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Report to Congressional Committees

March 2008

DEFENSE CONTRACTING

Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists

GAO-08-360

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GAO Highlights

Accountability • Integrity • Reliability

Highlights of GAO-08-360, a report to congressional committees

Why GAO Did This Study

In 2007, the Department of Defense (DOD) paid contractors $158.3 billion for a range of services, including contract specialists. To better understand the use of contractors in this role, GAO initiated a case study, under the authority of the Comptroller General, at the Army Contracting Agency's (ACA) Contracting Center of Excellence (CCE). GAO determined (1) the extent to which and why CCE relies on contractor contract specialists, (2) how risks of contractor use are mitigated, (3) how the cost of the contractors compares to that for CCE's government employees, and (4) whether the contract vehicles were appropriate. GAO reviewed a random sample of contract files to understand the contractors' duties and responsibilities, compared compensation costs, and reviewed documents from the General Services Administration (GSA), under whose contracts CCE ordered the contract specialists.

What GAO Recommends

GAO recommends that the Secretary of Defense issue guidance regarding personal services contracts and that the Secretary of the Army direct ACA to work with CCE to develop a plan that addresses the appropriate mix of government and contractors, implement a training program, and ensure that contractors identify themselves as such. GAO also recommends that GSA implement controls to prevent contractors from improperly advertising their services. In written comments on a draft of this report, DOD and GSA agreed with the recommendations.

To view the full product, including the scope and methodology, click on GAO-08-360. For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

What GAO Found

CCE has relied on contractor contract specialists since it began hiring them in 2003. In August 2007, contractors—who work side by side and perform the same functions as their government counterparts—comprised 42 percent of CCE's contract specialists. CCE officials cited difficulties hiring and retaining government personnel in light of the competition from government and the private sector for this competency. While CCE officials said that they prefer to use government employees, they have not considered the appropriate balance of contractor versus government contract specialists. Furthermore, CCE has not addressed the need for more training of its government employees to strengthen their skills in conducting CCE's increasingly more complex procurements.

Methods to mitigate the risks of using contractors have been mixed in effect. First, the line separating contractor from government employee is blurry, and contractors did not always clearly identify themselves as such when dealing with the public. Second, the potential for the work being done under a personal services contract, which the *Federal Acquisition Regulation* generally prohibits because of the government-contractor relationship it creates, was clearly present. While contractor managers retained control over matters such as approving leave requests, CCE took steps to further strengthen the management distinction between government and contractor employees based on GAO's findings. Finally, risks of organizational and personal conflicts of interest were mitigated to some extent, but in practice the government relies on individual contractor employees to identify potential conflicts. These types of risks must be mitigated to ensure that the government does not lose accountability over policy and program decisions.

CCE is paying up to almost 27 percent more for its contractor-provided contract specialists than for similarly graded government employees. This comparison took into account government salary, benefits, and overhead and the loaded hourly labor rates paid to contractors. Our review of available résumés showed that six contractor employees supporting CCE in fiscal year 2007 had on average more contracting experience than CCE's five recent government hires.

Despite CCE's legal counsel's concerns, CCE has been inappropriately ordering contract specialists under a GSA contract because the services were out of scope of those contracts. GAO found additional problems, such as a contractor advertising contract specialist services on GSA's Web site that it was not authorized to provide. Due to what it characterizes as the growing demand by federal agencies for contractor contract specialists, GSA recently posted a revised contract category, under which government agencies can procure contract specialists to provide acquisition management services, such as cost estimating and proposal evaluation support. In response to GAO's findings, GSA contacted each of the contractors involved in our review about their out-of-scope services and plans further follow-ups with them.

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Abbreviations

ACA	Army Contracting Agency
BPA	blanket purchase agreement
CCE	Contracting Center of Excellence
DAU	Defense Acquisition University
DAWIA	Defense Acquisition Workforce Improvement Act
DOD	Department of Defense
FAR	*Federal Acquisition Regulation*
GAO	Government Accountability Office
GSA	General Services Administration
JCC-I/A	Joint Contracting Command-Iraq/Afghanistan
MOBIS	Mission Oriented Business Integrated Services
OCI	organizational conflict of interest
RFQ	request for quotations

GAO
Accountability * Integrity * Reliability

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Congressional Committees

Over the past 10 years, Department of Defense (DOD) spending on services has increased 76 percent—to $158.3 billion in fiscal year 2007—and now outpaces its spending on supplies and equipment, including major weapon systems.[1] One effect of the escalation in service spending has been to place greater demands on a shrinking acquisition workforce, which is increasingly faced with the need to manage more complex contracting approaches. Agencies have dealt with these trends by relying more heavily on contractors, particularly those that provide professional, administrative, and management support services, an area where DOD's spending more than tripled from fiscal years 1998 through 2007. One example of a function DOD is acquiring through contracts is contract specialists, who perform a range of acquisition services in support of government contracting officers.

The decision to turn to contractors can, in some cases, create risks that the government needs to consider and manage. Of key concern is the risk of loss of government control over and accountability for mission-related policy and program decisions when contractors provide services that closely support inherently governmental functions. Contract specialist services are an example of such a service, whereas the contracting officer, who obligates the government's money, is performing an inherently governmental function that cannot be obtained through a contract. Other concerns include an increased potential for conflicts of interest, both organizational and personal; the potential for improper use of personal services contracts, which the *Federal Acquisition Regulation* (FAR) generally prohibits because of the employer-employee relationship they create between the government and contractor personnel; and the cost to the government of hiring contractors rather than government personnel.

To learn more about the use and roles of contractors providing contract specialist services, we conducted a case study, under the authority of the

[1]We have reported that to a large extent, DOD has not proactively managed this growth, meaning that it cannot know whether its investments in service contracts are achieving the desired outcomes. GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, GAO-07-20 (Washington, D.C.: Nov. 9, 2006).

Comptroller General to conduct evaluations on his own initiative, of the Army's Contracting Center of Excellence's (CCE) use of contractors in this role. Organizationally, CCE falls under the Army Contracting Agency (ACA), a field operating agency reporting to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology. We determined (1) the extent to which and the reasons CCE is relying on contractors, (2) what actions have been taken to mitigate the risks associated with using contractors in contract specialist roles, (3) how the costs of CCE's contract specialists compared to that of its government contract specialists, and (4) whether the contract vehicles used to acquire the specialists were appropriate. This report presents our findings at CCE as an example of the challenges faced by agencies in an environment of increased reliance on contractors to help meet the contracting mission.

We identified CCE as a government agency using contractors as contract specialists through a bid protest that involved CCE's predecessor organization awarding a contract for contract specialists.[2] In fiscal year 2007, CCE obligated almost $1.8 billion in contract actions. To conduct our work, we interviewed CCE and ACA officials and contractor representatives. We obtained information on CCE's contract specialist staffing levels in fiscal year 2007, and we reviewed CCE's orders issued under blanket purchase agreements (BPA)[3] established in 2006 for contract specialist services, as well as billing information. To identify the roles and responsibilities of contractor contract specialists, we interviewed government and contractor contract specialists and government contracting officers, and we reviewed 42 randomly selected CCE contract files for work performed by the contractor contract specialists in fiscal years 2006 and 2007 to understand the contractors' day-to-day duties. We also reviewed contractor policies and procedures regarding organizational and personal conflicts of interest. In addition, we reviewed FAR provisions pertaining to conflicts of interest, as well as those relating to personal services contracts. To compare costs, we calculated an average loaded hourly rate (including benefits, overhead, and other costs) for CCE's government contract specialists who perform

[2]*LEADS Corporation*, B-292465, September 26, 2003, 2003 CPD 197 at 1. The protest was denied.

[3]BPAs are a simplified method of filling anticipated repetitive needs for supplies and services. For example, agencies can establish "charge accounts" with qualified vendors. FAR 13.303-1(a). BPAs established under a Federal Supply Schedule apply the BPA procedures under subpart 8.4 of the FAR.

the same tasks and have similar qualifications as the contractor-provided contract specialists, and compared it to the weighted average labor hour rate that two contractors charged CCE for contract specialists in August 2007. The contractors' labor hour rates include wages, benefits, overhead, general and administrative expenses, and profit. We also reviewed résumés to compare experience levels of contractor and government contract specialists. Résumés were available for six contractor contract specialists who had supported the agency for at least 6 months; we also reviewed the résumés of the five contract specialists CCE had recently hired. We reviewed CCE's contracting strategies to determine whether new contracts were awarded to obtain contract specialists or whether interagency contracts through other federal agencies, such as the General Services Administration's (GSA) schedule program, were used. We analyzed contract documents, including CCE's BPAs with four contractors, related task orders, and underlying GSA schedule contracts. We spoke with GSA officials responsible for overseeing the Mission Oriented Business Integrated Services (MOBIS) schedule and with CCE officials. We also examined the FAR section on the use of GSA schedules.

While CCE has established BPAs with four contractors to provide contract specialist services, nearly all of the contractor-provided contract specialists at CCE during our review were employees of CACI International, Inc. (CACI); thus, our primary focus was on the CACI contract, related BPA, and orders.

We conducted this performance audit from May 2007 to March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See appendix I for additional information on our scope and methodology.

Results in Brief

CCE has relied on contractor contract specialists since it began hiring them in 2003 to help meet its increasing workload and plans to continue doing so, although officials told us that they would prefer an all-government workforce. CCE's contractor employees supported from 24 to 30 percent of its contract actions from fiscal years 2005 through 2007 and, in August 2007, represented 42 percent of the agency's contract specialists. The contractors work side by side with government contract specialists and perform the same activities. CCE and ACA officials noted that they

face chronic difficulties in recruiting and retaining contract specialists, given the high demand for this skill set in the Washington, D.C., area. They said that it is a struggle to compete with other agencies as well as with the contractors supplying the specialists to the government. Further, while the agency has a 2-year training program for interns, it lacks a formal training program for its other contract specialists, despite officials' acknowledgment that skills need to be improved. Finally, CCE has not considered what would be an appropriate and feasible balance of the number of contractor and government employees. A recent Defense Acquisition University (DAU) study recommended that agencies assess the proper balance of contractor to government contract specialists to avoid overreliance on contractors.

