

GAO

Report to the Honorable
George E. Brown, Jr., House of
Representatives

July 1993

AIR FORCE APPROPRIATIONS

Funding Practices at the Ballistic Missile Organization



**National Security and
International Affairs Division**

B-248361

July 16, 1993

The Honorable George E. Brown, Jr.
House of Representatives

Dear Mr. Brown:

In response to your request, and subsequent discussions with your staff, we reviewed the Advanced Strategic Missile Systems (ASMS) program office use of its fiscal year 1990 appropriations. Specifically, we determined

- whether the program office had used, as stipulated by the Congress, at least \$21 million of fiscal year 1990 appropriations for development of a new Intercontinental Ballistic Missile (ICBM) boost guidance system, and
- whether the replacement of \$11.2 million of fiscal year 1989 appropriations with fiscal year 1990 appropriations was proper.

Background

For fiscal year 1990, the Air Force Research, Development, Test, and Evaluation appropriation included about \$70.4 million for the ASMS program, \$29 million less than the \$99.4 million the Air Force had requested. The conference report on the Department of Defense Appropriations Act for Fiscal Year 1990 stated that \$50 million requested for certain nonguidance development projects had been deleted and that \$21 million was being provided only for the development of a new ICBM boost guidance system.

The conference committee also directed the Air Force to obtain prior approval from the Congress before funding could be increased for any of the ASMS projects identified in the ASMS Research, Development, Test, and Evaluation Descriptive Summary. In addition, the conference committee agreed with language in the Senate Committee on Appropriations' report that no fiscal year 1990 funds for the ASMS program could be obligated or expended until 30 days after the Congress received a detailed justification of projects proposed to be carried out with these funds, as well as all changes since the program was initially presented to the Congress in early 1989. This justification was submitted to the Congress in March 1990.

Results in Brief

The program office satisfied the stipulation in the conference report that \$21 million of fiscal year 1990 appropriations be used for boost guidance development.

The program office used \$11.2 million of the fiscal year 1990 ASMS appropriations to fund obligations on four advanced guidance technology development contracts that previously had been charged against fiscal year 1989 appropriations. The program office took this action to free up 1989 appropriations for ASMS nonguidance development projects. According to ASMS officials, replacement of fiscal year 1989 funds with fiscal year 1990 funds was precipitated by the program office's efforts to comply with the intent of the Congress concerning the use of fiscal year 1990 appropriations, while also following Air Force Headquarters direction to complete strategic relocatable target and earth penetrating weapon activities and continue other nonguidance technology development projects for which fiscal year 1990 appropriations were not available. However, \$9.2 million of the \$11.2 million represented obligations incurred before the start of fiscal year 1990.

Using fiscal year 1990 funds to pay for \$9.2 million of obligations that were incurred in fiscal year 1989 violated the terms of 31 U.S.C. 1502 and was inconsistent with the Air Force regulation that establishes procedures for the obligation and deobligation of appropriated funds. In addition, the Air Force's replacement of fiscal year 1989 appropriations with fiscal year 1990 appropriations, in order to free up 1989 funds for nonguidance projects whose funding was curbed by language in the conference report, was, in effect, a circumvention of the restrictions imposed by the conferees on the use of fiscal year 1990 appropriations.

Fiscal Year 1990 Funds Used for Boost Guidance Technology Development

The program office obligated \$23.6 million of fiscal year 1990 appropriations for development of technologies that could be used in future ICBM boost guidance systems.¹

- About \$7.4 million was obligated for defining modular boost guidance system designs. Conceptual system designs for near-, mid-, and far-term missions were generated. This effort was started in fiscal year 1989 and was completed in fiscal year 1991.

¹The Charles Stark Draper Laboratory, Inc., performed most of the development efforts and received about \$14.9 million of the \$23.6 million obligated.

- About \$12.5 million was obligated for developing a new generation of solid-state inertial instruments. This is an ongoing effort that began several years before fiscal year 1990.
- About \$3.7 million was obligated for a pro rata share of ASMS operating expenses, such as systems engineering support, computer support, nuclear effects analysis, and travel.

Included within the \$23.6 million of fiscal year 1990 appropriations obligated for boost guidance development was \$2.4 million that was improperly used to replace fiscal year 1989 funds. This \$2.4 million should not be counted as part of the fiscal year 1990 funds used for new boost guidance development. Even excluding this amount, however, the program office still satisfied the stipulation in the conference report that \$21 million of fiscal year 1990 appropriations for the ASMS program be used for new boost guidance system development.

