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Acronyms

AFAA	Air Force Audit Agency
ELIN	Exhibit Line Item Number
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
IDIQ	Indefinite-Delivery, Indefinite-Quantity
IG	Inspector General
MEO	Most Efficient Organization
NAVFAC	Naval Facilities Engineering Command
OMB	Office of Management and Budget
PWS	Performance Work Statement



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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ARLINGTON, VIRGINIA 22202-4704

April 3, 2007

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
NAVAL INSPECTOR GENERAL

SUBJECT: Report on Performance-Based Service Contract for Environmental Services
at the Navy Public Works Center, San Diego, California
(Report No. D-2007-079)

We are providing this report for information and use. This report is the second of two reports discussing the Office of Management and Budget Circular No. A-76 public-private competition for environmental services at the Navy Public Works Center, San Diego, California. We considered management comments on a draft of this report in preparing the final report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Henry F. Kleinknecht at (703) 604-9324 (DSN 664-9324) or Ms. Rebecca L. Yovich at (703) 604-9423 (DSN 664-9423). See Appendix G for the report distribution. The team members are listed inside the back cover.

By direction of the Deputy Inspector General for Auditing:

A handwritten signature in black ink, reading "Richard B. Jolliffe".

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management

Special Warning

This special version of the report has been revised to omit contractor proprietary data and source selection information.

Department of Defense Office of Inspector General

Report No. D-2007-079

April 3, 2007

(Project No. D2005-D000CH-0123.001)

Performance-Based Service Contract for Environmental Services at the Navy Public Works Center, San Diego, California

Executive Summary

Who Should Read This Report and Why? Defense officials responsible for the Office of Management and Budget (OMB) Circular No. A-76, "Performance of Commercial Activities (Revised)," May 29, 2003, public-private competition process and DoD acquisition and contracting personnel should read this report. It addresses the management of a performance-based environmental services contract resulting from a public-private competition and also discusses the use of fixed-price, performance-based, indefinite-delivery, indefinite-quantity (IDIQ) task orders.

Background. On June 17, 2002, the Department of the Navy announced the decision to perform a cost comparison of the environmental services function at the Public Works Center in San Diego, California. One privcounovate

performance-based service acquisition, to maximize contractor performance and innovation at lower costs, with the contract as currently structured for the environmental services function at the Navy Public Works Center, San Diego, California (finding A).

The Commanding Officer, Naval Facilities Engineering Command Southwest should adequately staff the Government residual organization for the duration of the contract. The contracting team should require Shaw to finalize a quality control program, determine the adequacy of Shaw's system for measuring each performance standard and take appropriate action if the requirements are not met, and notify Shaw that it is not in compliance with contract terms until the quality control plan is approved and all performance standards are measured. Also, the contracting team should assess the reasonableness and necessity of all performance standards in the contract, delete or revise non-critical standards, and determine whether it is in the Navy's best interest to continue with the performance-based services contract. In addition, the contracting team should ensure that contract language regarding workload fluctuations in future contracts is specific about contract pricing changes and evaluate alternative methods of billing customers. We also recommend that the Navy Director of Strategic Sourcing consider the issues with performance-based contracting for environmental services before issuing the solicitation for the Naval Facilities Engineering Command Mid-Atlantic environmental services public-private competition.

The Navy Public Works Center also was not following sound procurement practices for performance-based IDIQ work valued at \$5.8 million annually. As a result, there was no means to hold Shaw accountable for measurable performance outcomes on the firm-fixed-price performance-based task orders. We calculate that during the base and first option period, the Navy paid about \$1.4 million more than negotiated in the competitively sourced contract by using higher labor rates and over the next three option periods will pay about \$6.6 million more if the Navy continues to accept Shaw's higher labor rates. In addition, the Navy in-house team would have won the competitively sourced environmental services function by about \$7.1 million if Shaw had proposed the higher labor rates (finding B).

The Commanding Officer, Naval Facilities Engineering Command Southwest should adequately staff the contract administration and send contracting and technical support staff to appropriate training for performance-based service acquisition and environmental services. He should also instruct the contracting officer to determine whether performance-based service acquisition is appropriate for the IDIQ requirements, include measurable performance standards in IDIQ task orders, award IDIQ task orders using the competitive rates from the competitively sourced contract, document the principal elements of the negotiated agreement, track contract dollars by specific line items, and request a reimbursement of \$1,431,404 from Shaw.

Management Comments and Audit Response. The Director, Program Analysis and Business Transformation, Deputy Assistant Secretary of the Navy (Acquisition Management) and the Director, Navy Strategic Sourcing concurred with all recommendations. All comments were responsive; therefore, additional comments are not required. See the Finding sections of the report for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

Table of Contents

Executive Summary	i
Background	1
Objective	3
Findings	
A. Contract Management	4
B. Performance-Based IDIQ Task Orders	20
Appendixes	
A. Scope and Methodology	41
B. Prior Coverage	43
C. Comparison of Shaw Quality Control Plan and PWS Performance Requirements	44
D. Professional Services Labor Rates in the Contract for the First Option Period	55
E. IDIQ Task Order Labor Rates for the Base Period	56
F. IDIQ Task Order Labor Rates for the First Option Period	58
G. Report Distribution	60
Management Comments	
Deputy Assistant Secretary of the Navy (Acquisition Management)	61
Navy Strategic Sourcing	69

Background

This is the second of two reports discussing the Office of Management and Budget (OMB) Circular No. A-76, public-private competition for the environmental services function at the Navy Public Works Center, San Diego, California. Congresswoman Susan A. Davis requested that we review allegations from the employees of the environmental department at the Navy Public Works Center, San Diego, California. The employees alleged several procedural and technical violations during the OMB Circular No. A-76 public-private competition. The employees also alleged potential adverse impacts as a result of the competition decision to award the environmental services function to a private sector provider, Shaw Infrastructure, Inc., (Shaw). We addressed the allegations in DoD Inspector General (IG) Report No. D-2006-036, "Public-Private Competition for Environmental Services at the Navy Public Works Center, San Diego, California," December 8, 2005. During our review of the allegations, we identified issues with the management of the performance-based service contract for environmental services and the use of fixed-price, performance-based, indefinite-delivery, indefinite-quantity (IDIQ) task orders. These issues are addressed in this report.

Public-Private Competition for Environmental Services. On June 17, 2002, the Department of the Navy announced the decision to perform a cost comparison of the environmental services function at the Public Works Center in San Diego, California. The cost comparison is a public-private competition process required by OMB Circular No. A-76 to compare the cost of Government performance with contract performance. About 103 positions were included in the public-private competition process. The Navy Public Works Center, San Diego, environmental services function falls under the chain of command of the Naval Facilities Engineering Command (NAVFAC)¹ and is responsible for providing a wide range of environmental services to customers throughout the Commander Navy Region Southwest area of cognizance. These services included laboratory analysis and testing, industrial and oily waste water treatment, hazardous waste handling and treatment, site assessment and remediation, and special projects.

On October 16, 2003, the Navy issued a solicitation for the OMB Circular No. A-76 cost comparison study to provide environmental services. The performance work statement (PWS) was based on a performance-based contracting template to ensure Navy-wide consistency, and included firm-fixed-price requirements, which represented ongoing, recurring work; and IDIQ requirements, which represented one-time, nonrecurring work. One contractor, Shaw, submitted a technical and price proposal to the solicitation. After four rounds of discussions with the evaluation boards, the source selection authority selected Shaw as the best value contractor to compete with the Government most efficient organization (MEO) in the cost comparison.

On August 16, 2004, the contracting officer conducted the cost comparison and announced the tentative decision to select the Government MEO to perform the

¹ On August 1, 2005, the Navy Public Works Center, San Diego, California, merged with the NAVFAC Southwest Division to become NAVFAC Southwest.

environmental services at the Navy Public Works Center, San Diego. The adjusted total cost to contract with Shaw for the services was \$72.3 million, \$12.2 million more than the MEO's adjusted total in-house cost of \$60.1 million. Shaw subsequently appealed the tentative decision, stating that five items were not properly accounted for in the in-house cost estimate. The MEO did not submit an appeal during the eligible period. On December 3, 2004, the Administrative Appeal Authority sustained three of the five appealed items and increased the in-house cost estimate accordingly. The Administrative Appeal Authority recomputed the cost comparison and determined the adjusted total in-house cost should have been \$76.6 million, \$4.1 million more than Shaw's adjusted total contract cost of 72.5 million.² The Administrative Appeal Authority's final decision reversed the tentative decision and ruled in favor of Shaw as the winner of the cost comparison.

Performance-Based Contract for Environmental Services. The Department of the Navy awarded contract N68711-03-D-4302 to Shaw on January 12, 2005. The contract was a performance-based, combination firm-fixed-price and IDIQ contract for performance of environmental services at the Navy Public Works Center, San Diego, California. The Government continued to provide services during the 79-day (approximately 3 months) phase-in period. Shaw fully assumed performance of environmental services on April 1, 2005. On October 1, 2006, the contracting officer exercised the second contract option period. As shown in Table 1, the contract was valued at about \$13.6 to \$14.1 million annually.

Table 1. Awarded Contract Value				
<u>Performance Period</u>	<u>Duration</u>	<u>Firm-Fixed-Price</u>	<u>IDIQ</u>	<u>Total</u>
Phase-in Period	3 months	\$ 399,941	0	\$ 399,941
Base Period	6 months	3,861,099	\$ 3,829,355	7,690,454
Option Period 1	1 year	7,834,287	5,785,788	13,620,075
Option Period 2	1 year	7,946,784	5,828,565	13,775,349
Option Period 3	1 year	8,058,512	5,872,410	13,930,922
Option Period 4	1 year	8,171,539	5,917,352	14,088,891
Option Period 5	3 months	1,930,547	1,914,784	3,845,331
Total	5 years	\$38,202,709	\$29,148,254	\$67,350,963

Performance-Based Services Acquisition Requirements. In a memorandum to the Secretaries of the Military Departments, and the Directors, Defense agencies dated April 5, 2000, the Under Secretary of Defense for Acquisition, Technology, and Logistics stated that it is the policy of DoD that, in order to maximize performance, innovation, and competition (often at lower cost), performance-based strategies for the acquisition of services are to be used wherever possible. In order to ensure that DoD continually realizes savings and performance gains, he

² Shaw's adjusted total contract cost includes about \$5.1 million for the costs of contract administration, one-time conversion, Federal income taxes, and the minimum conversion differential. These costs are calculated based on a percentage of the in-house personnel costs, which were increased by the appeal.

established that a minimum of 50 percent of service acquisitions, measured in both dollars and actions, should be performance-based by the year 2005.

Section 821, “Improvements in Procurement of Services,” of Public Law 106-398, “Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001,” October 30, 2000, established a preference for performance-based service contracting. The law states that the term “performance-based” includes the use of PWSs that set forth contract requirements in clear, specific, and objective terms with measurable outcomes. The law requires the Secretary of each Military Department to establish service contracting centers of excellence and to provide enhanced training in service contracting.

The Federal Acquisition Regulation (FAR) Part 37, “Service Contracting,” requires the use of performance-based acquisitions for services to the maximum extent practicable and states that services should be obtained in the most cost-effective manner, without barriers to full and open competition. A service contract is defined as a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. The FAR requires performance-based contracts for services to include a PWS; measurable performance standards in terms of quality, timeliness, and quantity; the method of assessing contractor performance against performance standards; and performance incentives where appropriate.

Objective

Our overall audit objective was to review selected portions of the OMB Circular No. A-76 process and the decision to award the environmental services function at the Navy Public Works Center, San Diego, California, to a private contractor. Specifically, we reviewed the allegations made to Congresswoman Susan A. Davis to determine whether the Navy decision to award the contract to Shaw Infrastructure, Inc., was in accordance with appropriate policies and procedures. On December 8, 2005, we issued DoD IG Report No. D-2006-036, “Public-Private Competition for Environmental Services at the Navy Public Works Center, San Diego, California,” which addressed the specific allegations contained in the congressional request. During our review of the allegations we identified issues with the management of the performance-based environmental services contract and the use of fixed-price, performance-based, IDIQ task orders. This report addresses those issues. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

A. Contract Management

The Navy Public Works Center was not effectively managing the performance-based contract for the environmental services function at the Navy Public Works Center, San Diego, California. The service provider, Shaw, assumed responsibility for the environmental services function from the in-house Government team as the low-bid, technically acceptable offeror on April 1, 2005. Contract performance was marginal to unsatisfactory during the first performance period. The Navy Public Works Center could not effectively manage contractor performance because:

- the contract contained 78 performance measures and Shaw did not fully implement a quality control program to measure all contract performance requirements (best practices for

2005. During the performance period, the contracting officer issued Shaw a cure notice⁴ for failure to comply with the PWS requirements, and the assessing official gave Shaw a “*⁵” contractor performance assessment report for performance of the contract requirements. By the time that the assessing official prepared the contractor performance assessment report, the contracting officer had already exercised the first option period on October 1, 2005. In the memorandum for the contract file regarding the determination to exercise the first option period, the contracting officer stated that exercising the option would ensure continuity of services and preclude the potential costs of disrupting operations, and that exercise of the option was the most advantageous method of fulfilling the Government’s need, considering price and other factors.

*⁵

First Option Period. According to the officer in charge, Shaw’s performance in the first option period, October 1, 2005, through September 30, 2006, improved over the previous performance period, and he commended Shaw for hiring additional personnel for waste characterization and quality control operations and for improving business relations with the Government and customers. However, he stated that the Government continued to have concerns with contractor performance, such as repeated basic operations violations, corrective actions taken, and the time frame in which situations were corrected. The officer in charge stated that continued efforts were required for Shaw to further improve overall performance, to complete and enforce quality control documentation, and to better manage the subcontractors.

Quality Control Program

The Navy cannot effectively manage contractor performance because the performance-based environmental services contract contained 78 performance measures and Shaw did not fully implement a quality control program for all contract requirements. Best practices for performance-based services acquisition recommend using only a few meaningful performance measures.

Performance Objectives and Standards. Performance objectives are an end state that the organization wants to achieve. A performance standard is a targeted

⁴ The contracting officer issues a cure notice to notify the contractor that the Government considers the contractor’s failures to be endangering performance of the contract. The contractor must “cure” the identified conditions in the specified amount of time or the Government may terminate the contract for default.

⁵ This area of the report represents source selection information that was omitted.

level or range of performance for each characteristic that the Government monitors. The environmental services contract had 37 firm-fixed-price PWS specification items with 78 performance objectives and standards, or acceptable quality levels. Because the environmental services function is highly regulated, many of the performance standards required the service provider to comply with Federal and State laws and regulations, Navy policies and procedures, or other permits and regulations.

Guidelines for Quality Controls. “The Guidebook for Performance-Based Services Acquisition in the Department of Defense,” December 2000, states that the performance assessment plan is based on the premise that the contractor, not the Government, is responsible for managing and ensuring that quality controls meet the terms of the contract. The Guidebook defines a quality control plan as a plan developed by the contractor for its internal use to ensure that it performs and delivers high-quality service. According to the Guidebook, effective use of the performance assessment plan, in conjunction with the contractor’s quality control plan, will allow the Government to evaluate the contractor’s success in meeting the specified contract requirements and the level of performance agreed to in the contract. Thus, the Government role is to assess service provider performance to measurable standards, and the service provider’s role is to assure quality through its quality control processes and quality management system.

Quality Management Program. The environmental services contract PWS required Shaw to establish and maintain a quality management program. The quality management program was required to include:

- accurate documentation of production processes and output measures,
- a systemic procedure for assessing compliance with the production processes and production output standards,
- accurate documentation of quality checks conducted throughout the production processes,
- assessment-driven process adjustments, and
- a corrective and preventative action process.

The PWS also required Shaw to have a quality control manager, quality control plans, and checklists. Additionally, Shaw was responsible for a quality control inspection and reporting system for all performance requirements in the contract. The quality control inspection and reporting system was required to consist of documented processes and procedures for the production of services, as well as systemic checking of production processes and outputs for compliance with established practices and standards.

Standard Operating Procedures. The environmental services contract required Shaw to develop standard operating procedures. Specifically, Shaw was required to develop and submit the required standard operating procedures within 60 days after the notice to proceed. Shaw stated in its technical proposal that it expected to review and adopt the Navy’s existing operating procedures during the phase-in

period. *⁶

However, although not required by the contract, the Navy Public Works Center provided Shaw with copies of its standard operating procedures for reference purposes.

Per the contract requirements, Shaw should have completed the required standard operating procedures during the approximately 3-month-long contract phase-in period. On May 23, 2005, the contracting officer issued Shaw a cure notice for failure to comply with PWS requirements, specifically stating that although the Government provided all Public Works Center working standard operating procedures to Shaw, more than 50 percent of the standard operating procedures had not been submitted for review. Additionally, the Government considered the standard operating procedures that Shaw had provided to be incomplete, and Shaw had not addressed the numerous comments on draft standard operating procedures. The Shaw program manager stated that Shaw had initiated a completion plan, and that all draft standard operating procedures would be submitted to the Navy by June 24, 2005. However, in October 2005, one of the residual organization members documented in a performance assessment that Shaw still did not have a standard operating procedure for the bio-remediation facility.