We found mixed results in terms of policies, procedures, and actions in place to mitigate the risks of using contractors in the contract specialist role at CCE:

- The line separating contractor from government employee is blurry, and we found situations in which contractor employees were not clearly identified as such to the general public and cases where they were listed as the government's point of contact on contract documents. In situations such as these, contractor employees may appear to be speaking for the government, a situation that could create the impression in the general public that they are government employees. As a result of our findings, CCE has taken initial steps to more clearly delineate the contractor employees.

- The work being done by CCE's contractor contract specialists reflects each of the descriptive elements listed in the FAR as a guide in assessing the existence of personal services contracts—which are generally prohibited unless authorized—including work performed under the direct, day-to-day supervision of the government. However, determinations as to whether a personal services contract is present must be made based on the facts and circumstances of each situation. In this case, the contractor maintains control over a number of supervisory and management functions, such as the approval of time cards and leave requests. As a result of our review, CCE has taken several actions, such as reorganizing the contractor employees so that their work is now assigned by a supervisor employed by the contractor. We found no DOD guidance that elaborated on the factors to be considered in determining whether a personal services contract exists or how to mitigate that risk when contractors work side by side with their government counterparts.

- To mitigate the risk of organizational and personal conflicts of interest, CCE requires contractors to submit mitigation plans when appropriate, and contractor employees sign agreements not to disclose proprietary or sensitive information belonging to the government or other contractors, such as cost and pricing data, government spend plan data, and contractor technical proposal data, and not to engage in any conduct prohibited by provisions of the Procurement Integrity Act as implemented by the FAR.[4] In practice, the government must rely heavily on individual contractor employees to identify potential organizational conflicts of interest, such as where they are assigned to a procurement on which their company is bidding. The same holds true for personal conflicts of interest, because, although a new FAR subpart states that contractors should have a written code of business ethics and conduct, neither the FAR nor DOD contracting policy requires that contractor employees be free from conflicts of interest or that they deploy other safeguards to help ensure that the advice and assistance the employees provide is not tainted by personal conflicts of interest.

CCE is paying more on average for contractor-provided contract specialists than for its government contract specialists who are doing equivalent work. We found that on average and taking into account benefits and overhead rates, the cost of a GS-12 CCE contract specialist is $59.21 per hour, as compared to the contractors' average loaded hourly labor rate of $74.99, or about 17 percent more. The average cost of CCE's GS-13 specialists is $72.15 per hour, while it is paying the contractor specialists $84.38 per hour, or about 27 percent more. We also reviewed available résumés of six contract employees supporting CCE for at least 6 months and found that they had from 5 to 32 years, or an average of 18 years, of contracting-related experience. In comparison, the five CCE government contract specialists hired in fiscal year 2007 had from 6 to 17 years, or an average of about 12 years, of contracting-related experience. All six contract employees had previously worked for, and were trained by, the federal government before being hired by the contractor.

The contract vehicles CCE has used since 2003 to acquire its contract specialists—orders issued under GSA's MOBIS schedule contracts—were inappropriate because the services were out of scope of those contracts. The labor category descriptions in the vendors' GSA schedule contracts are, in most cases, substantially different from the descriptions in CCE's performance work statements and did not accurately represent the work

[4] 41 U.S.C. § 423, FAR 3.104.

that the contractors were performing. For example, one contractor's negotiated GSA contract was for "senior business analysts," but it is providing CCE with contract specialist support—a completely different description. Acquiring services outside the scope of the underlying contract circumvents the government's competition requirements and limits the government's ability to know if it is paying a fair and reasonable price. CCE's legal counsel and a senior procurement analyst raised concerns about the scope of services, but the agency issued the BPAs without resolving their concerns. When we brought the issue of the out-of-scope services to GSA's attention, as well as other issues we found, such as a contractor that had advertised services on GSA's Web site that it was not under contract to provide, GSA began contacting the contractors to rectify the situations. Because of the high demand for contract specialists, GSA has revised the MOBIS schedule to add acquisition management support services, including assistance in supporting proposal evaluations and reviews of contractor performance. Finally, CCE failed to follow Army policy for certifying that work ordered under a non-DOD contract—in this case, a GSA contract—is within scope of the contract.

We are recommending that the Secretary of the Army direct ACA to work with CCE to take several actions, including identifying the appropriate mix of contractor and government personnel and developing a plan to achieve the desired balance, implementing a training program for its employees, and putting in place procedures to ensure that contractors identify themselves as such in all interactions external to CCE. We are also recommending that DOD issue guidance to clarify the circumstances under which contracts risk becoming improper personal services contracts and to provide direction on how the risk should be mitigated. Finally, we are recommending that GSA, as the entity responsible for the MOBIS schedules, strengthen controls to guard against situations where contractors improperly advertise services on GSA's Web site that they are not under contract to provide. In written comments on a draft of this report, DOD and GSA concurred with the recommendations and outlined actions they plan to take or have taken to address them. DOD's and GSA's comments are reprinted in their entirety in appendixes II and III, respectively.

Background

CCE, which falls organizationally under ACA, provides contracting support to 125 DOD customers in the National Capitol Region, including the Joint Chiefs of Staff, TRICARE Management Activity, Defense Information Systems Agency, DOD Inspector General, Pentagon Renovation Office, and Office of the Judge Advocate General. During fiscal

year 2007, the agency awarded about 5,800 contract actions and obligated almost $1.8 billion. CCE is one of many government agencies that have turned to contractors to support their contracting functions.

While use of contractors provides the government certain benefits, such as increased flexibility in fulfilling immediate needs, we and others have raised concerns about the federal government's services contracting, in particular for professional and management support services.[5] A major concern is the risk of loss of government control over and accountability for mission-related policy and program decisions when contractors provide services that closely support inherently governmental functions. Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government, such as approving contractual requirements; as such, they must be performed by government employees, not private contractors. The closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based, in part, on contractor work. Decisions may be made that are not in the best interest of the government and may increase vulnerability to waste, fraud, or abuse.

The FAR[6] sets forth examples of services closely supporting inherently governmental functions. These include acquisition support services, such as

- services in support of acquisition planning,
- services that involve or relate to the evaluation of another contractor's performance,
- contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors), and
- contractors working in any situation that permits or might permit them to gain access to confidential business information, any other sensitive information, or both.

[5]GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, D.C.: Sept. 17, 2007).

[6]The FAR is the primary regulation for use by all federal executive agencies in their acquisition of supplies and services with appropriated funds.

It is now commonplace for agencies to use contractors to perform activities historically performed by federal government contract specialists. Although these contractors are not authorized to obligate government money, they provide acquisition support to contracting officers, the federal decision makers who have the authority to bind the government contractually. Among other things, contract specialists perform market research, assist in preparing statements of work, develop and manage acquisition plans, and prepare the documents the contracting officer signs, such as contracts, solicitations, and contract modifications.

In its 2007 report to Congress, DOD's Panel on Contracting Integrity[7] noted that the practice of using contractors to support the contracting mission merits further study because it gives rise to questions regarding potential conflicts of interest and appropriate designation of governmental versus nongovernmental functions. The panel concluded that potential vulnerabilities may exist that could result in fraud, waste, and abuse.

A November 2005 DAU study[8] cited four top reasons that federal agencies are contracting out for procurement services: (1) to meet workload surge requirements, (2) inability to hire adequate resources to meet workload, (3) relative speed of contracting versus hiring to meet workload, and (4) ability to select specific required expertise. The DAU data showed that contractors performed duties across the spectrum of contracting functions, from acquisition planning to contract closeout. The study's authors noted that as DOD's personnel levels have dropped, activity rates for procurement organizations have increased, driving a gap between the requirements and government capability in many DOD contracting offices. The report warned that the government must be careful when contracting for the procurement function to ensure that government leaders retain thorough control of policy and management functions and that contracting

[7]Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, *Panel on Contracting Integrity, 2007 Report to Congress*. Also, see the John Warner National Defense Authorization Act for Fiscal Year 2007, § 813.

[8]Defense Acquisition University, *Contracting Out Procurement Functions: An Analysis*, DAU Research Report 06-001 (Fort Belvoir, Va.: Defense Acquisition University Press, November 2005).

does not inappropriately restrict agency management in its ability to develop and consider options.[9]

CCE Is Using Contractors to Supplement Its Workforce without Considering the Right Balance of Contractors versus Government Employees

CCE has relied on contractors to help meet its increasing workload requirements since 2003 and plans to continue doing so, although agency officials would prefer an all-government workforce. The roles and responsibilities of the contractor contract specialists mirror those of the government contract specialists. In fact, contractor and government contract specialists work side by side and perform the same duties. CCE has not taken into consideration what constitutes a reasonable and feasible balance of the number of government versus contractor personnel or developed a training program for its permanent government employees.

CCE Has Relied on Contractors to Meet Its Increasing Workload and Plans to Continue Doing So

According to agency officials, CCE began using contractor contract specialists in 2003 as a stopgap measure to meet an increase in workload, but the agency has continued to rely heavily on their support. Our analysis of CCE's contract actions showed that contractors supported from 24 to 30 percent of all actions from fiscal year 2005 through 2007. In fiscal year 2007, CCE spent over $2.8 million on over 32,600 hours (approximately 15.6 full-time-equivalent employees)[10] of contracting support services from two contractors—CACI and The Ravens Group. In August 2007, 42 percent of CCE's contract specialists were contractors.[11] CCE officials stated that

[9]In *Urgent Reform Required: Army Expeditionary Contracting* (November 2007), the Commission on Army Acquisition and Program Management in Expeditionary Operations reported similar findings specifically for the Army. It noted that there were significant reductions in the Army's contracting workforce from 1990 to 2006, while workload increased over 654 percent from 1992 to 2006. The commission recommended increasing the stature, quantity, and career development of military and civilian contracting personnel. In response to the commission's report, the Army approved the creation of an Army Contracting Command, which will fall under the Army Materiel Command and be led by a two-star officer. The Army also plans to increase its contracting workforce by approximately 400 military personnel and 1,000 civilian personnel.

[10]Based on 2087 hours for a full-time-equivalent employee.

[11]This percentage does not include three contractor employees for whom CCE was billed 16 hours or less in August 2007.

the agency plans to continue relying on contractors, although they would prefer an all-government workforce.

