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**REVIEW OF THE GIRVAN INSTITUTE OF
TECHNOLOGY COOPERATIVE AGREEMENT**

February 9, 2004

cc:

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National Aeronautics and
Space Administration

OFFICE OF INSPECTOR GENERAL

Released by: [Original signed by]

David M. Cushing, Assistant Inspector General for Auditing

Review of the Girvan Institute of Technology Cooperative Agreement

We evaluated the Girvan Institute of Technology (Girvan) cooperative agreement (Agreement)¹ as a follow-on activity to our survey of the NASA Research Park (NRP) at Ames Research Center (Ames).

We found deficiencies in the award and financial oversight of the Agreement. Specifically, Ames circumvented competition and awarded the Agreement noncompetitively based on an invalid unsolicited proposal. The unsolicited proposal was invalid because it was not independently originated and developed by the offeror, and further, it was paid for in part by the Government and prepared with Government involvement. In addition, NASA has not provided sufficient financial oversight for the Agreement. NASA's share of funding under the Agreement has increased more than 1,000 percent, from \$600,000 in the original award to \$6.9 million, without adequate analyses to ensure that the cost to the Government was fair and reasonable. During the first year of the Agreement, NASA provided 92 percent of Girvan's funding versus the 23 percent specified in the original Agreement.

We made two recommendations to NASA management for improving the effectiveness of its procurement and business operations relating to the Agreement. The first recommendation was to reevaluate the Agreement and determine whether it is in the best interest of the Government to continue or terminate the Agreement. Secondly, if the Agency decided to continue the Agreement, we recommended that it take action to ensure proper financial oversight of the Agreement.

Management concurred with the first recommendation to reevaluate the Agreement and determined that it was in the Government's best interest to terminate it. The projected completion date for the termination action is February 29, 2004. Because the Agency is taking action to terminate the Agreement, the second recommendation is moot.

The complete text of management's response is in Appendix E. We consider management's proposed corrective action to terminate the Agreement responsive to our recommendations.

We identified "funds put to better use"² of \$1,471,799 that are expected to be achieved by the Agency taking the corrective action of terminating the Agreement. This amount is

¹Cooperative agreements are awarded when the principal purpose of the relationship between NASA and the recipient is the transfer of anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute. The Girvan agreement called for a set level of funding by NASA.

²The auditing phrase "funds put to better use" means that funds could be used more efficiently if management takes action to implement and complete the recommendations made by the audit, including reduction in outlays or deobligation of funds from programs or operations.

calculated as the difference between the value of the Agreement of \$4,872,987 and the total obligations under the Agreement of \$3,401,188. Management confirmed that no new funds will be obligated to the Agreement and concurred with the “funds put to better use” calculation methodology and resulting estimated dollar amount.

Invalid Unsolicited Proposal

Federal Acquisition Regulation (FAR) Subpart 15.6, “Unsolicited Proposals,” requires that unsolicited proposals be developed outside the Government, be independently originated and developed by the offeror, and be prepared without Government supervision, endorsement, or direct Government involvement (see Appendix C for details on the FAR requirements). Ames awarded the noncompetitive Agreement based on an unsolicited proposal that did not meet the requirements of the FAR. By accepting the invalid unsolicited proposal, NASA circumvented requirements for full and open competition and Girvan received an unfair advantage over other potential competitors.

Unsolicited Proposal Was Not Independently Originated and Developed by the Offeror. Ames had prior involvement with the offeror (the professor) before the professor submitted the unsolicited proposal. The professor worked as a consultant for Ames on a task order under contract NAS2-98081³ from April 25, 2001, through March 8, 2002. The professor’s final report under his task order included a plan for the establishment of an “Entrepreneurial Center (EC).” On February 14, 2002, during the same time period he worked on the EC concept under the task order, the professor submitted an unsolicited proposal to Ames for the full implementation of the EC (that is, Girvan).

