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## **Inherently Governmental Functions**

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### **The Scenario**

The auditor was reviewing contractor invoices at an overseas location. During the review, the auditor noted that one of the contractors working at the Contracting Office certified payments for numerous vendor invoices and salaries to local vendors. Some of the invoice charges appeared excessive such as:

- \$5,000 for monthly janitorial services for a 1,500 square foot building
- \$10,000 to repair water damage to three trailers

The auditor requested interviews with the Contracting Officer and finance office officials to determine why the contractor was certifying invoices to local vendors for services and salaries. During the interview, the Contracting Officer and finance manager stated that the contractor often approved invoices when they were too busy or emergency supplies were requested. The Contracting Officer reviewed the invoices when they had time; however, they were working twelve hour days and were often several weeks behind in their reviews.

The auditor reminded the Contracting Officer that Federal Acquisition Regulations (FAR) prohibited contractors from performing inherently governmental functions, which includes certifying/approving payments to local vendors on behalf of the United States government. FAR 2.101 provides the following guidance:

“An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to ... (v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal Funds.”

The auditor noted that the excessive invoice charges might indicate that the contractor was accepting bribes or kickbacks from local vendors in exchange for preferential treatment. The Contracting Officer stated that they doubted this was occurring because the contractor worked closely with the Department of Defense for the past two years and was an exceptional employee. The auditor expanded their review of payments certified by the suspect employee and observed the following trends:

- Twelve payments for translating services to the contractor’s brother within the past four months.
- Eighteen certified invoices for rubbish removal services for a local vendor. The auditor noted that this contract was previously awarded to another local company.

**General Comments / Lessons Learned.** Department of Defense personnel should closely monitor contractors assigned to provide assistance with contract administration at overseas locations. Most importantly, auditors should be alert to situations where contractors are performing inherently governmental functions because this can increase the Government's exposure to fraud. When conducting audits in Southwest Asia, auditors should remember that increasing workloads and demanding schedules could negatively affect the Department of Defense's ability to oversee the execution and administration of some Government contracts.

Auditors and contracting personnel assigned to work in Southwest Asia should be aware of business practices that are incompatible with United States procurement law and regulations. For example, the practice of baksheesh\* directly conflicts with laws and regulations prohibiting the solicitation, offer or acceptance of bribes, gifts, and gratuities from foreign contractors from Department of Defense personnel. Baksheesh includes the Western concepts of charity and expression of gratitude for services (similar to the Western practice of tipping). However, it also encompasses the act of overt bribery for favorable treatment. While laws in several countries prohibit the practice in business, the laws are seldom enforced and the practice remains widespread.

#### **FRAUD INDICATORS**

- **Contractors certify payments for vendor goods, services, or salaries.**
- **Increased workloads and responsibilities prohibit ongoing Department of Defense monitoring of each contractor's work.**
- **Contractors perform inherently governmental functions,**
- **Evidence of bribery or kickbacks such as payments to a contractor's family members and/or close associates and favoritism to a vendor or small groups of vendors.**

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\* Baksheesh is the term used to describe tipping, charitable giving, and certain forms of political corruption and bribery in the Middle East and South Asia. (<http://wikipedia.org/wiki/Baksheesh>)