CCE officials told us that prior to 2005, the majority of the agency's contracting activity consisted of issuing orders against GSA schedule contracts—a relatively simple contracting method. After a DOD policy memorandum placed limitations on the use of non-DOD contract vehicles because of widely reported misuse of interagency contracts, CCE began relying less on using contract vehicles awarded by other agencies. Our analysis of Federal Procurement Data System-Next Generation data found that from fiscal years 2005 to 2007, the number of CCE contract actions through other agency contract vehicles decreased by 55 percent and obligations through use of these vehicles decreased by 45 percent. According to agency officials, CCE began awarding more of its own contracts through full and open competition, but the contracting staff generally lacked experience with these more complex types of procurements. Much of the workload had to be assigned to a limited number of more experienced staff, creating a situation where officials believed they had no choice but to turn to contractor support.

Activities and Responsibilities of Contractor Contract Specialists Mirror Those of Government Personnel

Contractor contract specialists at CCE perform the same tasks as government contract specialists. Typical tasks include pre-procurement research and planning, preparing contract documents, monitoring contracts, assisting with negotiations, and closing out contracts. These "cradle-to-grave" procurement activities are performed as support for a government contracting officer, who performs an inherently governmental function with the ability to bind the government by contract. According to CCE contracting officers, the work is generally assigned based on knowledge and experience, not whether the specialist is a government or contractor employee, with the only exception being cases where there could be a potential organizational conflict of interest (such as when the contractor employee's company could bid on the contract in question).

We reviewed contract files for 42 randomly selected contract actions on which contractor contract specialists worked during fiscal years 2006 and 2007 and found that the contractors had prepared a range of contracting documents, such as contract modifications, requests for legal review, small business coordination records, cover sheets to route contract actions for approval, award decision memorandums, and memorandums to the file. Contractors also had requested or received documents from vendors or other DOD entities, such as proposals, technical evaluations,

and past performance questionnaires, and assisted in preparing statements of work.

The contracting officers and government and contractor-provided contract specialists we interviewed at CCE emphasized that while the contractors can recommend a course of action, the contracting officers make the decisions, such as deciding on an acquisition strategy and making contract award determinations. The contracting officers and specialists also told us that although contractors may assist in negotiations, the contracting officer takes the lead role in negotiating the terms of the contract.

CCE Has Faced Difficulties Hiring Government Contract Specialists

CCE officials informed us that the agency has had trouble recruiting and retaining government contract specialists. For example, an official told us that as of October 2007 the agency had 10 contract specialist positions that have been vacant for as long as 5 months, as well as another 12 vacancies, such as procurement analysts and a cost/price analyst. According to the official, from August 2006 through August 2007, 24 contract specialists—more than one-quarter of its government contracting workforce[12] during the period—left the agency. Agency officials stated that some of these personnel retired, but many had gone to work for private contractors that support the federal government. In fact, CCE officials said that they cannot compete with the private sector when it comes to offering some employment incentives. Additionally, both CCE and ACA officials stated that the government's hiring process takes too long and that potential candidates are often hired by a contractor or another agency before CCE can make an offer. For example, it took CCE over 5 months, from solicitation to job offer and placement, for two recent contract specialist hires. In contrast, a CCE official told us that they can order and have a contractor employee in place within as little as a couple of weeks.

CCE officials stated that the agency's recruitment difficulties are in large part caused by the high demand for contract specialists—by both the many federal agencies in Washington, D.C., and contractors from which the government purchases these services—making it difficult to compete for them. Contractor representatives, too, reiterated that the employment market for well-qualified contract specialists is extremely competitive. CACI employees who were supporting CCE as contract specialists

[12]CCE's government contracting workforce includes contract specialists, procurement analysts, and cost/price analysts.

confirmed that there is a high demand for their skill set, and several of these individuals stated that a well-qualified person can be selective when searching for a new employer. In addition, these employees said CACI offers some better benefits than the federal government, including higher salaries, fewer responsibilities, and shorter work weeks (because of contract restrictions on extended hours). Senior managers from The Ravens Group told us that their firm recruits contract specialists who have worked for and been trained by the government and hires them at a higher rate of pay.

CCE Has Not Considered the Appropriate Balance of Contractor to Government Employees and Lacks a Training Plan to Help Build Government Staff's Skills

CCE plans to continue relying on contractors to help meet its mission, but has not considered the appropriate and feasible ratio of government employees to contractors. In a November 2005 study on contracting out the procurement function, DAU concluded that it is reasonable to contract out functions or tasks that are not inherently governmental to meet a sudden or temporary increase in workload or when special expertise is required. However, the study cautioned that contracted procurement support needs to be maintained at a "reasonable" level. The study recommended that each contracting activity be limited in the percentage of its workforce that may be contractors, acknowledging that the appropriate limitation is a matter for debate.[13] It noted that using contractors only in limited situations would

- provide contracting agencies with flexibility to quickly react to surge workload situations,
- enable managers to assign the contractors to lower-priority tasks so that government employees would handle the more sensitive procurement tasks, and
- help address the concern that extensive contracting out of the contracting function could reduce, in the long term, the opportunity to develop adequate numbers of government personnel with a full range of contracting experience.

Defining the right mix of contractor to government contract specialists is not just a matter of numbers, but also of skill sets. The DAU study envisions contractors playing a limited role and performing lower-priority tasks. However, at CCE, complex, high-priority work is often assigned to

[13]The authors suggested that contractor employees should not exceed 25 percent of an activity's total procurement workforce in other than exceptional situations. The authors did not specifically set forth their rationale for recommending this percentage.

the contractors, whose role has been ongoing since 2003. In part, according to agency officials, this is because many of the government employees lack experience with complex procurements. However, we found that while CCE has implemented a 2-year training program for its contract specialist interns, the agency does not have in place a training program for its permanent staff. In fact, according to CCE's former Commander and the current Director of Contracting, contracting staff have had to learn these practices on the job, which has resulted in some performance problems. An agency's overall training strategy—including planning, developing, implementing, and continuous improvement of its programs—is an important factor in ensuring that the staff has the skills, knowledge, and experience to meet agency missions.

Risks Associated with Using Contractors for Acquisition Services Are Being Mitigated to a Mixed Degree

Three broad areas of risk of using contractors as contract specialists are present at CCE, with the risks being mitigated to various degrees. First, we found that the blurred lines demarcating contractor from government personnel could result in creating the impression that contractor employees are government personnel. Contractor employees were not always identified as such to the public and in some cases were named on documents as the government's point of contact. Second, the work being done reflects the descriptive elements listed in the FAR as guidance for assessing the existence of personal services contracts, which are prohibited unless authorized. However, a determination as to whether a personal services contract exists must be made on a case-by-case basis; here, CACI's on-site managers retain control over supervisory and managerial functions, such as approving time cards and making hiring and firing decisions, thus negating the existence of a personal services contract. We found no DOD guidance that elaborated on the factors to be considered in determining whether an unauthorized personal services contract exists or how to mitigate that risk. Finally, although policies and procedures are in place to help mitigate organizational and personal conflicts of interest, in practice, CCE relies on contractor employees to self-identify potential conflicts.

Contractor Contract Specialists Not Always Identified as Such

To avoid confusion by vendors and customers over whether they are speaking to a government employee, it is important to clearly distinguish between contractors and government employees in all interactions. Contractor personnel attending meetings, answering government

telephones, and working in other situations where their contractor status is not obvious to third parties should identify themselves as such to avoid creating the impression that they are government officials.[14] In addition, the FAR states that agencies must ensure that all documents or reports contractors produce are suitably marked as contractor products or that contractor participation is appropriately disclosed. Further, in December 2005, the Assistant Secretary of the Army issued a memorandum, "Contractors in the Government Workplace," stating that "while it is preferred that contractor personnel work in company office space, if Government and contractor personnel must be co-located in the same office space, then, to the maximum extent possible, the contractor personnel should have separate, and separated, space."

At CCE, we found the line separating government from contractor personnel to be blurry. There is no physical separation; the two work side by side in identical office space, and contractor employees are not identified as such on their cubicles. The only apparent distinction is their different badge color.

In addition, contractors were not always identified as such on contracting documents they had prepared. We reviewed 23 contract modifications[15] prepared by contractor employees and found that their status as contractors was not indicated on the documents. Further, on 16 of these modifications, the contractor was identified as administering the contract, and on four, the contractor was listed as the point of contact without identification as a contractor—for example, as the "CCE contact" or "government point of contact." Instances such as these, where the contractor is not identified as such or is misidentified, can cause confusion about the contractor's status and create an impression that the contractor is speaking or acting for the government. For example, we found a situation in which a vendor, in submitting a proposal to the government, listed the contractor contract specialist as the contracting officer, who has the contract source selection authority for the government. Another contract file contained e-mails between a contractor employee and third-party entities—correspondence with a CCE customer

[14]FAR 37.114(c).

[15]Contract modifications are documents that amend or modify existing contract conditions and are signed by the government contracting officer. Bilateral contract modifications are also signed by the vendor providing the goods or services.

agency and notification to a vendor that its bid would not be considered—with no contractor identification at all.

CCE officials told us that the agency has no requirement that contractor employees identify themselves as contractors in the e-mail signature line, which could help ensure that outside parties know they are dealing with a contractor. Further, although the FAR and CCE's orders for contract specialists under the BPAs specifically cite telephone contacts as situations in which contractors should identify themselves as such, a CCE management official did not know whether this was occurring in practice.

When we brought these issues to CCE's attention, the agency began to establish policies to mitigate the risk of contractors being mistaken for government employees and appearing to be speaking for the government. It has since issued a policy that contractor support personnel are not to communicate orally or in writing with other contractors, such as vendors. The contractor contract specialists will still communicate with CCE's federal customers. In addition, the CACI on-site senior manager notified CACI employees at CCE that they are to identify themselves as contractors in all correspondence, including e-mail and voice mail, and documents.

Determination of Whether Personal Services Contract Exists Must Be Made on Case-by-Case Basis

At CCE, the work of the contractor contract specialists, performed in direct support of the government contracting officer and under his or her day-to-day supervision, results in an arrangement that can have characteristics of a personal services contract. Personal services contracts are generally prohibited, unless authorized by statute. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Section 37.104 of the FAR lists six descriptive elements to be used as a guide in assessing the existence of a personal services contract.[16] The presence of any or all of these elements does not necessarily establish the existence of a personal services contract. Such a finding can only be established based on a case-by-case analysis of the totality of the circumstances of each case. The FAR elements are shown in table 1 along with the working environment of the contract employees at CCE. We found that the actual working environment for the contractor contract specialists at CCE touched on all six elements.