Clear overlap was present in the professor’s EC plan developed for Ames under the task order and his unsolicited proposal to implement the EC concept. For example, the professor’s final report under the task order proposes the following objectives for the planned center:

- To foster, develop, support, and/or manage cooperative endeavors, that is, joint efforts between the public, private, and academic sectors in support of research, technology development, and technology transfer;
- To foster and support new companies or elements of existing companies devoted to the commercialization of technologies developed by governmental organizations and academic institutions; and
- To foster, develop, support, and/or manage projects, programs, and organizations for entrepreneurial education, education outreach, and workforce development.

Almost identically, the professor’s unsolicited proposal proposes to establish an EC (that is, Girvan):

³NAS2-98081 was an Ames contract with Quantum Services, Inc. (QSI) for administrative and technical services, with a fiscal year 2001 value of \$172,980,820. The value of the professor’s QSI task order was \$207,205.

- To foster, develop, support, and/or manage cooperative endeavors between the public, private, and/or academic sectors in support of research, technology development, and technology commercialization;
- To foster and support new companies or elements of existing companies devoted to the commercialization of technologies offered through the NRP; and
- To foster, develop, support, and/or manage projects, programs, and organizations for entrepreneurial education, education outreach, and workforce development.

Ames accepted the professor's unsolicited proposal and Girvan was established to fully implement the plan for an EC. A subsequent Girvan proposal seeking additional NASA funding further evidences that there was prior involvement between the professor and Ames as well as overlap between efforts under his task order and his efforts under the Agreement that resulted from his unsolicited proposal. Specifically, the proposal states:

Until March, [the professor] had been supporting the management at ARC in the development of the NASA Research Park (NRP) and other NASA-related activities under a consulting contract with a NASA contractor. This work has now been subsumed by the Girvan Institute, this proposed amendment accounts for increased costs associated with the continuation of that work.

See Appendix D for details on the professor's efforts under the task order versus Girvan's efforts under the Agreement resulting from the professor's unsolicited proposal.

Decision to Accept Unsolicited Proposal Based Largely on an Office of General Counsel Statement That Was Qualified and Based on Incomplete Information. The Ames Commercial Technology Office (CTO), who the professor supported under his task order, requested legal advice via e-mail from the Ames Office of General Counsel (OGC) regarding the propriety of the unsolicited proposal. However, the CTO's request did not provide an accurate and complete description of the chronology of events leading up to the submission of the unsolicited proposal or a full depiction of Ames' prior involvement with the professor pertaining to the unsolicited proposal.

In an e-mail response to the CTO, the OGC stated that Ames should be able to accept the unsolicited proposal, but qualified this statement by noting that "it's hard to give you a complete answer." The OGC response also identified several issues such as organizational conflicts of interest and an unfair competitive advantage for the professor that could cause potential problems with the proposed arrangement. Because of these potential problems, the OGC noted that "if [the professor] developed an unsolicited proposal on his own time and there is no unfair competitive advantage . . . then we should be able to accept the proposal if it has merit." Despite the potential problems raised by the OGC, the CTO did not follow up with the OGC to provide additional information that would produce a complete answer.

Recommendations, Management's Response and Evaluation of Management's Response.

- 1. The Associate Administrator for Aeronautics (formerly Aerospace Technology) should instruct the Director, Ames Research Center, to reevaluate the Agreement, in consultation with the Ames OGC and Procurement Officer, and make a written determination whether it is in the best interests of the Government to continue or terminate the Agreement.**

Management's Response. The Ames Director has reevaluated the Agreement, in consultation with the Ames OGC and Procurement Officer, and decided to terminate the Agreement in the best interests of the Government. The projected completion date for the termination action is February 29, 2004.

Evaluation of Management's Response. Management's proposed corrective action is responsive to the recommendation. This recommendation is resolved but will remain undispositioned and open until the Agreement is officially terminated.

