



United States Department of Defense  
**Office of Inspector General**

Contingency Contracting:  
A Framework for Reform

Report No. D-2010-059

May 14, 2010

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## Acronyms and Abbreviations

COR	Contracting Officer Representative
COWC	Commission on Wartime Contracting
DCAA	Defense Contract Audit Agency
DCIS	Defense Criminal Investigative Service
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
IG	Inspector General
QASP	Quality Assurance Surveillance Plan
SPO	Special Plans and Operations
U.S.C.	United States Code



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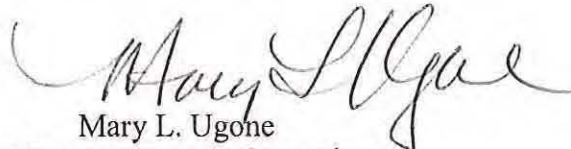
May 14, 2010

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Contingency Contracting: A Framework for Reform (Report  
No. D-2010-059)

We are providing this report for your information and use. We did not issue a draft report. This report is based on a body of work performed by the DOD Office of Inspector General related to DOD's contingency contracting that was issued from October 1, 2007 through April 1, 2010. This report contains no recommendations; therefore, we do not require written comments.

Questions should be directed to Bruce Burton at (703) 604-9071.

  
Mary L. Ugone  
Deputy Inspector General  
for Auditing

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# Results in Brief - Contingency Contracting: A Framework for Reform

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## What We Did

Our overall objective was to provide DOD field commanders and contract managers with information on systemic contracting issues identified in DOD Inspector General products issued from October 1, 2007 through April 1, 2010, that involve high-risk areas of contract management and identify actions that need to be taken to correct these issues for future contracting. We reviewed 34 reports and 19 Defense Criminal Investigative Service investigations related to contracting in contingency operations with the primary focus being work done in Iraq and Afghanistan. Defense Criminal Investigative Service investigations were included separately in Appendix C because the fraud investigations are distinctly different from the auditing process. We also summarized the DOD Response to the Interim Report, “At What Cost-Contingency Contracting in Iraq and Afghanistan,” by the Commission on Wartime Contracting in Iraq and Afghanistan. Our summary of the DOD response to the Commission on Wartime Contracting in Iraq and Afghanistan was included to show the progress and focus DOD has on contingency contracting. Their work and ours have a distinct correlation because we both seek to improve program and contract management.

## What We Found

The DOD IG issued 34 reports and completed 19 investigations of fraud from October 1, 2007 through April 1, 2010, that pertain to the contracting process. We reviewed the 34 reports and found 10 systemic issues related to contracting deficiencies with the top 5 issue areas being:

1. Requirements,
2. Contract Pricing,
3. Oversight and Surveillance,
4. Property Accountability, and
5. Financial Management.

Additionally, we reviewed the 19 fraud investigations, shown on page 42, and determined that the criminal offenses occurred during the award and contract administration phases.

The “Key Aspects of the Contracting Process” flowchart on page iii and the “Fraud Indicators and Poor Practices in Relation to the Contracting Process” flowchart on page iv are useful resources to DOD field commanders and contract managers. These flowcharts provide:

- a useful snapshot of key contract issues and fraud indicators related to contingency operations, and
- a visual tool for Commanders and contracting officers to assess the strengths and weaknesses in their contracting approaches and real-time awareness of areas that might be susceptible to fraud and contributors to waste and abuse.



Source: Army Photograph

The “Key Aspects of the Contracting Process” flowchart shows the contracting process in four distinct phases: pre-award, award, contract administration, and contract closeout. Each phase provides actions that should be taken during program and contract management. The red text indicates the systemic issue areas identified in our audits.

The “Fraud Indicators and Poor Practices in Relation to the Contracting Process” flowchart identifies examples of fraud indicators and poor contract administration practices that may occur in the first three contracting process phases (pre-award, award, and contract administration).

Use of this information should lead to immediate improvements in the environment of contingency operations. Commanders and contract managers can use these charts to assess their contracting operations, to identify areas that could be improved, to ensure the best contracting practices are implemented, and to identify vulnerabilities to fraud, waste, and abuse.