[16]FAR Subpart 37.104(d).

Table 1: The Six FAR Personal Services Contract Elements Compared with CCE's Working Environment

FAR elements suggesting personal services contracts exist	CCE contracting environment
1. Performance on-site.	Contractors are on-site at CCE and sit among government personnel performing the same tasks.
2. Principal tools and equipment furnished by the government.	Contractors use government equipment and facilities.
3. Services are applied directly to the integral effort of the agency or an organizational subpart in the furtherance of its assigned function or mission.	CCE's core mission is providing contract support directly to DOD entities. Contractors fulfill capability and workforce gaps at CCE.
4. Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.	Other than reassigning work when a potential organizational conflict of interest exists, there is no difference between the work of a government employee and a contractor employee.
5. The need for the type of service provided can reasonably be expected to last beyond 1 year.	CCE has contracted for contract specialist support on an ongoing basis since 2003.
6. The inherent nature of the service, or the manner in which it is provided, reasonably requires, directly or indirectly, government direction or supervision of contractor employees in order to (1) adequately protect the government's interest, (2) retain control of the function involved, or (3) retain full personal responsibility for the function supported in a duly authorized federal officer or employee.	CCE uses time-and-materials contracts for these services. Because there is no profit incentive for cost control or labor efficiencies when these contracts are used, they require the government to ensure appropriate surveillance over the contractor's performance. Contractor tasks are issued by the government directly to the contractor employee performing the work. The contractors' work is directly reviewed by the government contracting officer. The contractors are performing tasks that are defined by the FAR as closely supporting inherently governmental functions. CCE contracting officers retain the responsibility for making contract awards.

Sources: FAR subpart 37.104(d), CCE data, and GAO analysis.

The FAR provides that each contract arrangement be judged in the light of its own facts and circumstances, with the key question always being whether the government will exercise relatively continuous supervision and control over the contractor personnel performing the contract.[17] For example, GAO bid protest decisions have considered, along with the existence of other factors, the fact that government "managers interviewed and selected contractor personnel for assignment to positions, and routinely requested pay increases and promotions for contractor personnel" to be contributing factors in the existence of a personal services contract.[18] Another bid protest decision considered that "the contractor's right to hire and fire employees, to grant or deny individual leave requests, and to reassign employees negate the existence of a personal services contract as defined in the FAR."[19] CACI's performance, in

[17]FAR 37.104(c)(2).

[18]*Encore Management, Inc.*, B-278903.2, February 12, 1999, 99-1 CPD ¶ 33 at 3.

[19]*W.B. Joley*, B-234146, March 31, 1989, 89-1 CPD ¶ 339 at 2.

this case, of supervisory and management functions, such as approving time cards and leave requests, preparing performance evaluations, and making hiring and firing decisions, means a personal services contract does not exist, even if the six FAR elements are present. Although the distinction between a personal services contract and a non-personal services contract is somewhat murky and requires a case-by-case analysis based on the facts of each circumstance, we found no additional DOD guidance that elaborated on the factors contracting officers or program officials should consider in determining whether a personal services contract exists and how to mitigate against this risk when contractors are working side by side with their government counterparts, perhaps even receiving their daily task assignments from a government supervisor. Because of the type of contract and nature of the contract services provided along with the presence of the FAR's descriptive elements, the CACI contract runs the risk of becoming a personal services contract if the government does not carefully monitor the manner in which services are provided.[20]

When we brought these issues to the attention of CCE, the agency began to take actions to strengthen the management distinction between government and contractor personnel. Before, the contractor personnel were assigned to a team consisting of government and contractor employees, and they generally worked for one contracting officer most of the time. Now, all of the contractor personnel are on a separate team, and the contractors' managers on-site are responsible for assigning work to the contractor employees—unlike the previous situation where the government contracting officer assigned the work. Under this arrangement, contractor contract specialists can work for several different contracting officers, according to a CCE official. In addition, CCE has plans to situate contractors together in an area separate from government personnel and to put nameplates on cubicles to clearly distinguish between contractor and government employees, but these plans have not yet been implemented.

[20]We note the inherent tension between the government's responsibility to refrain from exercising relatively continuous supervision and control over contractor employees under FAR 37.104, the government's obligation to ensure sufficient surveillance of contractor performance for time-and-materials contracts under FAR 16.601(c)(1), and the government's responsibility to ensure enhanced oversight when contracting for functions that closely support inherently governmental functions. See FAR 7.503(d) and FAR 37.114(b).

The Acquisition Advisory Panel[21] recently reported that as the extent of service contracting has grown, the current ban on personal services contracts has created two responses—government managers may find themselves crafting cumbersome and inefficient processes to manage the work of contractor personnel to avoid the appearance that they are exercising continuous supervisory control, or they may simply ignore the ban. The panel recommended replacing the ban with guidance on the appropriate and effective use of personal services contracts. The panel stated that in implementing the recommendation, the government should be allowed to supervise the work performed by the contractor workforce, but current prohibitions on government involvement in purely supervisory or management activities—such as hiring, leave approval, and performance ratings—should be retained.

Mitigations of Organizational and Personal Conflicts of Interest Must Rely Heavily on Individual Contractor Specialists

Reliance on contractor support to meet agency missions can raise the risk of organizational and personal conflicts of interest.[22] In fact, the Acquisition Advisory Panel noted that the government's increased reliance on contractors, coupled with increased contractor consolidations, has escalated the potential for organizational conflicts of interest (OCI). With respect to protecting contractor confidential or proprietary data, the panel recognized the increased threat of improper disclosure as more contractor employees support the government's acquisition function. The panel also found that while there are numerous statutory and regulatory provisions that apply to federal employees to protect against personal conflicts of interest, most do not apply to contractor personnel.

An OCI may be present when a contractor organization has other interests that either directly or indirectly (because of business or relationships with other contractor organizations) relate to the work to be performed under a contract and (1) may diminish its capacity to give impartial, technically sound, objective assistance or advice or (2) may result in it having an unfair competitive advantage. The FAR and GAO bid protest decisions provide guidance for contracting officers to mitigate three types of OCIs:

[21]Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress* (January 2007). Also, see National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1423 (2003).

[22]Whether the contractor providing contract specialist support had an adequate organizational conflict of interest mitigation plan in place has been the subject of GAO bid protests, for example, *The LEADS Corporation v. CACI*, B-292465, September 26, 2003.

unequal access to nonpublic information as part of its performance under a government contract that might provide the contractor firm unfair competitive advantage in a future competition; biased ground rules, such as the firm being in a position to write a statement of work that might provide it an unfair advantage in a future competition; and impaired objectivity when the contractor firm's work under a contract entails evaluating its own work or that of a competitor either through an assessment of performance under another contract or through an evaluation of proposals.[23]

As required under its BPA with CCE, CACI submitted an OCI risk mitigation plan, which lays out the elements of its plan to mitigate the risk of an OCI. According to the plan, the contractor has established a separation, or "firewall," between the business unit that provides contract specialists and program support services to CCE and all other divisions and corporations owned by the company. As a part of the firewall, the business unit's employees are physically separated from the company's other operating groups, proposal databases are separated, and the business unit's employee financial incentives do not depend on the performance of the company's other operating organizations. Also, the business unit providing contract specialists is precluded from submitting proposals in response to solicitations issued by CCE, except for those related to the BPA for contract specialists. In addition, the company provides its employees with OCI training and instructions to immediately notify the contracting officer of a potential OCI; requires them to sign conflict of interest and nondisclosure agreements to protect proprietary or sensitive information belonging to the government or other contractors—for example, cost and pricing data, government spend plan data, and contractor technical proposal data—and not use this information to violate procurement integrity rules; and limits where employees can work within CACI for 2 years after leaving CCE. The nondisclosure agreement also addresses personal conflicts of interest, as the contractor employee must agree not to engage in any conduct prohibited by the Procurement Integrity Act as implemented in FAR 3.104. Finally, a group internal to the company conducts annual reviews of the effectiveness of and adherence to the OCI risk mitigation plan.

Although CCE and the contractor have taken steps to mitigate OCI risks, in practice, identifying and mitigating the risks necessarily relies, to a large

[23]FAR Subpart 9.5.

extent, on individual contractor personnel. Contractor officials indicated that it is the responsibility of the contractor contract specialists to immediately notify the company supervisor and contracting officer of potential OCIs. CACI officials and employees told us of cases where contractor contract specialists had been exposed to potential conflicts of interest, that is, they were assigned to procurements that the company planned to bid on. We were told these employees were subsequently removed from working on the procurements after notifying contractor management and government officials of a potential conflict. Despite these instances, CCE officials told us that they are careful about what procurements they assign to the contractors. For example, the CCE contracting officer's representative[24] told us that she screens requirements packages to determine which ones would present a potential conflict if assigned to a contractor. However, she does not have visibility to the subcontract level, where the contractor could be a subcontractor to a potential bidder.

For purposes of this report, we define a personal conflict of interest as a situation when an individual, employed by an organization in a position to materially influence research findings, recommendations, or both, may lack objectivity or be perceived to potentially lack objectivity because of his or her personal activities, relationships, or financial interests. For example, a conflict can occur when a government employee contacts an offeror during the conduct of an acquisition since this could be construed as seeking employment. Defense contractor employees are not subject to the same laws and regulations that are designed to prevent federal employee conflicts of interests. Moreover, although a new FAR subpart states that contractors should have a written code of business ethics and conduct, neither the FAR nor DOD contracting policy requires that contractor employees be free from conflicts of interest or that they deploy other safeguards to help ensure that the advice and assistance the employees provide is not tainted by personal conflicts of interest.[25] Therefore, mitigating the risks associated with personal conflicts of interest depends on the integrity of the contractors and their employees.

[24]If contract performance will be ongoing, a contracting officer's representative—generally an official at the requiring agency with relevant technical expertise—is normally designated by the contracting officer to monitor the contractor's performance and serve as the liaison between the contracting officer and the contractor.

[25]See GAO, *Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees*, GAO-08-169 (Washington, D.C.: Mar. 7, 2008).

For example, one of the contractors providing contract specialists to CCE has an internal policy for standards of employee ethics and business conduct that addresses personal conflicts of interest. In addition, the company provides mandatory ethics training that covers personal conflicts of interest. According to a company official, rather than having a formal financial disclosure process, its employees are equipped with knowledge of what constitutes a personal conflict of interest, and it is the employees' responsibility to self-report if they have a personal conflict of interest. The company also has a moonlighting policy that requires employees to obtain company approval prior to forming any relationship with a for-profit company.