Fiscal Year 1989 Funds Replaced With Fiscal Year 1990 Funds

In April 1990, the program office used \$11.2 million of its fiscal year 1990 appropriations to fund obligations that previously had been funded with fiscal year 1989 appropriations. In our view, the use of \$9.2 million of this amount to pay for obligations incurred in fiscal year 1989 was improper.

The \$11.2 million was obligated on four contracts. Two of the four were fixed-price contracts awarded in September 1987 for the development and validation of reentry vehicle guidance components. The original period of performance for both of these contracts was from September 1987 to September 1992. The other two were cost-plus-fixed-fee contracts for reentry vehicle and boost guidance technical support and advanced technology development. The first of these contracts was awarded in June 1986 with an original period of performance through May 1989. The other contract was awarded in November 1988, with a period of performance through May 1991. These four contracts were all funded incrementally with appropriations requested and provided in annual installments, based on the estimated needs for a given period.

According to ASMS officials, fiscal year 1990 appropriations were not available to fund ASMS program obligations until April 1990, 30 days after the report requested by the Senate Committee on Appropriations had been submitted to that Committee. Therefore, the program office used fiscal year 1989 appropriations, which were available for obligation until September 30, 1990, to fund its development activities during the first 6 months of fiscal year 1990.

By the end of March 1990, only about \$3.8 million of the fiscal year 1989 ASMS budget authority remained unobligated. However, there were nonguidance technology projects the Air Force wanted to continue that required more than \$3.8 million in fiscal year 1989 funds. According to ASMS officials, sufficient funds from fiscal year 1990 appropriations were not available for these projects because of the restrictive language in the conference report that denied fiscal year 1990 funds for specific projects and that placed limits on the amount of fiscal year 1990 funds available for other projects.

ASMS officials stated that they were directed by Air Force Headquarters to bring the projects whose funding was denied by the conference committee report to a reasonable conclusion² and to continue other nonguidance technology projects. According to those officials, complying with that direction required additional fiscal year 1989 funds. To make additional fiscal year 1989 funds available, in April 1990 the program office deobligated \$11.2 million of the fiscal year 1989 funds used for guidance technology development and replaced them with fiscal year 1990 funds.

Of the \$11.2 million of fiscal year 1990 appropriations that was obligated to replace 1989 fiscal year appropriations, \$2 million was for new obligations that were incurred in fiscal year 1990. The Air Force could have used either 1989 appropriations, which were available for obligation for a 2-year period, or fiscal year 1990 appropriations to satisfy these obligations. Accordingly, we are not questioning the replacement of fiscal year 1989 appropriations with fiscal year 1990 appropriations to fund new obligations incurred during fiscal year 1990. However, \$9.2 million of the 1990 fiscal year appropriations was used to fund obligations incurred before the start of fiscal year 1990.

Under 31 U.S.C. 1502, fixed-term appropriations are available only to pay expenses properly incurred or to complete contracts properly made during the period of appropriation availability.³ This provision requires that a contractual obligation be charged to an appropriation that was available when the obligation was incurred, even if performance extends into an ensuing fiscal year. (23 Comp. Gen. 370 (1945).) In the absence of express statutory authority, appropriations for a subsequent fiscal year are not available to fund a valid obligation of a prior obligational period.

²The conclusion of these projects did not involve termination of contracts.

³This statute is the basis for the so-called bona fide need rule.

We believe that the action of the Air Force in replacing \$9.2 million of fiscal year 1989 funds with fiscal year 1990 funds to satisfy valid obligations incurred during the 1989 fiscal year violated 31 U.S.C. 1502. Since valid incremental obligations were incurred on these contracts in fiscal year 1989 and were charged against the 1989 fiscal year appropriations available at that time, there was no basis under 31 U.S.C. 1502 for using fiscal year 1990 funds to pay for any portion of the work involved, regardless of when it was performed.

Our conclusion that the Air Force violated 31 U.S.C. 1502 is not affected by the incremental nature of the funding of these contracts. In our view, the requirements imposed by 31 U.S.C. 1502 are just as applicable to the incremental obligation of funds that occurred here as they are to the obligation of funds to cover the entire cost of a fully funded contract. Certainly, when the Congress appropriated funds in fiscal year 1990 to cover the estimated additional incremental cost of these projects for fiscal year 1990, it did not intend that the Department of Defense use those funds to cover costs for which funds had already been requested, appropriated, and obligated in a prior fiscal year.