## **What Has Been Done Based On Our Audits**

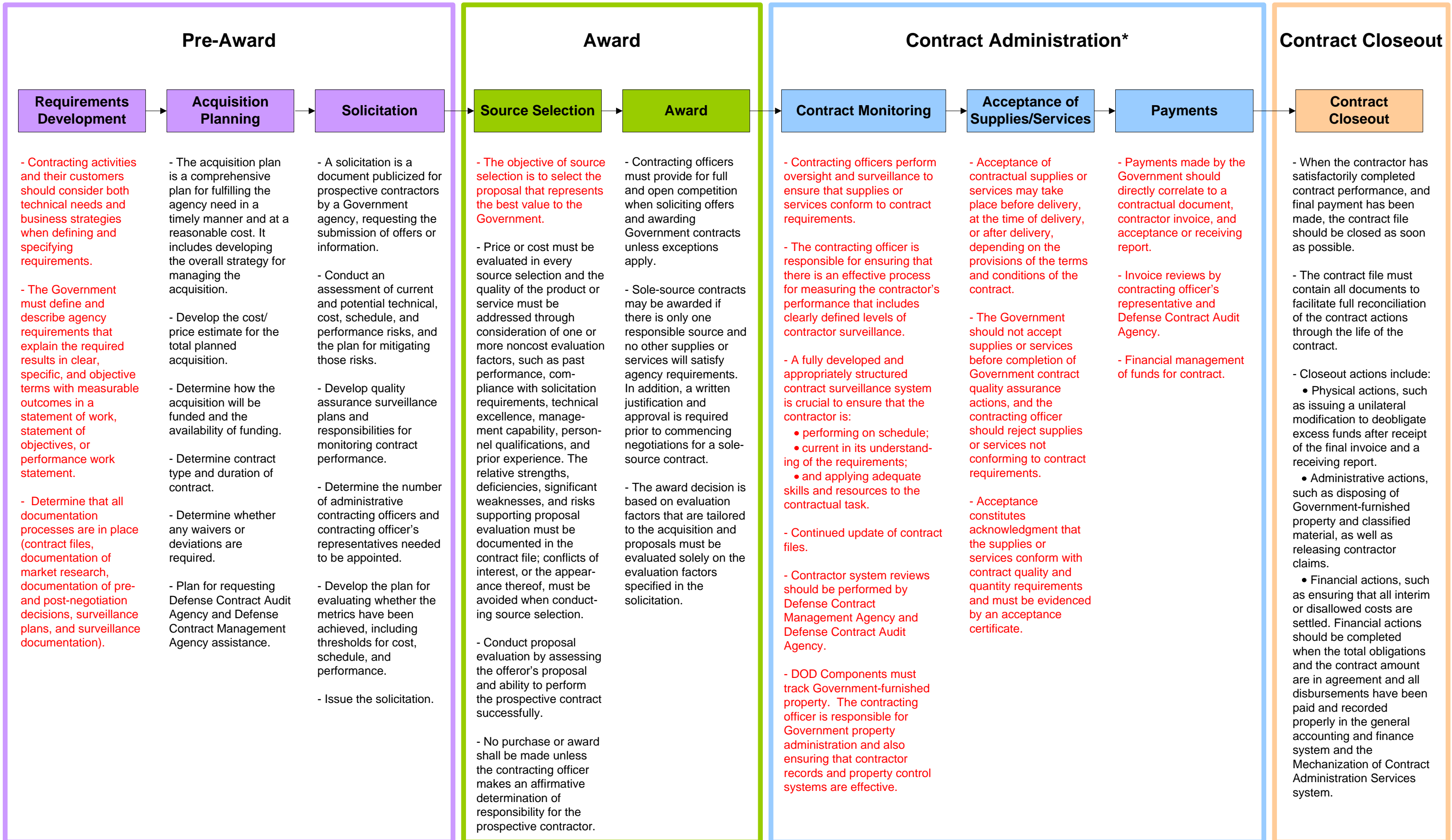
We compiled the recommendations made for each of the 5 top issue areas. Specifically, our recommendations were for management to:

- ensure all requirements are fully defined and properly compete all requirements;
- ensure a fair and reasonable price is received;
- develop a Quality Assurance Surveillance Plan and properly designate a Contracting Officer Representative;
- establish records and maintain accountability for Government property; and
- review all invoices and reconcile the services and products received.

## **What Needs To Be Done**

The effectiveness of contractor support of expanded U.S. operations in Afghanistan and other contingency operations could be compromised by the failure to extract and apply lessons learned from Iraq. As we surge into Afghanistan, it is critical that we review the shortfalls identified and develop a framework to achieve better contracting for contingency operations in Afghanistan and future contingencies. Consequently, we have identified necessary steps to improve contracts in current and future contingency operations, based on our review of the reported deficiencies.

# Key Aspects of the Contracting Process



Red Text = Top five recurring contracting issue areas.

\* There are 70 contract administration functions in the Federal Acquisition Regulation.

# Fraud Indicators and Poor Practices in Relation to the Contracting Process

Pre-Award		
Requirements	Contract Documentation	Contract Type
<ul style="list-style-type: none"> <li>- The Government failing to state requirements functionally to the maximum extent possible. Specifications that are vague make it difficult to reasonably compare estimates.</li> <li>- The Government defining statements of work and specifications to fit products or capabilities of a single contractor, which effectively excludes competition.</li> <li>- The Government splitting requirements to use simplified acquisition procedures in order to avoid review and approval.</li> <li>- The Government modifying the contract shortly after award in order to make material changes in the requirements or statement of work.</li> </ul>	<ul style="list-style-type: none"> <li>- A pattern of missing documents or documentation with outdated information in the contract file.</li> <li>- Contract documents that are altered, backdated, or modified to cover deficiencies.</li> <li>- Contract awards made without adequate documentation of all pre-award and award actions.</li> <li>- Invoices that do not have adequate supporting documentation or supporting documentation is incomplete.</li> </ul>	<ul style="list-style-type: none"> <li>- The high risk to the Government in cost-reimbursement contracts may provide an opportunity for fraud to occur.</li> <li>- The contracting officer extending the duration of a cost-reimbursement or time-and-materials contract after experience provided a basis for firmer or fixed pricing.</li> <li>- Award/use of an illegal cost-plus-percentage-of-cost contract.</li> </ul>