CCE Is Paying More for Contractor Contract Specialists Than Its Government Employees

CCE is paying more on average for contractor-provided contract specialists than for its government specialists. We reviewed the hours of contractor services CCE purchased under orders pursuant to the four BPAs it established at the end of fiscal year 2006. By the end of fiscal year 2007, CCE had purchased contract support services only from CACI and The Ravens Group, with the vast majority being from CACI. Agency officials informed us that CCE has purchased services of two types of contract specialists: (1) contract specialists II, which are Defense Acquisition Workforce Improvement Act (DAWIA)[26] II-certified/GS-12 equivalents, and (2) contract specialists III, which are DAWIA III-certified/GS-13 equivalents. Because the orders issued pursuant to the BPAs are time-and-materials contracts, payments to contractors are based on the number of labor hours billed at a fixed hourly rate—which includes wages, benefits, and the company's overhead; general and administrative expenses; and profit.[27] Because agency officials stated that CCE has

[26]In 1990, Congress enacted DAWIA to enhance the quality and professionalism of the defense acquisition workforce (Pub. L. No. 101-510). Most of DAWIA was codified in Title 10 of the United States Code, and it has been amended a few times since enactment. DAWIA requires the Secretary of Defense to establish the minimum qualification standards of those personnel performing functions integral to the acquisition process, formalizes career paths for personnel who wish to pursue careers in acquisition, and defines critical or senior management acquisition positions. See GAO, *Defense Space Activities: Management Actions Are Needed to Better Identify, Track and Train Air Force Space Personnel*, GAO-06-908 (Washington, D.C.: Sept. 21, 2006). The certification levels are based on an individual's education, experience, and training. National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510 (1990). See also DOD Manual 5000.52M.

[27]We recently reported on DOD's use of time-and-materials and labor-hour contracts. GAO, *Defense Contracting: Improved Insight and Controls Needed over DOD's Time-and-Materials Contracts*, GAO-07-273 (Washington, D.C.: June 29, 2007).

government contract specialists with the same certifications and GS levels as the contractor contract specialists, we determined that these specialists were comparable. Therefore, we compared the costs and experience of the government and contractor employees within these two categories. We found that the average hourly cost of a contract employee is higher than a government specialist performing the same duties, as shown in table 2.

Table 2: Comparison of the Average Cost of CCE's Government and Contractor Contract Specialists

DAWIA certification/ GS level or equivalent	Average hourly cost of a government employee[a]	Average hourly cost of a contract employee[b]	Percentage difference
II/GS-12	$59.21	$74.99	26.65
III/GS-13	72.15	84.38	16.95

Source: GAO analysis based on government information.

[a]This rate is based on actual salaries and benefits paid during the pay period ending on August 18, 2007, and 68.3 productive hours per pay period. The rate does not include the government's costs of managing the payroll of government employees.

[b]This rate is based on the weighted average rate CCE paid during August 2007 and does not include CCE's cost of managing the contracts for these services.

Key elements of our analysis were as follows:

- The loaded hourly cost of a government employee includes salary, costs of the government's contributions to the employee's benefits, the costs to train the employee, the employee's travel expenses, and the costs of operations overhead—which are the costs of government employees who provide support services, such as budget analysts or human capital staff.
- Government employee salaries and benefits were based on actual data from one pay period. These data were then compared to hourly cost of contractor employees ordered during that same pay period. The cost of a contractor employee is the fully loaded hourly rate the government pays for these services. We reported the weighted average of those hourly rates because the agency used two contractors at two different rates during that pay period.
- We excluded the costs that the government incurs for both government and contractor-provided specialists. These include the costs of supplies, facilities, utilities, information technology, and communications.

Based on a limited number of résumés we reviewed, the contractors generally had more contracting experience than their government counterparts. Résumés were available for six CACI employees supporting

CCE as contract specialists for at least 6 months during fiscal year 2007; they had from 5 to 32 years, or an average of about 18 years, of contracting-related experience. In contrast, the five CCE government contract specialists hired during fiscal year 2007 had from 6 to 17 years, or an average of about 12 years, of contracting-related experience prior to joining the agency. All six contract employees previously worked for, and were trained by, the federal government before being hired by the contractor.

Contract Vehicles Inappropriately Issued and Used to Order Contract Specialists

CCE's issuance of the BPAs with four contractors for contract specialists under GSA's MOBIS schedule was inappropriate as some of the services required in CCE's performance work statements were outside the scope of the underlying contracts. The labor category descriptions in the vendors' GSA schedule contracts were, in most cases, significantly different from the description on CCE's performance work statements and, for the two contractors who have been issued task orders, did not accurately represent the work performed.[28] A GSA official confirmed that contract specialist services were not within the scope of the MOBIS schedule but said it is the responsibility of the ordering agency to ensure that orders are within scope. In addition, we found that one of the other contractors had improperly advertised on GSA's Web site that its contract contained contract specialist services. GSA has initiated corrective actions with the four contractors based on our findings. Because of federal agencies' demand for contract support services, GSA recently implemented a revised MOBIS category for acquisition management support, which includes contract specialist services. Finally, CCE did not comply with Army policy requiring an assertion that work performed by a contractor under a non-DOD contract is within scope of the contract.

Orders for Contract Specialists Were Out of the Scope of the Underlying Contract

The four contractors' BPAs with CCE (CACI, The Ravens Group, Tai Pedro & Associates, and Government Contracts Consultants), established under the GSA schedule contracts, were inappropriately issued as some of the services required in the performance work statements were outside the scope of these underlying contracts. Specifically, their labor category descriptions differed significantly from those required in CCE's

[28]Contract specialists are available under GSA's Temporary Administrative and Professional Staffing Support Services Schedule, but these services are limited to a maximum of 240 work days.

performance work statements, and they did not accurately represent the work that the contractor was to perform. Moreover, CCE has issued task orders for contract specialists against CACI's and The Ravens Group's MOBIS contracts that were outside the scope of those contracts. Where an agency announces its intention to order from an existing GSA contractor, all items ordered are required to be within the scope of the vendors' contracts.[29] Orders issued outside the scope of the underlying GSA contract do not satisfy legal requirements under the Competition in Contracting Act for competing the award of government contracts and limit the government's ability to know if it is paying a fair and reasonable price. In such cases, the out-of-scope work should have been awarded using competitive procedures or supported with a justification and approval for other than full and open competition.[30]

CCE has issued task orders for contract specialists against CACI's and The Ravens Group's MOBIS contracts. Table 3 provides examples of the differences between the GSA schedule contract labor category descriptions and CCE's statements of work for these contractors for a contract specialist—level 3 position. Although the performance work statement does not delineate responsibilities that are specific to the contract specialist, level 3 position, it contains responsibilities for all contract specialist positions as described in the table.

[29]*Tarheel Specialties, Inc.*, B-298197, 298197.2, July 17, 2006, 2006 CPD ¶ 140.

[30]See, generally, FAR Subpart 6.3.

Table 3: Comparison of Labor Categories in Two Contractors' GSA MOBIS Contracts with Requirement in CCE's Performance Work Statement

MOBIS labor category description	CCE requirements
CACI: senior program control analyst **Responsibilities:** Maintains current project documentation and record of changes, including status reports. Assists in establishing budgets and monitoring performance. Directs all or most activities related to financial and administrative functions, such as budgeting, manpower and resource planning, and financial reporting. May research, report on, and recommend solutions to contractual issues. Provides expert functional advice and direction to functional/user area management and project teams working on complex systems. **Experience/education:** Experience in the preparation and analysis of financial statements, working with acquisition systems, or complex vertical business, purchasing applications, or both. General experience required includes progressively more responsible experience in general accounting, acquisition, or management activities.	**Contract specialist – level 3** **Responsibilities:** Provides support and assistance in essentially all areas of FAR-based federal procurement in which advanced or complex knowledge and expertise is required, such as preparing or reviewing pre-procurement packages; actively participating in integrated process teams; developing and managing acquisition plans; preparing/researching support documentation; making recommendations to the contracting officer; handling complex problems through resolution; validating data; and otherwise completing actions needed to successfully advertise, solicit, construct, award, administer, and close out government contract vehicles. **Experience/education:** Master's degree. An advanced degree or acquisition certification is preferred. Eight years of progressive experience supporting and developing large, major, or complex government procurements. In-depth knowledge of the FAR, agency-specific regulations, and current and demonstrated experience with acquisition streamlining initiatives and reforms. Practical knowledge of various acquisition approaches. Ability to formulate appropriate documentation for the various approaches. Experience leading and managing other acquisition professionals.
The Ravens Group: senior budget/business analyst **Responsibilities:** Reviews expenditures and prepares operating budgets for various departments to ensure conformance to budgetary limits. Performs a variety of tasks. **Experience/education:** Requires a bachelor's degree in business, finance, accounting or economics with 8 years of experience in federal government budgeting; the DOD Planning, Programming and Budgeting System; or equivalent budgeting experience. Knowledge of automated systems used in budget formulations and execution is required. Relies on extensive experience and judgment to plan and accomplish goals.	

Source: GAO analysis based on GSA contracts and CCE BPAs.

Our review of the contract file shows that during acquisition planning, CCE's policy and legal offices raised concerns about the use of the GSA MOBIS schedule to meet CCE's requirements.[31] Specifically, in a September 1, 2006, letter to the contracting officer and government contract specialist, CCE's Acting Chief Attorney expressed concern that the schedule "may not provide the right personnel for this requirement," and cited an applicable GAO decision in which the protest was sustained on the basis that vendors' quoted services were outside the scope of their

[31]Although CCE has been procuring contract specialists from the GSA MOBIS schedule since 2003, it established the BPAs with four contractors in September 2006; the contract files contained no evidence of legal objections prior to 2006.

GSA contracts.[32] The CCE attorney determined that the request for quotations (RFQ) was "legally insufficient" because of this and other issues and indicated that the out-of-scope issue, among others, should be considered. According to the legal office, despite this determination, CCE contracting personnel issued the RFQ without returning it to the attorney for further review. According to the Army's internal policies and a March 2006 CCE memorandum regarding legal review procedures, where the contracting officer makes a decision or takes a proposed action that is contrary to legal advice, the contract file must include written evidence to that effect, including a statement of the contracting officer's rationale for proceeding contrary to such legal advice. No such evidence was included in the contract file in this case.