Our conclusion that the Air Force violated 31 U.S.C. 1502 finds further support in the failure of the program office to comply with the provisions in Air Force Regulation 170-8, which establishes prerequisites for the obligation and deobligation of funds. This regulation was issued, in part, to ensure compliance with the statute. Under section B, part 8, of the regulation, the obligation of multiple-year appropriations, such as the Air Force research and development appropriations used by the ASMS program, "must cite the fiscal year in which the funds for a specific requirement were programmed, approved, and appropriated." Also, "once a determination is made to cite a specific fiscal year on a contract, the obligation becomes final against that fiscal year appropriation, provided the transaction meets the criteria for recording obligations." In this case, the Air Force requested and received funding in fiscal year 1989 to cover the obligations it would enter into during that year and the four contracts initially cited fiscal year 1989 appropriations as the source of funds to be used to cover the obligations. Accordingly, the obligations should not subsequently have been charged to the fiscal year 1990 appropriations, even though all of the work was not completed during fiscal year 1989.

In addition, section J, part 38, of the regulation states that funds should be deobligated when the criteria for recording are no longer met. Deobligations are permitted if (1) final payment is less than the original

obligations, (2) the initial obligation is determined to be invalid, (3) a previously recorded estimate is reduced, or (4) accounting errors are being corrected. The regulation states that "deobligation of funds to 'free-up funds' for new obligations is not authorized." The Air Force's deobligation of fiscal year 1989 funds and replacement with fiscal year 1990 funds freed up the fiscal year 1989 funds to pay for new obligations. This deobligation of funds, therefore, was not authorized under the regulation.

Department of Defense and Air Force officials conceded that the use of fiscal year 1990 appropriations to pay for work performed in fiscal year 1989 would violate 31 U.S.C. 1502. These officials contended, however, that the replacement of fiscal year 1989 funds with fiscal year 1990 funds was proper because the fiscal year 1990 funds were used to pay for work that was performed during that fiscal year. While complete documentation identifying when all the work was performed was not readily available, limited documentation in the contract files indicated that at least some of the \$9.2 million of replaced funds was used to pay for work done in fiscal year 1989. In any event, because the critical date for purposes of determining compliance with 31 U.S.C. 1502 is the date on which the obligations were incurred, rather than the date on which the expenditures were made, we did not pursue this matter further.

By using fiscal year 1990 funds to satisfy fiscal year 1989 obligations that had previously been charged against fiscal year 1989 funds, the Air Force freed up an equivalent amount of fiscal year 1989 appropriations for nonguidance projects that could not have been funded with fiscal year 1990 funds. These projects could not have been funded because fiscal year 1990 funds for those projects were expressly denied by the conference committee or because fiscal year 1990 funds were not sufficiently available for those projects as a result of overall ASMS funding reductions imposed by the Committee. The Air Force's use of fiscal years 1989 and 1990 appropriations in this manner, in effect, circumvented the restrictions imposed by the conferees.

Recommendation

We recommend that the Secretary of the Air Force direct that the replacement action be canceled and that appropriate adjustments be made in the expired Air Force Research, Development, Test, and Evaluation accounts for fiscal years 1989 and 1990. If implementing our recommendation results in a violation of the Antideficiency Act, 31 U.S.C. 1341(a), which prohibits agencies from making expenditures or

incurring obligations in excess of available appropriations, the Air Force will need to make the required reports to the President and the Congress.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the Department of Defense agreed that the program office had obligated \$23.6 million of fiscal year 1990 appropriations for development of technologies that could be used for new ICBM boost guidance systems and, therefore, complied with the congressional stipulation.

The Department also agreed that the program office's use of \$9.2 million of fiscal year 1990 appropriations to fund obligations of four advanced guidance technology contracts that had previously been charged against fiscal year 1989 appropriations was not consistent with Air Force Regulation 170-8. (This regulation specifically refers to the standards for recording obligations as set forth in 31 U.S.C. 1501 and 1502.) However, the Department did not agree that the program office was in violation of the terms of 31 U.S.C. 1502. The Department believes that the statute allows fiscal year 1990 appropriations to be used to fund obligations previously charged to fiscal year 1989 appropriations so long as those obligations are for expenses incurred, that is, the work was performed by the contractors, during the period of fiscal year 1990 appropriations availability—in this case fiscal years 1990 and 1991. The Department contends that the \$9.2 million of fiscal year 1990 ASMS funds that replaced fiscal year 1989 ASMS funds were used to pay expenses incurred during fiscal year 1990 and, therefore, that there was no violation of 31 U.S.C. 1502. Consequently, it did not concur with our recommendation.