Award	
Source Selection	Contract Pricing
<ul style="list-style-type: none"> <li>- Improper relationships between Government and contractor personnel.</li> <li>- The Government's failure to perform market research to determine evaluation factors, contracting method, or whether commercial items or nondevelopmental items would meet the Government's needs.</li> <li>- The Government restricting procurement to exclude or hamper any qualified contractor.</li> <li>- The Government revealing information about procurements to one contractor that is not revealed to another.</li> <li>- The Government accepting late or nonresponsive proposals, or accepting proposals from nonresponsive offerors.</li> <li>- The Government improperly disqualifying offerors.</li> <li>- The Government exercising favoritism towards a particular contractor during the evaluation process.</li> <li>- The Government awarding contracts to contractors with poor records of performance.</li> <li>- The Government awarding contracts that include items other than those contained in the bid specifications.</li> <li>- The Government's approval of a justification for less than full and open competition based on improper reasons or inaccurate facts.</li> </ul>	<ul style="list-style-type: none"> <li>- The Government not preparing estimates or preparing estimates after solicitations are requested.</li> <li>- The Government and contractor utilizing unqualified personnel to develop cost or pricing data used in estimates.</li> <li>- Government estimates and contract award prices are consistently very close.</li> <li>- The Government approves items that are of lesser value but the contract cost is not reduced.</li> <li>- The contractor issuing an engineering change proposal soon after the award of a contract.</li> </ul>

Contract Administration				
Oversight and Surveillance	Inherently Governmental	Property Accountability	Award Fee	Financial Management
<ul style="list-style-type: none"> <li>- Contractors awarding subcontracts to unsuccessful bidders.</li> <li>- The Government providing materials or services to contractors even though contractors are being paid to provide the materials or services.</li> <li>- The administrative contracting officer approving modifications.</li> <li>- Contractors failing to meet terms but no compliance efforts are undertaken.</li> <li>- The Government certifying receipt of goods without performing inspections.</li> <li>- The user frequently complaining of poor quality of supplies or services provided under a contract. This may indicate that contractors are delivering something less than what you are paying for.</li> <li>- The Government failing to appropriately close out the contracts in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>- Increased workloads and responsibilities that prohibit ongoing DOD monitoring of each contractor's work.</li> <li>- Contractors certifying payments for vendor goods, services, or salaries.</li> </ul>	<ul style="list-style-type: none"> <li>- Inadequate management oversight and physical inventory control.</li> <li>- Unreliable property inventory data.</li> <li>- Inventory records disclose unusual patterns when compared to physical inventory reviews that cannot be reasonably explained.</li> <li>- Inventory items marked with incorrect disposal condition codes, such as repairable or scrap when they should be labeled excellent.</li> <li>- Failure to return Government-furnished equipment.</li> </ul>	<ul style="list-style-type: none"> <li>- Failure to properly document contractor performance.</li> <li>- The fee determining official's failure to properly document award fee determinations that differ from Award Fee Review Board recommendations.</li> <li>- Award fee granted is not reflective of the contract oversight and surveillance assessments.</li> </ul>	<ul style="list-style-type: none"> <li>- The contractor submitting false invoices or claims to the Government.</li> <li>- Excess profits on either a specific contract, product line division may be a bid fraud indicator.</li> <li>- Later contractor billings showing a downward adjustment of material costs as labor overhead costs increase.</li> <li>- The Government paying contractors for the same items or services without an attempt to recoup the overpayments.</li> <li>- The Government not regularly reconciling contract payments, transactions, and inventory.</li> <li>- Contractors' failure to correct known system deficiencies.</li> <li>- Contractors or suppliers complaining that they are not being paid in a timely manner. This may indicate fraudulent manipulations and diversion of Government resources through supply or finance operations.</li> <li>- The Government's failure to deobligate funds.</li> </ul>



# Table of Contents

<b>Results in Brief</b>	i
Contract Process	iii
Fraud Indicators in Relation to the Contracting Process	iv
<b>Introduction</b>	1
Objectives	1
Background	1
<b>What We Found</b>	2
1. Requirements	3
2. Contract Documentation	6
3. Contract Type	8
4. Source Selection	11
5. Contract Pricing	12
6. Oversight and Surveillance	13
7. Inherently Governmental Functions	19
8. Property Accountability	21
9. Award Fees	23
10. Financial Management	24
<b>What Has Been Done Based On Our Audits</b>	30
<b>What Needs To Be Done</b>	34
<b>Appendices</b>	
A. Scope and Methodology	37
Prior Coverage	37
B. Issue Areas by Audit Report	38
C. National Procurement Fraud Task Force	39
D. Fraud Indicators in the Contracting Process	44
E. Commission on Wartime Contracting	
Interim Report and DOD's Response	48
F. DOD Inspector General Reports	53



# Introduction

## Objectives

Our overall objective was to provide DOD field commanders and contract managers with information on systemic contracting issues identified in DOD Inspector General (IG) products issued from October 1, 2007 through April 1, 2010, that involve high-risk areas of contract management and identify actions that need to be taken to correct these issues for future contracting. This report provides a contract framework and tool for training personnel in the Defense Acquisition Workforce Improvement Act career fields. See Appendix A for a discussion of the scope and methodology, as well as prior coverage.

## Background

DOD is the world's largest purchaser of goods and services. DOD spent \$392 billion in FY 2008 and \$366 billion in FY 2009 on contracts. The DOD acquisition and contracting community continues to face the stress of managing the increasing Defense budget with a smaller and less capable workforce. The size and skill of the DOD acquisition workforce has not kept pace with the growth of its contract oversight responsibilities. Effective oversight of the diverse functions performed under high dollar value logistics and support contracts requires a sizeable cadre of highly-trained Government contracting personnel with specialized knowledge and significant acquisition expertise. Collective results of work conducted throughout Southwest Asia have led the DOD IG to conclude that a relatively small number of inexperienced civilian or military contract administrators and support personnel were assigned far-reaching responsibilities for an unreasonably large number of contracts. In order to meet urgent warfighter needs in contingency operations, contracted procurements were expedited, contributing to less than prudent contracting practices.

