

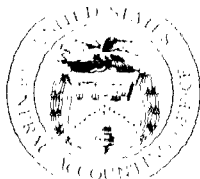
GAO

Report to the Chairman, Subcommittee
on Federal Services, Post Office, and
Civil Service, Committee on
Governmental Affairs, U.S. Senate

December 1990

TEST AND EVALUATION

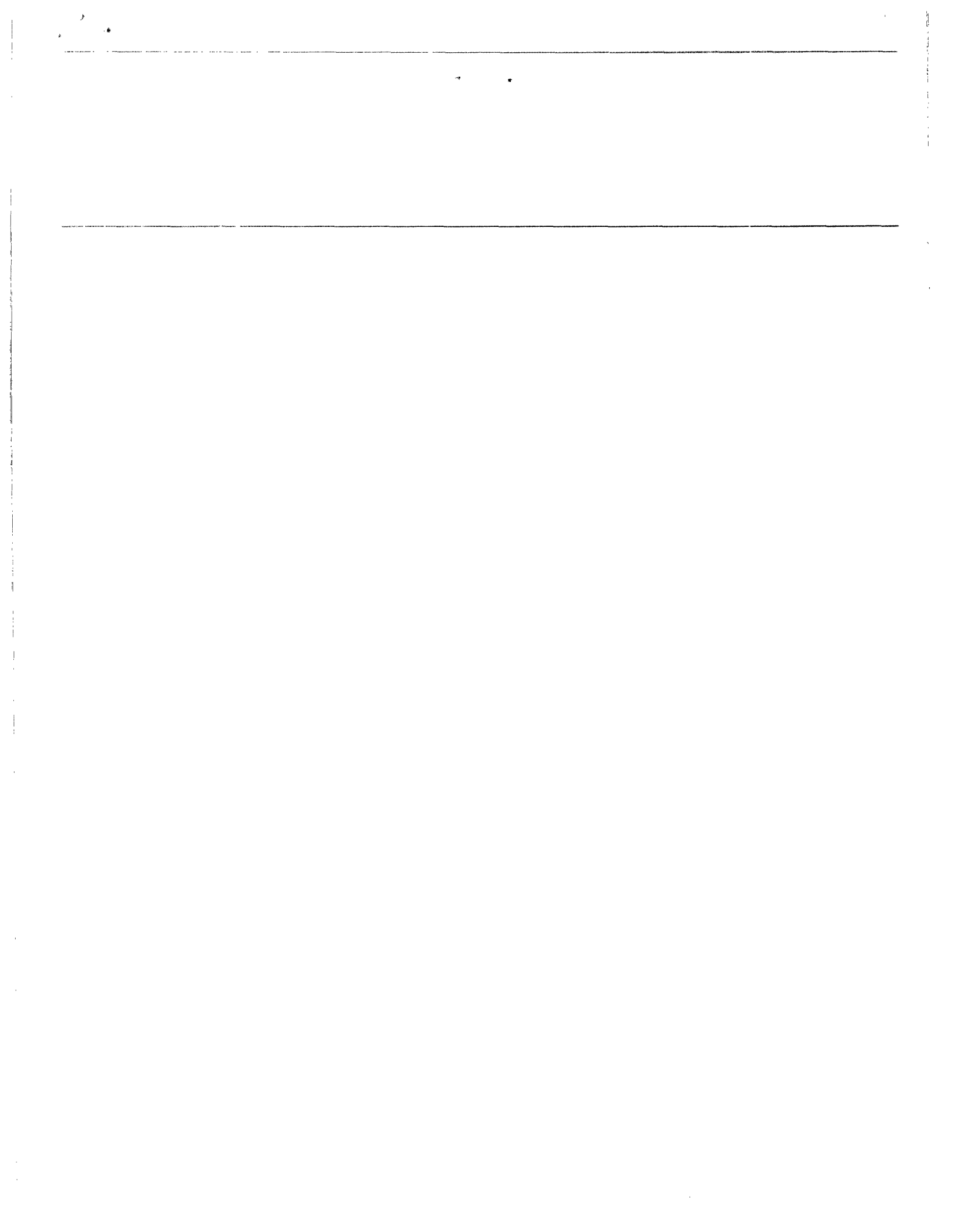
The Director, Operational Test and Evaluation's Controls Over Contractors



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National Security and
International Affairs Division

B-240028

December 21, 1990

The Honorable David H. Pryor
Chairman, Subcommittee on Federal
Services, Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Senator Pryor:

The Office of the Director, Operational Test and Evaluation (DOT&E), uses contractor assistance to support its oversight responsibility for operational test and evaluation (OT&E) of major weapon systems. Recently, congressional members have expressed concern that some of DOT&E's contractors could have conflicts of interest; that is, they could assess the operational testing of the same weapon systems that they had participated in developing.