In our view, the Department's interpretation of 31 U.S.C. 1502 and its applicability to the facts of this case are incorrect. The fiscal year 1989 funds that were replaced with fiscal year 1990 funds had been obligated to satisfy a legitimate need that arose in fiscal year 1989 and that represented a liability of the Air Force to the contractors under the terms of the contracts. Contrary to the Air Force's position, when the government incurs expenses in one fiscal year that are attributable to a binding contractual commitment the government made in a prior fiscal year, the obligation should be charged to the appropriation that was available when the obligation was incurred, in this case fiscal year 1989, rather than the appropriation that was available when performance by the contractor occurred and payment became due. Furthermore, our position in this case, unlike the Department's position, is consistent with Air Force Regulation 170-8, which was issued, in part, to ensure compliance with 31 U.S.C. 1501

and 1502. Accordingly, since the replacement of funds was not based on any change in the scope or cost of the contracts and there was no change in the government's contractual liability under the original obligations, we continue to believe that the replacement violated the terms of 31 U.S.C. 1502 and should be canceled.

The Department's comments are presented in appendix I.

Scope and Methodology

Subsequent to the receipt of your request, we had several discussions with staff of your District Office. During these discussions, the scope of our review was defined to include the issues discussed in this report.

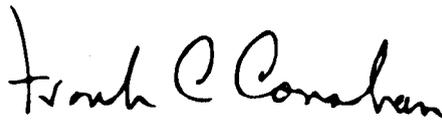
To meet our objectives, we interviewed appropriate Air Force officials and examined pertinent documents at the ASMS program office at the Ballistic Missile Organization, Norton Air Force Base, California. We also reviewed (1) laws and Air Force regulations concerning the obligations of appropriated funds and (2) pertinent congressional materials concerning the fiscal year 1990 Department of Defense appropriations.

We performed our review between February 1992 and May 1993 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Chairmen, House Committees on Government Operations, on Appropriations, and on Armed Services and Senate Committees on Governmental Affairs, on Appropriations, and on Armed Services; the Secretaries of Defense and the Air Force; and the Director, Office of Management and Budget. We will also make copies available to others upon request.

This report was prepared under the direction of Nancy R. Kingsbury, who may be reached on (202) 512-5074 if you or your staff have any questions concerning this report. Other contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink that reads "Frank C. Conahan". The signature is written in a cursive style with a large initial 'F' and 'C'.

Frank C. Conahan
Assistant Comptroller General

Comments From the Department of Defense

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



COMPTROLLER OF THE DEPARTMENT OF DEFENSE
WASHINGTON, DC 20301-1100

OCT 22 1992

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "AIR FORCE APPROPRIATIONS: Funding Practices at the Ballistic Missile Organization," dated September 10, 1992 (GAO Code 392693/OSD Case 9128.) The DoD partially concurs with the report.

The DoD agrees with the GAO determination that the Advanced Strategic Missile Systems program office used at least \$21 million of fiscal year 1990 appropriations for development of an Intercontinental Ballistic Missile boost guidance system, in accordance with congressional guidance.

The DoD does not agree, however, that the Advanced Strategic Missile Systems program office was in violation of the provisions of 31 U.S. Code 1502 because of the specific actions taken with respect to the obligation and deobligation of Air Force research and development fiscal year 1989 and fiscal year 1990 funding. The statute cited specifies payment for "expenses properly incurred and contracts properly made within that availability." The actions taken by the Air Force are authorized by 31 U.S. Code 1502.

Department accounting policy draws a clear distinction between types of fiscal obligations incurred. For instance, accrued expenditures represent obligations for services already performed, while undelivered orders (i.e., contracted work yet to be performed) represent obligations for services for which a liability has not yet been incurred.

Had the GAO identified fiscal year 1990 funds expended for work actually performed during fiscal year 1989, the DoD would agree that the FY 1989 funds should not have been deobligated and replaced with fiscal year 1990 funds. No documentation has been presented to support this conclusion. While the DoD agrees

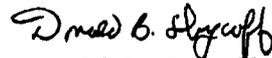
See comment 1.

Appendix I
Comments From the Department of Defense

that it is not standard practice to terminate contractual action on work not yet performed and recontract for that work in a subsequent fiscal year--even in an incrementally funded appropriation, such action is not specifically prohibited by the statute.

Detailed DoD comments are provided in the enclosure. Additional technical changes and information were separately provided to the GAO staff. The DoD appreciates the opportunity to comment on the GAO draft report.