**DOD Spending on Contract Awards**  
(Amounts in billions of dollars)

<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2008-2009</b>
\$392.1	\$365.9	\$758.0

The United States Code (U.S.C.), Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), DOD 5000 series of acquisition guidance, and DOD Regulation 7000.14-R, "The DOD Financial Management Regulation," provide the policies, directives, guidance, and instructions for awarding and administering contracts. The contract process flowchart, on page iii, highlights the key parts of the contracting process based on Federal and DOD guidance.

# What We Found

We reviewed 32 Audit reports and 2 Special Plans and Operations (SPO) reports issued by the DOD IG from October 1, 2007 through April 1, 2010, that involve high-risk areas of contract management and identify actions that need to be taken to correct these issues for future contracting. In addition, we reviewed 19 Defense Criminal Investigative Service (DCIS) investigations dealing with contingency contracting issues. DCIS investigations were included separately because the fraud investigations are distinctly different from the auditing process (Appendix C). The reports and investigations covered a wide variety of acquisition programs and contracting issues. The DOD IG also reported on DOD adherence to laws and regulations, specifically the FAR and the DFARS.

DOD IG audits were initiated based on internal DOD management requests, Defense Hotline allegations, statutory requirements, congressional requests, and referrals from investigative agencies. These audits disclosed a wide array of problems involving compliance with Federal and DOD policies that were designed to ensure DOD receives what it contracted for and at the best price. We grouped the deficiencies discussed in the reports into the following 10 issue areas in contracting process order:

1. Requirements,
2. Contract Documentation,
3. Contract Type,
4. Source Selection,
5. Contract Pricing,
6. Oversight and Surveillance,
7. Inherently Governmental Functions,
8. Property Accountability,
9. Award Fees, and
10. Financial Management.

Appendix A explains the methodology we used in reviewing these reports and how we determined the issue areas to summarize in the report. Appendix B contains a list of the issue areas by report number. Most of the reports identified more than one issue area. Appendix F is a list of all the reports and the Web site to obtain copies.

Appendix C discusses the 19 DCIS investigations involving fraudulent contracting activity in Southwest Asia from October 1, 2007 through April 1, 2010. Appendix D provides a description of fraud indicators at different phases/steps throughout the contracting process.

Appendix E discusses similar issues identified in a June 2009 Interim Report by the Commission on Wartime Contracting (COWC) in Iraq and Afghanistan and DOD's response to that report. We included DOD's response to show the progress and focus DOD has on contingency contracting. Their work and ours have a distinct correlation because we both want to improve program and contract management.

## **Contingency Contracting**

DOD routinely uses contracted support in contingency operations. Contingency contracting is direct contracting support to tactical and operational forces engaged in armed conflict and noncombat contingency operations such as disaster relief efforts including Hurricane Katrina and the California wildfires, both domestic and overseas. Contingency contracting is the process of obtaining goods, services, and construction from commercial sources via contracting means in support of contingency operations. A contingency contract is a legally binding agreement for supplies, services, and construction awarded by Government contracting officers in the operational area, as well as other contracts that have a prescribed area of performance within a designated operational area.

Contingency contracting encompasses all contracting done in a contingency environment, including stability operations, natural disasters, and other catastrophic events. DOD has experienced an increased reliance on contractors to support the operational force. Contractors are called upon to fill a growing number of back office positions, provide front-line support in contingencies, and help with the cradle-to-grave contracting process.

We identified 10 systemic issues areas related to contracting deficiencies.

### **1. Requirements**

Establishing appropriate and accurate requirements is one of the most important parts of the contracting process. If program officials do not establish specific, well-defined requirements, all aspects of the contracting process that follow are adversely affected. The requirements process is used to deliver the capabilities required by the warfighter. Acquisition contracting begins when agencies identify their needs and clearly define the requirements necessary to satisfy those needs. Contracting activities and their customers should consider both technical needs and business strategies when defining and specifying requirements. The Government must define and describe agency requirements that explain the required results in clear, specific, and objective terms with measurable outcomes. Additionally, contingency contracting officers must ensure that specifications reflect only what is needed to meet the requirements of the mission and that the statement of work, statement of objectives, or performance work statement will not unnecessarily restrict competition or innovation. Further, if changing requirements necessitate contract modifications, the contracting officer must ensure that the changes are within the scope of the original contract prior to executing the modifications.

Deficiencies related to requirements may be categorized into two distinct issue areas: unclear/change requirements and out-of-scope requirements.

### **Criteria for Establishing Clear Requirements**

FAR Subpart 46.201, "Quality Assurance: General," states that the contracting officer should include appropriate contractor quality requirements during the solicitation. FAR Part 37, "Service Contracting," states that performance-based service contracts should include a performance work statement. A performance work statement should describe

the required services in terms of the desired results rather than how the work should be accomplished. Additionally, when using a performance work statement, agencies should use measurable performance standards.

Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the planner should consult with requirements and logistics personnel who determine type, quality, quantity, and delivery requirements. According to FAR Subpart 7.1 "Acquisition Plans," the agency should perform acquisition planning and conduct market research for full and open competition, or when full and open competition is not required, obtain competition to the maximum extent practicable. Specifically, the agency head is responsible for ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with regard to the nature of the supplies and services being acquired. In addition, the agency head is required to establish criteria and thresholds with increasingly greater detail in the planning process as the acquisition becomes more complex and costly. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner.