On April 4, 2006, one year into Shaw's performance of the environmental services contract, the NAVFAC Southwest Facilities Engineering Acquisition Division officer in charge sent Shaw a performance status letter, stating that considerable effort was still required to tie the standard operating procedures and the quality control plan together into a usable, applicable tool for quality environmental services, and that the current quality management system did not meet the PWS requirement.

Shaw Quality Control Plan. Shaw submitted the first quality control plan on March 11, 2005. Shaw stated in the quality control plan that "our team recognizes the importance of the PWS, and our PWS tools substantiate our commitment to achieving PWS performance objectives and acceptable quality levels." However, the quality control plan was general and did not specifically describe the quality controls in place to ensure that Shaw would meet all contract requirements, specifically the acceptable quality levels associated with the contract performance requirements. The residual organization business line manager commented that the plan should identify data needed for acceptable quality levels, identify how the data can be obtained, put procedures in place to acquire data, and establish procedures to process and report data in the monthly quality control reports. According to the residual organization, Shaw's quality control program did not identify regulatory deficiencies, business application problems, or implement corrective action, and many deficiencies could have been avoided if Shaw had completed standard operating procedures in a timely manner. They stated that Shaw's quality control program was not proactive but reactive to deficiencies identified by the residual organization or regulatory agencies.

During the first option period, Shaw revised its quality control plan four times, submitting the fourth revision on July 17, 2006. The Shaw quality control

⁶ This area of the report represents source selection information that was omitted.

manager commented that the residual organization should bear in mind that a quality control plan is not intended to duplicate the quality control inspection responsibilities and requirements in the standard operating procedures and quality control checklists. The residual organization stated that the plan was a significant improvement and Shaw was finally looking inward at the organization and how it is performing rather than how an external audience perceived the performance. According to the residual organization business line manager, although Shaw's quality control plan had improved, there were still incidents which should not have occurred with adequate quality controls.

We reviewed Shaw's July 17, 2006, quality control plan and August 2006 monthly performance report and compared them to the performance standards in the PWS. We found that the quality control plan and monthly performance report did not address all performance requirements. Specifically, as shown in Table 2, of the 78 contract performance standards, Shaw's quality control plan addressed 45 standards, did not address 18 standards, and it was questionable whether the plan addressed 15 standards. In the August 2006 monthly performance report, Shaw addressed 52 standards, did not address 22 standards, and it was questionable whether 4 standards were addressed. We did not evaluate whether Shaw was actually meeting the contract performance standards or the adequacy of Shaw's systems in place to measure the performance standards. For more detail on the performance standards and quality control plan, see Appendix C.

Table 2. Performance Standards Addressed in Shaw's Quality Control Plan and August 2006 Monthly Performance Report					
	<u>Lab</u>	<u>IWOW</u>	<u>CSWS</u>	<u>Other</u>	<u>Total</u>
Performance Standards	16	26	27	9	78
Quality Control Plan					
Yes	4	20	17	4	45
No	6	2	8	2	18
Questionable	6	4	2	3	15
Monthly Performance Report					
Yes	5	23	19	5	52
No	11	2	8	1	22
Questionable	0	1	0	3	4
CSWS	Containerized Solid Waste Services				
IWOW	Industrial and Oily Waste Water Treatment Services				
Lab	Laboratory Services				

Maintaining an Effective Quality Control Program. The environmental services contract clause 5252.246-9303, "Consequences of Contractor's Failure to Perform Required Services," required the contractor to perform all of the contract requirements and to maintain an effective quality control program during the course of the contract. The clause stated that failure to maintain adequate quality control may result in termination of the contract for default. Shaw should have a

quality control system for each performance requirement to be able to evaluate performance and identify the areas needing improvement. It is important that the contracting officer require that Shaw maintain an adequate quality control program to ensure that contract requirements are accomplished in accordance with the performance standards and to allow the residual organization to monitor performance as conceptualized in the performance-based services acquisition guidelines. Therefore, the contracting officer needs to require Shaw to have a quality control program that addresses all contract performance standards and require that monthly performance reports address each performance standard. The contracting officer and residual organization also need to determine the adequacy of Shaw's system for measuring each performance standard, and take appropriate action if Shaw does not meet requirements. If Shaw fails to make progress in the performance of contractual requirements, the contracting officer should consider what options are available, including terminating the contract for default. Additionally, the contracting officer should notify Shaw that it is not in compliance with contract terms until the quality control plan is approved and all performance standards are measured and met, and withhold payment if necessary.

Best Practices. Best practices for performance-based service acquisition measurements and metrics suggest selecting only a few meaningful measures on which to judge success and include contractual language for negotiated changes to the metrics and measures. There are 78 performance standards, or measures of success, in this environmental services contract. According to the residual organization, all of the performance standards established in the PWS are indicators of performance problems that could occur and are therefore necessary for the contract. While Shaw proposed they could perform all of the contract requirements at the required level of performance, the number of performance measures is extremely high and likely difficult to monitor. Therefore, the contracting officer, the residual organization, and Shaw should discuss the performance standards that are in the contract and determine if all are critical for performance of the environmental services and negotiate any performance standards that should be changed.

Measurable Outputs

Shaw was paid a fixed amount for performance that was not dependent on measurable quantity outputs, such as the number of laboratory tests performed, gallons of industrial and oily waste water treated, and pounds of hazardous waste stored and disposed of, while the Navy received reimbursements from clients based on actual output. During the 6-month base period and the 1-year first option period of contract performance, the workload under the fixed-price line items of laboratory services and industrial and oily waste water treatment was significantly less than the amount established in the PWS. In addition, during the first option period, the workload under the fixed-price line item for containerized solid waste services was less than the amount established in the PWS. However, the contract contained vague language to address workload fluctuations.

PWS Workload. The PWS specification items for the areas of laboratory services, industrial and oily waste water treatment, and containerized solid waste services referenced detailed historical workload data in the attachments to PWS

technical exhibit JC-1801020-001. The PWS informed offerors that the technical exhibits represented the type, quantity, and location of services to be provided. The contractor was required to propose a staffing level for completion of the contract requirements based on this information during the OMB Circular No. A-76 public-private competition for environmental services. However, according to residual organization data from the laboratory information management system and the environmental waste billing and tracking system, actual workload in the 6-month base period and 1-year option period significantly fluctuated from the levels established in the PWS.

Table 3 shows the fluctuations between the PWS workload and the actual workload during the 6-month base performance period, April 1 through September 30, 2005. As shown in the table, Shaw performed 56.1 percent fewer laboratory tests and treated 47.6 percent fewer gallons of industrial and oily waste water. The workload for the containerized solid waste services requirements, however, was 1.6 percent higher than established in the PWS.

**Table 3. Measurable Outputs for Fixed-Price Line Items
During the 6-Month Base Performance Period**

<u>Workload</u>	<u>Lab (tests)</u>	<u>IWOW (gallons)</u>	<u>CSWS (pounds)</u>
PWS	17,515	29,486,750	2,069,465
Actual	7,691	15,440,809	2,102,406
Percent Difference	(56.1)	(47.6)	1.6

Table 4 shows the fluctuations between the PWS workload and the actual workload during the 1-year option performance period, October 1, 2005, through September 30, 2006. As shown in the table, Shaw conducted 44.8 percent fewer laboratory tests, treated 40.2 percent fewer gallons of industrial and oily waste water, and stored or disposed of 17.5 percent fewer pounds of containerized solid waste than was established in the PWS.

**Table 4. Measurable Outputs for Fixed-Price Line Items
During the 1-Year First Option Period**

<u>Workload</u>	<u>Lab (tests)</u>	<u>IWOW (gallons)</u>	<u>CSWS (pounds)</u>
PWS	35,029	58,973,500	4,138,930
Actual	19,329	35,264,533	3,414,099
Percent Difference	(44.8)	(40.2)	(17.5)

Workload Fluctuation. The environmental services contract contained vague language to address workload fluctuations. The PWS did include a specification item for workload fluctuations that specifically stated:

The Service Provider shall provide the services identified in this PWS for all PWC [Public Works Center] clients. Prior to start of performance, the Government will provide a listing of current clients. Because mission workload fluctuates from year to year, these requirements are considered to be within 10% of the range of mission requirements required of the Service Provider under the firm fixed price Customer Line Item Number (CLIN) established in Section B. Work that is within (i.e., plus or minus) 10% of the annual workload identified in Attachment JC-1801020-001 shall be performed as firm-fixed price work as identified in Section B and Attachment JB-1.

According to the contracting officer, the intent of this PWS specification item was to support a contract modification if there was a substantial increase or decrease in workload; however, the PWS was unclear on what was to happen if the workload increase or decrease actually occurred. The contract did not include a variation in quantities clause, which would allow either party to the contract to demand an equitable adjustment when the permissible variation was exceeded. Consequently, even though there were significant fluctuations in workload, especially in the areas of laboratory services and the industrial and oily waste water treatment, Shaw was paid the same fixed price for performing the services.

Proposed Contract Modification. On September 5, 2006, the contracting officer issued a request for proposal under contract N68711-03-D-4302 for modification number P00010. The contracting officer stated that due to considerable changes in the scope of the contract, the significant decrease in workload for laboratory and industrial and oily waste water services, the Government decreased the estimated workload for the remaining contract option periods. The proposed workload for the laboratory analytical services was 29,217 tests, a decrease of 16.6 percent from the PWS workload. The proposed workload for the industrial and oily waste water treatment was about 30 million gallons, a decrease of 48.2 percent from the PWS workload.

The contracting officer exercised the second option year via modification number P00010, effective on October 1, 2006. Although the contracting officer had issued the request for proposal with a decreased workload requirement in the areas of laboratory services and industrial and oily waste water treatment, when the contracting officer exercised the option year, the workload levels remained the same as before. The contracting officer stated that because Shaw's proposal for the second option year with reduced workload levels came in at a rate that was higher than the competitively sourced contract rate, it was in the best interest of the Government to exercise the option year at the original workload levels. The contracting officer should ensure that the contract language regarding workload fluctuations in future contracts for environmental services is specific about contract pricing changes should significant variations in workload occur. The contracting officer should also negotiate reduced workload levels in accordance with the intent of the workload fluctuation contract language. If the negotiations

are unsuccessful, the contracting officer should consider recompeting the requirements at the next option year.

Business Operations. The Navy Public Works Center, San Diego, California, is a Navy working capital fund organization. A working capital fund organization must operate much like a business, receiving funding from customers rather than through direct appropriation. Each year NAVFAC Southwest issues a notice of the Navy working capital fund stabilized rate schedule to provide its clients with rates for maintenance, engineering, utilities, transportation, environmental, and other services. NAVFAC develops the working capital fund rates consistent with the DoD and Department of Navy budget processes. The rates for most of the environmental services are on a per test, per gallon, or per pound basis.

Although the Navy Public Works Center, San Diego, California, is reimbursed by clients based on actual work completed, because the environmental services contract with Shaw was a fixed-price contract, Shaw was not paid based on actual workload or true output. This created a disconnect between the amount of money coming into the Navy working capital fund and the amount being paid to Shaw for performing the environmental services. Also, Shaw had no incentive to increase output. This increased output would generate additional revenue for the Navy working capital fund and potentially reduce rates for customer services. As a result, Shaw was paid a fixed amount for performance that was not dependent on measurable outputs, while the Navy received reimbursements from clients based on actual output. Due to the setup of the Shaw fixed-price contract for environmental services, the Commanding Officer, NAVFAC Southwest, should consider evaluating alternative methods of billing customers for environmental services. One method may be to charge customers a fixed price not dependent on quantity to better synchronize with the environmental services contract terms.

Measurable Output Summary. The PWS technical exhibits provided extensive historical Public Works Center environmental services workload data. While it is true that historical data describe past experience and may not necessarily be indicative of the future, Shaw's proposal for the OMB Circular No. A-76 public-private competition was based on the historical data. Therefore Shaw was paid a fixed price based on the historical workload data while actually performing significantly less work, specifically in the areas of laboratory services and industrial and oily waste water treatment services. The FAR requires performance-based contracts for services to include measurable performance standards in terms of quality, timeliness, and quantity. The performance-based environmental services contract included performance standards in terms of quality and timeliness for fixed-price contract line items relating to laboratory services, industrial and oily waste water treatment, and containerized solid waste services; however, the PWS did not adequately establish a link between the performance standards and quantifiable measurable outputs in terms of quantity or the number of analytical services or tests conducted, gallons of industrial and oily waste water treated, or pounds of disposed containerized solid waste. As a result, Shaw was paid for work that was not performed. The Commanding Officer, NAVFAC Southwest should ensure that contracting personnel include measurable performance standards in terms of quantity, quality, and timeliness in future performance-based service contracts.

Residual Organization Staffing and Contractor Experience

The Government residual organization was not adequately staffed for the additional level of oversight that has been required on the performance-based environmental services contract.

Guidance on Staffing. The OMB Circular No. A-76 and the OMB Circular No. A-76 Revised Supplemental Handbook did not provide guidance on the recommended size of the residual organization. According to DoD 4100.XX-M, “DoD A-76 Costing Manual,” March 14, 2001, contract inspection, quality assurance evaluation, and other administrative requirements that are common to contract and Government performance to assure acceptable performance by the service provider are not included in the contract administration factor as OMB considers this a common cost for all offerors. Quality assurance evaluators typically perform these responsibilities.

The Performance Assessment Plan for the environmental services contract stated that the performance assessment representatives, formerly quality assurance evaluators, are the on-site representatives who assess service provider performance. The performance assessment representative roles and responsibilities are to periodically observe service provider performance, review delivered services, review quality management corrective actions, keep contemporaneous records of performance issues and results, periodically assess service provider performance for each contract performance objective, and communicate findings as necessary. The performance assessment plan estimated that four positions were required to monitor the performance of the environmental services service provider. The performance assessment plan also identified the other key Government performance assessment personnel as the senior performance assessment representative, the performance assessment board, and the designated Government representative, but did not identify an estimated number of positions required for these responsibilities.

Residual Organization Staffing. The residual organization was staffed with six positions: one business line manager who was designated as the senior performance assessment representative and contract designated Government representative, four subject matter experts who were designated as the performance assessment representatives, and one management analyst responsible for billing and funding. According to members of the residual organization, they were unable to adequately monitor contractor performance because they had to spend time partnering with Shaw and training Shaw personnel to perform the contract requirements. In addition to monitoring and documenting Shaw’s performance in accordance with the performance assessment plan, the residual organization members stated that they also had to deal with the day-to-day fleet operations, coordinate work induction, develop scopes of work and independent Government estimates for IDIQ requirements, educate Government acquisition staff on operational implications, participate in negotiations, and review Shaw’s proposals and prepare the Government position for IDIQ task orders.

Additionally, the residual organization members stated that they had to review and coordinate the review of Shaw deliverables, procure Government-furnished

materials and services, evaluate the appropriateness of costs Shaw incurs on behalf of the Government, oversee the budget, initiate funding documentation for change orders or new work, and prioritize and manage requests for additional resources. Furthermore, the residual organization members stated that they must facilitate interactions between Shaw and supported commands, provide quality assurance for record keeping requirements, participate in performance evaluation board meetings, and assist in developing any reports that the contracting officer issues to Shaw.

*⁷ The residual organization is staffed to meet the minimum requirements if the contractor was successfully performing the contract requirements. However, because the contractor did not have an adequate quality control system in place, and the residual organization had to spend time training, among many other daily duties, the administrative burden is too much for the current staffing level to perform. The Commanding Officer, NAVFAC Southwest needs to ensure that the residual organization is adequately staffed for the duration of the contract.

Contractor Experience. Shaw stated in its contractor work plan for the OMB Circular No. A-76 public-private competition that a major emphasis would be placed on recruiting qualified incumbent personnel who had the skills to contribute effectively to Shaw's proposed management and technical approach. Shaw stated that a key element of its organizational structure would be qualified staff from the existing pool of incumbent employees to fulfill 90 percent of staffing and ensure continuity of operations. *⁷

When the Navy announced the public-private competition for environmental services in June 2002, there were 103 affected positions. According to the Shaw deputy project manager, the Public Works Center provided a list of 59 adversely impacted Public Works Center, San Diego employees. Eighteen employees interviewed and were offered positions with Shaw and 16 accepted positions and were on board when Shaw began full performance on April 1, 2005. This accounted for about 27 percent of the 59 adversely impacted employees identified by the Public Works Center. According to Shaw's organization chart dated October 16, 2006, only four of the adversely impacted Public Works Center employees were still on board with Shaw. The inability to hire and retain the experienced Government workers has had a serious impact on contractor performance and the need for additional contract oversight.