Contractor representatives told us that the linkage between labor categories and the work to be performed is more of an art than a clean-cut science. They told us that they attempted to match the labor categories as best they could by using their GSA labor rates and CCE's requirements. Although acknowledging that the mapping was strained, CACI officials pointed out that it was disclosed in their proposal to CCE and that the company provided CCE with résumés that more closely matched the agency's requirements. CACI officials told us that they have had discussions in the past with GSA about offering contracting support skill sets and what schedule is appropriate. The Ravens Group officials said that the key is the evaluation of the qualifications and level of effort required and relating those factors to the various MOBIS schedule job descriptions and labor rates.

GSA agreed that CCE's orders for contract specialists were issued out of scope of the vendors' underlying MOBIS contracts, but a senior official stated that it is the responsibility of the ordering agency to ensure that orders are within scope of the vendors' contracts. The official told us that while GSA has ownership of the MOBIS schedule, it is only able to perform limited oversight of the orders issued under schedule contracts. The official acknowledged that GSA is aware of instances where agencies

[32]In *American Systems Consulting, Inc.*, B-294644, December 13, 2004, 2004 CPD ¶ 247, GAO determined that an award of a BPA based on a competition of GSA schedule contract vendors, using schedule program procedures, was improper because the awardee's quotation contained services not identified in its contract. We found the services offered to be outside of the contract's scope because the labor categories identified in the awardee's schedule contract as "most nearly equating" to the labor categories in the performance work statement did not match the positions as described in the performance work statement.

have improperly used the MOBIS schedule to hire contract specialists, although it does not know the extent to which this has occurred.

We found that other DOD agencies had used the MOBIS schedule to procure contract specialists but stopped doing so because of concerns about out-of-scope work. In 2004, ACA's Capital District Contracting Center in Fort Belvoir, Virginia, used the MOBIS schedule to hire contract specialists in support of what is now the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A). However, in 2005, the contracting center changed its approach, awarding a similar contract for additional support using full and open competition instead of continuing to issue orders under the MOBIS contract. When the period of performance expired, JCC-I/A awarded its own contract in 2006 for contract specialists, again using full and open competition. According to a former JCC-I/A official involved in the award, the driving factor in the decision to issue a competitive solicitation was the determination that contract specialist services were not in the scope of the MOBIS schedule.[33]

Based on our findings, CCE is planning to solicit a new contract for contract specialists using full and open competition, under the FAR's commercial item acquisition procedures, with a target award date of June 30, 2008. In the interim, according to a CCE official, no more orders are being placed under the current BPAs for contract specialists.

Although CCE has not placed orders for contract specialists with two other firms with which it has established BPAs—Tai Pedro & Associates and Government Contracts Consultants—we found troublesome issues related to their schedule contracts as well. Tai Pedro & Associates' MOBIS contract actually includes a labor category for "contract specialist" services under a category for competitive sourcing support, which allows

[33]We and others have raised concerns about the use of interagency contracts, such as GSA schedule contracts, for the acquisition of services. For example, in April 2005, we reported on breakdowns in the issuance and administration of task orders, issued by the Department of the Interior under a GSA schedule information technology contract, for interrogation and other services in Iraq on behalf of DOD. These breakdowns included issuing task orders that were beyond the scope of underlying contracts, in violation of competition rules, and not properly justifying the decision to use interagency contracting. GAO, *Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations*, GAO-05-201 (Washington, D.C.: Apr. 29, 2005). Also see GAO, *Interagency Contracting: Improved Guidance, Planning, and Oversight Would Enable the Department of Homeland Security to Address Risks*, GAO-06-996 (Washington, D.C.: Sept. 27, 2006). We placed interagency contracting on our high-risk list in January 2005.

contractors to perform competitive sourcing surveys or to assist agencies in developing A-76 procurement strategies.[34] According to GSA officials, the competitive sourcing support category allows contractor contract specialists to assist with A-76 projects and outsourcing efforts, but not with other efforts.

Government Contracts Consultants' MOBIS contract did not contain acquisition support categories. However, the contractor advertised that its contract contained these categories—including contract specialists—on the GSA Advantage Web site, the agency's portal for Web-based procurement. The contractor took this action despite having affirmed in writing to GSA prior to its contract award its understanding that "contract support services are not authorized" under the contract. Until we informed GSA officials of this situation in September 2007, they were unaware that it had occurred. They told us that they normally check postings on GSA Advantage against awarded contracts to ensure that inappropriate services are not advertised, but in this case the situation was overlooked.

GSA Has Initiated Corrective Actions

Based on our findings, GSA began in the fall of 2007 to notify the four contractors that contract specialist services are out of scope of their schedule contracts. For example, GSA notified Government Contracts Consultants that it had been found to be performing out-of-scope services. GSA sent its internal reviewers to the company's facilities to review its task orders to determine what services the company was offering federal customers under its GSA contract. GSA also directed Government Contracts Consultants to remove the incorrect labor categories from its posting on the GSA Advantage Web site, which the company has since done. GSA also notified both CACI and The Ravens Group that they had been found to be performing services outside the scope of their schedule contracts and informed Tai Pedro & Associates that acquisition support services are out of the scope of its MOBIS schedule contract, which is limited to support for competitive sourcing efforts. GSA told CACI, The Ravens Group, and Tai Pedro & Associates that internal reviewers would visit their facilities in fiscal year 2008 to ensure that they are performing within the scope of their contracts and that GSA may periodically ask for copies of recently awarded task orders to be reviewed for scope

[34]Office of Management and Budget Circular A-76 prescribes policies and procedures for use by agencies as they select service providers through competitions among public and private sector sources.

appropriateness. GSA advised all four companies—Government Contracts Consultants, The Ravens Group, CACI, and Tai Pedro & Associates—that if any new out-of-scope work is performed, GSA will take appropriate action, up to and including canceling their contracts or initiating termination for cause proceedings.

Because of the demand for contract support services, GSA recently implemented a revised Special Item Number category—Acquisition Management Support—under the MOBIS schedule. Contract specialist services can be ordered under this category to perform functions such as cost estimating; preparing price negotiation memorandums and statements of work; assisting with acquisition planning, including performing market research and recommending procurement strategies; providing expert assistance in supporting proposal evaluations; assisting with reviews of contractor performance; and investigating reports of contract discrepancies. GSA has links on its Web site for special ordering instructions and an ordering guide for the revised category. These documents primarily discuss mitigating conflicts of interest and ensuring that contractors do not perform inherently governmental functions.

CCE Did Not Properly Justify Use of Interagency Contracting Vehicle

In placing the orders for contract specialist services, CCE did not follow ACA policy and guidance pertaining to interagency contracts. After a number of reports by inspectors general and others regarding problems with interagency contracting, DOD established requirements in October 2004[35] for reviewing and approving the use of non-DOD contract vehicles when procuring supplies and services for amounts greater than the simplified acquisition threshold.[36] These requirements included determining that the tasks to be accomplished or supplies to be provided were within the scope of the contract to be used. ACA's implementing guidance, issued before CCE established the BPAs with the four contractors, required that specific certifications be made when using non-DOD contracts, including procedures for direct acquisitions (i.e., orders placed by an Army contracting or ordering officer against a non-DOD

[35]Memorandum from the Office of the Secretary of Defense, "Proper Use of Non-DOD Contracts," October 29, 2004.

[36]The simplified acquisition threshold is $100,000, except for acquisitions of supplies or services that as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. FAR 2.101.

contract), such as CCE's orders against the vendors' GSA schedule contracts. Prior to the contracting officer's placement of a direct acquisition order for supplies and services, the head of the requiring activity must execute, among other things, a written certification that the supplies, services, or both, are within the scope of the non-DOD contract. Additionally, for the acquisition of services, (1) the requiring activity must obtain written concurrence from the non-DOD contracting officer at the servicing organization (in this case, GSA) that the services to be provided are within the scope of the non-DOD contract, unless the DOD contracting office has access to the non-DOD contract, and (2) the contracting officer must obtain written coordination from supporting legal counsel prior to placement of the order.

CCE's certification for use of a non-DOD contract was undated but signed by the contracting officer. It stated that the services were within the scope of the non-DOD contract, despite the fact that there was a clear disconnect between the descriptions in the contractors' GSA contract labor categories and the services CCE required. In addition, we could find no evidence that CCE obtained written concurrence from a GSA contracting officer, as required, or written coordination from its legal counsel. In fact, the certification listed the point of contact at the non-DOD agency as "to be determined."

Conclusion

The CCE example delineates two major areas of concern in today's environment: hiring contractors for sensitive positions in reaction to a shortfall in the government workforce rather than as a planned strategy to help achieve an agency mission, and the need to properly manage those contractors once they are hired. When contractors are performing duties closely supporting inherently governmental functions—such as those performed by contract specialists at CCE—risks are present that can result in loss of government control and decision making, absent proper mitigation and government vigilance. CCE and its contractors alike bear responsibility for helping to mitigate risks, such as ensuring that measures are in place to prevent conflicts of interest and that contractor personnel are clearly identified as such. Given the blurred lines separating government from contractor employees in such situations as that at CCE, an additional risk is that the work may be done under an improper personal services contract. DOD guidance on this issue—which could help contracting and program officials look beyond the FAR elements to determine the condition and mitigate the risk—is lacking. Because CCE has not considered the appropriate balance of contractor and government personnel performing specific functions, or adequately trained its

government workforce, the agency runs the risk of over reliance on contractors to meet its mission and of paying more in the long run. If CCE relies too heavily on contractors and cannot adequately develop its own workforce, it may not be able to support its DOD customers. The cost of decreased mission capability could be far higher than paying more for contractors. And GSA, as the agency responsible for the schedule program, needs to take steps to ensure that contractors appropriately advertise their available services.

Recommendations for Executive Action

We recommend that the Secretary of Defense issue guidance to clarify the circumstances under which contracts risk becoming improper personal services contracts and to provide direction on how the risk should be mitigated.