Sincerely,


Donald B. Shycoff
Acting Comptroller

Enclosure

GAO DRAFT REPORT - DATED SEPTEMBER 10, 1992
(GAO CODE 392693) OSD CASE 9128

"AIR FORCE APPROPRIATIONS: FUNDING PRACTICES AT
THE BALLISTIC MISSILE ORGANIZATION"

DEPARTMENT OF DEFENSE COMMENTS

* * * * *

FINDINGS

FINDING A: Funding Provided For The Advanced Strategic Missile Systems Program. The GAO reported that for FY 1990, the Air Force Research, Development, Test and Evaluation appropriation included about \$70.4 million for the Advanced Strategic Missile Systems program--about \$29 million less than the \$99.4 million requested by the Air Force. The GAO reported that in arriving at the amount, the Conference Committee stated that \$50 million the Air Force had requested for strategic relocatable target attack, earth penetration weapon, and Evader Replica penetration aid activities had been deleted, and that an additional \$21 million was being provided only for the development of a new Intercontinental Ballistic Missile boost guidance system.

The GAO reported that the Conference Committee also directed the Air Force to obtain prior approval before funding could be increased for any of the advanced strategic missile Systems projects identified in the Research, Development, Test and Evaluation Descriptive Summary. The GAO pointed out that the Conference report stated that the Appropriations Committees will no longer tolerate the Air Force treating the Advanced Strategic Missile Systems as an unallocated pool of funds. In addition, the GAO noted that the Conference Committee expressed its agreement with the Senate Appropriations Committee report that no FY 1990 funds for the program could be obligated or expended until 30-days after the Congress received a detailed justification of projects proposed to be carried out with the funds, as well as all changes since the program was initially presented in 1989. The GAO noted that the report was submitted to the Congress in March 1990. (pp. 2-3/GAO Draft Report)

DoD Response: Partially concur. While most of the information presented by the GAO is generally accurate, it should be recognized that the FY 1990 Descriptive Summary disclosed and justified only one project: the Advanced Strategic Missile Systems. Therefore the Congressional restriction against increases without prior Congressional approval applied at the program element level. At the project level, restrictions were placed against denied projects and the Air Force restricted reprogramming decreases to the \$21 million Congressional add for Intercontinental Ballistic Missile Boost Guidance Systems. Those restrictions were agreed upon by all four Congressional committees, as reflected in the March 31, 1991 Report of Programs. Subsequent Descriptive Summaries have broken out individual sub-projects for the convenience of the Congress.

Now on p. 1.

See comment 2.

FINDING B: Fiscal Year 1990 Funds Used For Boost Guidance Technology Development. The GAO found that the Advanced Strategic Missile Systems program office obligated about \$23.6 million of FY 1990 appropriations for development of technologies that could be used in future Intercontinental Ballistic Missile boost guidance systems. The GAO explained that the amount included:

- About \$7.4 million obligated for defining modular boost guidance system designs. According to the GAO, conceptual system designs were generated, with the effort started in FY 1989, and completed in FY 1991.
- About \$12.5 million obligated for developing a new generation of solid state inertial instruments. The GAO noted that the effort is one that is ongoing, having begun several years before FY 1990.
- About \$3.7 million obligated for a prorata share of Advanced Strategic Missile Systems operating expenses, such as systems engineering support, computer support, nuclear effects analysis, and travel.

According to the GAO, the \$23.6 million of the FY 1990 appropriations obligated for boost guidance development included \$2.4 million that the program office improperly used to replace FY 1989 funds (Finding C) and should not be considered as part of the FY 1990 funds used for boost guidance development. The GAO also pointed out, however, that the \$23.6 million was \$2.6 million more than the \$21 million provided for that purpose, as explained in the Conference Committee report. The GAO concluded, therefore, that even excluding the \$2.4 million of FY 1989 funds improperly replaced, the program office would still have satisfied the congressional stipulation. (p. 3, pp. 5-6, p. 11/GAO Draft Report)

DoD Response: Partially concur. While most of the information presented is accurate, the DoD disagrees that the program office improperly replaced FY 1989 funding. See the DoD response to Finding C.

FINDING C: Fiscal Year 1989 Funds Replaced with Fiscal Year 1990 Funds. The GAO found that in April 1990, the program office used \$11.2 million of the FY 1990 appropriations (\$8.8 million for reentry vehicle guidance technology development and \$2.4 million for boost guidance technology development) to fund obligations on four guidance technology development contracts that had previously been funded with FY 1989 appropriations. The GAO reported that program officials said replacement of the 1989 funds with the 1990 funds was precipitated by efforts of the program office to comply with the intent of the Congress concerning the use of FY 1990 appropriations, while also following Air Force Headquarters direction to complete strategic relocatable target and earth penetrating weapon activities and continue other non-guidance technology development projects for which FY 1990 appropriations were not available.

Now on p. 3.