Lessons Learned. Shaw planned to hire 90 percent of the incumbent Public Works Center, San Diego workforce; however, it was only able to retain 4 of the incumbent workers. Shaw has had performance problems throughout the base and

⁷ This area of the report represents source selection information that was omitted.

first option period. The environmental services contract is currently in the second option year and will have to be recompeted in about 2 more years. *⁸ and, according to the residual organization, it is uncertain that there will be more competition during the private-private recompetition for environmental services.

NAVFAC Mid-Atlantic Competition. On September 14, 2006, the Department of the Navy announced a public-private competition for the NAVFAC Mid-Atlantic environmental services and pest management. According to a NAVFAC Competitive Sourcing Program Analyst, this is the second competition for the NAVFAC Mid-Atlantic environmental services, as the Government MEO won the first competition because no private offers were received. As of December 15, 2006, the competition was in the preliminary planning phase and the PWS was under development. The Navy Director of Strategic Sourcing should consider the issues with performance-based contracting for environmental services and the need for experienced contractor service providers identified in this report before issuing the solicitation for the NAVFAC Mid-Atlantic environmental services public-private competition.

Other Matters of Interest

Technical Evaluation. *⁸

⁸ This area of the report represents source selection information that was omitted.

Conclusion

The competitive sourcing goal in the 2002 President's Management Agenda states that competition generates significant savings and noticeable performance improvements. Specifically, competition promotes innovation, efficiency, and greater effectiveness. Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. The theory of performance-based service acquisition is that it improves the quality of services, results in cost savings, maximizes competition and innovation, and shifts the risk from the Government to industry because the contractor is responsible for achieving the objectives. However, environmental services functions are highly regulated, and the required outcomes must be achieved by prescribing to Federal and State laws and regulations. Although it appears that Shaw's performance improved over the performance during base period, the residual organization still identified many performance concerns during performance assessments. The problems with contractor performance during the first two performance periods of the contract raise questions as to the extent to which the goals for competitive sourcing and performance-based services contracting of reducing costs, improving performance, and focusing on outcomes rather than processes are being achieved for the environmental services function at the Navy Public Works Center, San Diego, California. Therefore, the Commanding Officer, NAVFAC Southwest should require the contracting team to determine whether it is in the Navy's best interest to continue with the performance-based service contract or whether the environmental services requirements should be recompeted under a different type of contract.

Recommendations, Management Comments, and Audit Response

A.1. We recommend that the Commanding Officer, Naval Facilities Engineering Command Southwest:

a. Require the contracting team to:

(1) Require Shaw to finalize a quality control program that addresses all contract performance standards and require that monthly performance reports address each performance standard.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest has required Shaw to revise its quality control plan to specifically address the performance standards in the performance work statement by April 16, 2007. Shaw significantly improved the monthly performance reports by addressing the performance standards and providing supporting documentation to substantiate that the performance standards have been met.

Audit Response. Management comments were responsive to the recommendation.

(2) Determine the adequacy of Shaw's system for measuring each performance standard, and if the requirements are not met, take appropriate action.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest identified three areas to determine the adequacy of Shaw's system for measuring the performance standards: monthly performance reports, customer complaints, and Notices of Violations. Based on the improvement of the monthly performance reports and the reduced number of customer complaints and Notices of Violations, NAVFAC Southwest has determined Shaw's system of measurement is adequate. NAVFAC Southwest will continue to monitor these three areas and if requirements are not met, they will be documented appropriately in the Contractor Performance Assessment Reporting System and additional action will be taken as appropriate.

Audit Response. Management comments were responsive to the recommendation.

(3) Notify Shaw that it is not in compliance with contract terms until the quality control plan is approved and all performance standards are measured and met, and withhold payment if necessary. If Shaw fails to make progress in the performance of contractual requirements, the contracting officer should consider what options are available, including terminating the contract for default.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest has issued Shaw a notice of noncompliance with the quality control plan. Shaw has made significant process in its system that measures performance standards. If Shaw does not continue to make progress, NAVFAC Southwest will document instances of noncompliance in the Contractor Performance Assessment Reporting System and may proceed with re-procurement if needed.

Audit Response. Management comments were responsive to the recommendation.

(4) Assess the reasonableness and necessity of the performance standards in the contract and revise or delete noncritical performance standards.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest has already opened discussions with Shaw and has completed the review of the performance standards for the industrial and oily waste water treatment commodity. Seven performance standards were consolidated into other standards and three were deleted entirely. NAVFAC Southwest will continue to review the remaining commodities and will complete this review in time for the revised performance standards to be incorporated in Shaw's revised quality control plan.

Audit Response. Management comments were responsive to the recommendation.

(5) Ensure that the contract language regarding workload fluctuations in future contracts for environmental services is specific about contract pricing changes, should significant variations in workload occur.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest is coordinating with NAVFAC Atlantic to develop a standard clause to be used for environmental services for future solicitations. NAVFAC Southwest will include clear language regarding workload fluctuations and contract pricing in future solicitations.

Audit Response. Management comments were responsive to the recommendation.

(6) Negotiate reduced workload levels in accordance with the intent of the workload fluctuation contract language, and if the negotiations are unsuccessful, consider recompeting the requirements at the next option year.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest is currently in negotiations with Shaw to reduce the contract price to coincide with the reduced workload level, taking into consideration fixed and variable costs. If negotiations are unsuccessful, NAVFAC Southwest will explore other alternatives, including recompeting the requirements.

Audit Response. Management comments were responsive to the recommendation.

(7) Evaluate alternative methods of billing customers for environmental services.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest evaluated alternate methods of billing for environmental services and considered billing models used by other NAVFAC Echelon IV commands. NAVFAC Southwest concluded that the current billing process is the best suited to ensure accountability for cost.

Audit Response. Management comments were responsive to the recommendation.

(8) Ensure that future performance-based service contracts include measurable performance standards in terms of quantity, quality, and timeliness.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest now issues performance-based contracts that have standard performance-based statements of work that identify the objectives that are to be achieved by the contractor. Measurable performance standards are clearly defined and allow for contractor performance to be assessed and to determine whether the performance objectives have been met. New contracts will adequately measure quantity, quality, and timeliness.

Audit Response. Management comments were responsive to the recommendation.

(9) Determine whether it is in the Navy's best interest to continue with the performance-based service contract or whether the environmental services requirements should be recomputed under a different type of contract vehicle.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest determined that a performance-based acquisition contract will work for the environmental services contract with the proper balance of prescriptive language. Additional resources have been committed to the environmental services contract and NAVFAC Southwest will continue to build on the improvements already initiated by Shaw. Lessons learned and best practices will be incorporated into future contracts.

Audit Response. Management comments were responsive to the recommendation.

b. Adequately staff the Government residual organization for the duration of the contract.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest evaluated the technical workload required by the contract and will provide two additional technical personnel to the residual organization.

Audit Response. Management comments were responsive to the recommendation.

A.2. We recommend that the Navy Director of Strategic Sourcing consider the issues with performance-based contracting for environmental services and the need for experienced contractor service providers identified in this report before issuing the solicitation for the Naval Facilities Engineering Command Mid-Atlantic environmental services public-private competition.

Management Comments. The Navy Director of Strategic Sourcing concurred, stating that this report has been forwarded to the Competitive Sourcing Center of Excellence in Charleston, South Carolina, which has oversight over preparation of the performance work statement and the solicitation for the NAVFAC Mid-Atlantic environmental services competition. They have been advised to incorporate the lessons learned from this report into the preparation of both the performance work statement and the solicitation for that competition.

Audit Response. Management comments were responsive to the recommendation.

B. Performance-Based IDIQ Task Orders

The Navy Public Works Center was not following sound procurement practices for sole-source, performance-based, IDIQ work valued at about \$5.8 million annually on the competitively sourced environmental services contract with Shaw. Sound procurement practices were not being followed because:

- the contracting office was not adequately staffed and contract administrators were not adequately trained in performance-based services contracting for environmental services since the Navy had not established a Center of Excellence in Service Contracting or provided enhanced training in service contracting as required by the “Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001”;
- firm-fixed-price performance-based task orders were being used with statements of work and/or contractor proposals that contained conflicting language and did not adequately define contract requirements in “clear, specific, and objective terms with measurable outcomes” since the extent of environmental service requirements were often unknown; and
- labor categories and burdened labor rates established in the competitively sourced contract were not used and IDIQ task order labor rates were significantly higher, about \$*⁹ for work performed by Shaw, versus the \$*⁹ labor rate established in the competitively sourced contract, a difference of 89.1 percent.

In addition, the contracting officer did not prepare price negotiation memorandums for task orders to document negotiated agreements or contract modifications to transfer funds between different contract line items that exceeded the contract maximum. As a result, there was no means to hold Shaw accountable for measurable performance outcomes on the firm-fixed-price performance-based task orders. We calculate that during the base and first option period, the Navy paid about \$1.4 million more than negotiated in the competitively sourced contract by using the higher labor rates and over the next three option periods will pay about \$6.6 million more if the Navy continues to accept Shaw’s higher labor rates. In addition, the Navy in-house team would have won the competitively sourced environmental services function by about \$7.1 million if Shaw had proposed the higher labor rates.

Staffing and Training

The Navy Public Works Center, San Diego, was not following sound procurement practices because the contracting office was not adequately staffed and contract

⁹ This area of the report represents contractor proprietary data that was omitted.

administrators were not adequately trained in performance-based services contracting for environmental services since the Navy had not established a Center of Excellence in Service Contracting or provided enhanced training in service contracting as required by the “Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.”

Contract Administration Positions in the A-76 Competition. The OMB Circular No. A-76 Revised Supplemental Handbook, “Performance of Commercial Activities,” March 1996, provided guidance for the determination of the cost to the Government of obtaining a service by contract. Contract administration costs include the cost of reviewing compliance with the terms of the contract, processing payments, negotiating change orders, and monitoring the closeout of contract operations. The cost of contract administration does not include inspection and other administrative requirements that would be common to contract and Government performance to assure acceptable performance. The contract administration positions are programmatically calculated by win.COMPARE², and are based on the MEO staffing, including the total number of both Government and subcontractor positions in the MEO.¹⁰ The number of contract administration positions calculated for this competition was 5 full-time positions, based on the MEO staffing of 107 positions. The cost of contract administration, \$1.8 million over the 5-year performance period, was included in the \$72.5 million total adjusted cost of contract performance.

Environmental Services Contract Administration. The contract and the IDIQ task orders were administered by the NAVFAC Southwest Division, San Diego, Resident Officer in Charge of Construction, now the Facilities Engineering Acquisition Division. According to the Facilities Engineering Acquisition Division officer in charge, there has been tremendous personnel turnover on this contract. Although the cost comparison included five full-time positions for contract administration, for the majority of the performance period of the environmental services contract, there was only one—either a contracting officer or a contract specialist administering the contract and IDIQ task orders.

According to the officer in charge, from February 2005 through August 2005, only one contracting officer was assigned to the contract. The contracting officer departed in August 2005, and a contract specialist was assigned to the contract on a part-time basis, pending the transfer of a new contracting officer. The part-time contract specialist was the only person administering the contract until November 2005, when a new contracting officer was assigned to the contract. The new contracting officer worked on the contract for about a month and then was out of the office until the end of January 2006. As a result, the contract administration remained with the contract specialist until the contracting officer returned to work.

In March 2006, an office assistant was assigned to the contract for a total of three positions administering the contract. In August 2006, the contracting officer left the office, and the administration of the contract and approximately 60 IDIQ task orders remained with the contract specialist and office assistant. In mid-August 2006 the

¹⁰ The win.COMPARE² software program was the mandatory costing software that DoD Components were required to use for development of the in-house cost estimate. DoD issued an upgraded version of the software program, COMPARE Version 2.1, on August 1, 2005.

initial contracting officer was reassigned to the contract. If this contract, which was estimated as needing five positions for administration, continues to be administered by one position on average, the contract management issues discussed in finding A and issues with the IDIQ task orders discussed in this finding will most likely persist. The Commanding Officer, NAVFAC Southwest needs to ensure that the administration of contract N68711-03-D-4302 is adequately staffed for the duration of the contract.

Service Contracting Centers of Excellence. Section 821, “Improvements in Procurements of Services,” of Public Law 106-398, “Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001,” October 30, 2000, requires the Secretary of each Military Department to establish Centers of Excellence in Service Contracting. Specifically, Section 821(c), “Centers of Excellence in Service Contracting,” states:

Not later than 180 days after the date of the enactment of this Act, the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

The contracting officer and the residual organization members stated that they had not received any assistance or guidance from a Navy Center of Excellence in Service Contracting. DoD IG Report No. D-2004-015, “Contracts for Professional, Administrative, and Management Support Service,” October 30, 2003, recommended that the Acquisition Executives for the Army, the Navy, and the Air Force establish and use Centers of Excellence in Service Contracting as required by section 821(c) of Public Law 106-398. The Navy concurred stating that the “Navy Virtual Center of Excellence for Service Contracting” was scheduled to be fielded in the first quarter of FY 2004. In September 2006, the Office of the Deputy Assistant Secretary of the Navy for Acquisition Management stated that because the Defense Acquisition University was developing a “Communities of Practice in Contracting” at the same time the Navy was planning the “Navy Virtual Center of Excellence for Service Contracting,” the Navy instead worked with the Defense Acquisition University to develop the Acquisition Community Connection Web site. Under this community Web site, an “Acquisition Center of Excellence for Services” was established in response to the Service Acquisition Reform Act of 2003, section 1431(b) “Center of Excellence in Service Contracting,” which states:

Not later than 180 days after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall establish a center of excellence in contracting for services. The center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

The Facilities Engineering Acquisition Division officer in charge and the residual organization were not aware of the Defense Acquisition University Acquisition Center of Excellence for Service Contracting, but stated after a quick review of the Web site, that it appeared to be somewhat useful.

DoD Service Acquisition. During FY 2006, the Government Accountability Office (GAO) examined DoD's approach to managing services in order to identify the key factors DoD should emphasize to improve its management of services. On November 9, 2006, GAO issued Report No. GAO-07-20, "Tailored Approach Needed to Improve Service Acquisition Outcomes," and stated that several key factors at both the strategic and transactional levels were needed to improve DoD's service acquisition outcomes of obtaining the right service, at the right price, in the right manner. GAO made six recommendations to improve DoD's strategic and tactical approach to acquiring services.

The Director, Defense Procurement and Acquisition Policy concurred with GAO's recommendations and stated that he is leading the Senior Procurement Executives of the Military Departments, Defense Logistics Agency, and the Defense Contract Audit Agency in the development of a comprehensive DoD-wide architecture for the acquisition of services. The DoD-wide architecture will help refine the process to develop requirements, ensure that individual transactions are consistent with DoD's strategic goals and initiatives, and provide a capability to assess whether service acquisitions are meeting their cost, schedule, and performance objectives. The Director, Defense Procurement and Acquisition Policy stated that DoD expects the assessment to be completed in the first quarter of calendar year 2007. The figure depicts the planned DoD architecture for service acquisition.

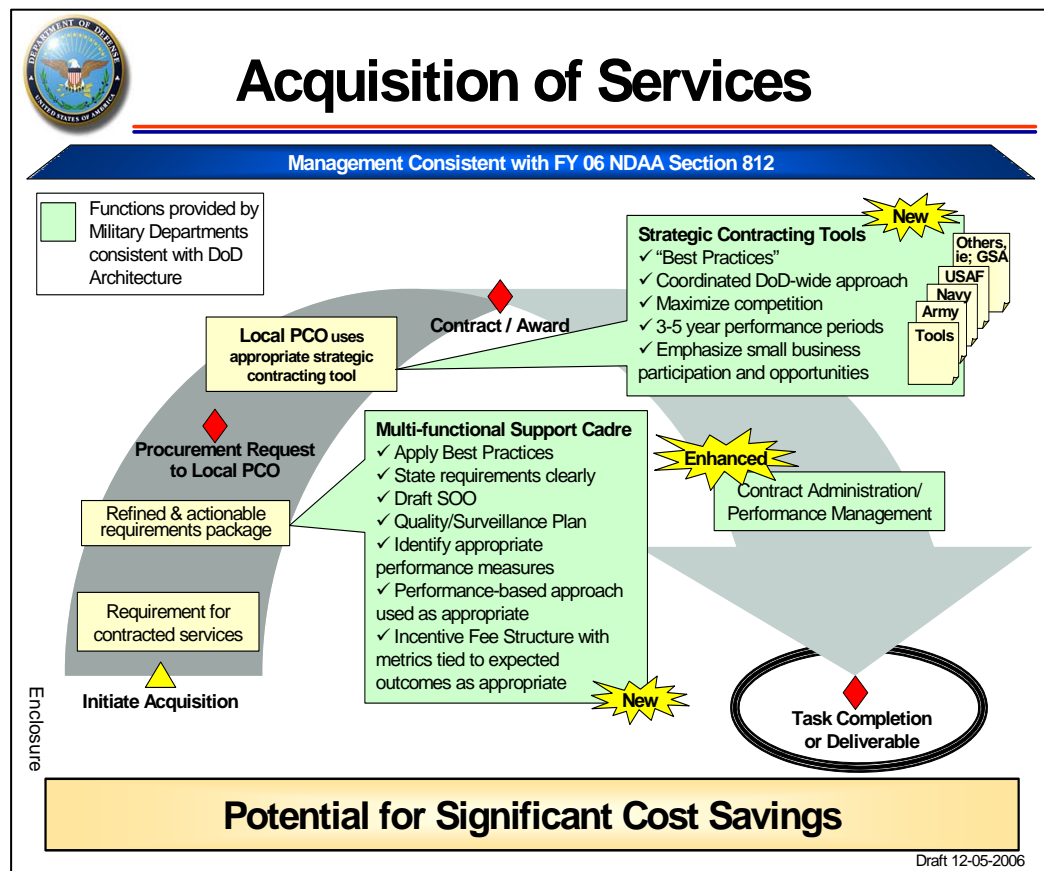


Figure. Draft DoD Architecture for Acquisition of Services

Performance-based service acquisition is a fairly new concept to the Government and is difficult to apply to environmental services, which are highly regulated and must be performed in accordance with many Federal and State laws and regulations. There have been significant problems with this performance-based environmental services contract. Unless the Navy develops some expertise in performance-based service acquisition and provides assistance to the contract administration staff, these problems will persist. We support the Defense Procurement and Acquisition Policy efforts to improve the Department-wide approach to acquisition of services, and therefore have not included audit recommendations specifically addressed to the Navy to implement the Center of Excellence in Service Contracting.