Insufficient Financial Oversight

The total level of NASA funding under the Agreement increased from \$600,000 at the time of the original award to \$6.9 million (more than 1,000 percent) without adequate analysis that the proposed cost increases were fair and reasonable to the Government. This situation occurred because neither the Ames Procurement Office nor the CTO questioned Girvan's proposed funding increases even though the Ames Deputy Chief Financial Officer (CFO) had raised questions. As a result, Ames is contributing significantly more for the Agreement than originally agreed and lacks assurance that its contributions under the Agreement are fair and reasonable.

NASA Requirements. The "NASA Grants and Cooperative Agreement Handbook" (Handbook) and the Agreement itself have requirements for financial oversight.

- The Handbook, Section 1260.11(f), "Evaluation and Selection," requires both the Technical Office and the Grants Officer to review significant requests for increases in funding to determine their necessity and reasonableness.
- The Agreement called for NASA funding of Girvan for the first 3 years only, and the Agency's share of the costs during those years would be limited. The Agreement states the following:

NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a 23 percent NASA; 77 percent Recipient [Girvan] basis. Girvan has the responsibility of sharing the costs of the programs it is managing for NASA. Failure of Girvan Institute to cost share at least as much as is indicated in its proposal's budget each calendar year is grounds for termination of this Agreement.

NASA’s Share of Funding Under the Agreement Has Grown Dramatically. In the original Agreement, NASA was to contribute \$250,000 for the first year and a total of \$600,000 over the first 3 years of the Agreement. Girvan projected that it would be self-sustaining (that is, would not need any NASA funds) in years 4 and 5. However, 4 and one-half months after the Agreement was awarded, Ames approved a Girvan proposal for additional funding that significantly increased NASA’s share of funding under the Agreement (via Supplement 1). Girvan’s financial projections in the proposal also indicated a requirement for NASA funding in years 4 and 5. The proposal offered little in the way of justification other than a statement indicating that “the activity has grown more rapidly than anticipated.” Ames also approved two subsequent Girvan proposals for additional increases in funding. The table below summarizes the growth in NASA funding under the Agreement for the first year and in total.⁴

<u>Agreement Document</u>	<u>Effective Date</u>	<u>First Year NASA Funding</u>	<u>Percent Increase</u>	<u>Total NASA Funding</u>	<u>Percent Increase</u>
Original	03/01/02	\$ 250,000	-	\$ 600,000	-
Supplement 1	07/15/02	1,215,490	386	5,902,237	884
Supplement 6	01/01/03	1,390,390	456	6,604,301	1,001
Supplement 9	03/01/03	-	-	6,909,386	1,052

NASA’s share of funding under the Agreement was also significantly higher than the percentage (that is, 23) stated in the original Agreement. Girvan’s Profit and Loss Statement for the first year, for example, showed NASA funding of \$1,125,948 (that is, 92 percent of the total costs), while Girvan’s funding was \$91,909 (8 percent).

Lack of NASA Financial Oversight. There was no documentation in the file to support a determination that these actions increasing NASA’s costs under the Agreement were fair and reasonable and in the best interest of the Government. The Ames Procurement Office and CTO did not question the significant funding increase in Supplement 1 despite questions raised by the Ames Deputy CFO. In a July 9, 2002, memorandum to the CTO, the Deputy CFO questioned the financial planning and strategic feasibility of the Agreement and stated, “. . . the revised Girvan proposal does not sufficiently explain the reason for the cost increase other than the activity has grown more rapidly than anticipated.” The Deputy CFO also stated “. . . we strongly encourage you to perform a detailed review of the Girvan business plan to insure [sic] its financial and strategic feasibility before any action is taken on their revised proposal. . . .” Despite those explicit concerns, the Ames Procurement Office awarded Supplement 1 to Girvan without negotiating any reduction in funding or obtaining additional justification. Further, Supplements 6 and 9 show no evidence of cost analyses to support the associated funding increases to the Agreement. Documentation in the file merely directs the reader to the cost analysis for the original Agreement as the basis of accepting the subsequent funding increases.

⁴Supplements 2-5, 7, and 8 made only administrative changes to the Agreement and did not change NASA’s funding obligations under the Agreement.

Recommendations, Management's Response and Evaluation of Management's Response.