The GAO found that of the \$11.2 million, \$2.0 million was used to fund obligations incurred in FY 1990. The GAO did not question the replacement of those funds, since the FY 1990 appropriations were requested by the Air Force and provided by the Congress to fund obligations the Air Force would incur during FY 1990.

According to the GAO, however, \$9.2 million of the amount represented obligations incurred before the start of FY 1990. The GAO stated that under 31 U.S. Code 1502, fixed-term appropriations are available only to pay expenses properly incurred or to complete contracts properly made during the period of appropriation availability and obligated consistent with 31 U.S. Code 1501. In the view of the GAO, that provision requires that an obligation be charged to the appropriation for the fiscal year in which the obligation was incurred. The GAO concluded, therefore, that the Advanced Strategic Missile Systems program office violated the provisions of 31 U.S. Code 1502 in using the \$9.2 million of FY 1990 appropriations for obligations incurred in FY 1989. (pp. 3-4, pp 6-8/GAO Draft Report)

Now on pp. 2, 4-6.

DOD Response: Non-Concur. The Department maintains that a contractual action is not an irrevocable act and that the ability to renegotiate the terms of payment for expenses incurred in FY 1990, or for services yet to be performed, is entirely permissible. According to the GAO June 1982 Principles of Appropriation Law, "The term "obligation" includes both obligations which have matured (legal liabilities) and those which are contingent upon some future performance such as the rendition of services".

The Air Force complied with 31 U.S. Code 1502(a) by using FY 1990 funds for payment of "expenses properly incurred" during the period they were available (FY 1990 and FY 1991). All FY 1990 funds applied to these guidance contracts were used to pay expenses incurred during FY 1990. Moreover, 31 U.S. Code 1502 does not preclude deobligation of funds that were properly obligated.

The Air Force did not use any FY 1990 funds to pay bills for either: 1) work performed in FY 1989; or 2) work performed in FY 1990 prior to the release of FY 1990 Advanced Strategic Missile Systems' appropriations.

The Advanced Strategic Missile Systems Director of Contracts gave very specific guidance to all affected contractors regarding how to calculate their unexpended balances. He strongly emphasized compliance with legal requirements. For example, when asked to determine how much of FY 1989 funds were unexpended, the Director instructed the contractors to exclude FY 1989 due bills as well as any FY 1990 efforts which had been billed for or paid.

Contractors were contacted directly for this information because expenditure data contained in the Program Initiation, Commitment, Obligation and Expenditure report is subject to reporting lags and/or erroneous data entries. Calls were made to industry requesting the latest expenditure information. The re-contracting actions were based on that information.

Recent examination of the April 1990 Program Initiation, Commitment Obligation and Expenditure report for all contracts in question provided the following new information:

1) Three of the four contracts clearly had more unexpended FY 1989 funds than required to support the deobligation actions taken.

2) The fourth contractor, Honeywell, had obligated \$13.8 million in FY 1987-89 funds as of April 1990. Cumulative expenditures at that time were approximately \$9.6 million. Total contract obligations as of Apr 1990 exceeded cumulative expenditures by \$4.2 million, more than the \$4.1 million that Honeywell told the Air Force was available for replacement with FY90 funds. FY 1989 Program Initiation, Commitment, Obligation and Expenditure report data taken along indicates Advanced Strategic Missile Systems program office deobligated more FY 1989 funds from this contract than were unexpended as of April 1990. However, this data conflicts with a review of total obligations and actual contractor billings.

Advanced Strategic Missile Systems contracting officers and financial managers analyzed actual contractor billings from the inception of the contract through FY 1990 to determine if Honeywell was accurate in calculating its unexpended obligations balance through Mar 90. It was determined that cumulative bills through March 1990 (when the contractors were calculating the numbers for the Air Force) were \$9.649 million, leaving \$4.171 million unexpended. This supports Honeywell's estimate that roughly \$4.1 million in FY 1989 funds could be deobligated from their contract in April 1990 if replaced immediately with FY 1990 appropriations.

FINDING D: Views of DoD Officials Regarding The Use of The FY 1990 Appropriations. According to the GAO, DoD officials stated that when incrementally funded research and development contracts are involved, obligations may be charged to the fiscal year in which the work is performed, rather than the fiscal year in which the obligation was incurred. The GAO reported that the DoD officials, therefore, feel the replacement of funds was proper, since the Advanced Strategic Systems Missile program office told them that, based on information the program office had solicited from the responsible contractors, the FY 1990 appropriations were used to pay for work performed during FY 1990. (p. 4, p. 8/GAO Draft Report)

DoD Response: Partially concur. The DoD officials stated that incrementally funded research and development budgets are formulated to cover all "costs" expected to be incurred during a twelve-month period which is co-incident with the fiscal year and that services are normally chargeable to the fiscal year in which the services are performed. Therefore, the re-negotiation of the terms of payment was permitted, since the Advanced Strategic Systems Missile program office told them that, based on information the program office had solicited from the responsible contractors, the FY 1990 appropriations were used to pay for work performed during FY 1990.