### **Report Examples of Unclear/Changing Requirements**

The Regional Contracting Command Bagram did not follow FAR standards for contracting procedures relating to quality assurance. The Regional Contracting Command Bagram awarded construction contracts that had poorly written statements of work that often lacked specific requirements and did not clearly define the acceptable standards for construction projects. Joint Contracting Command-Iraq/Afghanistan personnel stated the reason for the poor statements of work was a lack of available subject matter experts to consult with during the procurement phase of the contracting process. The nonspecific, unclear statements of work contributed to the poor quality of buildings and projects accepted by the U.S. Government. The unclear statements of work were one of multiple factors contributing to the \$3.4 million of rework at Bagram Air Field for rewiring housing units, reinstalling sewage lines for latrines and repairing flooring. (Report No. D-2008-119)

The Combined Security Transition Command-Afghanistan and Afghanistan Engineer District improperly exercised a contract option that did not have well-defined requirements on one of the Kabul National Military Hospital contracts. As a result, the Afghanistan Engineer District may have spent \$770,000 of unsupported Afghanistan Security Forces funds unnecessarily on the two Kabul National Military Hospital contracts. For example, Combined Security Transition Command-Afghanistan and Afghanistan Engineer District did not properly define a contract requirement for an oxygen supply system at the National Military Hospital. The Afghanistan Engineer District exercised the option for the

replacement of an oxygen supply system as part of the award of the contract. However, more than one year later, the Afghanistan Engineer District removed the oxygen supply system requirement because it was discovered that the scope of the requirement would have to be significantly increased in order to bring the work up to code. Because the oxygen supply system requirements were not fully defined at the time the contract was awarded, the exercise of the oxygen supply system option was not appropriate. As a result of the removal of the oxygen supply system requirement, the Afghanistan Engineer District inefficiently spent \$170,666 for design costs for an oxygen supply system that was never delivered. (Report No. D-2009-076) Figure 1 shows a picture of the Kabul National Military Hospital.

**Figure 1. Kabul National Military Hospital**



Source: DOD IG Report D-2009-076

### **Criteria for Awarding Out-of-Scope Requirements**

According to FAR Part 6, “Competition Requirements,” contracting officers must promote and provide for full and open competition when awarding out-of-scope modifications to existing Government contracts. The competitive procedures available for fulfilling the requirement for full and open competition include sealed bids, competitive proposals, or a combination of competitive procedures. A contract awarded without providing for full and open competition must contain a reference to the specific authority under which the contact was awarded.

### **Report Examples of Out-of-Scope Requirements**

The Marine Corps exceeded the maximum quantity of vehicles to be ordered resulting in a violation of the scope of the contract. The contracting officials awarded 5 delivery orders to 1 contractor for a total of 4,455 Mine Resistant Ambush Protected Category I vehicles and 6 delivery orders to another contractor for an unidentified number of Category I vehicles even though the maximum quantity of Category I vehicles to be ordered under each contract was 1,500. The contract was modified twice to increase the maximum number of Category I vehicles that could be ordered from 1,500 to 4,000 vehicles; which still does not cover the additional 455 vehicles that were ordered. Marine Corps Systems

Command officials stated that they saved the Government \$127.3 million by paying base year prices instead of the higher option year prices for the increased number of vehicles purchased in the base year. However, the vehicles were purchased in the base year, and the number of vehicles ordered in excess of the initial contract maximum was significantly beyond the contract scope. Prudent business practices would dictate that the buy be recompeted or, at a minimum, the price renegotiated to ensure a fair and reasonable price for the increased number of vehicles. (Report No. D-2009-046) The following picture depicts a Mine Resistant Ambush Protected Vehicle in Afghanistan.

**Figure 2. A Mine Resistant Ambush Protected Vehicle During a Patrol in Afghanistan**



Source: [www.defenseimagery.mil](http://www.defenseimagery.mil)

The U.S. Air Forces Central War Reserve Materiel contracting officer issued contract modifications outside the scope of the War Reserve Materiel contract. Specifically, the contracting officer modified the War Reserve Materiel performance work statement to include two additional requirements, valued at \$23.5 million, that were outside the scope of the original War Reserve Materiel performance work statement. The two additional requirements added were the requirement to refresh the Air Force High Mobility Multipurpose Wheeled Vehicle and provide operations, maintenance, and support for the Naval Forces Central Command munitions. The modifications were outside the scope of the original performance work statement because they included work that Air Force Central Command and the contractor had not contemplated or foreseen when they negotiated the original War Reserve Materiel contract. This occurred because the contracting officer failed to consider scope constraints when U.S. Air Forces Central functional personnel and U.S. Naval Forces Central Command personnel requested the use of the War Reserve Materiel contract for the additional requirements. As a result, the War Reserve Materiel contracting officer did not properly compete the additional requirements and may not have received fair and reasonable prices. (Report No. D-2009-108)

## **2. Contract Documentation**

The head contracting office and contract administration office should maintain a contract file that contains records of all contractual actions taken during that contract. The



documentation in the contract file should support the rationale and actions taken for the entire procurement process and support all contractual actions taken. Specifically, the contract file should contain documentation that supports the basis of the acquisition and the award of the contract; assignment of contract administration; the performance of contract administration responsibilities and duties; and actions taken reflecting contract payment. Additionally, the contract file should provide a complete audit trail that can be used to support future reviews, investigations, and congressional inquiries. Examples of documentation contained in the contract file include:

- a signed copy of the awarded contract, all contract modifications, and documents that support the contract modifications;
- justifications and approvals;
- determinations and findings;
- contract type justification;
- source selection documentation;
- cost or price analysis;
- quality assurance and property records; and
- bills, invoices, vouchers, and supporting documents.