- 2. The Associate Administrator for Aeronautics should instruct the Director, Ames Research Center, to take action to ensure the proper financial oversight of the Agreement, provided the Agreement is not terminated.**

Management's Response. Pursuant to Recommendation 1, the Agency is taking action to terminate the Agreement, rendering this recommendation moot.

Evaluation of Management's Response. The recommendation is resolved and dispositioned, and will be closed for reporting purposes.

List of Appendixes

Appendix A – Status of Recommendations

Appendix B – Background, Scope, and Methodology

Appendix C – FAR Requirements for Unsolicited Proposals

Appendix D – Excerpts from the Professor’s Task Order and His
Unsolicited Proposal

Appendix E – Management’s Response

Appendix F – Report Distribution

Acronyms Used in the Report

CFO	Chief Financial Officer
CTO	Commercial Technology Office
FAR	Federal Acquisition Regulation
NRP	NASA Research Park
OGC	Office of General Counsel

Appendix A. Status of Recommendations

Recommendation No.	Resolved	Unresolved	Open/ECD*	Closed
1	X		02/29/04	
2	X			X

*ECD – Estimated Completion Date

Appendix B. Background, Scope, and Methodology

This review was a result of survey work conducted on the NASA Research Park (NRP) at Ames Research Center (Ames). During our survey of the NRP, we reviewed the cooperative agreement (Agreement) awarded to the Girvan Institute of Technology (Girvan)⁵ because of potential duplication in the services for commercial technology related to the development of the NPR.

Girvan's task in the overall development of the NRP concept is to support the management of Ames with an emphasis on management of commercial technology and to function as an Entrepreneurial Center (EC) at Ames. Components of the EC included operating elements; partnerships, both Center-wide and Principal Investigator specific (Government-industry-university in various combinations); commercialization of Government-developed technologies; outreach (conferences, workshops, and meetings); developing tenant-partners in the NRP; and financing the activities of the EC, including the establishment of the new companies to effect technology commercialization.

During our review of the Agreement, we conducted interviews with Ames management, Girvan management, and Government, industry, and academic partners for the purpose of better understanding Girvan's overall role in the Ames NPR. We conducted fieldwork between November 2002 and August 2003.

This review was conducted as a non-audit assignment in the new Office of Audits. Although this review activity did not follow generally accepted government auditing standards, appropriate inspection and evaluation quality standards and controls were applied.

⁵A member of the Ames Commercial Technology Office, who was involved in the award of the Agreement, told us that the institute was named "Girvan" because the Center Director at the time (Harry McDonald) came from Girvan, Scotland.

Appendix C. FAR Requirements for Unsolicited Proposals

The following Federal Acquisition Regulation (FAR) sections define an unsolicited proposal and contain the requirements for acceptance and negotiation of an unsolicited proposal on behalf of the Government.

FAR Subpart 15.603, “Unsolicited Proposals”

Part (a) defines an unsolicited proposal as follows:

Unsolicited proposals allow unique and innovative ideas or approaches that have been developed *outside the Government* (emphasis added) to be made available to Government agencies for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the Government will enter into a contract [or other Agreement] with the offeror for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the offeror.

Part (c) expounds further on this definition,

A valid unsolicited proposal must—

- (1) Be innovative and unique;
- (2) *Be independently originated and developed by the offeror* (emphasis added);
- (3) *Be prepared without Government supervision, endorsement, direction, or direct Government involvement* (emphasis added);
- (4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency’s research and development or other mission responsibilities; and
- (5) *Not be an advance proposal for a known agency requirement that can be acquired by competitive methods* (emphasis added).

FAR Subpart 15.607, “Criteria for acceptance and negotiation of an unsolicited proposal”

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact shall return an unsolicited proposal to the offeror, citing reasons, when its substance:

- (1) Is available to the Government without restriction from another source;
- (2) Closely resembles a pending competitive acquisition requirement;
- (3) Does not relate to the activity's mission; or
- (4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

(b) The contracting officer may commence negotiations on a sole source basis only when:

- (1) An unsolicited proposal has received a favorable comprehensive evaluation;
- (2) A justification and approval has been obtained (see 6.302-1(a)(2)(i) for research proposals or other appropriate provisions of Subpart 6.3, and 6.303-2(b));
- (3) The agency technical office sponsoring the contract furnishes the necessary funds; and
- (4) The contracting officer has complied with the synopsis requirements of Subpart 5.2.