In response to your request, we are providing information on DOT&E's use of contractors. Our objectives were to

- describe the nature and extent of DOT&E's management controls over contractor support, including measures to address possible conflicts of interest under omnibus contracts;¹
- provide our views on DOT&E's use of Federally Funded Research and Development Centers,² particularly the Institute for Defense Analyses;³ and
- determine DOT&E's use of the Institute during fiscal years 1987-89 and identify any possible conflicts of interest and the Institute's controls to avoid such conflicts.

Background

Concerned that OT&E was not receiving sufficient emphasis and independent oversight, the Congress established DOT&E as an independent test

¹Omnibus contracts contain a general statement of work to be performed by contractors. The contracting agency develops specific work orders or taskings for contractors based on this general work statement.

²Federally Funded Research and Development Centers are privately operated but publicly funded under long-term contracts with federal sponsoring agencies.

³The Institute for Defense Analyses, a Center established in 1956, primarily assists the Office of the Secretary of Defense, the Joint Chiefs of Staff, and the defense agencies. The Institute provides studies, analyses, computer software, models, and other technical or analytical support for policy and program planning and management by its sponsors. It does not work for private companies, foreign governments, or the military departments.

organization in the Office of the Secretary of Defense (OSD). The Congress believed that an organization with a vested interest in a weapon system's development should not evaluate the operational testing on which production decisions are based. Rather, Congress intended that the OT&E field tests be assessed by an independent test office to determine whether weapon systems can actually perform their intended mission.

Because DOT&E lacks a large in-house staff, it obtains contractor assistance to support its oversight of operational testing. Of its \$34.8 million total budget for fiscal years 1987-89, about 90 percent, or \$31.2 million, was for contractor assistance. Approximately \$12.5 million was obligated to the Institute for Defense Analyses, \$0.2 million to another center, and \$18.5 million to private companies. Of the latter amount, about \$2.1 million was provided to private contractors awarded omnibus contracts beginning in March 1989.

DOT&E's mission is to provide independent assessments of major defense systems. However, the ability to fulfill the independence mission was questioned in a hearing held on DOT&E's use of contractors and consultants by the Senate Committee on Governmental Affairs, Subcommittee on Federal Services, Post Office, and Civil Service. The primary concern centered on possible conflicts of interest for private contractors. In response to this concern, a DOT&E official told us DOT&E discontinued using private contractors in March 1990. Since that time, DOT&E has used only the Institute for OT&E assistance because it believes that the Institute, which does not develop or produce weapon systems, is less likely to have a conflict of interest.

Although DOT&E relies on other defense agencies⁴ to award contracts, the Congress has indicated that it holds DOT&E ultimately responsible for the consequences, such as conflicts of interest, of any contractor participation in OT&E activities.⁵ DOT&E is also expected to follow the governmentwide Federal Acquisition Regulation and applicable Office of Management and Budget (OMB) guidance on contract management and

⁴Due to the limited dollar value of DOT&E's contracting support, the Defense Test and Evaluation Support Agency and Defense Supply Services-Washington award its contracts.

⁵See the Conference Report on the DOD Authorization Act for Fiscal Years 1990 and 1991. H.Rep. No. 101-331, Page 600 (1989). The act added section 2399 to 10 U.S.C., and states that the Director is not to contract with any person for advice or assistance in the test and evaluation of a system in which the person participated in the development, production, or testing for a military department or defense agency (or for another defense contractor). In addition, the legislation states that a contractor that has participated in the development, production, or testing of a system for a military department or defense agency is not to be involved (in any way) in the establishment of criteria for data collection, performance assessments, or evaluation activities for operational testing.

conflicts of interest regarding the use of contractors. For example, OMB Policy Letter 89-1 states that the responsibility for identifying and preventing potential conflicts of interest in government contracts is shared between the contracting officer and the requester of the service.