To help ensure that CCE has sufficient qualified government personnel to meet its mission, and uses contractors appropriately, we recommend that the Secretary of the Army direct ACA to work with CCE in taking the following three actions:

- identify the appropriate mix of contractor and government contract specialists over the long term and develop a plan to help fill positions to achieve the desired balance;
- implement a training program designed to ensure that CCE's permanent employees develop and maintain needed skills; and
- implement formal oversight procedures to ensure that contractors identify themselves as such in all interactions external to CCE, including telephone communications, e-mail signature lines, and documents, as required by the FAR.

Finally, we recommend that the Administrator of GSA strengthen internal controls to guard against situations where contractors advertise services on the GSA Advantage Web site that are not in their underlying GSA schedule contracts.

Agency Comments and Our Evaluation

DOD and GSA provided written comments on a draft of this report. Their comments are reprinted in appendixes II and III, respectively.

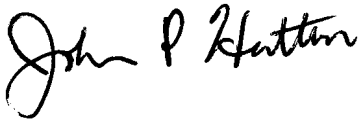
DOD's Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, concurred with all four of our recommendations and outlined actions DOD plans to take or has taken to address them. The Director stated that contractors performing as contract specialists is viewed as a

matter of grave concern. While one of our recommendations called for ACA to work with CCE to identify the appropriate mix of contractor and government contract specialists over the long term, the Director stated that he plans to meet with the Army's Senior Procurement Executive in an effort to eliminate, within 180 days, contractors acting as contract specialists at CCE. If this time frame cannot be met, the Director plans to urge the Army to transfer the workload within CCE to other DOD contracting agencies or sister federal agencies so that contract specialist functions are performed solely by government employees. In response to our recommendation that formal oversight procedures be implemented to ensure that contractors are identified as such in all interactions external to CCE, DOD stated that CCE had recently distributed to its government personnel and support contractors an information paper reinforcing such a policy. DOD's response states that CCE provided GAO with this information paper in February 2008. We did not receive such a paper. After seeing this reference in DOD's comments, we contacted CCE to request a copy of this document, but as of our report issuance date, we had not received it.

GSA agreed with our recommendation that the agency strengthen controls to guard against situations where contractors advertise services on the GSA Advantage Web site that are not in their underlying schedule contracts. GSA noted that while it provides limited oversight of the orders issued under schedule contracts, it takes actions to educate customers about how best to use the contracts. GSA also pointed out that because the revised Special Item Number category "Acquisition Management Support" has been implemented under the MOBIS schedule, contracting for contract specialist work is now within the scope of that schedule.

We are sending copies of this report to interested congressional committees; the Secretary of Defense; the Secretary of the Army; the Commander, ACA; the Commander, CCE; the Administrator of GSA; and the Director, Office of Management and Budget. We will provide copies to others on request. This report will also be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report or need additional information, please contact me at (202) 512-4841 or huttonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff acknowledgments are provided in appendix IV.



John Hutton
Director
Acquisition and Sourcing Management

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The Honorable John McCain
Ranking Member
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United States Senate

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Subcommittee on Defense
Committee on Appropriations
House of Representatives

The Honorable Bernard Sanders
United States Senate

Appendix I: Scope and Methodology

To learn more about the use and roles of contractors providing contract specialist services, we conducted a case study under the authority of the Comptroller General to conduct evaluations on his own initiative. We selected the Army's Contracting Center of Excellence (CCE), in the Washington, D.C., area, as one Department of Defense (DOD) agency using contractors in this role based on a bid protest that had been submitted to our office. The protest, which was denied, challenged the Defense Contracting Command–Washington's (now known as CCE) acceptance of CACI, International's (CACI) organizational conflict-of-interest mitigation plan and the evaluation of proposals for contract specialist services.[1] In fiscal year 2007, CCE obligated almost $1.8 billion in contract actions. Because nearly all of the contractor-provided contract specialists at CCE during the performance of our review were employees of CACI, our primary focus was on the CACI contract. CCE had also ordered a few contract specialists from another firm, The Ravens Group. In all, CCE had established blanket purchase agreements (BPA) with four contractors in September 2006, under General Services Administration (GSA) schedule contracts, to provide contract specialist services.

To determine the extent to which and the reasons CCE is relying on contractors, we obtained contract specialist staffing levels in fiscal year 2007. We reviewed CCE's task orders issued under schedule contracts using the agency's BPAs for contracting support services and agency billing information. We also interviewed CCE's commander and contracting, training, and human capital officials and spoke with officials from the Army Contracting Agency (ACA), which is CCE's parent organization. We analyzed information from the Federal Procurement Data System-Next Generation to determine trends in CCE's use of other agencies' contracts from fiscal years 2005 through 2007. To identify the roles and responsibilities of the contractor contract specialists, we randomly selected 42 contract actions worked on by contractor contract specialists during fiscal year 2006 and fiscal year 2007 through June 13 to determine what work they perform on a daily basis. The intent of this file review was to understand the contractors' day-to-day duties; we selected the files randomly to avoid selection bias. We interviewed management officials from CACI and The Ravens Group. We also interviewed CACI's

[1]*LEADS Corporation*, B-292465, September 26, 2003, 2003 CPD 197 at 1. LEADS Corporation challenged the Defense Contracting Command–Washington's (now known as CCE) acceptance of CACI's organizational conflict-of-interest mitigation plan and the evaluation of proposals. GAO denied the protest.

contract specialists at CCE, but The Ravens Group management would not allow us to interview their employees. We did not consider this to be a scope limitation because of the small number (2 to 3) of The Ravens Group's contract specialists at CCE during the time of our review. For comparison, we interviewed government contract specialists at CCE regarding their roles and responsibilities. We also interviewed government contracting officers about the roles and responsibilities of the government and contractor-provided contract specialists. To obtain information on the general demand for contract specialists in today's marketplace, we interviewed contractor management representatives, and we reviewed a Defense Acquisition University report on contracting out the procurement function,[2] an Air Force-sponsored study to assess the status of contracting out procurement functions within DOD and federal agencies. We also looked at job postings on USA Jobs, the federal government's Web site for job vacancies.

To determine what actions have been taken to mitigate the risks associated with using contractors in contract support roles, we interviewed CCE managers and contracting officers and CACI contract specialists at CCE. We reviewed CACI's organizational conflicts of interest (OCI) mitigation plan and interviewed employees about their knowledge of policies and procedures regarding OCIs. We interviewed CACI officials regarding the company's policies and procedures to mitigate personal conflicts of interest, and we examined related documents—such as CACI's Standards of Ethics and Business Conduct—and the ethics training provided by CACI to its employees. We also reviewed other documents, such as the Acquisition Advisory Panel's 2007 report.[3] In addition, we reviewed sections of the Federal Acquisition Regulation (FAR) pertaining to organizational and personal conflicts of interest, as well as those related to personal services contracts. We conducted a legal review of CCE's performance work statement, BPAs, and orders for contract specialists and compared the elements of personal services contracts in FAR Subpart 37.104 with the environment in which contractors are working at CCE as contract specialists.

[2]Defense Acquisition University, *Contracting Out Procurement Functions: An Analysis.* DAU Research Report 06-001 (Fort Belvoir, Va.: Defense Acquisition University Press, November 2005).

[3]Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*.

To compare the cost of contractor contract specialists to their government counterparts, we reviewed CCE's fiscal year 2007 task orders with CACI and The Ravens Group and agency billing information to identify the hourly labor rate the government is paying for these positions. Because the orders issued pursuant to the BPAs are time-and-materials contracts, payments to the contractors are based on the number of labor hours billed at a fixed hourly rate, which includes wages, benefits, overhead, general and administrative expenses, and profit. We identified the number of hours purchased from each contractor during August 2007 and calculated the weighted average hourly cost for contract specialist II and III positions. We reported the weighted average hourly cost because the agency used two contractors at two different rates in August 2007. To compare these costs to those for a government contract specialist, we identified two groups of CCE employees that perform the same tasks and share similar qualifications, those who were GS-12s with Defense Acquisition Workforce Improvement Act (DAWIA) II certification—which are equivalent to contractor-provided contract specialist II positions—and those who were GS-13s with DAWIA III certification—which are equivalent to contractor-provided contract specialist III positions. We obtained the actual salaries and the government's contributions to the benefits of those contract specialists during the pay period ending on August 18, 2007.[4] We used data from one pay period to capture the costs of government contract specialists because CCE has had turnover in these positions, making it difficult to capture costs throughout the year. From those data, we determined the average hourly rate and costs of benefits for these two groups based on 68.3 productive hours[5] during the pay period. To determine the government's overhead costs, we used the actual costs of support services—salaries and government contributions to the benefits of human capital personnel, manpower personnel, and other support staff as identified by ACA during the pay period ending on August 18, 2007. CCE also provided the agency's expenditures on travel and training during

[4]We included CCE's contributions to employee benefits. These are Thrift Savings Plan, Thrift Savings Plan Basic, Civil Service Retirement System, Federal Employees Retirement System, Social Security, Medicare, Federal Employee Health Benefits, and Federal Employee Group Life Insurance.

[5]Office of Management and Budget Circular A-76, which establishes federal policy for the competition of commercial activities, states that staffing of federal civilian employee positions shall be expressed in terms of annual productive work hours (1,776) rather than annual available hours that include nonproductive hours (2,080 hours). For the purposes of this analysis, which analyzes the costs during one pay period rather than a full year, we are using an equivalent 68.3 productive hours per pay period to determine the hourly rate.

fiscal year 2007. We then determined the average travel and training costs per person per hour for only those government employees who were directly associated with these costs. This average travel and training cost estimate was applied to all government contract specialists supporting CCE and may be higher than the agency's actual cost per person. We excluded from our analysis the costs for supplies, information technology, and communication services because the government pays these costs for contractors as well. We also excluded the costs of facilities and utilities because the Director of Resource Management told us that ACA could not specifically identify these costs (which the government also covers for contractor employees). We compared the average hourly cost—actual salary, government's contribution to benefits, and overhead—of the two groups of CCE contract specialists to the weighted average hourly rate paid for the respective contractor positions. To determine how CACI and CCE employee contracting experience differs, we reviewed available résumés of contractor and government contract specialists. Résumés were available for six CACI contract specialists who have supported CCE for at least 6 months and were identified by CCE officials as doing the same work as government contract specialists. Five résumés were available for CCE contract specialists hired in fiscal year 2007, who were identified by agency officials as doing the same work as the contractors. In reviewing these résumés, we considered previous contracting experience to be the time spent in jobs related to the field of contracting.

