

W

September 28, 1999

TO: H/Associate Administrator for Procurement

FROM: W/Assistant Inspector General for Auditing

SUBJECT: Final Report on the Audit of NASA Noncompetitive Procurements
Assignment Number A9900100
Report Number IG-99-056

The subject final report is provided for your use and comments. Please refer to the Executive Summary for the overall audit results. Our evaluation of your response is incorporated into the body of the report and in Appendix E. Management concurred with all the recommendations, and the planned corrective actions are responsive. All three recommendations are resolved but will remain open for reporting purposes until corrective actions are completed. Please notify us when action has been completed on the recommendations, including the extent of testing to ensure corrective actions are effective.

If you have questions concerning the report, please contact Mr. Lorne A. Dear, Program Director, Procurement Audits, at (818) 354-3360; or Mr. Tony A Lawson, Audit Program Manager, at (301) 286-6524; or Mr. Michael Bruns, Auditor-in-Charge, at (216) 433-8918. We appreciate the courtesies extended to the audit staff. The final report distribution is in Appendix F.

[original signed by]

Russell A. Rau

Enclosure

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B/Chief Financial Officer
B/Comptroller
BF/Director, Financial Management Division
G/General Counsel
JM/Management Assessment Division

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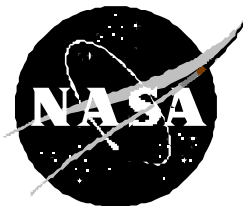
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IG-99-056

**AUDIT
REPORT**

NASA NONCOMPETITIVE PROCUREMENTS

September 28, 1999



National Aeronautics and
Space Administration

OFFICE OF INSPECTOR GENERAL

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Acronyms

CO	Contracting Officer
FAR	Federal Acquisition Regulation
FY	Fiscal Year
ISS	International Space Station
JOFOC	Justification for Other than Full and Open Competition

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NASA Office of Inspector General

IG-99-056
A9900100

September 28, 1999

NASA Noncompetitive Procurements

Executive Summary

Background. NASA obligated significant funds in fiscal year (FY) 1998 to noncompetitive new awards and to modifications of noncompetitive awards made in FY 1998 and prior years. NASA's FY 1998 procurement obligations totaled more than \$12.5 billion, of which about \$9.7 billion was available for competition. Of the \$9.7 billion, NASA obligated more than \$4.4 billion (45 percent) for noncompetitive procurement actions. NASA prepares a Justification for Other than Full and Open Competition (JOFOC) for a noncompetitive procurement to support the use of noncompetitive procedures. Appropriate officials certify the JOFOC for completeness and accuracy. As part of its oversight duties, the NASA Headquarters Office of Procurement conducts survey reviews at NASA installations that address, in part, noncompetitive procurements.

Objectives. The overall objective of our audit was to determine whether NASA awarded its FY 1998 noncompetitive awards and made modifications in accordance with the requirements of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement. Our specific objectives were to determine whether:

- technical analyses were adequate and allowed the contracting officer (CO) to negotiate a fair and reasonable price and
- the pricing of noncompetitive purchase order awards was reasonable.

Appendix A contains further details on the audit objectives, scope, and methodology.

Results in Brief. NASA's noncompetitive procurement actions at the Ames Research Center (Ames), John H. Glenn Research Center (Glenn Research Center), Goddard Space Flight Center (Goddard), and the Johnson Space Center (Johnson) were adequately supported by JOFOC's. The JOFOC's generally identified the appropriate statutory authority and contained sufficient facts to support other than full and open competition. We commend the NASA Headquarters Procurement Management Survey Report teams for their ongoing JOFOC reviews during procurement surveys. The Procurement Division at Glenn Research Center also reviews JOFOC's annually. We believe these oversight activities have significantly improved the quality of the JOFOC's.

However, technical analyses for 17 of the 40 noncompetitive procurement actions at 3 (Glenn Research Center, Goddard, and Johnson) of the 4 Centers reviewed were inadequate. Analyses performed at Ames were adequate. Further, the CO at Johnson did not request technical assistance for a modification made to the International Space Station (ISS) contract (see Appendix C). Therefore, the CO's ability to develop a sound and supportable prenegotiation position and to obtain more favorable award prices may have been weakened (see Finding A). Of the remaining 21 analyses, 9 contained findings by the analyst. The CO's properly dispositioned the findings in all nine cases. We commend the CO's for their disposition efforts.

In addition, 38 of the 65 noncompetitive purchase order awards at 3 (Glenn Research Center, Goddard, and Johnson) of the 4 Centers reviewed did not contain the documentation supporting determinations of price reasonableness required by the FAR. Therefore, NASA management and procurement supervisory staffs lack assurance that the Agency paid a fair and reasonable price for supplies and services (see Finding B).