Results in Brief

DOT&E's policies and procedures for managing contracts for OT&E support comply with existing guidelines. Moreover, DOT&E took measures that were consistent with regulations requiring agencies to guard against contractors' conflicts of interest. For example, DOT&E evaluated the omnibus contracts for possible conflicts of interest and inserted language in contracts requiring the contractors to disclose any conflicts.

Because a federal agency has considerable latitude in placing work with Federally Funded Research and Development Centers, DOT&E's use of the Institute for OT&E support is permissible under federal regulations. Further, in our opinion, DOT&E's use of the Institute is appropriate because the Institute is less likely than private contractors to have conflicts of interest.

Of the \$12.5 million obligated by DOT&E to the Institute during fiscal years 1987-89, about \$2 million was used for consultant and subcontractor support. The Institute's policy is not to employ consultants on tasks that could result in a conflict of interest. However, based on available information, we identified three consultants that were involved in defense programs and later made operational test assessments for the Institute on the same programs. We have no basis to conclude that the consultants' prior work affected their ability to provide objective and impartial advice. These situations raise questions, however, about the effectiveness of the Institute's controls over consultants because it did not periodically update its conflict-of-interest reviews of consultants or disclose to DOT&E possible conflicts so that they could be addressed. Even though the Institute's contract and Federal Acquisition Regulation do not require disclosure of a consultant's prior work, we believe such disclosure would be consistent with the regulation requiring disclosure of a center's affairs.

The Institute's work for OSD organizations responsible for system acquisition and development testing raises questions regarding its ability to be fully objective in performing operational testing work for DOT&E. We found four instances in which the Institute's objectivity may have been impaired due to its acquisition and development work. Although the Federal Acquisition Regulation does not require the disclosure of such

circumstances, we believe that full disclosure to DOT&E would have been consistent with the spirit of the regulation.

A detailed discussion of these matters is included in appendix I.

Conclusion and Recommendation

The Institute is not now required to disclose to DOT&E possible conflicts of interest arising from (1) its work for OSD organizations responsible for system acquisitions and development testing or (2) its use of consultants. Nonetheless, we believe that such disclosure to DOT&E would be consistent with the Federal Acquisition Regulation requiring disclosure of the Institute's affairs. Accordingly, we recommend that DOT&E require the Institute to disclose possible conflicts of interest to it for resolution because DOT&E is ultimately responsible for the consequences of any contractor participation in OT&E activities.

Scope and Methodology

Our fieldwork was performed at various sites in the Washington, D.C., metropolitan area, including the offices of DOT&E and the Institute.

We reviewed applicable legislation, regulations, policy letters, and DOT&E's contract management guidelines and interviewed DOT&E officials about their controls over contractor support. Since the request focused on DOT&E's use of omnibus contracts to supplement its in-house capabilities, we focused on DOT&E's conflict-of-interest controls over those contracts. We did not evaluate conflict-of-interest controls over other private contractors.

Our views on DOT&E's use of the Institute are, in large measure, based on past reports that dealt with establishing and using Federally Funded Research and Development Centers. However, to identify any potential conflicts of interest at the Institute, we reviewed all 10 task orders sponsored by the Deputy Director Defense Research and Engineering (Test and Evaluation) during fiscal years 1987-89 and information on 113 out of 145 task orders sponsored by the Under Secretary of Defense for Acquisition during fiscal years 1988-89.⁶ Our objective was to determine which of these task orders included systems that were also included in all the 42 task orders sponsored by DOT&E. We then interviewed officials regarding the scope of selected task orders and, where necessary, reviewed the Institute's work products.

⁶At the time of our review, 32 task orders were not available.

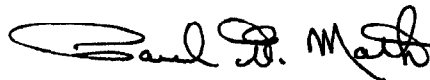
We reviewed DOT&E's contracts, taskings, and funding documents concerning its relationship with the Institute. We also obtained lists of the Institute's consultants and subcontractors and reviewed available data on organizational business ties and controls in place to address conflicts of interest. The term "conflict of interest" means any situation in which a person or organization is unable or potentially unable to render impartial advice because of prior work, other activities, or relationships. We did not evaluate whether the consultants or subcontractors had financial interests that could result in conflicts of interest.