To determine whether the contract vehicles used to acquire the specialists were appropriate, we reviewed CCE's contracting strategies to determine whether new contracts were awarded to obtain contract specialists or whether interagency contracts through other federal agencies, such as GSA's schedule program, were used. We analyzed CCE's BPAs with four contractors—CACI, The Ravens Group, Tai Pedro & Associates, and Government Contracts Consultants—and their underlying GSA Mission Oriented Business Integrated Services (MOBIS) schedule contracts to which the BPAs were tied. We also reviewed CCE's performance work statements and analyzed the task orders that have been issued for contract specialists. We reviewed the contract files to obtain documentation, such as legal reviews and compliance with DOD policies on interagency contracting. We interviewed CCE officials and GSA officials, including the Director of GSA's Management Services Center, Region 10, who is responsible for the MOBIS schedule. We reviewed reports by GAO and others concerning the use of interagency contracts. We also reviewed FAR Subpart 8.4, which sets forth the regulations pertaining to GSA's schedule program.

We conducted this performance audit from May 2007 through March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAR 24 2008

Mr. John Hutton
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Hutton:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-08-360, "DEFENSE CONTRACTING: Army Case Study Delincates Concerns with Use of Contractors as Contract Specialists," dated February 20, 2008 (GAO Code 120654).

We fully concur with the recommendations provided in the report. Recently, I testified at House Armed Service Committee Subcommittee on Readiness on the matter of inherently governmental responsibilities. I expressed my concern that we had a small number of contracting organizations that had contractors performing as contract specialists.

I view this to be a matter of grave concern. I plan to meet with the Army's Senior Procurement Executive in an effort to accelerate the transition of contractors out of the contract specialist role. If we can not eliminate the role of contractors acting as contract specialists within 180 days, I plan to urge the Army to transfer the workload within that office to other DoD contracting agencies or sister federal agencies so that contract specialists function are performed solely by Government employees.

Detailed comments on the report recommendations are attached. The Department of the Army Contracting Agency, Contracting Center of Excellence (CCE), provided a response for each recommendation directed to the Secretary of the Army.

We appreciate the opportunity to provide comments on the draft report. My point of contact for this issue is Janice E. Sullivan who is available at (703) 614-4840 and janice.sullivan@osd.mil.

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachment:
As stated

GAO DRAFT REPORT – DATED FEBRUARY 20, 2008
GAO-08-360 (GAO CODE 120654)

"DEFENSE CONTRACTING: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists"

DEPARTMENT OF DEFENSE COMMENTS TO THE GAO RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense issue guidance to clarify the circumstances under which contracts risk becoming improper personal services contracts and to provide direction on how the risk should be mitigated.

DOD RESPONSE: Concur. DoD concurs with the need to provide guidance regarding the appropriate use of personal service contracts and how to mitigate the risks of unauthorized personal service contracts. We are in the process of developing such guidance.

RECOMMENDATION 2: The GAO recommended that the Secretary of the Army direct the Army Contracting Agency to work with their Contracting Center of Excellence to identify the appropriate mix of contractor and government contract specialists over the long term and develop a plan to help fill positions to achieve the desired balance.

DOD RESPONSE: Concur. The Army advises that the Contracting Center of Excellence (CCE) long term goal is to staff the organization solely with government contract specialists. We have put forth an aggressive recruitment effort to fill all vacant government positions with highly qualified contract specialists. Towards this goal, CCE decreased the number of contractor personnel from thirty-one in 2007 to seventeen currently (as of February 26, 2008). Today, however, CCE still needs contractor personnel who, on average, possess greater experience and/or expertise than available in the government workforce. We anticipate the continued reduction of contractors in the CCE workplace over the next two years as the Gansler Commission recommendations are implemented; improving the Army's acquisition workforce and developing Government acquisition personnel who are better trained and more capable of handling the complex requirements of our customers.

RECOMMENDATION 3: The GAO recommended that the Secretary of the Army direct the Army Contracting Agency to work with their Contracting Center of Excellence to implement a training program designed to ensure its permanent employees develop and maintain needed skills.

DOD RESPONSE: Concur. The Army advises that CCE has implemented the recommendation that will ensure Government employees receive training and needed skills as outlined:

a. In-House Training: All managers are required to meet with their employees to discuss career goals and objectives and to ensure that all Individual Development Plans are updated and reflect the desired and required training to remain current. An assessment of major trends and weaknesses in the organization is made and a determination on how to best utilize limited funds available to improve or update the skill levels of all of CCE contracting personnel. Training is conducted through various methods to include lunch time sessions, train-the-trainer, on-the-job training and mentoring. Some of the in-house training provided in FY 2007 included Team Building; Continuous Learning Course (CLC) 033, Contract Format and Structure; CLC 007, Contract Source Selection; Cost and Pricing; lunch time training on various subjects provided by acquisition professional, and monthly luncheons with speakers from National Contract Management Agency (NCMA); and Small Business Training.

b. Defense Acquisition Workforce Improvement Act: Certification requirements are reviewed annually to ensure all personnel are certified at their required level. Over 97% of CCE's personnel meet or exceed their required level.

c. Formal Training: Formal training is conducted at least once a quarter. Four formal training sessions are scheduled for FY 2008. Additional training include web-based courses and paying for personnel to attend outside training. For example, CCE hosts a monthly NCMA professional development opportunity. CCE also established an on the job training and mentoring program within the CCE Directorate of Contracting. On the job training and mentoring provide unique opportunities to our specialists who already possess some job-related skills and the knowledge to learn from their peers. Training schedule for FY 2008 includes Best Values and Source Selection, Performance Based Contract, Performance Work Statement, Commercial Contracting, and Review of Contractor Cost and Pricing Data. When available, CCE funds college tuition for courses related to acquisition or contracting.

RECOMMENDATION 4: The GAO recommended that the Secretary of the Army direct the Army Contracting Agency to work with their Contracting Center of Excellence to implement formal oversight procedures to ensure that contractors identify themselves as such in all interactions external to CCE, including telephone communications, emails signature lines, and documents, as required by the Federal Acquisition Regulation (FAR).

DOD RESPONSE: Concur. The Army advises that CCE recently provided all CCE Government personnel and the CCE support contractors with an information paper which, among other topics, explicitly re-enforced the long-standing policy that contractor employees identify themselves as required by the FAR. A copy was provided to GAO in February 2008. Consistent with Army policy, CCE has always required contractor employee email addresses contain the contractor's company name. Most correspondence (electronic or hard copy) leaving CCE is signed by warranted contracting officers. Those

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documents and emails signed by contractor employees will be reviewed to ensure that the contractor's identity is evident. Ensuring contractor identity was added to CCE's contract file checklist. In addition, telephonic spot checks will be conducted monthly. Finally, CCE took additional steps to ensure that contractor employee identity is known, including having the contractor program manager assign all work to his/her contractor personnel and physically assigning all contractor personnel to the same work area. CCE's legal office also prepared policy documents on the duties and responsibilities of the contractor specialist to include contractor personnel.

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Appendix III: Comments from the General Services Administration

GSA

GSA Administrator

March 19, 2008

The Honorable Gene L. Dodaro
Acting Comptroller General of the United States
Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

The General Services Administration (GSA) appreciates the opportunity to review and comment on the draft report, "DEFENSE CONTRACTING: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists" (GAO-08-360). We also appreciate the Government Accountability Office's (GAO's) acknowledgement of the actions GSA has already taken as a result of the report findings.

The GAO draft report includes one recommendation to GSA, namely that GSA strengthen internal controls to guard against situations where contractors advertise services on the GSA Advantage! website that are not in their underlying GSA schedule contracts. We agree with the recommendation and will take appropriate action.

Technical comments that update and clarify statements in the draft report are enclosed and incorporated herein by reference. If you have any questions, please contact me. Staff inquiries may be directed to Mr. Kevin Messner, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Cordially,

Lurita Doan
Administrator

Enclosure

cc: John Hutton, Director, Acquisition and Sourcing Management

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
Telephone: (202) 501-0800
Fax: (202) 219-1243
www.gsa.gov

Government Accountability Office Draft Report, "DEFENSE CONTRACTING: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists" (GAO-08-360)

GSA Comments

Page 22, paragraph 3: Beginning at "GSA agreed that CCE's orders for contract specialist were issued out of scope ... but a senior official stated ... it is only able to perform limited oversight of the orders issued under the schedule contracts."

GSA Comment:
The report correctly notes that GSA performs limited oversight. However, GSA does take extensive action to educating customers in how to best use Schedule contracts. In managing the schedules, GSA:

- Develops and manages Special Item Numbers (SIN) descriptions to ensure that they clearly convey what services are covered and what services are not covered
- Operates GSA Advantage!
- Provides guidance on best use of schedules via many channels
- Leads regulation in Federal Acquisition Regulation (FAR) 8.4. This provides ordering procedures for agencies to use schedules appropriately
- Evaluates contractor performance and compliance with scope through the Customer Assessment Initiative (CAsI) Report Card
- Delivers regular customer training courses, in person and via webinar
- Publishes Multiple Award Schedule (MAS) Owners Manual (updated edition coming soon)
- Consults to advise customer agencies on best way to use schedules
- Conducts annual compliance surveys to identify on-going opportunities to improve schedule usage
- Issues Frequently Asked Questions (FAQ's) for all of our schedules
- Conducts scope review, consultations and assists with acquisition planning to customers when requested

Nonetheless, it is the responsibility of the ordering activity to follow ordering procedures and stay within scope. It is also the responsibility of the contractor to follow Terms & Conditions of its contract.

Page 24, paragraph 2: Because of the demand for contract support services, GSA recently implemented a revised Special Item Number category—"Acquisition Management Support"—under the MOBIS schedule.

GSA Comment:
We appreciate GAO's acknowledgement of recent actions undertaken, but we note that the information GSA posts on its website also provides guidance that is directed to ordering activities, as well as contractors, to ensure that both parties are aware of their responsibilities and limitations under the regulations. As a result of the change to MOBIS last month, contracting for contract specialist work is now within the scope of the schedule.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

John Hutton, (202) 512-4841 or huttonj@gao.gov

Acknowledgments

In addition to the individual named above, Michele Mackin, Assistant Director; Erin Schoening; William Allbritton; Timothy Carr; Daniel Chen; Justin Jaynes; Kenneth Patton; Charles Perdue; and Sylvia Schatz made key contributions to this report.

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