Enhanced Training in Service Contracting. Public Law 106-398 also requires the Secretary of each Military Department to provide enhanced training in service contracting. Specifically, Section 821(d)(2), “Enhanced Training in Service Contracting,” states:

The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

The contracting staff stated they had not received specific training on performance-based acquisition for environmental services, but the officer in charge and the lead contracting officer had been introduced to performance-based service acquisition as a part of other contracting classes. It is important that the contracting and technical staff receive training in both performance-based service acquisition and in the functional area of the contract to be administered. Therefore the contracting personnel and technical support staff should explore available options and attend appropriate training for performance-based service acquisition and for environmental services.

Firm-Fixed-Price IDIQ Task Orders

The contracting officer awarded Shaw firm-fixed-price, performance-based, IDIQ task orders with statements of work and/or contractor proposals that contained conflicting language and did not adequately define contract requirements in “clear, specific, and objective terms with measurable outcomes” because the extent of environmental service requirements were often unknown.

Performance-Based Acquisition Requirements. Section 821, of Public Law 106-398, establishes a preference for performance-based service contracting. Specifically, Section 821(e), “Definitions,” states:

The term “performance-based”, with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting,

respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

FAR Subpart 37.6, “Performance-Based Acquisition,” states that performance-based contracts shall include measurable performance standards in terms of quality, timeliness, and quantity, and the method of assessing contractor performance against performance standards. The FAR instructs agencies to describe the work in terms of the required results, enable an assessment of work performance against measurable performance standards, and rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work. In addition, the FAR states that performance standards should be measurable, establish an acceptable performance level, and be structured to permit an assessment of the contractor’s performance.

IDIQ Task Orders. Neither the environmental services contract PWS nor the fixed-price IDIQ task orders identified any measurable performance outcomes or acceptable levels of performance in terms of quality, timeliness, and quantity. Additionally, the IDIQ task orders did not specify the method of assessing contractor performance to ensure that Shaw provided the proposed level of performance. Also, although the IDIQ task orders were awarded for a fixed price, many task orders contained vague and imprecise language that was used to define the requirements—not clear, specific, and objective terms with measurable outcomes as required by the FAR and public law. The following are examples of the vague, imprecise, and conflicting language that we identified in the IDIQ task orders and/or contractor proposals.

Task Order for Drinking Water Testing. On September 27, 2005, the contracting officer awarded Shaw a fixed-price IDIQ task order to provide lead and copper sampling and testing services at the southern distribution drinking water system, Marine Corps Base Camp Pendleton. In the proposal for the requirements of this task order, Shaw stated that “this letter presents our technical approach and assumptions, funding requirements for a negotiated fixed price task order, and anticipated schedule.” Although the task order and Shaw’s proposal stated fixed price, the task order language suggested a level of effort, as the award amount was “not to exceed” \$150,000 and the statement of work specified that:

Shaw will collect drinking water samples from up to 1,011 samplings locations designated by MCBP [Marine Corps Base Camp Pendleton] FMD [Facilities Management Division]. . . . Our cost assumes that our field technicians/scientists can collect lead and copper water samples at an average rate of 10 samples per person per day. Therefore, we have assumed that this sampling effort will require approximately 100 person days to complete.

On November 8, 2005, the contracting officer modified the task order by \$96,922 to provide additional funding to compensate Shaw for additional laboratory testing identified in the original delivery order. The modification increased the award amount to \$246,922, the same amount that Shaw originally proposed to perform the task order requirements. The contracting officer awarded

a second modification for \$235,000 on December 9, 2005, increasing the total award value to \$481,922. Shaw did not submit a proposal for the second task order modification; however, the Shaw IDIQ project manager did inform the contract specialist that Shaw would be unable to accomplish all “not to exceed” items specified in the summary workload for the second modification. The objective of the modification stated:

Continue to provide Lead and Copper Sampling and Testing Services, Southern Distribution System Drinking Water System, Marine Corps Base Camp Pendleton, CA. The potential number of possible test sites at MCBCP is approximately 8,000. Task order 0044 was issued to sample and test approximately 1,000 sites. Modification 02 will provide the contractor a not to exceed amount of funds to continue with critical sampling and testing per the statement of work.

Although the modification states that it is firm-fixed-price, the “not to exceed” award amount and the language in the statement of work suggested a specific level of effort. Specifically, the statement of work identified the summary workload as not to exceed 1,200 labor hours; and sample testing as not to exceed 860 parameter monitoring samples, and not to exceed 500 lead/copper samples. Also, the statement of work stated that Shaw will only bill the Government “for samples that are tested” and “for labor hours expended.” Additionally, Shaw was to provide a weekly summary to the residual organization showing the cumulative labor hours and number of samples tested.

While the original task order and first modification did not identify any means to monitor Shaw’s performance, the second modification did provide a means to identify the amount of work that the Government received from Shaw. However, the language in the task order is not clear as to whether the Government wants a specific number of sites sampled, a specific number of samples collected, or a specific number of labor hours performed. Additionally, while the text of the task order and modifications for the lead and copper testing suggested a level of effort, Shaw billed the Government for a percentage of the total fixed price each month.

Task Order for Pipeline Removal. On October 1, 2005, the contracting officer awarded Shaw a performance-based, fixed-price, IDIQ task order for \$375,000 to complete the removal of an abandoned pipeline and prepare site closure documentation. The statement of work stated:

This task order is for completion of the removal of the abandoned pipeline at UST 22 and preparation of site closure documentation. The duration of work under this Task Order will not exceed 180 calendar days including fieldwork, and approval of the Final Site Closure Report.

Although the contracting officer did not incorporate Shaw’s proposal in the task order, the task order was awarded for the same amount that Shaw proposed to perform the work. Shaw proposed to subcontract the work to the Anteon Corporation (Anteon) and planned to provide limited project oversight and management, primarily consisting of schedule and financial tracking. Shaw

stated that its funding requirements for the fixed-price task order were based on Anteon's understanding of the statement of work and its anticipated level of effort to meet the objectives of the statement of work. Specifically, regarding the \$343,000 time and materials subcontract with Anteon (91 percent of the total task order value), Shaw stated:

The various tasks and deliverables specified in the SOW [statement of work] may not be completed within the technical assumptions and within the level of effort included in Anteon's cost estimate. Shaw will notify the PWC [Public Works Center] Contracts Specialist and the PWC Subject Matter Expert if a modification to the Task Order is necessary.

By signing the task order, which did not incorporate the contractor's proposal, Shaw agreed to complete all fieldwork and approval of the final site closure report within 180 days, for the fixed price of \$375,000. Even though Shaw's proposal for the fixed-price task order was based on a subcontractor's understanding of the level of effort required for the project, and Shaw stated that the tasks "may not" be completed within the level of effort included in the cost estimate, Shaw should be responsible for all efforts to complete all fieldwork and the final site closure report by the date agreed to and for the price awarded. According to the task order, Shaw should have completed the task order requirements by April 1, 2006. Shaw's invoice for the performance period ending March 31, 2006, identified the task order as 87 percent complete. The May 17, 2006, Public Works Officer Report listed the task order status as active, stating that fieldwork was completed, but the preparation of the closure report was still in progress. The contracting officer should hold Shaw accountable for task order performance requirements and deadlines.

Task Order for Model Boat Range Remediation. On October 27, 2005, the contracting officer awarded Shaw a performance-based fixed-price task order for \$1.35 million. The objectives of the task order were to develop a field sampling and analysis work plan based on historical data; conduct field work in accordance with regulations; prepare and modify the field sampling and analysis plan, remedial design, and remedial action as necessary; perform a natural resource survey at the site and complete all documentation necessary to facilitate removal of activities at the site; and perform a geotechnical survey of the slope located on the eastern boundary of the model range to evaluate the stability of the ground plane. The statement of work estimated that the volume of lead-impacted soil was 2,000 cubic yards. The statement of work did not specify a period of performance, but did provide a schedule of deliverables and submittal due dates.

Shaw proposed that the transportation and disposal of lead-impacted soil would cost about \$0.7 million, 52 percent of the total task order award value. Shaw made the following statement regarding the soil:

Shaw will remove up to 2,000 cubic yards (Shaw has assumed a material weight of 1.5 tons per cubic yard of in bank material, with a total removal effort not to exceed 3,000 tons) of lead impacted soil from the slopes around the MBR [model boat range]. Shaw will request

a modification to the contract for quantities in excess of 3,000 tons which shall be governed by the scale of the disposal facility.

Shaw's proposal included loose language by stating that they would request a modification if the weight of the soil to be removed exceeded what they estimated. The statement of work did not identify any measures to determine the actual amount of soil that Shaw removed. Therefore, Shaw was able to request a modification if the weight of the soil was more than anticipated, but because the task order was awarded for a fixed price, the Government was not able to recoup money if Shaw removed less than 2,000 cubic yards of soil. Perhaps a better method would have been to establish a range relating to various levels of cubic yards of soil to be removed and price for removal for each yardage amount. As of September 30, 2006, the contracting officer had not awarded a modification to this task order. The November 15, 2006, Public Works Officer Report listed the task order status as active, stating that the project was still in the planning stage. The report identified the base impact end date as June 1, 2007.

There are many risks and unknowns associated with environmental services such as site assessment and remediation, but the lack of clear measurable outcomes in the task orders makes it difficult to determine whether the customer is getting what they are paying for. There are also questions as to how much it will cost for contractors to assume this risk under firm-fixed-price task orders. If performance-based service acquisition is used for the IDIQ task orders, the contracting officer needs to include measurable performance outcomes in terms of quantity, timeliness, and quality in the IDIQ task orders; needs to review Shaw's performance of the IDIQ requirements; and needs to hold Shaw accountable for task order requirements and deadlines. However, performance-based task orders may not be the best contracting method for the IDIQ requirements because there are so many unknowns involved in the site assessment and remediation area of environmental services and the cost premium for contractors to assume this risk. The contracting officer needs to determine whether performance-based service acquisition is appropriate for the IDIQ requirements in the environmental services contract, or whether another contracting method should be used, such as time and materials or multiple task orders where the first task order would be awarded to identify the problem and the second task order would be awarded to resolve the problem.

Labor Rates

Labor categories and burdened hourly rates established in the competitively sourced contract were not used and rates used on individual task orders were significantly higher, about \$*¹¹ for work performed by Shaw, versus the \$*¹¹ labor rate established in the competitively sourced contract, or a difference of 89.1 percent.

Competitively Sourced Contract IDIQ Labor Rates. The IDIQ portion of the environmental services PWS required the contractor's proposal to be based on a specified number of labor hours for various professional skill sets and job classifications. The PWS identified 12 different skill sets for a total of

¹¹ This area of the report represents contractor proprietary data that was omitted.

*¹² labor hours for each performance period.¹³ Table 5 shows the average fully burdened labor rate Shaw proposed and the amount awarded for the IDIQ contract requirements for the 6-month base period and the 1-year option periods.

Table 5. Average Fully Burdened IDIQ Labor Rates in the Competitively Sourced Contract

<u>Performance Period</u>	<u>Labor Hours</u> ¹	<u>Average Fully Burdened Rate</u> ²	<u>Total Amount</u> ³
Base Period			\$1,801,034
Option Period 1			2,743,284
Option Period 2			2,786,060
Option Period 3			2,829,906
Option Period 4			2,874,848

¹Source selection information omitted.

²Contractor proprietary data omitted.

³The total amount cannot be calculated by multiplying the hourly rate by the labor hours due to rounding of the hourly labor rate.

Table 6 shows the specific professional skill set classifications and required labor hours identified in the PWS, Shaw's proposed labor rates, and the fully burdened hourly labor rate for the first option period of the competitively sourced environmental services contract. The fully burdened labor rate for each professional skill set included:

- labor burden, consisting of fringe benefits, earned leave, and overhead, at *¹⁴ depending on whether or not the position was subject to the service contract act;
- overhead at *¹⁴ ;¹⁵
- general and administrative expense at *¹⁴ ; and
- profit at *¹⁴ .

See Appendix D for the full breakout of the fully burdened labor rates for the professional skill set classifications for the first 1-year option period.

¹² This area of the report represents source selection information that was omitted.

¹³ The awarded IDIQ requirements in the competitively sourced contract were [source selection information omitted] labor hours in the 6-month base period and [source selection information omitted] labor hours for each of the four 1-year option periods.

¹⁴ This area of the report represents contractor proprietary data that was omitted.

¹⁵ Contractor proprietary data omitted.

**Table 6. IDIQ Labor Rates for the First Option Period
in the Competitively Sourced Contract**

<u>Professional Skill Set Classification</u>	<u>Labor Hours¹</u>	<u>Hourly Labor Rate²</u>	<u>Burdened Hourly Rate²</u>	<u>Total Burdened Amount</u>
Principal Geologist/Engineer				\$ 100,152
Senior Geologist/Engineer				985,931
Staff Geologist/Engineer				241,116
Quality Control Manager				98,892
Physical Science Technician				376,301
Graphics Specialist				125,710
Database Manager				124,758
Senior Environmental Protection Specialist				64,962
Environmental Protection Specialist				296,900
Associate Environmental Protection Specialist				44,298
SCAPS ³ Data Acquisition Specialist				73,638
SCAPS ³ Operations Manager				211,432
Total⁴				\$2,744,090

¹Source selection information omitted.

²Contractor proprietary data omitted.

³Site Characterization and Analysis Penetrometer Systems.

⁴Total Burdened Amount does not equal the Total Amount shown in Table 5 due to rounding.

IDIQ Task Order Labor Rates. The Navy awarded Shaw the environmental services contract based on the labor rates in Table 6; however, we reviewed Shaw's proposals for 21 of the fixed-price IDIQ task orders and modifications awarded during the 6-month base period and determined the average fully burdened labor rate was \$*¹⁶. This was 89.1 percent higher than the rates Shaw proposed for IDIQ requirements in the OMB Circular No. A-76 competition. We also reviewed Shaw's proposals for the 20 fixed-price IDIQ task orders and modifications awarded during the first option period and determined the average fully burdened labor rate was \$*¹⁶. This was an increase of 82.3 percent from the rates proposed in the OMB Circular No. A-76 competition.

As shown in Table 7, the average burdened labor rate by Shaw personnel category for the base period and the first option period was \$*¹⁶. See Appendixes E and F for the average fully burdened labor rates calculations, by labor category, for task orders awarded in the base period and the first option period.

¹⁶ This area of the report represents contractor proprietary data that was omitted.

Table 7. IDIQ Task Order Labor Rates

<u>Professional Services</u>	<u>Labor Hours</u> ¹	<u>Burdened Rate</u> ¹	<u>Total Amount</u>
Base Period – Exempt			\$ 128,226
Option Period 1 – Exempt			<u>87,375</u>
Subtotal			215,601
Base Period – SCA ²			63,978
Option Period 1 – SCA ²			<u>22,732</u>
Subtotal			86,710
Base Period – Shaw E&I ³ /Other			635,305
Option Period 1 – Shaw E&I ³ /Other			<u>2,196,745</u>
Subtotal			2,832,050
Total			\$3,134,361

¹Contractor proprietary data omitted.

²Service Contract Act.