Recommendations. The CO's and technical analysts should communicate more to improve the quality and usefulness of technical analyses. The CO should provide regulations, guidance, and prior technical reports to analysts for reference purposes. Further, analysts should document all fact-finding meetings to better support their conclusions. Lastly, management should ensure that CO's and purchasing agents receive refresher training on the documentation required to adequately support pricing decisions on noncompetitive purchase order awards.

Management's Response. Management concurred with all the recommendations. NASA management will reemphasize the importance of quality technical analyses. NASA will also provide training relative to technical analyses and the pricing of noncompetitive purchase order awards. The complete text of the response is in Appendix D. We consider management's comments responsive.

Introduction

FAR Subpart 6.3, "Other than Full and Open Competition," requires the CO to justify noncompetitive actions. Subpart 6.3 prescribes the policies and procedures and identifies the statutory authorities for contracting without providing for full and open competition. The NASA FAR Supplement contains additional documentation and approval requirements for JOFOC's.

The requirement to obtain a fair and reasonable price becomes more critical when procurements are noncompetitive. To obtain a fair price, the CO relies on various proposal analysis techniques that may include a technical analysis. The CO is not required to request a technical analysis, but usually does so. A technical analysis assesses a contractor's proposed effort to accomplish future contract requirements. The technical analysis is not an evaluation of dollar amounts but rather of the information supporting the dollar amounts. The analysis includes the number and kinds of labor hours, the number of proposed trips, total computer hours, and the quantities/kinds of materials proposed.

An important part of the technical analysis is fact-finding. Fact-finding is that portion of the process in which the Government seeks to fully understand the contractor's proposal. Generally, the analyst performs fact-finding as part of a negotiation team that includes the CO and could include pricing personnel. The contractor has the opportunity to explain why the methods and amounts it has proposed differ from NASA's perspective. The CO must ensure that differences between the contractor and NASA perspectives are resolved and documented before prenegotiation positions are developed. Ultimately, the CO combines the technical analysis results with any completed financial-type analyses to develop and support the negotiation objectives and results. This documentation supports the CO's negotiation of a reasonable price.

The CO must also document the reasonableness of prices obtained for noncompetitive purchase order awards. The CO can use items such as a current price list, catalogs, and market research to support the determination of price reasonableness.

Findings and Recommendations

Finding A. Performing Technical Analyses

Technical analyses for 17 of the 40 noncompetitive procurement actions reviewed at Glenn Research Center, Goddard, and Johnson were inadequate. In addition, the CO at Johnson did not request technical assistance for a modification made to the ISS contract (see Appendix C). Technical analysts provided general statements rather than the required detailed justifications for accepting the proposed types and quantities of resources. In addition, technical analysts did not document fact-finding meetings held with contractors to resolve proposal issues. These inadequacies occurred primarily because the technical analysts had other duties and priorities or did not follow Center guidance. Therefore, contract files did not fully support the CO's negotiation position. Moreover, poor analyses can affect the CO's negotiation tactics and ability to obtain a fair and reasonable price.

Guidance for Performing and Documenting Technical Analyses

The FAR provides guidance for performing a technical analysis. FAR 15.404-1, paragraph (e) "Technical analysis," requires that, at a minimum, the analyst examine the types and quantities of material proposed and the need for the types and quantities of the labor hours and the labor mix. The objective of the analysis is to help ensure that the final, agreed-to price is fair and reasonable. In addition, Subpart 4.8, "Government Contract Files," requires that file documentation be sufficient to constitute a complete history of a transaction for the purpose (in part) of supporting actions taken. Thus, the analyst must fully support and document the details associated with the conclusions reached in the reports provided to the CO's.

In addition to the FAR guidance, Glenn Research Center provided additional technical guidance. Glenn Research Center issued Handbook 5115.5, "Technical Analyses of Cost Proposals," in November 1986 for four primary purposes. The purposes of the Handbook included: (1) improving the understanding about what constitutes an adequate analysis and (2) achieving a measure of uniformity in conducting analyses and subsequent report preparation. Appendix D of the Handbook states . . . "an analysis of procurement actions over \$500,000 should identify for each major section of the work breakdown structure the proposed and recommended resource, the proposal rationale, and the reasons for agreement or exception."

Johnson issued no additional guidance. During the summer of 1996, when a large number of change orders were in process for the ISS, some technical staff were unsure about how to perform and document their analyses. The ISS price analyst obtained a copy of an Air Force Headquarters Aeronautical Systems Division pamphlet entitled, "The One Hour Guide to Factfinding and Technical Evaluations," from a member of the Air Force on temporary detail to the ISS. The price analyst decided that all technical analysts doing ISS work should receive a copy of the guidance before the analysis begins. The pamphlet describes analysis techniques,

provides reporting guidance, and mandates that contract files contain fact-finding documentation. Although this document is not mandatory guidance at Johnson, it contains general information the analyst should use to prepare a quality technical analyses.