We performed this review between September 1989 and September 1990 in accordance with generally accepted government auditing standards. We did not obtain written agency comments. However, the views of agency officials were sought during the course of our work and are incorporated where appropriate.

As requested, we plan no further distribution of this report until 30 days after its issue date, unless you publicly announce its contents earlier. At that time, we will send copies to the Secretaries of Defense, the Navy, the Army, and the Air Force and to interested congressional committees. Copies will also be made available to others on request.

Please contact me at (202) 275-8400 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix II.

Sincerely yours,



Paul F. Math
Director, Research, Development,
Acquisition, and Procurement Issues

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Abbreviations

DOT&E	Office of the Director, Operational Test and Evaluation
OMB	Office of Management and Budget
OSD	Office of the Secretary of Defense
OT&E	operational test and evaluation

DOT&E's Use of Private Contractors and the Institute for Defense Analyses

DOT&E's Controls Over Contractor Support

In obtaining assistance and advisory services, DOT&E uses the required controls over both contract management and conflicts of interest, as discussed below.

Management Controls Meet OMB Requirements

DOT&E's contract management control system is consistent with procedures prescribed by "OMB Circular No. A-120."¹ The circular requires, among other things, that (1) written approval for advisory and assistance services be required at a level above the organization sponsoring the activity, (2) requirements be appropriate and fully justified in writing, (3) work statements be specific and complete, (4) contracts be competitively awarded, (5) work be properly administered and monitored, (6) work be evaluated when completed, and (7) written reports on advisory and assistance services be obtained when needed. As summarized below and on succeeding pages, we found that DOT&E's contract management process meets these requirements.

- To initiate contractor assistance, a DOT&E staff member and the DOT&E Program Analyst, who is responsible for DOT&E's overall funding, draft a task order defining the scope and need for contractor support. The Deputy Director, Resources and Administration, responsible for DOT&E's contractor assistance, reviews the work statement and decides whether to proceed with the work request. For all work requests, a review board consisting of DOT&E's deputy directors decides whether to contract for the proposed work.
- DOT&E's Program Analyst maintains monthly financial statements that track obligations by task order. The financial statements are designed to ensure that DOT&E does not over obligate funds.
- The larger contractors provide DOT&E monthly status reports which it evaluates and uses to track contract status and costs.
- When a work request is reported as having been completed, the contracting officer's technical representative consults with the DOT&E staff member who initiated the work and reviews the monthly status reports to determine whether the work has actually been completed. Also, the OSD Director of Contractor Assistance and Advisory Services helps to ensure that the proper process is followed in determining whether the contractor support was adequate.
- To document the use of contractor assistance, the DOT&E Program Analyst and the contracting officer's technical representative maintain log

¹Guidelines for the Use of Advisory and Assistance Services (Jan. 4, 1988).

books consisting of task orders and supporting records for the larger contracts.

Controls Established by DOT&E Adhered to Regulations

Before it began obtaining OT&E support exclusively from the Institute, DOT&E had controls in place to guard against possible conflicts of interest on omnibus contracts. These controls adhered to the Federal Acquisition Regulation, which states that agencies should prevent conflicts of interest that could result in an unfair competitive advantage to a contractor or impair a contractor's objectivity in performing contract work. Therefore, as required by the regulation, DOT&E evaluated the omnibus contracts to (1) identify and evaluate potential conflicts of interest early in the acquisition process and (2) avoid, neutralize, or mitigate significant conflicts before contract award.²

DOT&E further attempted to prevent conflicts of interest by inserting a provision in the contracts requiring contractors to self-disclose potential conflicts and eliminate them. For example, contractors were required to evaluate whether the work to be done for DOT&E conflicted with work being done for other organizations. In addition, a DOT&E official said that based on past experiences, DOT&E was generally aware of a contractor's business ties and has tried to avoid giving contractors work that could result in a conflict of interest. For example, one contractor was not given work on space systems because the contractor's prior business had the potential of creating a conflict.