³Environmental and Infrastructure.

We selected one job skill set classification, senior geologist/engineer, and compared the burdened labor rate that Shaw was awarded in the competitively sourced contract, the independent Government estimate for the OMB Circular No. A-76 competition, and the actual rate from an IDIQ task order that Shaw was awarded in September 2005. As shown in Table 8, Shaw included additional overhead at a rate of *¹⁷ on the IDIQ task order, which resulted in a 115.3 percent difference between the actual rate in the IDIQ task order and the rate awarded for the senior geologist/engineer in the competitively sourced contract.

¹⁷ This area of the report represents contractor proprietary data that was omitted.

**Table 8. 4.1.1 Senior Geologist/Engineer
(24,100 Hours Proposed/Negotiated)**

<u>Description</u>	<u>Contract Proposed/Negotiated</u>		<u>Independent Government Estimate</u>		<u>Actual (Task Order 43)</u>	
	<u>Rate (Percent)</u> ¹	<u>Amount</u> ¹	<u>Rate (Percent)</u> ²	<u>Amount</u> ²	<u>Rate (Percent)</u> ¹	<u>Amount</u> ¹
Labor Rate						
Labor Burden ³						
Subtotal						
Overhead						
Subtotal						
G & A ⁴						
Subtotal						
Profit						
Fully Burdened Rate						
Difference from Negotiated (Percent)				58.7		115.3

¹Contractor proprietary data omitted.
²Source selection information omitted.
³Labor Burden (Fringes, Earned Leave, Overhead).
⁴General and Administrative.

Home Office Overhead. Shaw applied additional overhead to staff proposed in the IDIQ task orders that was not applied in the pricing proposal for the competitively sourced contract. Although Shaw did not allocate any cost for project administration to the IDIQ work in its proposal for the competitively sourced contract, Shaw included a percentage for home office overhead, ranging from *¹⁸ to *¹⁸ for the base period and *¹⁸ to *¹⁸ for the first option period, on most of the proposals for IDIQ task orders. The unburdened labor rates and home office overhead rate applied in the IDIQ proposals are the only rates that vary significantly from the original contract rates. The additional overhead is the main reason that Shaw's fully burdened labor rates were higher than originally proposed in the OMB Circular No. A-76 competition.

We asked the Shaw IDIQ project manager why the IDIQ labor rates were so much higher than the contract labor rates. The IDIQ project manager explained that Shaw's plan at the time the original IDIQ prices were proposed was to hire the adversely impacted Navy employees with the required skill sets working at the Navy Public Works Center, San Diego, to fill the positions and use that workforce to perform the core of the IDIQ task order workload. Shaw assumed the overhead would be lower for these personnel because they would be located at the client-provided Public Works Center facility. Shaw planned to augment this workforce with Shaw personnel presently assigned to other Shaw business units. However,

¹⁸ This area of the report represents contractor proprietary data that was omitted.

the IDIQ project manager stated that none of the adversely impacted Navy workers elected to interview for the positions and work for Shaw. Therefore, because Shaw was unable to hire the adversely impacted Navy personnel, Shaw personnel from other Shaw offices had to perform the work. These Shaw personnel from other business units incurred the home office overhead burden for Shaw Environmental and Infrastructure personnel, since they are not located full time at the Navy Public Works Center facility. In addition to using the personnel from other Shaw offices, Shaw had to hire subcontractors for the IDIQ requirements.

Labor Rate Reasonableness. As part of the technical and price evaluation during the OMB Circular No. A-76 competition, the Price Evaluation Board evaluated Shaw's price proposal. The independent Government estimate identified an average IDIQ labor rate of \$*¹⁹ with a labor burden of *¹⁹, general and administrative fees of *¹⁹, and profit of *¹⁹, for an average fully burdened labor rate of \$54.56. *¹⁹

Labor Rate Comparison. The IDIQ award amounts of \$1.8 million and \$2.7 million for professional services during the base and first option period were based on Shaw providing the proposed *¹⁹ and *¹⁹ labor hours at the average competitively negotiated rates of \$*²⁰ and \$*²⁰. However, with the average fully burdened labor rates of \$*²⁰ and \$*²⁰ the Navy would only receive *²⁰ (53 percent) and *²⁰ (54.9 percent) of the labor hours required in the PWS for the base period and the first option period, respectively. We reviewed 41 IDIQ task order proposals available on Shaw's Web portal and provided by the Facilities Engineering Acquisition Division. Of the 41 IDIQ task orders awarded to Shaw, the Navy received *²⁰ IDIQ labor hours during the base period and *²⁰ IDIQ labor hours in the first option period. Table 9 shows the additional costs the Navy paid by accepting the higher labor rates in the task order proposals versus the rates that Shaw was awarded under competitively negotiated contract.

¹⁹ This area of the report represents source selection information that was omitted.

²⁰ This area of the report represents contractor proprietary data that was omitted.

Table 9. Overpayment From Higher Task Order Labor Rates

	<u>Hours</u> ¹	<u>Labor Rate</u> ¹	<u>Amount</u>
Base Period			
IDIQ Task Orders			\$ 827,525
Competitively Sourced Contract			<u>437,722</u>
Overpayment			\$ 389,803
First Option Period			
IDIQ Task Orders			2,306,871
Competitively Sourced Contract			<u>1,265,270</u>
Overpayment			\$1,041,601
Total Overpayment			\$1,431,404

¹Contractor proprietary data omitted.

While Shaw may have planned to hire the affected Navy Public Works Center employees, the Government should not have to incur the cost of Shaw being unable to hire personnel and locate them at Public Work Center facilities as they proposed. We calculate that the additional overhead Shaw applied to the IDIQ labor rates in the 6-month base period and first option year accounts for about half of the \$1.4 million overpayment. Additionally, Shaw proposed average fully burdened labor rates of \$*²¹, \$*²¹, and \$*²¹ for the *²² IDIQ labor hours over the remaining three contract option periods. We calculate that if the Navy continues to accept Shaw's higher IDIQ labor rates at an average of \$*²¹ the Navy will spend \$15.1 million for the IDIQ requirements over the next three option periods, about \$6.6 million more than negotiated in the competitively sourced contract. The Price Evaluation Board determined that Shaw had built enough profit in its price proposal to cover any staffing understatements. Therefore, if Shaw is not able to perform as proposed, it should incur the additional costs, not the Government. The contracting officer should award task orders to Shaw using the labor categories and rates awarded under the competitively sourced contract or use other multiple award task order contracting procedures. Also the contracting officer should request a reimbursement from Shaw for the overpayment of \$1.4 million resulting from awarding the IDIQ tasks orders for higher labor rates than awarded in the competitively sourced contract.

Price Negotiation Memorandums and Contract Funding

The contracting officer did not prepare price negotiation memorandums for IDIQ task orders to document the principal elements of the negotiated agreement to determine fair and reasonable prices. Additionally, the contracting officer did not prepare contract modifications to transfer funds between different contract line items that exceeded the contract maximum.

²¹ This area of the report represents contractor proprietary data that was omitted.

²² This area of the report represents source selection information that was omitted.

Contract Pricing and Negotiation. FAR Subpart 15.4, “Contract Pricing,” prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts and contract modifications. The contracting officer is responsible for evaluating the reasonableness of the offered prices. The contracting officer’s analysis develops a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. FAR Subpart 15.406-3, “Documenting the Negotiation,” requires the contracting officer to document in the contract file the principal elements of the negotiated agreement. The documentation (for example, price negotiation memorandum) shall include the purpose of the negotiation, a description of the acquisition, a summary of the contractor’s proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government’s negotiation objective, the negotiated position, and documentation of fair and reasonable pricing.

Price Negotiation Memorandums. The audit team requested price negotiation memorandums from the contracting officer several times, but none were provided. In October 2006, the contracting officer provided pre-negotiation memorandums, which provided information on the price, for 8 of the 64 IDIQ task orders. Many of these pre-negotiation memorandums contained inaccuracies and discrepancies, such as labor categories, and hours in many of the memorandums did not correspond with the labor categories and hours in the cost proposal for the subject task order. The contracting officer did not prepare price negotiation memorandums for any of the six of the IDIQ task orders and two task order modifications that we reviewed in detail. The task orders that we selected to review ranged in dollar value from \$39,311 to \$1,350,563. Additionally, although an independent Government estimate was prepared for most of the task orders we reviewed, each task order was awarded for the exact amount that Shaw proposed to perform the requirements. Accordingly, we could not determine how the contracting officer determined that the proposed prices were fair and reasonable, and whether the contracting officer negotiated any prices with Shaw before awarding the task order.

IDIQ Requirements. The environmental services contract identified five different exhibit line item numbers (ELINs) associated with the IDIQ requirements. As previously discussed, the contractor was required to propose for the IDIQ requirements based on a specified number of hours for various professional skill sets identified in the PWS. These requirements were captured in ELIN 016, “Professional Services,” to provide consulting, professional services, project management, and technical support. ELIN 017, “Materials and Supplies,” was a “not to exceed” amount for materials and supplies associated with IDIQ requirements.²³ The remaining IDIQ line items, ELIN 018, “Environmental Laboratory Services;” ELIN 019, “Industrial and Oily Waste Water Treatment;” and ELIN 020, “Containerized Solid Waste Services,” were to provide services in the respective environmental service areas during non-scheduled working hours. The PWS required the contractor to propose on a minimal number of hours in these areas.

²³ The contract did not include an ELIN referencing subcontractor costs. According to the contract specialist, because the contract did not specify an ELIN for subcontracts, the contracting staff determined that subcontract costs would be awarded under ELIN 017, “Materials and Supplies.”

Awarded Value of IDIQ Task Orders. The environmental services contract established a maximum amount for IDIQ requirements in the 6-month base period of \$3.83 million, and \$5.79 million in the first option period. As shown in Table 10, most of the awarded value was under ELIN 016 and ELIN 017, and the amount awarded for the remaining line items was negligible. During the base period, the contracting officer awarded Shaw 45 task orders and modified 6 of the task orders for a total of \$4.39 million, thereby exceeding the contract maximum by \$0.56 million. During the first option period, the contracting officer awarded Shaw 19 task orders and 7 modifications of the task orders for a total of \$10.99 million, exceeding the contract maximum by \$5.2 million.

Table 10. IDIQ Award Amounts for the Base Period and Option Period 1

Base Period			
<u>ELIN</u>	<u>Contract Award</u>	<u>Task Order Award</u>	<u>Difference</u>
016	\$1,801,034	\$ 947,089	\$ 853,945
017	2,000,000	3,261,376	(1,261,376)
Other*	28,320	185,934	(157,614)
Total	\$3,829,354	\$4,394,399	\$ (565,045)
Option Period 1			
<u>ELIN</u>	<u>Contract Award</u>	<u>Task Order Award</u>	<u>Difference</u>
016	\$2,743,284	\$ 2,990,372	\$ (247,088)
017	3,000,000	7,282,648	(4,282,648)
Other*	42,504	718,330	(675,826)
Total	\$5,785,788	\$10,991,350	\$(5,205,562)

* Awarded under ELINs 018, 019, 020, or contract line item 0002.

As shown in Table 10, the contracting officer awarded IDIQ task orders for about 50 percent of the contract maximum for ELIN 016, “Professional Services,” during the base period and exceeded the contract maximum by \$0.2 million for the first option period. The amount awarded for IDIQ task orders exceeded the contract maximum for ELIN 017, “Materials and Supplies,” by about \$1.3 million and \$4.3 million during the base period and the first option period, respectively.

The contract included clause 5252.216-9313, “Maximum Quantities,” from the Navy Facilities Acquisition Supplement, that stated “the maximum shall not be exceeded except as may be provided by formal modification to the contract.” However, the contract specialist deducted the base period overrun from the funds for the first option period without modifying the contract and did not prepare contract modifications to move award amounts between ELINs or increase the “not to exceed” amount of the materials and supplies. In addition, the contracting officer did not prepare a justification and approval for exceeding the award amounts for IDIQ requirements in the base period or the first option period. When asked how additional cost overruns would be addressed, the contract specialist stated that overruns would be taken from the next option period.

Some of the administrative matters involving the IDIQ task orders, such as the preparation of price negotiation memorandums and the contract funding documentation may have been neglected due to the minimal staff assigned to

administer this contract, as previously discussed. Nonetheless, the contracting officer is required by the FAR to document the principal elements of the negotiated agreement in the contract file and should ensure that price negotiation memorandums documenting the rationale for the awarded task order price are prepared at the conclusion of negotiations for all future IDIQ task orders awarded to Shaw. Also, the contracting officer should track contract dollars by specific line item, prepare a justification and approval if the award amounts are exceeded, and modify the contract in accordance with contract clause 5252.216-9313.

Conclusion

Shaw won the OMB Circular No. A-76 public-private competition by about \$4.1 million. Shaw's contract price of \$67.4 million included the average hourly, fully burdened, IDIQ labor rates ranging from \$*²⁴ to \$*²⁴ for the life of the contract. If Shaw had proposed the labor rates that were used in the IDIQ task orders, Shaw's contract price would have been \$78.6 million. As shown in Table 11, if the contract price based on actual IDIQ labor rates was used in the cost comparison, the MEO would have won the competition by \$7.1 million.

Table 11. Cost Comparison Adjustment for IDIQ Task Order Burdened Hourly Labor Rates

Performance Period	<u>Contract Labor Rates</u>		<u>Task Order Labor Rates</u>	
	<u>Total</u> <u>Contract Cost</u>	<u>Total</u> <u>In-House Cost</u>	<u>Total</u> <u>Contract Cost</u>	<u>Total</u> <u>In-House Cost</u>
1	\$12,297,093	\$13,218,870	\$14,691,334	\$13,218,870
2	13,914,103	15,534,249	16,160,703	15,534,249
3	14,083,084	15,733,250	16,314,713	15,733,250
4	14,254,029	15,942,112	16,442,031	15,942,112
5	<u>14,425,791</u>	<u>16,151,391</u>	<u>16,569,075</u>	<u>16,151,391</u>
Total	68,974,100	76,579,872	80,177,856	76,579,872
Minimum Conversion Differential*	<u>3,480,803</u>		<u>3,480,803</u>	
Adjusted Total	\$72,454,903	\$76,579,872	\$83,658,659	\$76,579,872
Difference (in favor of)	\$ 4,124,969			\$ 7,078,787

* Established to ensure that the Government did not undertake a conversion for marginal estimated saving. Equal to the lesser of 10 percent of the in-house personnel costs or \$10 million.

²⁴ This area of the report represents contractor proprietary information that was omitted.

DoD relies on OMB Circular No. A-76 public-private competitions to promote cost savings and to increase the quality of service provided. The Navy estimated savings of \$12.7 million over the life of the Shaw contract. Using the actual IDIQ labor rates, the estimated savings would be reduced to \$1.5 million. Also, the MEO would have won the competition and the estimated savings would have been \$5.1 million. With the higher labor rates for IDIQ requirements, Shaw has not been able to provide all of the labor hours they agreed to provide in the competitively sourced contract. Because the Navy is spending more money but receiving less of the IDIQ requirements proposed in the contract, the Navy will actually spend more on the execution of the environmental services contract than intended and not achieve the \$12.7 million estimated savings.

Management Comments on the Finding and Audit Response

Management Comments. The Director, Navy Strategic Sourcing provided comments on the Public Law 106-398 requirement that the Secretary of each Military Department provide enhanced training in service contracting. He stated that the Department of the Navy complies with the services contract training requirements for personnel who award and manage contracts for services. Specifically, he stated that the Department of the Navy has established an Acquisition Center of Excellence to award and administer competitive sourcing (OMB Circular No. A-76) contracts. He stated that the Center of Excellence personnel meet all training requirements of the Defense Acquisition Workforce Improvement Act and appropriate training on contracting for services. In addition, the Director, Navy Strategic Sourcing stated that the Navy continuously reviews and updates existing competitive sourcing training, which includes performance-based service acquisition, and that he will direct the training be revised to incorporate information about the Service Contracting Center of Excellence.

Audit Response. The Acquisition Center of Excellence is not administering the contract for environmental services at the Navy Public Works Center, San Diego, California, which is a competitive sourcing contract. NAVFAC Southwest, Facilities Engineering Acquisition Division administers the environmental services contract. The Facilities Engineering Acquisition Division officer in charge and lead contracting officer have stated that they have not received assistance from a service contracting center of excellence and have received limited training in performance-based service acquisition and environmental services.

Recommendations, Management Comments, and Audit Response

B. We recommend that the Commanding Officer, Naval Facilities Engineering Command Southwest:

1. Adequately staff the contract administration for contract N68711-03-D-4302.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest Public Works Department San Diego currently has 3.5 full-time equivalents, consisting of three contract specialists and a part-time operations assistant, dedicated to the contract. The command is currently hiring an additional contract specialist to bring the number of full-time equivalents assigned to the contract to 4.5.

Audit Response. Management comments were responsive to the recommendation.