Analysis and Documentation of Procurement Actions

Of the 17 inadequate technical analyses, 11 did not have the required rationale to support the acceptance of proposed values. For example, a Goddard technical analyst stated that he reviewed all the labor hours and categories and believes that the contractor can perform the requested work as proposed. General statements of this nature are not in compliance with the FAR. A detailed labor hour analysis should identify for each major section of the work breakdown structure or statement of work: (1) the proposed and recommended resources, (2) the proposal¹ rationale, and (3) the reasons for agreement or exception. NASA’s technical analysts did not provide the necessary supporting details for the 11 technical analyses.

In addition, six analyses performed at Johnson lacked fact-finding documentation. For five analyses, the contract files did not show any details of a visit to a subcontractor’s production site. For the remaining analysis, the file did not contain details of discussions held with the contractor to clarify proposed resources.

A summary of the inadequate technical analyses, by Center, follows:

Table 1. Inadequate Technical Analyses

<u>Center</u>	<u>Actions Reviewed</u>	<u>Number of Inadequate Analyses</u>	<u>Analyses Without Adequate Rationale</u>	<u>Analyses Lacking Fact-Finding Documentation</u>
Glenn Research Center	10	3	3	0
Goddard	15	6	6	0
Johnson	<u>15</u>	<u>8</u>	<u>2</u>	<u>6</u>
Totals	40	17	11	6

Two illustrations of the lack of an adequate justification for accepting proposed resources follow. Glenn Research Center and Goddard, respectively, performed the analyses.

- The technical analyst’s review of Glenn Research Center contract NAS 3-98099 did not include an adequate rationale for accepting the proposed resources. The analysis also did not identify proposed and recommended values by cost element or work breakdown structure.

¹ Glenn Research Center Handbook 5115.5, “Technical Analyses of Cost Proposals,” states the basis for the proposed labor hours could include historical hours, standard hours, or engineering estimates. The analyst’s report should identify the basis for the proposed labor hours, which could vary.

The FY 1998 contract award including options totaled \$3.8 million.² Two cost elements accounted for about \$3 million of the proposed \$3.8 million. The contractor proposed more than \$1.5 million for the operation and administration of the academic program in Cleveland and about \$1.5 million for subcontract costs. The proposed operation resources included various numbers of teachers, teacher aides, and a Project Director. The technical analyst's report did not identify the proposal rationale or state the reasons the numbers and mix of teachers were acceptable. In addition, the analysis did not identify the rationale for the proposed subcontract costs or explain why those costs were acceptable. The analyst did question some aspects of the proposed resources, but did not identify the affected cost elements of the proposal.

- The technical analysis of a \$92 million modification to definitize Goddard letter contract NAS 5-97179³ lacked an adequate rationale for accepting proposed resources. The analysts' evaluation simply stated that, in general, the contractor responded adequately to all items in the Statement of Work. The contractor's proposal broke out costs into more than 20 summary cost elements, none of which the analyst addressed separately in his summary report. Without specific detail for the various cost elements, including the basis for the proposed and recommended resources, the analyst's conclusions are not thoroughly supportable.

Fact-Finding Documentation

Of the six Johnson analyses that lacked fact-finding documentation, five were for modifications made to the ISS contract (NAS 15-10000). The five modifications involved spare part buys; the same analyst performed all five analyses. None of the analyses documented fact-finding meetings held to resolve proposal uncertainties. The analyst initially recommended a reduction in the proposed labor hours for the five follow-on spares buys based on his assumption that because the contractor had made the parts previously, labor time would be reduced. However, the CO decided that the analyst's position was not well supported and that a visit to the subcontractor's production site was necessary to address the labor matter. The CO and the analyst visited the production site and subsequently determined that the analyst initially overstated the possible labor time reductions. However, neither individual documented the details of the visit.

Appendix B of the report shows the amount of FY 1998 funds obligated for the contracts affected by the 17 analyses.

Headquarters Surveys Report Findings on Technical Evaluations

Recent Headquarters procurement surveys at Glenn Research Center, Goddard, and Johnson also identified deficiencies in technical evaluations. The November 30 through December 10, 1998,

² The contract called for the development, operation, and replication of a Science, Engineering, Mathematics, and Aerospace Academy at cities throughout the country, including Cleveland.

³ The contract was for the Thermosphere, Ionosphere, Mesosphere, Energetics, and Dynamics (TIMED) mission.

procurement survey report at Goddard states, “The technical evaluations for two-thirds of the reviewed files were poor, consisting merely of brief statements of proposal acceptability without any evidence of critical analysis of its elements.” Headquarters noted that a critical analysis of proposed resources was also lacking in a May 1998 review at Johnson and an October 1997 review at Glenn Research Center.

Factors Affecting the Quality of Analyses

Generally, three factors adversely affected the quality of the 17 technical analyses we reviewed.