In June 1989, the Senate Committee on Governmental Affairs, Subcommittee on Federal Services, Post Office, and Civil Service, held a hearing on DOT&E's use of contractors and consultants. The Subcommittee released a report which found that private contractors' work for the Department of Defense raised concerns of both direct and indirect conflicts of interest. Direct conflicts of interest resulted from the omnibus contractors monitoring and assessing operational tests of weapon systems that they participated in developing. In addition, indirect conflicts of interest could result from their relationships with other private contractors that developed weapon systems that the contractors would later assist DOT&E in evaluating. Because DOT&E discontinued this practice

²According to the Federal Acquisition Regulation, each contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in deciding whether a significant potential conflict exists and, if it does, in developing an appropriate means for resolving it.

in March 1990, we did not evaluate whether its use of these private contractors would result in conflicts of interest. Instead, we focused our attention on DOT&E's sole use of the Institute for obtaining OT&E support.

Appropriateness of DOT&E's Use of the Institute

DOT&E now uses only the Institute for OT&E support. DOT&E believes that this practice is appropriate because the Institute is thought to be less likely than private contractors to have a conflict of interest concerning particular weapon systems. We agree. Under its charter, the Institute has no commercial interests in developing weapon systems and may not work for the services that could develop and use those systems.

In addition, DOT&E's use of the Institute is consistent with governmentwide regulations issued as Policy Letter 84-1 by the Office of Federal Procurement Policy and later incorporated into the Federal Acquisition Regulation. The regulation states that Federally Funded Research and Development Centers must meet some special long-term research or development need that cannot be met as effectively by existing in-house or contractor resources. In March 1988, we reported that centers are effective because of their expertise and independence and because they have a special relationship, including the sharing of information, with their sponsoring agency.³

Also, the policy letter specifies that a center's purpose, mission, and general scope of effort should be stated clearly enough to differentiate between work that should be done by the center and that which should be done by private contractors. The policy letter, however, does not state how these mission statements should reflect such differentiation. According to the Institute's mission statement, its purpose is to promote national security, public welfare, and advancement of scientific learning. Its scope of effort typically covers analyses, evaluations, and reports, including the examination of the relative effectiveness of alternative national security measures. Thus, under federal regulations and the Institute's mission statement, DOT&E has considerable latitude in placing work with the Institute.

The Institute's Work for DOT&E

The Institute's relationship with DOT&E is governed by Policy Letter 84-1 and the Federal Acquisition Regulation, which set out Federal policy for establishing and using Federally Funded Research and Development

³Competition: Issues on Establishing and Using Federally Funded Research and Development Centers (GAO/NSIAD-88-22, Mar. 1988).

Centers. The Federal Acquisition Regulation reinforces Policy Letter 84-1 by stating that a center is required to conduct its business in a manner befitting its special relationship with the government, operate in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the sponsoring agency. The Institute has controls to ensure that

- its consultants and subcontractors⁴ do not have previous or current employment that could result in conflicts of interest and
- its work for OSD organizations responsible for weapon systems acquisition and development testing does not conflict with its operational testing work for DOT&E.

As discussed below, we question whether the Institute is completely effective in administering these controls. In addition, we believe the controls can be improved by having the Institute disclose possible conflicts to DOT&E for resolution because DOT&E is ultimately responsible for the consequences of any contractor participation in OT&E activities. Such disclosure to DOT&E would be consistent with the Federal Acquisition Regulation.

The Institute's Controls Over Consultant/ Subcontractor Conflicts of Interest Have Weaknesses

Of the \$12.5 million obligated by DOT&E to the Institute during fiscal years 1987-89, about \$2 million was paid to 51 consultants and 2 subcontractors. (The Institute's use of consultants and subcontractors as a percentage of its work for DOT&E declined from 24.4 to 12.3 percent over this period.) Based on available information, we believe these consultants/subcontractors did not have other current employment that could cause conflicts of interest. However, the Institute did not periodically update its conflict-of-interest reviews of consultants or disclose to DOT&E any prior employment of the consultants that might have involved potential conflicts. Further, the Institute did not document its subcontractor conflict-of-interest reviews.