2. Send contracting and technical support staff to appropriate training for performance-based service acquisition and environmental services.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that contracting and technical support staff will attend performance-based acquisition training designed to enhance skills in scoping objectives, developing performance work statements, and monitoring and documenting performance. Until this training is accomplished, appropriately trained staff will review contract language to ensure its use coincides with best practices for performance-based acquisitions. The contracting team will also attend general environmental technical training. In addition, NAVFAC Southwest will share lessons learned at upcoming sessions of the Command's quarterly conferences, where participation by all Business and Support Lines is strongly encouraged.

Audit Response. Management comments were responsive to the recommendation.

3. Instruct the contracting officer to:

(a) Determine whether performance-based service acquisition is appropriate for the indefinite-delivery, indefinite-quantity requirements, or whether another method, such as time and materials or multiple task orders, should be used.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest will evaluate characteristics of new work requirements to determine suitability for a firm-fixed-price or time and materials task order, and will include performance-based service acquisition language and prescriptive language when necessary.

Audit Response. Management comments were responsive to the recommendation.

(b) Include measurable performance standards with clear, specific, and objective language in terms of quantity, timeliness, and quality in the performance-based indefinite-delivery, indefinite-quantity task orders.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that as of February 12, 2007, measurable performance standards are being incorporated into the indefinite-delivery, indefinite-quantity task orders. The scope of each task order is reviewed to determine measurable performance standards and NAVFAC Southwest will ensure that performance standards are incorporated into indefinite-delivery, indefinite-quantity work, as acceptable quality levels are further defined.

Audit Response. Management comments were responsive to the recommendation.

(c) Award task orders to Shaw using the competitive rates from the competitively sourced contract and document the principal elements of the negotiated agreement.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that effective October 2006, competitive rates from the competitively sourced contract are being used to award task orders. In addition, pre-negotiation and post-negotiation memorandums are prepared and included in the contract file to document the negotiation.

Audit Response. Management comments were responsive to the recommendation.

(d) Track contract dollars by specific line item, prepare a justification and approval if the award amounts are exceeded, and modify the contract in accordance with contract clause 5252.216-9313.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest has developed a process to track dollars per specific line item. If it becomes evident that a specific line item threshold will be exceeded, a justification and approval will be executed before awarding projects that would exceed the threshold and the contract will be modified in accordance with contract clause 5252.216-9313.

Audit Response. Management comments were responsive to the recommendation.

(e) Request a reimbursement of \$1,431,404 from Shaw.

Management Comments. The Director, Program Analysis and Business Transformation concurred, stating that NAVFAC Southwest has formally notified Shaw that a \$1,431,404 reimbursement is required.

Audit Response. Management comments were responsive to the recommendation.

Appendix A. Scope and Methodology

We met with officials from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of Defense Procurement and Acquisition Policy; the Deputy Assistant Secretary of the Navy for Acquisition Management; and Navy and NAVFAC strategic sourcing officials. We interviewed and obtained documentation regarding the environmental services contract from personnel of the NAVFAC Southwest Facilities Engineering Acquisition Division and the subject matter experts of the NAVFAC Southwest environmental services residual organization. We also interviewed and obtained documentation from Shaw personnel.

We reviewed the FAR and the Guidebook for Performance-Based Services Acquisition in the Department of Defense for guidance on performance-based service acquisition. We reviewed the contract, modifications, and IDIQ task orders issued during the 6-month base period and the first 1-year option period. We also reviewed Shaw's technical proposals and cost estimates for IDIQ task orders. We reviewed the performance assessment plan, monthly performance reports from April through July 2005, performance assessment worksheets from September 2005 through August 2006, performance assessment board reports from March 2006 through September 2006, and the contractor performance assessment report for the 6-month base period. We reviewed Shaw's quality control plans and quality control inspection reports from August 2005 through September 2006.

We reviewed 64 IDIQ task orders awarded and modifications issued as of September 30, 2006, obtained from the NAVFAC Southwest Facilities Engineering Acquisition Division and the Shaw environmental services Internet portal. To determine the average hourly labor rates, we reviewed the 41 cost proposals that were available from the NAVFAC Southwest Facilities Engineering Acquisition Division as of April 2006 and the Shaw portal as of October 2006. We calculated the average hourly labor rate for the base and first option period and used that rate to determine the overpayment made by the Navy using the higher rates versus the competitively negotiated labor rates and to determine the estimated additional overpayment the Navy will make over the remaining 3 contract option years if they continue to use the higher labor rates to acquire all of the IDIQ hours in the contract.

We performed this audit from September 2005 through February 2007 in accordance with generally accepted government auditing standards.

Use of Computer-Processed Data. We used computer-processed cost comparison data calculated by the win.COMPARE² software program to identify the appropriate number of contract administration positions and to recalculate the cost comparison using Shaw's actual IDIQ labor rates. According to DoD IG Report No. D-2001-127, "Data Reliability Assessment Review of win.COMPARE² Software," May 23, 2001, the general and application controls over the win.COMPARE² software were adequate. In addition, through software testing, the DoD IG determined that computations and reports generated by win.COMPARE² were sufficiently reliable, accurate, and in accordance with the

OMB Circular No. A-76 Revised Supplemental Handbook and the DoD A-76 Costing Manual. Nothing came to our attention in this review that caused us to doubt the reliability of the computer-processed data.

Government Accountability Office High-Risk Area. GAO has identified several high-risk areas in DoD. This report provides coverage of the Defense Infrastructure Management and Defense Contract Management high-risk areas.

Appendix B. Prior Coverage

During the last 5 years, GAO, DoD IG, and the Air Force Audit Agency (AFAA) have issued nine reports discussing performance-based services acquisition. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted AFAA reports can be accessed at <https://www.affa.hq.af.mil/afck/plansreports/reports.shtml>.

GAO

GAO Report No. GAO-07-20, "Tailored Approach Needed to Improve Service Acquisition Outcomes," November 9, 2006

GAO Report No. GAO-05-526, "Better Contracting Practices Needed at Call Centers," June 30, 2005

GAO Report No. GAO-04-380, "Coast Guard's Deepwater Program Needs Increased Attention to Management and Contractor Oversight," March 9, 2004

GAO Report No. GAO-02-1049, "Guidance Needed for Using Performance-Based Service Contracting," September 23, 2002

DoD IG

DoD IG Report No. D-2006-036, "Public-Private Competition for Environmental Services at the Navy Public Works Center, San Diego, California," December 8, 2005

DoD IG Report No. D-2006-010, "Contract Surveillance for Service Contracts," October 28, 2005

DoD IG Report No. D-2004-015, "Contracts for Professional, Administrative, and Management Support Services," October 30, 2003

DoD IG Report No. D-2003-016, "Material Distribution Services Contract at the Defense Distribution Depot Warner Robins, Georgia," October 30, 2002

Air Force

AFAA Report No. F2005-0003-FC3000, "Performance-Based Services Acquisition Management," January 5, 2005

Appendix C. Comparison of Shaw Quality Control Plan and PWS Performance Requirements

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
3.1 Environmental Laboratory Services	
The Service Provider shall provide environmental laboratory services: volatile organics, semi-volatile organics, metals, general chemistry, bacteriology, radiological, and aquatic toxicity bioassay.	Comply with applicable Federal and State laws and regulations. (<i>No/No</i>)
	All records, reports, and data are provided within the specified time frames. (<i>Questionable/No</i>)
The Service Provider shall develop and maintain a set of standard operating procedures (SOPs) for all activities identified as part of performing Environmental Laboratory Services within 60 days from the notice to proceed. Upon request the Service Provider shall provide copies of the SOPs.	SOPs are developed within 60 days from notice to proceed. (<i>Yes/Yes</i>)
3.1.1 Sampling and Field Analytical Services	
The Service Provider shall provide sampling services within 2 working days of the request by the client for service.	Sample collection is provided within 2 working days of the time of receipt of requirement or as agreed to with the Client 95 percent of the time. (<i>Questionable/No</i>)
The Service Provider shall provide sampling services including, but not limited to, sampling for regulatory compliance, installation restoration (IR) (Comprehensive Environmental Response, Compensation, and Liability Act) volatile organics, semi-volatile organics, metals, general chemistry, bacteriology, and aquatic toxicity bioassay.	Sample is collected within 15 minutes of scheduled time for sampling service 95 percent of the time. (<i>Yes/Yes</i>)
The Service Provider shall provide all necessary and related sample materials, sample collection equipment, preservation material, personal protective equipment, and transportation of the samples to an approved laboratory.	Field analytical services are provided within 2 working days of the time of receipt of requirement or as agreed to with the Client 95 percent of the time. (<i>No/No</i>)
The Service Provider shall provide and conduct field analytical services including, but not limited to, pH, residual and total chlorine, temperature, conductivity, ferrous iron testing, and dissolved oxygen and turbidity.	Service is provided at the collections site within 15 minutes of scheduled time 95 percent of the time. (<i>No/No</i>)

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
3.1.2 Analytical Services	
The Service Provider shall provide analytical services and associated reports in the categories of, but not limited to, process samples (screening), compliance, IR, and microbiological.	All samples are analyzed within required holding times 98 percent of the time. (<i>Yes/Yes</i>)
The Service Provider shall provide specific report formats or electronic formats in the format specified by the client or Federal and State regulatory agencies.	
Process reports for samples submitted within the first 2 hours of the scheduled laboratory hours shall be provided the same day; samples submitted after that period shall be provided the next working day.	Process reports for samples submitted within the first 2 hours of the scheduled laboratory hours provided the same day; samples submitted after that period shall be provided the next working day. (<i>Questionable/Yes</i>)
Compliance reports shall be provided within 10 working days from the date of sample receipt.	Compliance reports are provided within 10 working days from the date of sample receipt. (<i>Questionable/No</i>)
IR reports shall be provided within 30 working days from the date of receipt of the last samples with the exceptions that asbestos reports shall be provided 2 working days after sample submission.	IR reports are provided within 30 working days from the date of receipt of the last samples with the exceptions that asbestos reports are provided 2 working days after sample submission. (<i>Questionable/No</i>)
Microbiology reports shall be provided within 10 working days of sample submission with the exception of drinking water microbiology reports, which shall be submitted 7 working days from sample submission.	Microbiology reports are provided within 2 working days of sample submission with the exception of drinking water microbiology reports, which are provided 7 working days from sample submission. (<i>Questionable/No</i>)
3.1.3 Client Guide for Sample Collection and Testing Services	
The Service Provider shall develop, maintain, and update a client guide for Environmental Test Methods and Sampling Services.	Guide is available to fill client requests. (<i>Yes/Yes</i>)
The Service Provider shall provide within 30 days of award a format for the guide and submit it to the designated Government representative (DGR) for review and comment.	All specifications for the manual are developed within 30 days from notice to proceed. (<i>No/No</i>)
Within 30 days of receipt of comments, the Service Provider shall provide a completed draft guide to the DGR for approval.	The manual is completed within 30 days of receipt of comment. (<i>No/No</i>)
Service Provider shall update the guide within 30 days of regulatory change.	The manual is maintained and updated as changes in requirements are identified, or within 30 days for a regulatory change. (<i>No/No</i>)

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
3.2 Industrial and Oily Waste Water Treatment Services	
The Service Provider shall collect, manage, store, treat, and dispose of or recycle hazardous wastes, industrial waste, and oily water.	Activities conducted in accordance with applicable laws, regulations, and Navy policy. (<i>Questionable/Questionable</i>)
	Personnel have appropriate training and certifications to conduct activities. (<i>Yes/Yes</i>)
The Service Provider shall develop and maintain a set of SOPs for all activities identified as part of performing these services within 60 days from the notice to proceed. Upon request the Service Provider shall provide copies of the SOPs to the DGR.	SOP developed for all activities within 60 days of notice to proceed. (<i>No/Yes</i>)
The Service Provider shall maintain and operate treatment facilities, which include all ancillary piping, lift stations and emergency generators associated with the treatment facilities.	All activities are conducted in compliance with applicable laws, regulations, permit conditions, and Navy policy. (<i>Yes/Yes</i>)
	Required records are maintained for operations personnel and transport. (<i>Yes/Yes</i>)
The Service Provider shall obtain and maintain ISO 14001 certification as part of the Environmental Management System (EMS) covering industrial and oily waste water treatment services during the first performance period of the contract.	ISO 140001 obtained within first performance period. (<i>Yes/No</i>)
3.2.1 Provide Industrial and Oily Waste Water Collection	
The Service Provider shall provide scheduling and collection services for industrial and oily waste water and general industrial waste from the point of generation to the appropriately permitted Government facility or treatment storage and/or disposal facility (TSDF).	Industrial and oily waste water is scheduled and collected in accordance with customer requests and requirements. (<i>Yes/Yes</i>)
3.2.1.1 Industrial and Oily Waste Water Scheduling and Collection by Pipeline	
The Service Provider shall provide industrial and oily waste water scheduling and collection by pipeline.	Industrial and oily waste water is scheduled and collected in accordance with customer requirements 98 percent of the time. (<i>Yes/Yes</i>)
	Collection is conducted in accordance with 33 Code of Federal Regulations (CFR) 153.310. (<i>Yes/Yes</i>)
The Service Provider shall develop an SOP for scheduling and collection of industrial and oily waste water by pipeline within 60 days from the notice to proceed.	SOP is developed within 60 days from notice to proceed. (<i>Yes/Yes</i>)

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
The Service Provider shall provide training to shore and ship commands as necessary to ensure compliance with applicable regulations and SOP.	Training is scheduled and provided to shore and ship commands utilizing the service 98 percent of the time. <i>(Yes/Yes)</i>
3.2.1.2 Industrial and Oily Waste Water Scheduling and Collection by Tanker Truck	
The Service Provider shall provide industrial and oily waste water scheduling and collection by mobile tanks (that is, tanker truck, bowsers).	Industrial and oily waste water is scheduled and collected in accordance with customer requirements 98 percent of the time. <i>(Yes/Yes)</i>
	Documentation and testing confirm conformance with permit conditions and applicable laws and regulations. <i>(Yes/Yes)</i>
3.2.1.3 Industrial and Oily Waste Water Scheduling and Collection by Container	
The Service Provider shall provide industrial and oily waste water scheduling and collection by container.	Industrial oily waste water is scheduled and collected in accordance with customer requirements 98 percent of the time. <i>(Yes/Yes)</i>
3.2.2 Provide Industrial and Oily Waste Water Treatment Service, Storage	
The Service Provider shall provide industrial oily waste water storage.	Industrial and oily waste water is stored in accordance with applicable laws, regulations, and permit conditions. <i>(Yes/Yes)</i>
3.2.3 Provide Waste Treatment for Industrial and Oily Waste Water Treatment Services	
The Service Provider shall use the appropriate tanks and treatment technology to treat collected and stored hazardous wastes and industrial and oily waste waters to applicable discharge standards as specified in the facility permits.	Treated waste meets permit discharge requirements. <i>(Yes/Yes)</i>
3.2.4 Provide Disposal of Industrial and Oily Waste Water	
The Service Provider shall provide disposal of industrial and oily waste water.	Disposal is in compliance with all applicable permits, laws, and regulations. <i>(Questionable/Yes)</i>
	All data and documentation will be performed within 5 days. <i>(Yes/Yes)</i>
	Recommendations must be submitted to the DGR no later than 30 days prior to the allowable storage time. <i>(No/No)</i>

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) <i>(Addressed in Quality Control Plan/Addressed in Monthly Performance Report)</i>
3.2.5 Operate and Monitor Industrial and Oily Waste Water Treatment Facilities	
The Service Provider shall operate and monitor treatment facilities, equipment, lift stations, and pipelines in compliance with applicable laws, regulations, media permits, and hazardous waste facility permit conditions.	Facilities are in operation and provide 100 percent of the service 95 percent of the time. One hundred percent of the service is defined as all systems that are necessary to provide service to the customers are available for service. <i>(Yes/Yes)</i>
The Service Provider shall respond to routine service requests/alarms. Routine alarm actions must be implemented within 5 calendar days from the time alarm is received.	
The Service Provider shall respond to urgent service requests/alarms. Urgent alarm actions must be implemented within 4 hours of the time the alarm is received.	
The Service Provider shall respond to emergency service requests/alarms. Emergency alarm actions implemented immediately but no later than 2 hours from the time the alarm is received.	
3.2.6 Maintain Industrial and Oily Waste Water Treatment Facilities	
The Service Provider shall maintain all treatment facilities, ancillary equipment, lift stations, and pipelines. Maintenance shall include, but is not limited to, painting, repair, and preventative maintenance of all tanks, ancillary equipment, pipelines, and other associated monitoring systems.	Treatment facilities are maintained according to Government provided or approved preventative maintenance schedule. <i>(Questionable/Yes)</i>
	Equipment maintained in accordance with manufacturer recommendations, Public Work Center standards, and applicable permit requirements. <i>(Questionable/Yes)</i>
The Service Provider shall maintain the industrial and oily waste water treatment facilities with the preventative maintenance schedule for treatment facilities.	Preventative maintenance schedule is entered and maintained in MAXIMO, an automated, on-line, maintenance management system. <i>(Yes/Yes)</i>
The Service Provider shall provide routine repair action initiated within 72 hours.	Routine repair action is initiated within 72 hours 98 percent of the time. <i>(Yes/Yes)</i>
The Service Provider shall provide urgent repair actions initiated within 24 hours.	Urgent repair actions are initiated within 24 hours 99 percent of the time. <i>(Yes/Yes)</i>
The Service Provider shall provide emergency repair action initiated immediately.	Emergency repair action is initiated immediately. <i>(Yes/Yes)</i>