Now on p. 6.

FINDING E: Additional GAO Views On The Use Of The FY 1990 Appropriations. The GAO disagreed with views of the DoD officials stated in Finding D for several reasons. First, the GAO stated that the FY 1989 funds that were replaced with FY 1990 funds had been obligated to satisfy a bona fide need of FY 1989, and represented a government liability to reimburse contractors for their expenditures under the terms of the contracts. According to the GAO, under 31 U.S. Code 1502, all liabilities and expenditures attributable to a contractual commitment made within the period of availability of a fiscal year appropriation remain chargeable to that appropriation--FY 1989 in this case.

The GAO also concluded that the program office actions were not consistent with the provisions of Air Force Regulation 170-8, which establishes prerequisites for the obligation and deobligation of funds. The GAO explained that under the Air Force regulation, the obligation of multiple-year appropriations must cite the fiscal year in which the fund for a specific requirement were programmed, approved, and appropriated, and once a determination is made, the obligation becomes final against that fiscal year appropriation. The GAO found that in the subject case, the Air Force requested and received funding in FY 1989 to cover the obligations for that year, and the four contracts involved initially cited FY 1989 appropriations as the source of funds. The GAO concluded, therefore, that the obligations should not have been subsequently charged to the FY 1990 appropriations.

The GAO further explained that under the Air Force regulation, funds should be deobligated when the criteria for recording are no longer met, but that deobligation of funds to free-up funds for new obligations is not authorized. According to the GAO, the deobligation of FY 1989 funds and replacement with FY 1990 funds freed up the FY 1989 funds, and then were used for new obligations that could not have been paid using 1990 funds, without violating the restrictions of the Conference report. The GAO concluded that the regulation prohibited the deobligation.

According to the GAO, DoD officials concede that use of FY 1990 appropriations to pay for work performed in FY 1989 would violate 31 U.S. Code 1502, but contend the replacement of funds in this case was proper, because the FY 1990 funds were used to pay for work performed during FY 1990. The GAO found, however, that documentation indicated that at least some of the \$9.2 million of replaced funds was used to pay for work done in FY 1989. The GAO observed that, by using FY 1990 funds to satisfy FY 1989 obligations previously charged against FY 1989 funds, the Air Force freed up an equivalent amount of FY 1989 appropriations for programs whose funding was expressly denied or limited by the report of the Conference Committee. The GAO concluded that by using the 1990 appropriations in that manner, the Air Force in effect circumvented the restrictions imposed by the conferees. (pp. 3-4, pp. 8-11/GAO Draft Report)

Now on pp. 2 and 6.

DoD Response: Partially concur. See the DoD response to Finding C regarding the bona fide need issue. The DoD agrees, however, that the transactions were not consistent with Air Force Regulation 170-8, paragraph 37. While the direction in Air Force Regulation 170-8 is intended to ensure compliance with the Statutes, a deviation from the regulation does not automatically indicate a violation of the Statutes.

The renegotiation of the terms of payment which resulted in the deobligation of FY 1989 funds from ongoing contracts and simultaneous obligation of FY 1990 funds was driven by the Air Force desire to comply with the Committee guidance. Since several ongoing non-guidance projects were denied FY 1990 funds, FY 1989 funds were used to bring those projects to a close. The Air Force directed Advanced Strategic Missile Systems officials to use available FY 1989 funds to close out the projects and Advanced Strategic Missile Systems officials complied with that direction.

The FY 1989 funds were used to conclude efforts for which FY 1989 funds were properly appropriated and which were also denied in FY 1990 appropriations. That action was prudent because in some cases the cost of accepting an FY 1989 deliverable and not issuing an additional task was less than paying termination costs.

RECOMMENDATION 1: The GAO recommended that the Secretary of the Air Force direct that the replacement action be canceled and that appropriate adjustments be made in the expired Air Force Research, Development, Test and Evaluation Accounts for fiscal years 1989 and 1990. (p. 12/GAO Draft Report)

DoD Response: Non-Concur. As previously explained in the DoD response to Finding C, the Air Force actions taken were in compliance with provisions of 31 U.S. Code Sections 1501 and 1502. Those provisions enable the DoD to renegotiate the terms of agreement, in this case the terms of payment, for work not yet performed and/or expenses not yet incurred, after making a reasonable effort to determine unbilled and unexpended balances.