Consultant Controls

The Institute's policy is not to employ consultants on jobs that could result in a conflict of interest. For example, a consultant would not be allowed to do OT&E work on a weapon system if the consultant was also working for the developer of the same weapon system. To carry out this policy, the Institute requires its consultants to sign an agreement stating

⁴According to an Institute official, a consultant is an individual who agrees to work for the Institute as needed at an agreed-upon hourly rate. A subcontractor is an incorporated entity that works a specified number of hours for the Institute.

that they will (1) avoid any activities that cause conflicts of interest and (2) disclose possible conflicts so that the Institute may exclude them from such work. Before hiring consultants, the Institute asks about their backgrounds to determine whether any of their past or present business activities could cause a conflict. However, the Institute does not periodically update information about its consultants' business ties or other employment after they are hired; therefore, a new business tie could arise and create a potential conflict of interest, and the Institute might not know about it.

Of the 51 consultants hired by the Institute, 2 had played a role in overseeing the services' space programs before they did operational test assessments on such programs for DOT&E. The Institute was aware of these consultants' prior work experiences but did not disclose this information to DOT&E because it was satisfied that no conflict of interest was created. One consultant previously worked for the Air Force in a high-level policy position involving space systems and later planned and reviewed the Institute's OT&E assessments of various Air Force space systems. The other consultant headed the Naval Space System Division in the Office of the Chief of Naval Operations and later evaluated the Institute's OT&E assessments of a Navy weapon system that was to proceed into full-rate production. While we have no basis to conclude that the consultants' prior work affected their ability to provide objective and impartial advice, these situations nonetheless raise questions about potential conflicts of interest and the performance of the Institute in administering pertinent controls. Considering the consultants' prior government positions and their work for the Institute, we believe the Institute should have disclosed these situations to DOT&E for resolution. Although the Institute's contract⁵ and the Federal Acquisition Regulation do not specifically require the disclosure of a consultant's past and present employment, we further believe that such disclosure would have been consistent with the regulation requiring disclosure of a center's affairs to the sponsoring agency.

In another situation, a consultant performed work on the LHX helicopter for a private company prior to performing OT&E related work on this system. The work for the private company included evaluating the requirement for the helicopter as well as a general developmental

⁵The Institute's contract states that it shall submit quarterly the names of all consultants employed during the period, a short statement of the matters on which the consultant's advice or service was needed, the daily rate of compensation, and the period for which service was required.

approach. The private company later prepared a proposal for a contractor that was awarded a development contract. The Institute was aware of this consultant's prior work experiences but did not disclose this information to DOT&E because it was satisfied that no conflict of interest was created. Although we have no basis to conclude that the consultant's prior work for the private company affected the consultant's ability to provide objective and impartial advice to the Institute, this situation again demonstrates a need for disclosure of such potential conflicts to DOT&E. For reasons similar to the above situations, disclosure of this matter to DOT&E for resolution would have been consistent with the regulation.

An Institute official told us that more attention will be given to consultant's work in relation to specific areas of prior employment.

Subcontractor Controls

Although we were advised that the Institute also assessed whether hiring a subcontractor would cause a conflict of interest, it did not document such assessments. Despite this shortcoming, the Institute's two subcontractors did not appear to have past or present employment that would affect their objectivity.

We reviewed the outside ties of the subcontractor that received over \$852,000, or about 99 percent of the funds that the Institute paid to subcontractors from 1987 to 1989. Although the subcontractor worked for both the Institute and the Air Force in the chemical warfare area, its work for the two organizations differed. The subcontractor performed policy analyses and studies for the Institute as part of its DOT&E work regarding how and when the United States should retaliate if the Soviets were to use chemical weapons. For the Air Force, the subcontractor assessed chemical contamination avoidance and decontamination procedures and chemical defenses against a Soviet chemical threat.

The Institute's Work for Other OSD Organizations Raises Questions About Its Objectivity

The Institute's work for the OSD organizations responsible for system acquisition and development testing raises questions regarding its ability to be fully objective in performing operational testing work for DOT&E. In three instances, we found that the Institute performed acquisition and operational testing work on the same weapon systems. In one other instance, the Institute performed similar development and operational testing work on the same system. Even though the Federal Acquisition Regulation does not require the disclosure of such instances, we believe disclosure to DOT&E for resolution would have been consistent with the regulation.