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
3.3 Containerized Solid Waste Services	
The Service Provider shall provide containerized solid waste services (CSWS) services for Naval facilities located principally in the San Diego Metro area and San Clemente Island (SCI).	All activities are conducted in accordance with laws, specified permit conditions, and regulations. <i>(No/No)</i>
The Service Provider shall develop and maintain SOPs for all activities identified as part of performing CSWS services within 60 days from the notice to proceed. Upon request the Service Provider shall provide copies of the SOPs to the DGR.	SOPs are submitted to DGR within 60 days from notice to proceed. <i>(No/No)</i>
The Service Provider shall obtain and maintain ISO 14001 certification as part of the EMS covering this activity during the first performance period.	ISO 140001 certification is obtained within first performance period. <i>(No/No)</i>
3.3.1 Collection and Transport of Containerized Hazardous and Non-Hazardous Solid Waste, Asbestos, PCB, Universal, and Designated Waste at the Generator Location	
The Service Provider shall collect, segregate, characterize, prepare appropriate shipping and billing documents, and transport containerized hazardous and non-hazardous solid waste, asbestos, polychlorinated biphenyls (PCB), universal and designated waste from the generator location to a Government-owned TSDF or an appropriate TSDF selected by the Service Provider.	Containerized waste is scheduled and collected in accordance with customer requirements within 15 minutes of scheduled included in JC-1801020-004 98 percent of the time. <i>(Yes/Yes)</i>
3.3.1.1 Collection and Transport of Containerized Hazardous and Non-Hazardous Solid Waste, Asbestos, PCB, Universal, and Designated Waste at the SCI generator location	
The Service Provider shall coordinate with hazardous waste coordinators at SCI to provide the personnel to ensure proper segregation and characterization of wastes collected for shipment from SCI and prepare appropriate manifests, shipping, and billing documents.	Service provider personnel are on site on the day scheduled 98 percent of the time. <i>(Yes/Yes)</i>
The Service Provider shall coordinate the barge transport of the containerized hazardous and non-hazardous solid waste, asbestos, PCB, universal, and designated waste from SCI to the Naval Station barge pier.	All required documents necessary for shipment are complete, correct, and provided to applicable agencies, transporter, TSDF. <i>(Yes/Yes)</i>
The Service Provider shall unload the barge of the items identified by the shipping documents and transport them to the Government-owned TSDF or a appropriate facility selected by the Service Provider.	Barged wastes are properly unloaded and managed. <i>(Yes/Yes)</i>

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
3.3.2 Containerized Waste Storage	
The Service Provider shall provide management and storage of hazardous and non-hazardous solid waste, asbestos, PCB, universal, and designated waste in accordance with permit conditions, laws, and regulations in Resource Conservation and Recovery Act (RCRA)-permitted facilities or less than "90-day" accumulation facilities as applicable.	Containerized waste is stored in accordance with applicable permit conditions, laws, and regulations. <i>(Yes/Yes)</i>
3.3.2.1 Containerized Waste Sorting, Segregation, and Consolidation (Bulking)	
The Service Provider shall separate, determine compatibility, consolidate (bulking), and containerize hazardous and non-hazardous solid waste, and designated waste as applicable for storage, Department of Transportation (DOT) transportation, and disposal within 2 working days of receipt at the facility.	All waste collected is processed (sorted, segregated, consolidated) within 2 working days of receipt during normal working hours 99 percent of the time. <i>(Yes/Yes)</i>
3.3.2.2 Lab Pack Preparation	
The Service Provider shall separate, determine compatibility, and lab pack hazardous waste for storage and DOT transportation.	In accordance with laws and regulatory requirements. <i>(No/Yes)</i>
3.3.3 Disposal of Containerized Waste	
The Service Provider shall dispose of containerized hazardous and non-hazardous solid waste, asbestos, PCB, universal, and designated waste.	Disposal is in compliance with all applicable laws and regulations. <i>(Questionable/Yes)</i>
The Service Provider shall implement procedures to ensure that the storage facilities maintain sufficient capacity to handle surge requirements and that the truck traffic is minimized through the various communities in the San Diego Metro area.	
The Service Provider shall research, document, and recommend to the DGR the most economical disposal option available to provide disposal services. Recommendations must be submitted to the DGR no later than 30 days prior to the allowable storage time.	Recommendations must be submitted to the DGR no later than 30 days prior to the allowable storage time. <i>(Questionable/No)</i>
Upon DGR approval, the Service Provider shall coordinate and document the disposal. All data and documentation for the disposal shall be completed within 5 days of disposal activities.	All data and documentation for disposal is performed within 5 days. <i>(No/No)</i>

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
3.3.4 Recycling	
The Service Provider shall provide recycling services.	All recyclable material is recycled 98 percent of the time. <i>(Yes/Yes)</i>
3.3.4.1 Textile Recycling	
The Service Provider shall sort, clean, and process textiles received from generators.	Recycled textiles are clean and available within 5 working days of receipt 98 percent of the time. <i>(Yes/Yes)</i>
3.3.4.2 Lead Acid Battery Recycling	
The Service Provider shall recycle lead acid batteries received from generators.	All recyclable material is recycled 98 percent of the time. <i>(Yes/Yes)</i>
3.3.4.3 Oil and Fuel Recycling	
The Service Provider shall recycle oil and fuel received from generators.	All recyclable material is recycled 98 percent of the time. <i>(Yes/Yes)</i>
3.3.4.4 Toner Cartridge Recycling	
The Service Provider shall recycle toner cartridges from generators.	All recyclable material is recycled 98 percent of the time. <i>(Yes/Yes)</i>
3.3.4.5 Empty Container Recycling and Management	
The Service Provider shall provide empty container recycling and management.	All recyclable material is recycled or reutilized 98 percent of the time. <i>(Yes/Yes)</i>
3.3.4.6 Fluorescent Light Recycling	
The Service Provider shall recycle fluorescent lights received from the generators.	All recyclable material is recycled 98 percent of the time. <i>(Yes/Yes)</i>
3.3.5 Spill Clean-Up Services	
The Service Provider shall provide personnel trained in accordance with 29 CFR 1910 available during scheduled working hours (07:30 to 16:00 Monday through Friday) to respond to and perform clean-up of hazardous and non-hazardous waste and material releases, excluding sewage releases at Naval facilities located in the San Diego Metro area.	Dispatched personnel shall be at spill site with the necessary materials and equipment within 1 hour of the request for service during scheduled working hours 99 percent of the time. <i>(Yes/Yes)</i>
The Service Provider shall provide personnel, containers, and equipment to perform spill clean-up services of unauthorized releases on land at Naval facilities located in the San Diego Metro area within 1 hour of the request for services from the DGR.	

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
The Service Provider shall complete spill reports within 2 working days of release occurrence.	Reports are submitted within 2 working days of release clean-up. (<i>No/No</i>)
The Service Provider shall maintain release clean up reports on all releases the Service Provider is requested to respond to in the format specified by the DGR.	
3.3.6 Maintain Containerized Solid Waste Equipment	
The Service Provider shall service, maintain, and repair Government-furnished equipment.	Equipment is available and operable 90 percent of the time. (<i>Yes/Yes</i>)
3.3.7 EPA ID Number Management, Manifest, and Land Disposal Restriction Services	
The Service Provider shall respond to requests by the DGR for information pertaining to the Navy facility Environmental Protection Agency identification numbers in section JC 1801020-005.	Arrive at the generator site with 15 minutes of time scheduled in accordance with customer requirements 98 percent of the time. (<i>No/No</i>)
The Service Provider in the capacity as the Government's agent shall provide hazardous waste characterization verification, profile review, manifest, and land disposal restriction certifications services for Government hazardous waste shipped directly from Naval facilities.	All documents are complete and accurate. (<i>Yes/Yes</i>)
3.3.8 PCB Program Management	
The Service Provider shall provide PCB program management, which includes, but is not limited to, maintaining annual records, document records archive, and developing an annual PCB document log in accordance with 40 CFR 761.180.	Complies with all applicable laws and regulations. (<i>Yes/Yes</i>)
	Records are maintained and reports submitted within specified timelines. (<i>No/No</i>)
3.4 Operate Bio-Remediation Facility	
The Service Provider shall operate, provide all maintenance and materials and manage the disposal of remediated soils for the Naval Air Station, North Island, bio-remediation facility in accordance with, but not limited to, Clean Water Act, Clean Air Act, County of San Diego Air Pollution Control District rules, Regional Water Control Board Order R9-2002-0040 waste disposal requirements and applicable permits.	Complies with all applicable laws, regulations, and permit conditions. (<i>No/Yes</i>)

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
The Service Provider shall prepare and submit all required reports to the DGR 30 days prior to the required regulatory submittal date for review and comment. Upon receiving DGR approval, the Service Provider shall sign and submit the required reports to the appropriate agency.	Records are maintained and reports submitted within specified timelines. (<i>Yes/Questionable</i>)
The Service Provider shall develop and maintain SOP for all activities identified as part of operating a bio-remediation facility within 60 days of the notice to proceed.	
3.6 Pollution Prevention Plan for Navy Medical Center San Diego	
The Service Provider shall provide Pollution Prevention (P2) Plan Modification or update services.	The P2 plan is completed as scheduled and conforms to regulatory requirements. (<i>No/Questionable</i>)
3.7 Commander Navy Region Southwest Emergency Planning and Community Right-to-Know Act 311, 312, and 313 Reporting	
The Service Provider shall perform all activities necessary to provide Emergency Planning and Community Right-to-Know Act (EPCRA) 311, 312, and 313 services.	
The Service Provider shall provide to the DGR the appropriate EPCRA report for the listed Naval facilities for review and comment 14 days prior to the regulatory report submittal date. Upon approval of the DGR, the Service Provider shall submit the report to the agency and provide a copy to the DGR.	The EPCRA reports are completed on or before the regulatory submittal date. Reports are complete and appropriate copies are provided to the DGR. (<i>Yes/Questionable</i>)
EPCRA services shall be in accordance with 40 CFR 372 and 40 CFR 370, Executive Order 12856, and Office of the Chief of Naval Operations Instructions (OPNAVINST) 5090.1b CH-2, Chapter 4-5 and additional annual updates to the OPNAVINST and DoD and or Navy specific guidance and San Diego County local hazardous material inventory requirements.	
3.9 PWC Master AUL List Service	
The Service Provider shall provide management and training and maintain and update the Navy Public Works Center San Diego Authorized Use List (AUL) database per Public Work Center Instruction 41103.	Emergency updates are made to the AUL database list within 1 working day of the request 98 percent of the time. (<i>Questionable/Yes</i>)

Note: See the list of acronyms at the end of the appendix.

Performance Objective	Performance Standard/Acceptable Quality Level (AQL) (<i>Addressed in Quality Control Plan/Addressed in Monthly Performance Report</i>)
	Rush updates are made to the AUL database list within 2 working days of the request 98 percent of the time. (<i>Questionable/Yes</i>)
	Routine updates are made to the AUL database list within 5 working days of the request 98 percent of the time. (<i>Questionable/Yes</i>)
3.11 Storm Water Monitoring, Sampling, and Reporting for the NMCS D	
The Service Provider shall perform all activities necessary to provide storm water monitoring, sampling, and reporting for the Naval Medical Center San Diego (NMCS D).	Wastes generated are properly disposed of and sampling schedules are met 99 percent of the time. (<i>Yes/No</i>)
The Service Provider shall provide required reports to the NMCS D DGR for review and comment 30 days prior to the report deadline. Upon approval by the DGR, the Service Provider shall submit the report to the appropriate regulatory agency and provide copies of the report and all relevant documents to the DGR.	Sampling is conducted in accordance with approved plans and Stormwater 846. (<i>Yes/Yes</i>)
The Service Provider shall provide storm water monitoring, sampling, and reporting for the NMCS D in accordance with the Stormwater 846, Clean Water Act, OPNAVINST 5090.1b, and Naval Base San Diego National Pollutant Discharge Elimination Permit CA0109169.	

Acronyms

AQL	Acceptable Quality Level
AUL	Authorized Use List
CFR	Code of Federal Regulations
CSWS	Containerized Solid Waste Services
DGR	Designated Government Representative
DOT	Department of Transportation
EMS	Environmental Management System
EPCRA	Emergency Planning and Community Right-to-Know Act
IR	Installation Restoration
NMCS D	Naval Medical Center San Diego
OPNAVINST	Office of the Chief of Naval Operations Instruction
P2	Pollution Prevention
PCB	Polychlorinated Biphenyls
RCRA	Resource Conservation and Recovery Act
SCI	San Clemente Island
SOP	Standard Operating Procedure
TSDF	Treatment Storage and/or Disposal Facility

Appendix D. Professional Services Labor Rates in the Contract for the First Option Period

55

Description	Labor Hours ³	Labor Rate ²	Labor Burden ¹		Overhead		G&A ²		Profit ²		Total Price	Fully Burdened Rate ²
			Total Cost ²	Amount ²	Percent ²	Amount ²	Percent ²					
4.11 - Principal Geologist/Engineer	Exempt										\$ 100,153	
4.1.1 - Senior Geologist/Engineer	Exempt										985,824	
4.1.1 - Staff Geologist/Engineer	Exempt										241,113	
4.1.2 - Quality Assurance Manager	Exempt										98,897	
4.1.3 - Physical Science Technician	SCA										376,247	
4.1.4 - Graphics Specialist	SCA										125,724	
4.1.5 - Database Manager	SCA										124,756	
4.1.6 - Senior Environmental Protection Specialist	SCA										64,960	
4.1.6 - Environmental Protection Specialist	SCA										296,258	
4.1.6 - Associate Environmental Protection Specialist	SCA										44,298	
4.1.7 -SCAPS Data Acquisition Specialist	Exempt										73,630	
4.1.7 - SCAPS Operations Manager	Exempt										211,433	
											\$2,743,293	

G&A General and Administrative

SCA Service Contract Act

SCAPS Site Characterization and Analysis Penetrometer System

¹ Labor Burden includes fringes, earned leave, and overhead.

² Contractor proprietary data omitted.

³ Source selection information omitted.

Appendix E. IDIQ Task Order Labor Rates for the Base Period

Professional Services - Exempt

Task Order No.	Hours ¹	Labor		Fringe		Overhead		G&A ¹	Profit ¹	Total Amount	Burdened Rate ¹
		Rate ¹	Cost ¹	Percent ¹	Amount ¹	Percent ¹	Amount ¹				
4										\$ 568	
5										9,085	
5(2)										1,234	
5(3)										1,100	
6										2,971	
7										13,182	
8										517	
24										1,490	
29										705	
31										1,894	
32										1,478	
33										6,445	
34										1,569	
35										13,168	
37										1,365	
42										6,337	
43										53,440	
44										10,670	
45										1,008	
Subtotal										\$128,226	

Note: See the list of acronyms and the footnotes at the end of the appendix.

Professional Services - SCA

Task Order No.	Hours ¹	<u>Labor</u>		<u>Fringe</u>		<u>Overhead</u>		<u>G&A</u> ¹	<u>Profit</u> ¹	<u>Total Amount</u>	<u>Burdened Rate</u> ¹
		<u>Rate</u> ¹	<u>Cost</u> ¹	<u>Percent</u> ¹	<u>Amount</u> ¹	<u>Percent</u> ¹	<u>Amount</u> ¹				
5										\$ 1,989	
5(2)										1,132	
6										1,214	
7										3,200	
31										1,074	
35										2,269	
43										46,592	
44										5,523	
45										985	
Subtotal										\$63,978	

Professional Services - Shaw E&I (includes others²)

5(2)										2,279	
5(3)										8,616	
24										286	
30										241,801	
31										9,004	
32										531	
33										4,296	
34										13,615	
35										104,759	
37										818	
41										98,614	
42										1,410	
43										85,727	
44										60,296	
45										3,253	
Subtotal										\$635,305	

Total

\$827,510

E&I Environmental and Infrastructure
G&A General and Administrative
SCA Service Contract Act

¹ Contractor proprietary data omitted.

² The audit team was unable to classify task order 30 and 41 professional services into Exempt, SCA, and Shaw E&I with the documentation provided.