- As a result of other priorities and duties, analysts accepted proposed resources in 11 instances and did not provide the detailed justifications for doing so. The analysts inappropriately relied on in-house estimates to support their positions, were unaware of Center guidance, or stated they did not always realize the extent of documentation required for the analyses. In a separate instance, to avoid delays in hardware delivery, an analyst accepted proposed resources despite problems with some aspects of the contractor’s proposal.
- At Johnson, the analysts’ other duties generally precluded them from thoroughly documenting fact-finding discussions as required by the FAR. In one instance, the analyst stated he was not aware of the Center guidance and documentation requirements. In the remaining five instances, other duties precluded the analyst from thoroughly documenting fact-finding discussions.
- The CO’s did not always give the analysts copies of the FAR requirements or prior acceptable analyses to use as a reference which could have improved the quality of analyses.

Effects of Technical Analyses

The technical analyst’s report can significantly affect the CO’s ability to negotiate a fair and reasonable price. The CO can negotiate a fair and reasonable price only if detailed analyses supported by fact-finding documentation are prepared and used for negotiations. The risk of cost over-runs increases when the analyst accepts proposed resources due to time limitations or because the proposed amount coincides with in-house estimates or mission budgets. In addition, without adequate fact-finding documentation, the CO’s development of a prenegotiation position may not be realistic. When the technical analyst does not question proposed resources, then the CO may not be negotiating from the most favorable position. The CO has little choice but to accept the proposed costs or make nominal changes. We believe that NASA lacks assurance that the CO obtained the most favorable price for the 17 noncompetitive procurements reviewed.

Recommendations for Corrective Action

The Associate Administrator for Procurement should require that CO’s:

1. Provide written guidance to analysts for noncompetitive procurements that identifies the proposed resources the CO wants evaluated, the required timeframe for the analysis, and the desired format.
2. Include fact-finding documentation in the official contract file.

Management's Response

Concur. The Associate Administrator for Procurement will instruct installation procurement officers to ensure that CO's emphasize the quality of technical analyses and file documentation to support prenegotiation objectives. Moreover, future NASA program management training classes will include procurement guidance concerning the importance of technical analyses and the related FAR requirements. The complete text of the response is in Appendix D.

Management also provided general comments related to Finding A.

Evaluation of Management's Response

The actions planned by management are responsive to the recommendations. The recommendations are resolved but will remain undispositioned and open until agreed-to corrective actions are implemented.

Our response to management's general comments on Finding A are in Appendix E of this report.

Finding B. Price Support for Purchase Orders

Of the 65 purchase orders totaling about \$4.6 million that we reviewed at Glenn Research Center, Goddard, and Johnson, 38 totaling more than \$2.6 million lacked support that the price obtained was fair and reasonable (see Table 2). NASA CO's and purchasing agents⁴ did not obtain the required price support due to increased workloads and a lack of training and because they incorrectly assumed noncompetitive procurements did not require price support. Therefore, NASA could be paying too much for its goods and services.

Table 2. Summary of Awards Reviewed and Questioned by Center

<u>Center</u>	<u>Awards Reviewed</u>	<u>Dollars Reviewed</u>	<u>Awards Questioned</u>	<u>Dollars Questioned</u>
Glenn Research Center	25	\$1,448,411	16	\$1,127,168
Goddard	25	1,522,393	13	721,213
Johnson	<u>15</u>	<u>1,629,536</u>	<u>9</u>	<u>794,149</u>
Totals	65	\$4,600,340	38	\$2,642,530

FAR Guidance for Simplified Acquisitions

FAR Part 13, "Simplified Acquisition Procedures," prescribes policies and procedures for the acquisition of supplies and services, the aggregate amount of which does not exceed \$100,000. These procedures reduce administrative costs, avoid unnecessary burdens for agencies and contractors, improve small business opportunities, and promote efficiency and economy in contracting. In addition, Part 13 provides special authority for acquisitions of commercial items exceeding the \$100,000 threshold but not exceeding \$5,000,000.

FAR Subsection 13.106-3, "Award and Documentation," requires the CO to determine that the proposed price is fair and reasonable before making an award. The FAR requires minimal documentation for purchases made using simplified acquisition procedures. For example, if a CO bases price reasonableness on a catalog price, then a copy of the catalog page should be part of the contract file. The FAR also prescribes that CO's base price reasonableness on competitive quotations or offers whenever possible. However, if the CO receives only one response from a potential vendor, the CO must include a statement of price reasonableness in the contract file. The statement of reasonableness may be based on:

- Market research.
- Comparison of the proposed price with prices found reasonable on previous purchases.

⁴ The Glenn Research Center and Johnson still have purchasing agents on their staffs. Goddard has reclassified its purchasing agents as contract specialists. Purchasing agents at Glenn Research Center have signatory authority up to \$50,000. Awards exceeding the \$50,000 must be approved by CO's.