Figure 3 shows Iraqi contractor agreeing to contract terms.

**Figure 3. Iraqi Construction Contractor Signs Contract**



Source: [www.defenseimagery.mil](http://www.defenseimagery.mil)

### **Criteria for Maintaining Contract Documentation**

FAR Subpart 4.8, “Government Contract Files,” states that contract administration files should document actions reflecting the basis for and the performance of contract administration responsibilities to include official copies of supporting documentation.

DFARS Subpart 204.8, “Contract Files,” January 24, 2008, requires that official contract files consist of original, authenticated, or conformed copies of contractual instruments, as well as signed or official copies of correspondence, memoranda, and other documents.

Each contract file should provide a complete background for decision making, actions taken, and reviews and investigations, as well as to furnish essential facts in case of litigation or congressional review.

### **Report Examples of Contract Documentation**

The U.S. Army Contracting Command, Southwest Asia-Kuwait did not maintain adequate contract documentation to support contract actions. For example, legal reviews for task orders were not always performed or were completed after the task orders were approved. Additionally, many key documents such as requirements, receiving reports, and invoices were either missing or not signed. We were not able to determine whether valid requirements existed, services were performed, and if the Government was properly billed. As a result, DoD did not have reasonable assurance that commercial transportation services for movement of equipment, cargo, and personnel, totaling as much as \$522 million, complied with terms set forth in the program's performance work statements, were valid requirements, and were received and represented the best value to the Government. (Report No. D-2009-096)

The Multi-National Force-Iraq and Multi-National Corps-Iraq did not have sufficient contract documentation for the 134 nontactical vehicles contracting files reviewed. From those 134 nontactical vehicles contract files, the report noted that 85 percent did not contain an acceptance document, 79 percent did not indicate that a contracting officer representative (COR) was appointed to administer and oversee the contract, 54 percent did not show why a contractor was selected for performance, and 57 percent did not reflect justification or intended use of the requested nontactical vehicles. The report also noted that the issues were more prevalent and more contracts were awarded at the regional contracting centers than at the Multi-National Security Transition Command-Iraq support location. Without accurate contracting files, DOD cannot make effective decisions regarding nontactical vehicles. (Report No. D-2010-022)

### **3. Contract Type**

A wide selection of contract types is available in order to provide flexibility in acquiring the supplies and services required. Contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. Specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. DOD officials should select the contract type that places a reasonable degree of risk upon the contractor and provides the contractor with the greatest incentive to perform efficiently and economically. When selecting and negotiating the contract type, the contracting officer should consider the availability of price competition, the type and complexity of the requirement, the period of performance, and the general acquisition environment. The contracting officer should document the rationale in the contract file for the contract type selected.

Deficiencies related to the section of contract type consist of three subcategories: firm-fixed-price, cost-type, and commercial acquisition.

### **Criteria for the Use of Firm-Fixed-Price Contracts**

The FAR provides guidance on selecting the appropriate contract type. FAR Subpart 16.1, “Selecting Contract Types,” and Subpart 16.2, “Fixed-Price Contracts,” state that contracting officers should select a contract type that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Firm-fixed-price contracts place full responsibility for performance costs and resulting profit or loss on the contractor. FAR Subpart 16.103(b) states that a firm-fixed-price contract should be used “when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered.

### **Report Example of Firm-Fixed-Price**

U.S. Army Space and Missile Defense Command/Army Forces Strategic Command officials incorrectly used firm-fixed-price contract line items for 28 of the 35 task orders reviewed (worth approximately \$32.5 million) instead of using a cost-type contract. They used the firm-fixed-price contract line items for the 28 task orders because they did not want to use cost-type contracts due to their increased oversight requirements and cost audits associated with executing cost-type contracts. Thus, contracting officers circumvented the FAR to avoid the oversight reviews conducted by the Defense Contract Audit Agency (DCAA). (Report No. D-2009-109)

### **Criteria for the Use of Cost-Type Contracts**

Section 2306(a), title 10, United States Code (10 U.S.C. 2306[a]) prohibits the use of the cost-plus-percentage-of-cost system of contracting. The underlying intent of Congress in prohibiting the cost-plus-award-fee system of contracting is to protect the Government from a contractor who has a contract for payment of undetermined future costs to pay liberally for reimbursable items because higher costs means higher profit for the contractor.

FAR Subpart 16.3, “Cost-Reimbursement Contracts,” states that a cost-reimbursement contract may only be used when appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

### **Report Examples of Cost-Type**

Navy Facilities Engineering Command Southeast contracting officials awarded the contractor three task orders on its cost-plus-award-fee Navy Construction Capabilities contract for hurricane recovery efforts valued at \$229 million that were administered as prohibited cost-plus-percentage-of-cost contracts. This occurred because Navy Facilities Engineering Command Southeast contracting officials never obtained proposals from the contractor and negotiated agreements for contract requirements that conclusively fixed the amount of fee or provided

for a specific scope of work or level of effort. As a result, the award fee available to the contractor increased proportionally to costs expended in performance, rewarding inefficiency and non-economical performance because higher costs meant higher profit to the contractor. The Navy paid additional fees for numerous tasks that had to be redone due to poor workmanship. For example, the contractor failed to lay the piping to the depth prescribed by the local building code causing numerous pipes to break. To fix the issue, the Navy added additional money to the contract for the same contractor to repair the damaged plumbing. (Report No. D-2008-097)