Now on p. 6.

The following are GAO's comments on the Department of Defense's letter dated October 22, 1992.

1. The Department's statement that we did not provide documentation to show that fiscal year 1990 funds were used for work performed during fiscal year 1989 is incorrect. As stated in our report, the contract files indicated that at least some of the \$9.2 million of replaced fiscal year 1989 funds was for work performed during that year. We brought this to the attention of the Air Force and requested, but did not receive, an explanation.
2. The Department pointed out that the conference report did not contain funding limits on individual Advanced Strategic Missile Systems projects other than those for which funding was specifically denied. We agree and have revised our report accordingly.

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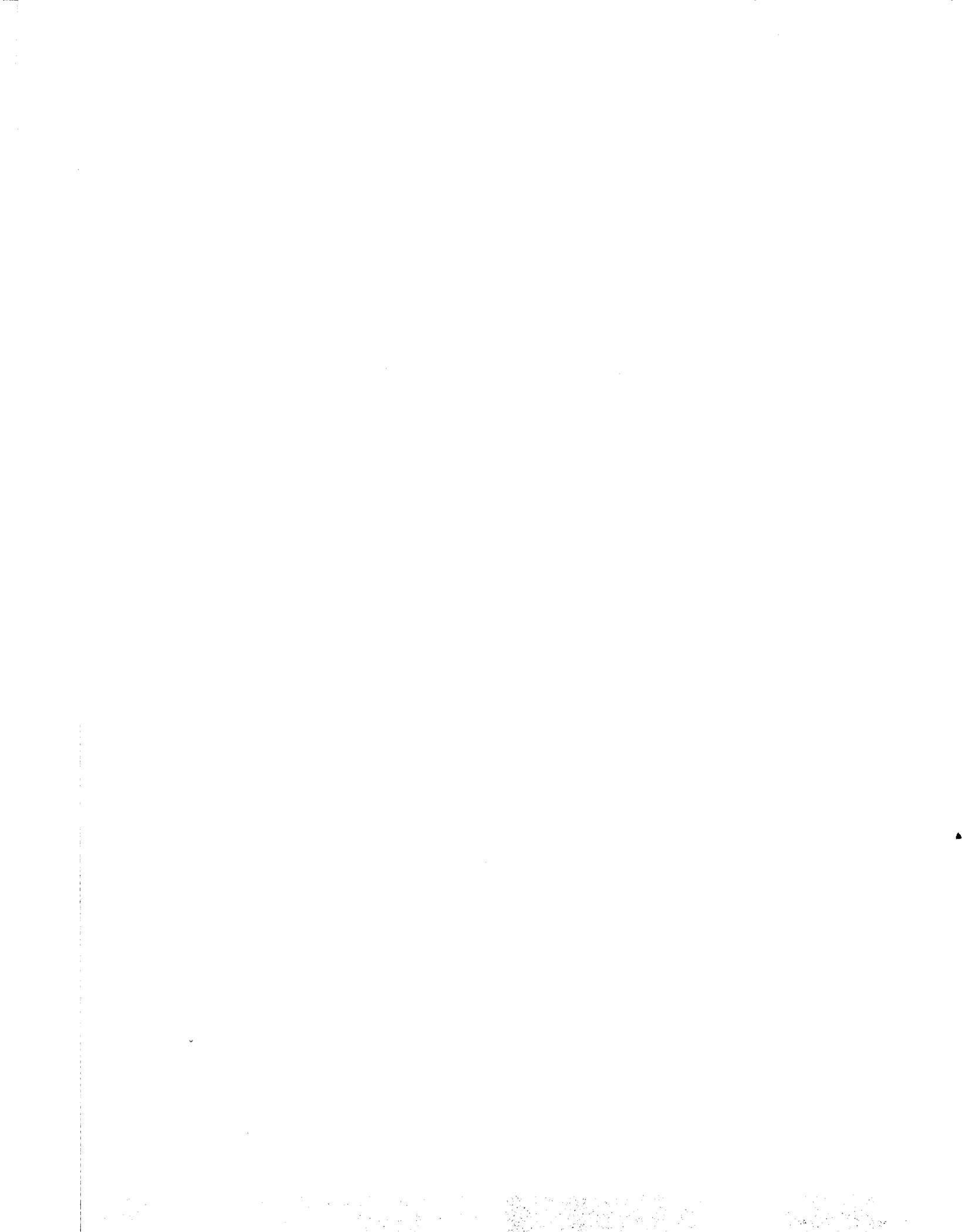
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