- Current price lists, catalogs, or advertisements.
- A comparison with similar items in a related industry.
- Value analysis.
- The CO's personal knowledge of the item being purchased.
- Comparison to an independent Government estimate.
- Any other reasonable basis.

Improved Price Documentation Needed

For 38 purchase orders, CO's and purchasing agents did not properly document, as required by the FAR, that the proposed price was fair and reasonable before making the awards. For 2 of the 38 purchase orders, CO's at Johnson and Glenn Research Center did include a statement in the file that the price obtained was reasonable. However, the CO's did not have adequate documentation to support their statements. The Johnson CO stated that the award price was reasonable because it was comparable to the prior purchase. However, the file did not contain documentation on the prior price paid. The CO at Glenn Research Center obtained support for the proposed labor resources but not the proposed labor rate.

Factors Impacting Price Verification

CO's did not obtain price support primarily because of increased workloads and a lack of training. For example, a Goddard CO experienced a backlog of orders due to a staff shortage and because she was training another staff member. To save time and lessen the backlog, the CO did not request and document the required price support. In addition, Glenn Research Center CO's did not always obtain price support because they incorrectly assumed that noncompetitive procurements did not require such support. Staff from each of the three Centers acknowledged they lacked training in price support requirements.

During discussions with Center personnel about price reasonableness, we learned that Center management was taking steps to improve price support. Both Glenn and Goddard procurement managers stated that a Small Purchase Acquisition team had developed a draft checklist for the CO's to use in purchase order files. We obtained a copy of each Center's checklist, the goal of which is to obtain file consistency from office to office and to ensure that CO's obtain and file required documentation of price and other matters. At Johnson, the team leader for the Institutional Acquisition office stated that he sent notifications to all of his staff, reminding them of the requirement to obtain price support. In addition, a Johnson CO designed a form for the CO's to complete and place in the file to support price reasonableness. We commend these actions.

Headquarters Surveys Report Findings on Price Support

Headquarters survey reports at Glenn Research Center, Goddard, and Johnson also identified deficiencies in price support. Headquarters issued a Procurement Management Survey Report on January 30, 1998, summarizing field work performed at Glenn Research Center in October 1997. The report stated that Glenn Research Center should address or establish price reasonableness

more consistently. A Headquarters Procurement Management Survey Report summarizing field work done at Johnson from May 4 through 15, 1998, stated that files showed very little or no evidence of price analysis. Headquarters cited the issue as a repeat finding from a September 1996 Johnson survey report. A Headquarters Procurement Management Survey Report for Goddard, summarizing field work performed from November 30 through December 10, 1998, did not address pricing issues.

Effect of Inadequate Price Support

Because the CO's and purchasing agents are not justifying price fairness, NASA lacks assurance that the price of noncompetitive awards is reasonable. NASA could be paying too much for its supplies and services. CO's must take advantage of all opportunities to reduce cost in the current environment of reduced budgets. Also, NASA must verify price reasonableness and train its CO's and purchasing agents in applying the FAR requirements for price support and documentation.

Recommendation for Corrective Action

The Associate Administrator for Procurement should require that:

3. Staff responsible for noncompetitive purchase order awards receive refresher training on the type of price support and documentation required by the FAR.

Management's Response

Concur. The Associate Administrator for Procurement will direct installation procurement officers to provide refresher training and to report results to NASA Headquarters. The complete text of the comments is in Appendix D.

Evaluation of Management's Response

The actions planned by management are responsive to the recommendation. The recommendation is resolved but will remain undispositioned and open until agreed-to corrective actions are completed.

Appendix A. Objectives, Scope, and Methodology

Objectives

The overall objective of our audit was to determine whether NASA awarded its FY 1998 noncompetitive awards and modifications in accordance with the requirements of the FAR and the NASA FAR Supplement. Our objectives were to determine whether:

- technical analyses were adequate and allowed the CO to negotiate a fair and reasonable price and
- the pricing of noncompetitive purchase order awards was reasonable.

Scope and Methodology

We reviewed only noncompetitive FY 1998 new contract and simplified acquisition/purchase order awards made at Ames, Glenn Research Center, Goddard, and Johnson. We also reviewed modifications made during FY 1998 to noncompetitive contract awards made in FY 1998 or in prior years. All testing was done on a judgmental basis due to time restrictions, the inaccuracy of some of the Center databases, and NASA's inability to separately identify each obligation made to noncompetitive procurement actions in FY 1998. We discuss these matters later under "Use of Computer-Processed Data."

We reviewed FAR and NASA FAR Supplement guidance for documenting and supporting the use of noncompetitive procurements. We also reviewed FAR and NASA Center-specific guidance governing the performance of technical analyses and the type of documentation needed to support the negotiation and pricing of awards. In addition, we identified FAR requirements for supporting the pricing of noncompetitive purchase orders. We also reviewed the Comptroller General's standards for internal controls in the Federal Government.