Appendix F. IDIQ Task Order Labor Rates for the First Option Period

Professional Services - Exempt

Task Order No.	Hours ¹	Labor		Fringe		Overhead		G&A ¹	Profit ¹	Total Amount	Burdened Rate ¹
		Rate ¹	Cost ¹	Percent ¹	Amount ¹	Percent ¹	Amount ¹				
5(4)										\$ 1,109	
44(1)										6,895	
46										3,339	
48										17,088	
50										7,631	
52										5,771	
53										2,630	
54										6,069	
55										4,153	
57										1,573	
58										2,264	
59										14,226	
60										1,123	
61										962	
62										1,244	
64										<u>11,298</u>	
Subtotal										\$87,375	

Professional Services - SCA

5(4)										1,058	
44(1)										3,569	
58										248	
60										174	
64										<u>17,683</u>	
Subtotal										\$22,732	

Note: See the list of acronyms and the footnotes at the end of the appendix.

Professional Services - Shaw E&I (includes others²)

Task Order No.	Hours ¹	Labor		Fringe		Overhead		G&A ¹	Profit ¹	Total Amount	Burdened Rate ¹
		Rate ¹	Cost ¹	Percent ¹	Amount ¹	Percent ¹	Amount ¹				
5(4)										\$ 5,601	
44(1)										38,960	
46										1,075	
47										95,225	
48										7,440	
49										343,264	
50										7,440	
51										44,506	
52										2,998	
53										26,353	
54										19,223	
55										2,652	
56										155,267	
57										904	
58										10,226	
59										208,823	
60										507	
61										765	
62										721	
63										1,194,721	
64										30,074	
Subtotal										\$2,196,745	
Total³										\$2,306,851	

E&I Environmental and Infrastructure
G&A General and Administrative
SCA Service Contract Act

¹ Contractor proprietary data omitted.

² The data needed to calculate task orders 49 and 51, fringe, overhead, G&A, and profit rates and to classify the Professional Services into Exempt, SCA and Shaw E&I were not available in the documentation provided.

³ Labor cost could not be determined from the documents available for task orders 49 and 51; therefore, the labor hours for these task orders were not included in calculating the Subtotal or Total Labor Rate.

Appendix G. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Deputy Under Secretary of Defense (Installations and Environment)
Director, Acquisition Resources and Analysis
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Director, Program Analysis and Evaluation
Director, Defense Procurement and Acquisition Policy

Department of the Navy

Assistant Secretary of the Navy (Manpower and Reserve Affairs)
Naval Inspector General
Auditor General, Department of the Navy
Commanding Officer, Naval Facilities Engineering Command Southwest
Director, Navy Strategic Sourcing

Department of the Air Force

Auditor General, Department of the Air Force

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Oversight and Government Reform
House Subcommittee on Government Management, Organization, and Procurement,
Committee on Oversight and Government Reform
House Subcommittee on National Security and Foreign Affairs,
Committee on Oversight and Government Reform
Honorable Susan A. Davis, U.S. House of Representatives

Deputy Assistant Secretary of the Navy (Acquisition Management)



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

MAR - 5 2007

MEMORANDUM FOR INSPECTOR GENERAL DEPARTMENT OF DEFENSE;
PRINCIPAL DIRECTOR FOR CONTRACTING ACQUISITION AND
CONTRACT MANAGEMENT

Subj: REPORT ON PERFORMANCE-BASED SERVICE CONTRACT FOR
ENVIRONMENTAL SERVICES AT THE NAVY PUBLIC WORKS CENTER,
SAN DIEGO, CALIFORNIA (PROJECT NO. D2005-D000CH-0123.001)

Ref: (a) DODIG letter of 2 FEB 07, same subject.

Encl: (1) Navy comments on D2005-D000CH-0123.001

The Navy concurs in all seventeen of the recommendations contained in Ref (a), as detailed in the enclosed response prepared by Naval Facilities Engineering Command, Southwest Division.

A handwritten signature in cursive script, reading "Bruce A. Sharp", is positioned above the typed name.

Bruce A. Sharp
Director, Program Analysis and
Business Transformation
for Deputy Assistant Secretary of the Navy
(Acquisition Management)

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

DoDIG Recommendation A.1.a.1

require contracting team to require Shaw to finalize a quality control plan, establish all contract performance standards and require that monthly performance reports address each performance standard.

NAVFAC Southwest required Shaw in writing on 22 February 2007 to revise their quality control plan to fully address the Acceptable Quality Levels (AQL) stated in the contract. The submittal is due April 16, 2007. Shaw monthly performance reports have improved, and are now providing meaningful data substantiated by supporting documentation that address contract performance standards.

Recommendation A.1.a.2

require the contracting team to determine the adequacy of Shaw's system for measuring performance standard, and if the requirements are not met, take appropriate action.

NAVFAC Southwest determined the adequacy of Shaw's measuring of performance standards, in three key areas: monthly performance reports, customer complaints, and Notices of Violations (NOV's). Improved monthly reports which speak to and support specific customer complaints, and reduced NOV's, all show that Shaw's system is adequate. NAVFAC SW will continue to monitor all three criteria, and if not met, will document appropriately in Contractor Performance Assessment Reporting System (CPARS) and take additional appropriate action.

Recommendation A.1.a.3

require the contracting team to notify Shaw that they are not in compliance with the quality control plan if approved and all performance standards are not met, withhold payment if necessary. If Shaw fails to make progress in the contract requirements, the contracting officer should consider what options are available, including terminating the contract for default.

NAVFAC Southwest requires a quality control program that addresses each performance standard. Monthly performance reports address each performance standard.

Navy Response:

Concur. NAVFAC SW requires a quality control plan to specifically address each performance work statement. Monthly performance reports have significantly improved and are now providing meaningful data substantiated by supporting documentation.

DoDIG Recommendation A.1.a.4

NAVFAC Southwest requires a system for measuring each performance standard and take appropriate action.

Navy Response:

Concur. In order to determine the adequacy of Shaw's measuring of performance standards, NAVFAC SW looked at three key areas: monthly performance reports, customer complaints, and Notices of Violations (NOV's). Improved monthly reports which speak to and support specific customer complaints, and reduced NOV's, all show that Shaw's system is adequate. NAVFAC SW will continue to monitor all three criteria, and if not met, will document appropriately in Contractor Performance Assessment Reporting System (CPARS) and take additional appropriate action.

DoDIG Recommendation A.1.a.5

NAVFAC Southwest requires a system for measuring each performance standard and take appropriate action. NAVFAC SW will continue to monitor all three criteria, and if not met, will document appropriately in Contractor Performance Assessment Reporting System (CPARS) and take additional appropriate action.

Encl (1)

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

Navy Response:

Concur. NAVFAC SW has issued a notice to inform Shaw of non-compliance of the Quality Control Plan. Shaw has made significant progress in their system of measuring output in relation to the performance standards. Should Shaw fail to continue to progress, NAVFAC SW will document appropriately in CPARS and may proceed with re-procurement if needed.

DoDIG Recommendation A 1 a 4

NAVFA Southwest require the contracting team to assess the reasonableness and necessity of performance standards in the contract and revise or delete non-critical performance standards.	NAVFAC the performance standards
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Response:

Navy I

NAVFA SW has reviewed performance standards in the contract and opened discussion with Shaw in order to assess each performance standard. The review of the performance standards to the Industrial Waste and Oily Waste commodity (specification item complete, and the recommendation is to consolidate seven (7) of the standards into other standards and to delete three (3) of the standards entirely. The review and recommendation of standards for the remaining commodities will be completed by March 15, 2007, to allow the standards to be incorporated into the contract.	Concur discussed performance 3.2) is c standards the stan
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DoDIG Recommendation A.1.a.5

Regarding contract pricing changes should significant variations in workload occur.	NAVFAC Southwest require the contracting team to ensure that the contract language regarding workload fluctuations in future contracts for environmental services is specific about contract pricing changes should significant variations in workload occur.
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Navy Response:

Standard pricing.	Concur. NAVFAC SW is coordinating with NAVFAC Atlantic in order to develop a standard clause to be used for environmental services for future solicitations. Future solicitations by NAVFAC SW will contain clear language regarding workload fluctuations and contract pricing.
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Encl (1) p.2

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

DoDIG Recommendation A.1.a.6

NAVFAC Southwest require the contracting team to negotiate reduced workload levels in accordance with the intent of the workload fluctuation contract language, and if the negotiations are unsuccessful, consider re-competing the requirements at the next option year.

Navy Response:

Concur. - Concur in negotiating with Southwest to decrease the contract option year workload with reduced workload level. Considering fixed and variable costs. A Request for Proposal (RFP) issued to SW to decrease fixed price laboratory Services under E.L.N. 0002 in the contract proposal is due on Feb 23, 2007. If negotiations are unsuccessful, NAVFAC SW will explore other alternatives including re-competing the requirements.

DoDIG Recommendation A.1.a.7

NAVFAC Southwest require the contracting team to evaluate alternative methods of billing customers for environmental services.

Navy Response:

Concur. NAVFAC SW evaluated alternate methods of billing for environmental services considered billing models used by other NAVFAC Echelon IV commands. Budgeting for services and billing through the Navy Working Capital Fund system allows the Navy to buffer the Fleet against sudden or drastic changes in cost. Budget submitting offices are notified at the headquarters level of the planned rates and estimated consumption to allow time to properly program budget to continue service at historical or projected levels. Therefore, NAVFAC SW concludes that the current billing process is best suited to ensure accountability for cost.

DoDIG Recommendation A.1.a.8

NAVFAC Southwest require the contracting team to ensure that future performance-based service contract include measurable performance standards in terms of quantity, quality, and timeliness.

Encl (1) p. 3

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

Navy Response:

Concur. Since the award of the Shaw contract in 2002, NAVFAC SW has issued over 100 performance based contract actions with high success. We now have standard performance based work statements that identify the “end state” objectives that the contractor is to achieve. In addition, we have clearly defined measurable performance standards to assess the contractor’s performance. These standards will allow us to determine whether or not the contractor has met the performance objectives. New contracts will adequately measure quantity, quality and timeliness.

DoDIG Recommendation A.1.a.9

NAVFAC Southwest require the contracting team to determine whether it is in the navy’s best interest to continue with the performance- based service contract or whether the environmental services requirements should be recompeted under a different type of contract vehicle.

Navy Response:

Concur. NAVFAC SW agrees that performance-based acquisition will work with the proper balance of prescriptive language. NAVFAC SW has examined the weaknesses outlined in the DOD IG Report and have been documenting lessons learned, best practices and change orders issued on the existing contract. Lessons learned from past experience will be incorporated into the follow-on contract. NAVFAC SW is committed to developing the necessary expertise to adequately administer future contracts, which should be performance-based with prescriptive language where appropriate. On the existing contract, NAVFAC SW has committed additional resources and will continue to build on the improvements already initiated by Shaw.

DoDIG Recommendation A.1.b

NAVFAC Southwest adequately staff the Government residual organization for the duration of the contract.

Navy Response:

Concur. After evaluating the technical workload required by the contract, NAVFAC SW will provide the necessary personnel and resources to ensure the Government residual organization is adequately staffed for the duration of the contract.

(1) p. 4

Encl

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

DoDIG Recommendation B.1

NAVFAC Southwest adequately staff the contract administration for contract no. N68711-03-D-4302

Navy Response:

Concur. NAVFAC SW Public Works Department San Diego currently has 3.5 Full Time Equivalents (FTE's) dedicated to this contract (1 GS-13 Contract Specialist, 2 GS-12 Contract Specialists, and .5 GS-6 Operations Assistant). The command is currently hiring one additional GS-12 Contract Specialist for the contract administration team, which will bring the number to 4.5 FTE's.

DoDIG Recommendation B.2

NAVFAC Southwest send contracting and technical support staff to appropriate training for performance-based service acquisition and environmental services.

Navy Response:

Concur. Contracting and technical support staff will attend 40 hours of performance-based acquisition training designed to enhance skills in scoping objectives, developing performance work statements, and monitoring and documenting performance. Until such training is accomplished, staff members with appropriate training will review contract language to ensure its use coincides with best practices for performance-based acquisitions. In addition, NAVFAC SW will share lessons learned at upcoming sessions of the Command's quarterly conferences, where participation by all Business and Support Lines is strongly encouraged. In the next six months or within three months of assignment of new staff (if available), the contracting team will attend 24 hours of general environmental technical training, available through the Navy Civil Engineer Corps Officer School.

DoDIG Recommendation B.3.a

NAVFAC Southwest instruct the contracting officer to determine whether performance-based services acquisition is appropriate for the IDIQ requirements, or whether another method, such as time and materials or multiple task orders should be used.

Encl (1) p. 5

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

Navy Response:

Concur. NAVFAC SW will evaluate the characteristics of each new work requirement to determine its suitability for a fixed price or time and materials approach and will include PBSA language and prescriptive language when necessary.

DoDIG Recommendation B.3.b

NAVFAC Southwest instruct the contracting officer to include measurable performance standards with clear, specific, and objective terms in terms of quantity, timeliness, and quality in the performance-based IDIQ task orders.

Navy Response:

Concur. Measurable performance standards are being incorporated into the IDIQ task orders as of 12 February 2007. Each scope is reviewed to determine applicable measurable performance standards. As Acceptable Quality Levels (AQL)'s are further defined, NAVFAC SW will ensure applicable standards are incorporated into IDIQ work.

DoDIG Recommendation B.3.c

NAVFAC Southwest instruct the contracting officer to award task orders to Shaw using the competitive rates from the competitively sourced contract and document the principal elements of the negotiated agreement.

Navy Response:

Concur. Effective October 2006, competitive rates from the competitively sourced contract are being used to award task orders. Pre and post memorandums to document the negotiation agreement are included in the contract file.

DoDIG Recommendation B.3.d

NAVFAC Southwest instruct the contracting officer to track contract dollars by specific line item, prepare a justification and approval if the award amounts are exceeded, and modify the contract in accordance with contract clause 5252.216-9313.

Encl (1) p. 6

**NAVY COMMENTS ON DoDIG AUDIT REPORT NUMBER D2005-
D000CH-0123.001**

Navy Response:

Concur. NAVFAC SW has developed a process to track dollars expended per specific line item. Should it become evident that a specific line item will exceed the dollar threshold, a justification and approval will be properly executed before awarding projects over the specific dollar threshold. The contract will be modified in accordance with contract clause 5152.216.9303.

DoDIG Recommendation B.3.e

NAVFAC Southwest instruct the contracting officer to request a reimbursement of \$1,431,404 from Shaw.

Navy Response:

Concur. NAVFAC SW has discussed reimbursement with Shaw in documented meetings. NAVFAC SW has formally provided notice to Shaw that reimbursement in the amount of \$1,431,404 is required.

Encl (1) p. 7

Navy Strategic Sourcing Comments

OPNAV N124, Navy Director of Strategic Sourcing response to DoD IG report
“Performance-Based Service Contract for Environmental Services at the Navy Public
Works Center, San Diego, California,” Project No. D2005-D000CH-0123.001 dated
February 2, 2007.

Finding A.2., page 17

“A.2. We recommend that the Navy Director of Strategic Sourcing consider the issues
with performance-based contracting for environmental services and the need for
experienced contractor service providers identified in this report before issuing the
solicitation for the Naval Facilities Engineering Command Mid-Atlantic environmental
services public-private competition.”

Response


Concur. On 9 February 2007, the Draft IG report was forwarded to Mr. Mac Thigpen at
the Competitive Sourcing Center of Excellence in Charleston, S.C. Mr. Thigpen’s
organization has oversight, among other things, over preparation of the Performance
Work Statement (PWS) and the solicitation for NAVFAC’s Environmental Services
competition in Navy Region MidLant. The Navy Director of Strategic Sourcing has
advised Mr. Thigpen to incorporate the lessons learned from the IG report into the
preparation of both the PWS and the solicitation for that competition.

Discussion of the need for enhanced training in service contracting, pages 20-23

“The Secretary of each military department and the head of each Defense Agency shall
ensure that the personnel of the department or agency, as the case may be, who are
responsible for the awarding and management of contracts for services receive
appropriate training that is focused specifically on contracting for services.”

Comment

The Department of Navy complies with the services contract training requirements for
personnel who award and manage contracts for services. For the Competitive Sourcing
Program, the Department of Navy has established an Acquisition Center of Excellence to
award and administer A76 service contracts. The Center of Excellence is comprised of
professional contracting personnel who meet the training requirements of Defense
Acquisition Workforce Improvement Act (DAWIA) and appropriate training on
contracting for services. Additionally, the Navy continuously reviews and updates
existing competitive sourcing A76 training which includes performance based service
acquisition (PBSA). N124 will direct that appropriate competitive sourcing training be
revised to incorporate information about the Service Contracting Center of Excellence.



Mark J. Zenthofer
Navy Director of Strategic Sourcing

Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Acquisition and Contract Management prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

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