Logistics Civil Augmentation Program IV acquisition plan states the use of indefinite-delivery, indefinite-quantity contracts allows the contracting officer to choose from three contract types—firm fixed price, cost plus award fee, and cost plus fixed fee. However, the report identified that the contracting officer planned to award only cost-plus-award-fee task orders. The acquisition plan allowed the use of cost-plus-award-fee task orders for contingency operations to motivate contractors to provide excellent performance. The Army, however, has the ability to issue firm-fixed-price contracts when costs can reasonably be estimated and cost-plus task orders for work with uncertain costs. Some costs related to contingency contract operations could reasonably be established at fixed prices based on experience; however, the Logistics Civil Augmentation Program IV Procuring Contracting Officer did not identify those costs. Limiting the use of cost-plus-award-fee contracts could reduce the likelihood of contractors overcharging the Government for goods and services and put less strain on overburdened oversight resources. (Report No. D-2009-114)

### **Criteria for the Use of Commercial Acquisition Contracts**

FAR Subpart 2.1 defines commercial items as goods used by the public or a nongovernmental entity that either have been offered for sale, offered for lease, or licensed, or have been sold, leased, or licensed to the public or a nongovernmental entity. FAR Subpart 12.2, “Special Requirements for the Acquisition of Commercial Items,” February 12, 2007, requires that agencies use firm-fixed-price contracts to acquire commercial items. The use of firm-fixed-price contracts when purchasing a commercial item is required to avoid fees contractors can charge the Government for procuring items that can be purchased by the public. Additionally, acquisition of commercial items under a cost-plus-fixed-fee contract is strictly prohibited.

### **Report Example of Commercial Acquisition**

U.S. Army Space and Missile Defense Command/Army Forces Strategic Command officials improperly used cost-plus-fixed-fee contract line items for 10 task orders valued at \$16.1 million to buy commercial items such as laptops, cell phones, and off-road vehicles; instead of using firm-fixed-price contract line items. The cost-plus-fixed-fee contract line items were used because U.S. Army Space and Missile Defense Command/Army Forces Strategic Command officials did not consider the items to be commercial, even though they were available to the public for purchase. Consequently, U.S. Army Space and Missile Defense

Command/Army Forces Strategic Command contracting officials could have wasted approximately \$439,000 by paying unnecessary fees to contractors for commercial items. (Report No. D-2009-109)

#### **4. Source Selection**

The objective of source selection is to select the proposal that represents the best value to the Government. Contracting officers must provide for full and open competition when soliciting offers and awarding Government contracts, unless exceptions apply. Proposal evaluation is an assessment of the offeror's proposal and ability to perform the prospective contract successfully. The award decision is based on evaluation factors that are tailored to the acquisition and proposals must be evaluated solely on the evaluation factors specified in the solicitation. Price or cost must be evaluated in every source selection, and the quality of the product or service must be addressed through consideration of one or more noncost evaluation factors, such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file and conflicts of interest, or the appearance thereof, must be avoided when conducting source selection.

#### **Criteria for Performing Source Selection**

FAR Subpart 15.3, "Source Selection," states the source selection authority "shall ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements." Source selection personnel should document and disclose the importance of the performance specifications to the subfactors in the solicitation to avoid a misunderstanding of the evaluation criteria among the contract offerors.

FAR Subpart 15.403-1(c)1(i), "Obtaining Cost or Pricing Data," states a contract price is based on adequate price competition if two or more responsible offerors...submit priced offers that satisfy the Government's expressed requirement and:

- (A) Award will be made to the offeror whose proposal represents the best value . . . where price is a substantial factor in source selection; and
- (B) There is no finding that the price of the otherwise successful offeror is unreasonable.

FAR Subpart 9.1, "Responsible Prospective Contractors," states "the award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs."

#### **Report Examples of Source Selection**

The Marine Corps Systems Command did not follow the FAR during the source selection process. Specifically, the Source Selection Authority directed the Source Selection Advisory Council to reconsider the proposals from Offeror A and General Dynamics three times until General Dynamics was determined the

best value for the contract. Therefore, there is no assurance that the Government received the best value for the work provided. (Report No. D-2009-041)

The Marine Corps Systems Command did not obtain adequate price competition when awarding Mine Resistant Ambush Protected vehicle contracts. Adequate price competition exists when two or more offerors submit priced offers for a requirement and the award is made to the offeror whose proposal represents the best value. However, each offeror proposed a different technical solution, and Marine Corps Systems Command officials awarded nine separate contracts for contractor-unique technical solutions at nine different contractor-proposed prices. All contracts were awarded firm-fixed-price without price negotiation discussions and without reliable cost or pricing data. Marine Corps Systems Command officials stated that price was not a rated factor in the source selection, and that contracts were awarded to all offerors who could meet technical capability requirements. Consequently, price was not a substantial factor in source selection, as required by the FAR for determining that the contract price was based on adequate price competition. As such, determination of price reasonableness during the contract award should have taken even more importance. (Report No. D-2009-046)

## **5. Contract Pricing**

Contracting officers must purchase supplies and services at fair and reasonable prices and are responsible for evaluating the reasonableness of the offered prices. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required. The contracting officer may require the advice and assistance of other experts to ensure that an appropriate analysis is performed. When cost or pricing data are not required, the contracting officer must perform price analysis. The Government may use a variety of price analysis techniques to ensure fair and reasonable pricing, including:

- comparison of proposed price to prices found reasonable on previous purchases,
- comparison of proposed price to independent government cost estimates, and
- analysis of pricing information provided by the offeror.