In addition, we performed the following actions to meet our audit objectives:

- Obtained the most recent copy of Procurement Management Survey Reports done at the Centers under review.
- Discussed FAR and Center criteria for technical analyses with Headquarters and Center policy officials.
- Reviewed Department of Defense guidance for performing and reporting analyses.
- Interviewed technical analysts to clarify actions taken and to determine their experience and training in performing analyses.

- Interviewed CO's regarding their use of the analysts' reports and to discuss discrepancies in technical analyses, negotiation positions, or negotiations.
- Assessed the degree of coordination between CO's and analysts.
- Met with CO's, purchasing agents, and management officials responsible for pricing support and fairness to discuss price requirements for noncompetitive purchase order awards.

Use of Computer-Processed Data

We extracted audit data from the database the Headquarters Office of Procurement uses to compile NASA's annual competition report. Headquarters uses the Center databases as the primary input for developing the competition report. We did not test the accuracy of the data. However, we determined that data at the Center level was sometimes inaccurate. For example, Goddard experienced problems in reconciling its monthly data to the Headquarters listing. Due to Year 2000 issues and NASA's pending implementation of a new integrated financial management system, Goddard did not plan to fix its system.

In addition, although we could determine the total FY 1998 obligations by contract and purchase order, we could not identify each obligation made. In addition, some obligations were for funding purposes only and, therefore, did not require a technical analysis. Moreover, other obligations were for close-out purposes. Therefore, although CO's made modifications and obligated funds to some noncompetitive awards in our universe, we could not use such obligations for audit purposes.

Audit Field Work

We performed field work from October 1998 through July 1999, at Ames, Glenn Research Center, Goddard, and Johnson. The audit was performed in accordance with generally accepted government auditing standards.

Appendix B. FY 1998 Contract Actions Affected by Technical Analyses

The FY 1998 contracts affected by the 17 inadequate technical analyses and the obligations made to those contracts during FY 1998⁵ follow. Table B-1 shows the 11 contracts for which analysts provided inadequate rationales for the accepted resources. Table B-2 shows the six contract modifications for which the analyses were inadequate due to lack of fact-finding documentation.

Table B-1. Analyses Without Adequate Rationales

<u>Center</u>	<u>Contract Number</u>	<u>FY 1998 Obligations</u>
Glenn Research Center	NAS 3-97121	\$ 259,000
	NAS 3-97193	298,000
	NAS 3-98099	388,000
Goddard	NAS 5-30384	12,372,000
	NAS 5-97179	43,698,000
	NAS 5-97211	1,263,000
	NAS 5-98068	356,000
	NAS 5-98129	5,320,000
Johnson	NAS 5-98183	240,000
	NAS 9-97216	2,850,000
	NAS 15-10000 (modification #451)	37,694,342

**Table B-2. Analyses Lacking Fact-Finding Documentation
Johnson ISS Contract NAS 15-10000***

<u>Modification Number</u>	<u>Modification Amount</u>
445	\$20,272,459
491	\$11,252,016
530	\$24,119,152
543	\$36,422,584
565	\$19,172,023
634	\$95,300,000

*Total FY 1998 obligations for the ISS contract was \$1,361,022,000. We selected the 10 largest FY 1998 modifications for review.

⁵ The headquarters database used for our audit universe showed the amount of funds obligated during FY 1998, by contract number, to noncompetitive new awards, modifications, and purchase orders. Although this appendix shows total dollars obligated by contract number, the procurement action we examined may not account for all obligations made to the contract in question. For example, a contract may have had total obligations of \$2,000,000 in FY 1998, of which \$500,000 pertained to funding purposes only. Thus, a technical analysis would not have been required to support the funding modifications.

Appendix C. Technical Analysis Not Done

The Johnson CO did not request the performance of a technical analysis for modification #608 to the ISS contract, valued at \$65 million. Under an ISS contract provision, NASA and the contractor agreed to work together on Integrated Process Teams. However, the contractor claimed that NASA failed to provide the required “team” personnel from 1995 through 1997, which resulted in the contractor overrunning the contract to make up for the lack of NASA support. The contractor sought an equitable adjustment of about \$130 million to cover the overrun. NASA responded that it had provided more support than required, but the contractor questioned whether the support provided was actually team related. NASA ultimately settled the dispute by modifying the contract. However, the CO did not request a proposal from the contractor or request technical assistance.

Appendix D. Management's Response

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




SEP 22 1999

Reply to AFRC: HS/9900WC9.001

TO: W/Assistant Inspector General for Auditing
FROM: HS/Director, Program Operations Division
SUBJECT: Code H Response to OIG Draft Audit Report of NASA's
Noncompetitive Procurements, Assignment No. A9900100

Enclosed is our response to the subject draft report dated
August 24, 1999.