In fiscal years 1988-89, the Under Secretary of Defense for Acquisition, who is responsible for the weapon system acquisition policy, including development testing, sponsored task orders for the Institute. In reviewing information on 113 of these task orders and all 42 task orders sponsored by DOT&E, we identified 3 sets of task orders relating to both acquisition and operational testing tasks for the same weapon systems. The Institute's work for the Under Secretary called for assessing alternative candidates to perform a specified mission, while the work for DOT&E required creation of methodologies for operational test planning and assessment of test results. Although the Institute personnel performing acquisition work do not perform operational testing work on the same weapon systems, we believe the Institute's work in assessing these candidates should be disclosed to DOT&E for possible resolution.

For example, in one case, the Institute's work for the Under Secretary required the identification of capabilities and the appropriateness of various aircraft in satisfying the Army's scout, attack, and assault missions. This analysis included assessing the technical and operational advantages and disadvantages of various competing candidates, including modified Apache helicopters, various tilt rotor aircraft, and light helicopter weapon systems. For DOT&E, the Institute will assess operational test functions on the light helicopter weapon system ultimately selected, including the review of test plans, monitoring of ongoing testing, and making recommendations on the test program. We believe that the Institute's work in developing acquisition options for the Under Secretary raises questions about its ability to be fully objective in assessing operational test matters for the system eventually selected.

We also compared the 42 task orders sponsored by DOT&E with the 10 task orders sponsored by the Deputy Director Defense Research and Engineering (Test and Evaluation), OSD's development test organization. The Institute's personnel worked for both the Deputy Director and DOT&E on nine weapon systems.⁶ A potential conflict generally was not created because the types of work were different. For example, the Institute's work on the Army Tactical Missile System for the development test organization identified a generic methodology to be used by the development tester in evaluating weapon systems, while the Institute's work for

⁶During the course of our evaluation, the Institute's personnel working in its Operational Evaluation Division performed development and operational testing related work. They were not organizationally separated from one another.

DOT&E evaluated the adequacy of the actual operational testing on that specific system.

As another example, the Institute's work on the Advanced Medium Range Air-to-Air Missile for the Director, Live Fire Testing, examined an approach for conducting live fire testing. Live fire testing is used to determine the physical vulnerability of selected U.S. aircraft and armor systems to enemy weapons, and the lethality of U.S. weapons against selected enemy aircraft and armor systems. On the other hand, the Institute's work for DOT&E was fundamentally different because it evaluated the adequacy of the operational testing on that specific missile by assisting in the evaluation of the missile's operational effectiveness and suitability in a realistic environment. In our view, the Institute's work for the Director, Live Fire Testing, does not conflict with its work for DOT&E because the nature and types of work were very different. Although live fire testing complements operational testing, this specialized form of testing focuses on a system's vulnerability and lethality.

In one case, however, involving the Forward Army Air Defense weapon system, the Institute's personnel working on development and operational testing performed essentially the same tasks. The tasks included identifying issues, objectives, and threats that should be addressed in testing; reviewing and monitoring the Army's plans and preparations for testing; observing the conduct of the tests; and assisting in the analyses of all test phases. In our view, performance of work by the Institute in the development test phase could impair the Institute's ability to be completely objective in performing essentially the same work regarding operational testing. Nevertheless, the Institute's development testing work ended in 1987 because OSD believed DOT&E was the most appropriate sponsor for the task.

In response to our preliminary findings, an Institute official stated that its Operational Evaluation Division will not undertake tasks related to systems and programs over which DOT&E has oversight responsibilities for any sponsor other than DOT&E and the Director of Live Fire Testing. With the exception of tasks relating to live fire testing, the Institute will not perform development testing work for the Deputy Director Defense Research and Engineering (Test and Evaluation). Additionally, no Institute research staff member or consultant may be assigned to an operational test and evaluation task for DOT&E if that staff member or consultant, subsequent to the establishment of the Office of DOT&E, has participated in the evaluation or analysis of that system as part of an

**Appendix I
DOT&E's Use of Private Contractors and the
Institute for Defense Analyses**

Institute task for any sponsor other than DOT&E and the Director of Live
Fire Testing.

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