The contract serves five centers, NASA Ames, NASA Glenn, NASA Langley, NASA Goddard and NASA Stennis. In addition, TRC conducts COTR Certification and COTR Refresher classes at Headquarters and Johnson under a GSA Schedule contract. The contract is monitored by the Glenn Center. TRC responds positively to new initiatives and suggestions to the classes.

In the COTR Certification class, which is three days, Chapter One-"Basic Contracting", has a section on Competition in Contracting that covers the Exceptions under FAR Part 6. This section has 27 slides covering the Exceptions and Justifications and preparations of the JOFOC. As of last year, TRC has begun using NASA IG Reports in class. For example, the IG Repot 04-007 on "Review of Sole-Source and Limited Competition Contract Actions Citing 'Unusual and Compelling Urgency' "and IG-03-024 on "Improving NASA Oversight of Prime Contractors' Noncompetitive Subcontracting" are brought to class and discussed with the students. These reports add validity to the slides that are presented in class. TRC does not disclose which Centers need improvement or were audited, but stresses the weaknesses in these areas. In addition, TRC uses Sole Source Justifications and Justifications for Other than Full and Open Competition (JOFOCs) Center Procedures and procurement Initiator's Guides collected from some of the Centers in the classroom. TRC cites case law and sources from the Federal Acquisitions Report (Court finds nothing "urgent and compelling" in agency action-Chapman Law Firm v. the United States). TRC will also use the Sole-Source Actions citing "Only One Responsible Source" Audit Report when it is released on the web site.

In the COTR Refresher class, these audit reports among others (Example: IG-03-006, "NASA'S Monitoring of Contractor Compliance with New Technology Reporting Requirements) are discussed at the end of the class along with new objectives.

LaRC feels that TRC Inc. properly addresses in the COTR and COTR Refresher training classes: (1) what actions the Program office can take to remove or overcome barriers to competition, and (2) the preparation of JOFOCs.

NASA LaRC will continue to review and monitor both the COTR and COTR Refresher training and classes that are being provided by TRC, Inc. LaRC will review the upcoming COTR classes in May to insure that these topics are adequately covered in the classroom.

Appendix F. Report Distribution

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To suggest ideas for or to request future audits, contact the Assistant Inspector General for Auditing. Ideas and requests can also be mailed to:

Assistant Inspector General for Auditing
NASA Headquarters
Washington, DC 20546-0001

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