Please call Jeff Cullen at (202)358-1784 or Jack Horvath at
(202)358-0456 if you have any questions or need further
coordination of assistance on this.


James Balinskas
Enclosure

HEADQUARTERS OFFICE OF PROCUREMENT
RESPONSE TO
OFFICE OF INSPECTOR GENERAL (OIG)
DRAFT REPORT NO. A9900100
DATED AUGUST 24, 1999
NONCOMPETITIVE PROCUREMENTS

DATE: September 22, 1999

ENCLOSURE

Code H's narrative response is provided as follows:

GENERAL COMMENTS:

The following corrections/clarifications related to Finding A are requested:

1. In the second paragraph (Guidance for Performing and Documenting Technical Analyses) on page 2 under Finding A, the number of the handbook, "Technical Analyses of Cost Proposals" should be corrected to 5115.2 instead of 5112.2.

2. Under Finding A, Performing Technical Analyses, the report states "... the CO at Johnson did not request technical assistance for two modifications made to the International Space Station (ISS) contract (see Appendix C). Therefore, the CO's ability to develop a sound and supportable prenegotiation position and to obtain more favorable award prices may have been weakened (see Finding A)". The statement does not accurately depict the circumstances of the modifications.

a) The first of the modifications in question is modification 604, valued at approximately \$71 million. Modification 604 settled a long-standing issue concerning Boeing's compliance with Cost Accounting Standards (CAS). Resolution of disagreements involving CAS issues does not always require a technical evaluation.

Even though modification 604 made a large adjustment to contract value, it did not result from any new contract requirements, did not involve evaluating labor hours, travel, computer hours, quantities/kinds of materials, or any other factors that a technical evaluation would be useful for. The modification was to settle a disagreement between Boeing and the government over accounting techniques used to assign costs on the contract. For this type of a negotiation, the "technical" expertise needed is in the accounting field. The contracting officer obtained this expertise from the Defense Contract Audit Agency (DCAA). Federal Acquisition Regulations 30.601 and 42.302 assign the Administrative Contracting Officer (ACO) primary cognizance over resolution of CAS issues. Accordingly, analysis of the Boeing claim was a coordinated effort among the ACO at the Defense Contracts Management Command (DCMC), Seattle, the DCAA (both Seattle and Houston offices), and NASA. The effort, however, was led by the ACO. At his direction, DCAA performed the required detailed accounting analysis and verification of the claim, in close coordination with both DCMC and NASA. The ACO determined that no additional technical evaluation was required.

b) The second modification referenced under Finding A where the audit states technical assistance was not requested, modification 608, settled a contractual disagreement regarding a contract clause entitled "Civil Servant Assistance." This clause required NASA to provide civil servant support to the Boeing statement of work effort.

See Appendix E,
OIG Comment 1

See Appendix E,
OIG Comment 2

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Boeing contended that NASA was not providing the support as required by the contract. In this case, a NASA technical review was performed to determine what support NASA was providing in accordance with this clause. The results of the technical review were included as an attachment to the Prenegotiation Position (PNP) Memorandum (the technical evaluation results were in the form of briefing charts that may not have been recognized by the IG as a technical evaluation). As a result of the technical review, a series of fact-finding meetings were held, as documented in the PNP Memorandum. These meetings revealed that much of the support being provided by NASA was actually required elsewhere in the contract. The negotiated agreement reached was a compromise to avoid litigation and the focus was on overall settlement of an area of controversy to the best advantage of the Government. The Contracting Officer determined that no additional technical analyses were necessary in order to protect the interests of the Government.

1. Finding A of the report also states that, "Johnson issued no additional guidance" for performing and documenting technical analyses. This statement is not considered accurate. JSC Announcement 96-094 – Technical Analysis/Evaluation of Contract Proposals, dated November 5, 1996, was issued to emphasize the requirements of quality technical evaluations and made specific reference to JSC Handbook 5101.4, Part 4. JSC Handbook 5101.4 was issued in 1989, and Part 4 provided detailed guidance on technical analysis of cost proposals. When the ISS program was assimilated into the JSC procurement office in early 1997, it automatically came under this JSC policy. It should also be noted that a new JSC policy document providing updated guidance on technical evaluations has been drafted and is presently in management review at JSC.

See Appendix E,
OIG Comment 3

CODE H RESPONSE

The OIG recommendations, and the Code H responses are as follows:

OIG RECOMMENDATIONS 1 AND 2:

The Associate Administrator for Procurement should require that CO's:

1. Provide written guidance to analysts for noncompetitive procurements that identifies the proposed resources the CO wants evaluated, the required timeframe for the analysis, and the desired format.
2. Include fact-finding documentation in the official contract file.

CODE H RESPONSE TO RECOMMENDATIONS 1 AND 2: Concur.