Appendix D. Excerpts from the Professor's Task Order and His Unsolicited Proposal

Task Order. The task order required the professor to:

- Foster the participation of the several campuses of the University of California and other universities in the NASA Research Park (NRP).
- Support the development of activities in the NRP, for example, shared Research and Development; shared presentations of technological innovations; small-business incubation; and innovative activities of industrial and commercial organizations, both local and national, as well as government agencies at all levels.
- Recruit suitable tenants/partners for the NRP.
- Support the management of Ames in NRP-related activities.
- Support the management of NASA's Ames Research Center, especially the management of the CTO of Ames.
- Support the development and implementation of the plan for the Entrepreneurial Center (the EC) of NASA Ames and the operating elements of the EC; the iterative analysis, refinements, and upgrades of these plans; the presentations of these plans to NASA management; and the analysis and reporting of the efficacy of the operations of the EC.
 - Components of the EC plan will include, but will not be limited to: the organizational structure of the EC and its operating elements; partnerships, both center-wide and Principal Investigator-specific (government-industry-university in various combinations); commercialization of government-developed technologies, outreach (conferences, workshops, and meetings); developing tenant-partners in the NASA Research Park; and financing the activities of the EC, including the establishment of the new companies to effect technology commercialization.

Unsolicited Proposal. The unsolicited proposal submitted by the professor identified in the Statement of Work that Girvan was established to:

- Foster, develop, support, and/or manage cooperative endeavors between the public, private, and/or academic sectors in support of research, technology development, and technology commercialization;
- Foster and support new companies or elements of existing companies devoted to the commercialization of technologies offered through the NRP; and
- Foster, develop, support, and/or manage projects, programs, and organizations for entrepreneurial education, education outreach, and workforce development.

Appendix E. Management's Response

National Aeronautics and
Space Administration
Ames Research Center
Moffett Field, CA 94035-1000



December 10, 2003

Reply to Attn of: J:200-9

TO: NASA Headquarters
Attn: Associate Administrator for Aerospace Technology *Hubbard 12/12/03*

FROM: D/Director

SUBJECT: Review of The Girvan Institute of Technology Cooperative Agreement at
Ames, Assignment, G-03-007

Our response to the subject Draft Review, dated November 24, 2003, which management considers responsive for closure, is as follows:

Recommendation 1. The Associate Administrator for Aerospace Technology should instruct the Director, Ames Research Center, to reevaluate the Agreement, in consultation with the Ames OGC and Procurement Officer, and make a written determination whether it is in the best interests of the Government to continue or terminate the Agreement.

Concur with recommendation:

The Ames Research Center Director has reevaluated the Agreement, in consultation with the Ames OGC and Procurement Officer, and has made a determination to terminate the Agreement in the best interests of the Government. Ames OGC and the Procurement Officer are currently taking action to terminate the agreement at the end of February 2004.

Recommendation 2. The Associate Administrator for Aerospace Technology should instruct the Director, Ames Research Center, to take action to ensure the proper financial oversight of the Agreement, provided the Agreement is not terminated.

Action is being taken to terminate The Girvan agreement, therefore, financial oversight would no longer be required.

G. Scott Hubbard
for G. Scott Hubbard

cc:
HQ/RS/S. Humphrey

Appendix F. Report Distribution

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Branch Chief, Science and Space Programs Branch, Energy and Science Division, Office of Management and Budget
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Managing Director, Natural Resources and Environment, General Accounting Office
Senior Professional Staff Member, Senate Subcommittee on Science, Technology, and Space

Chairman and Ranking Minority Member – Congressional Committees and Subcommittees

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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

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