The Associate Administrator for Procurement will issue a letter to the installation procurement officers instructing them to ensure that CO's comply with the audit

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recommendations. The letter will encourage them to emphasize the quality of technical analyses and proper file documentation in support of prenegotiation positions.

Corrective Action Official: HS/J. Cullen
Corrective Action Closure Official: HS/J. Balinskas
Projected Corrective Action Closure Date: November 10, 1999

Additionally, procurement teaches a segment of NASA's Program Management and Advanced Program Management courses. The FAR requirements and importance of technical evaluations will be included in the course material for future courses.

Corrective Action Official: HC/J. Lupis
Corrective Action Closure Official: HC/A. Guenther
Projected Corrective Action Closure Date: October 29, 1999

OIG RECOMMENDATION 3:

The Associate Administrator for Procurement should require that:

3. Staff responsible for noncompetitive purchase order awards receive refresher training on the type of price support and documentation required by the FAR.

CODE H RESPONSE TO RECOMMENDATION 3: Concur.

The Associated Administrator for Procurement will issue a letter to the installation procurement officers pointing out the need for refresher training, with results to be reported back to NASA HQ.

Corrective Action Official: HS/J. Cullen
Corrective Action Closure Official: HS/J. Balinskas
Projected Corrective Action Closure Date: November 10, 1999

Appendix E. OIG Comments on Management Response

NASA Headquarters provided the following general comments in its response to our draft report. The Office of Inspector General (OIG) responses are also provided.

Management Comment. Under Finding A, the number of the handbook, “Technical Analyses of Cost Proposals” should be 5115.2 instead of 5112.2.

OIG Comment 1. We agree and have made the required change.

Management Comment. In Finding A, the report states that the CO at Johnson did not request technical assistance for two modifications made to the ISS contract. Therefore, the CO’s ability to support their prenegotiation position and obtain a better contract price may have been weakened. Management’s position is that modification 604 did not require a technical analysis. In addition, management states that the report does not recognize that a technical analysis had been performed for modification 608 due to the format in which the analysis was presented.

OIG Comment 2. After considering management’s comments and further reviewing our own analyses, we agree that the lack of a technical analysis did not affect negotiations for modification 604. However, we disagree with management’s position regarding modification 608. The technical analysis to which management refers was a NASA internal analysis that was done to show the ISS contractor that the Agency had met contract provisions and provided civil servant support to the contract effort. NASA went to considerable lengths to document its contract support. However, NASA did not require the ISS contractor to provide specific evidence of harm other than its claim that NASA’s lack of support caused a contract overrun. NASA’s CO did not request either proposed costs or a technical analysis from the contractor. We believe the negotiated settlement did not reflect an analysis of the contractor’s costs. We maintain our position with respect to modification 604. In addition, the report statement that the CO’s ability to obtain a better contract price was weakened by an inadequate technical analyses applies not only to modification 608 but also to the other 17 analyses considered inadequate. Management’s response gives the appearance that the statement applied to modifications 604 and 608 only.

Management Comment The statement in Finding A that Johnson issued no additional guidance for performing and documenting technical analyses is not accurate. Management states that a Johnson Handbook issued in 1989 provided detailed guidance on a technical analysis of cost proposals. This guidance became applicable to the ISS program in 1997. Furthermore, JSC developed a new policy document with updated technical guidance that is under management review.

OIG Comment 3. During the audit, we found no evidence of and no one told us about an existing Johnson Handbook. We met with the individual who drafted the new policy document, and he did not advise us of existing guidance. In addition, the primary ISS cost analyst told us

that he provided the ISS technical analysts with copies of the Air Force technical guidance pamphlet because the ISS cost analyst had no other guidance available.

Appendix F. Report Distribution

National Aeronautics and Space Administration (NASA) Headquarters

A/Administrator
AI/Associate Deputy Administrator
AO/Chief Information Officer
B/Chief Financial Officer
B/Comptroller
BF/Director, Financial Management Division
C/Associate Administrator for Headquarters Operations
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Assistant to the President for Science and Technology Policy
Deputy Associate Director, Energy and Science Division, Office of Management and Budget

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Branch Chief, Science and Space Programs Branch, Energy Science Division, Office of Management and Budget
Associate Director, National Security and International Affairs Division, Defense Acquisition Issues, General Accounting Office
Professional Assistant, Senate Subcommittee on Science, Technology, and Space

Chairman and Ranking Minority Member -- Congressional Committees and Subcommittees

Senate Committee on Appropriations
Senate Subcommittee on VA, HUD, and Independent Agencies
Senate Committee on Commerce, Science, and Transportation
Senate Subcommittee on Science, Technology, and Space
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on VA, HUD, and Independent Agencies
House Committee on Government Reform and Oversight
House Subcommittee on National Security, Veterans Affairs, and International Relations
House Committee on Science
House Subcommittee on Space and Aeronautics

Congressional Member

Honorable Pete Sessions, U.S. House of Representatives

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