When cost or pricing data are required, contracting officers should use cost analysis to evaluate the reasonableness of individual cost elements and should use price analysis to verify that the overall price is fair and reasonable.

### **Criteria for Obtaining Fair and Reasonable Prices**

FAR Subpart 15.4, "Contract Pricing," states that the objective of proposal analysis is to ensure that the final agreed-upon price is fair and reasonable. The Government may use various price and cost analysis techniques and procedures to ensure a fair and reasonable price is received.

### **Report Examples of Contract Pricing**

The Army provided no evidence of price reasonableness in two procurements valued at \$242 million. The Army Research, Development, and Engineering

Command did not use validated historical pricing data when determining price reasonableness for current and future procurements, and made comparisons to prices when the volumes being acquired differed greatly. For example, the Army paid \$285.00 each for an initial order of 10,000 Deltoid and Axillary Protectors. In a subsequent order, the Army procured 840,000 Deltoid and Axillary Protectors from the same manufacturer at the same price as the 10,000. Contracting officials compared orders of 840,000 and 10,000 when determining price, without taking into account a possible volume-quantity discount. As a result, there is no evidence that the historical pricing used, or the price at which the contract was awarded was fair or reasonable. (Report No. D-2008-067)

The Afghanistan Engineer District did not properly negotiate and award contract modifications to two contracts, valued at \$1.4 million, related to the renovation and repair of the Kabul National Military Hospital resulting in an unnecessary spending of more than \$770,000. For example, the U.S. Army Corps of Engineers cost engineer prepared the independent Government estimate of \$133,881 for the evaluation and replacement of sewage risers, but awarded the contract for \$343,500 without verifying the cost difference. As a result, the Government may have overpaid for the contract modification. (Report No. D-2009-076)

## **6. Oversight and Surveillance**

Contracting officers perform oversight and surveillance to ensure that supplies or services conform to contract requirements. Agencies should implement procedures to assure that contract requirements are met before the acceptance of deliverables. The contracting officer is responsible for ensuring that there is an effective process for measuring the contractor's performance that includes clearly defined levels of contractor surveillance.

A fully developed and appropriately structured contract surveillance system is crucial to ensure that the contractor is:

- performing on schedule,
- current in its understanding of the requirements, and
- applying adequate skills and resources to the contractual task.

Contracting officers may delegate contract administration or obtain specialized support services from outside agencies, such as DCMA or DCAA. Additionally, the contracting officer can delegate certain contract administration functions to administrative contracting officers and can appoint CORs. The CORs perform technical monitoring, inspections, and acceptance of contract deliverables and ensure that the contract and program offices are fully aware of the contractor's performance. However, CORs have no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

Quality assurance surveillance plans (QASPs) should be prepared in conjunction with the preparation of the statement of work, and the plans should specify all work requiring

surveillance and the method of surveillance. Acceptance of contractual supplies or services may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. The Government should not accept supplies or services before completion of Government contract quality assurance actions, and the contracting officer should reject supplies or services not conforming to contract requirements. Acceptance constitutes acknowledgment that the supplies or services conform with contract quality and quantity requirements and must be evidenced by an acceptance certificate.

We identified six factors related to contract oversight and surveillance deficiencies: acceptance, contracting officer, COR, DCAA, Defense Contract Management Agency (DCMA), and written procedures.

### **Criteria for Accepting Goods and Services**

According to FAR Subpart 46.5, “Acceptance,” acceptance constitutes acknowledgement that the supplies or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to other terms and conditions of the contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. Supplies or services shall ordinarily not be accepted before completion of Government contract quality assurance actions.

DOD Financial Management Regulation (FMR), volume 10, chapter 7, requires that the office receiving goods or services complete a receiving report as formal acceptance that the Government was satisfied with the contractor’s performance.

### **Report Examples of Acceptance**

The contracting officer for the Family of Medium Tactical Vehicles conditionally accepted incomplete vehicles and paid the contractor up to 100 percent for some of the vehicles. Specifically, the contracting officer approved 32 contractor requests and inappropriately conditionally accepted 1,745 of the 2,366 vehicles. The administrative contracting officer conditionally accepted and paid full price for 656 vehicles in response to contractor reasons for the Government to conditionally accept the vehicles, including noncompletion of testing requirements, request for a deviation of nonconforming contractor parts, and delivery schedule delays for the contractor to incorporate engineering change proposals. This occurred because the project manager believed that the conditional acceptance allowed a more efficient production and acceptance process. Furthermore, the project manager believed that these practices were in the best interest of the Army, although they were not in accordance with the contract terms and FAR requirements. The conditional acceptance of vehicles resulted in the Army prematurely paying more than \$3.8 million for vehicles. (Report No. D-2008-038)

A sample inventory of weapons in Depot 1, a weapons storage depot for the Afghan National Army, purchased by the U.S. Military from a contractor for



distribution to the Afghanistan National Army, appeared to be in unsatisfactory condition. The majority of the weapons did not appear to have been cleaned prior to delivery. They were dirty, had rust on them, and some of the barrels were clogged with cloth. In addition, these particular “refurbished” weapons had paint that came off on your hands when handled, broken hand guards and ejection port covers, and even had leftover “Go Army” stickers on them. The weapons were, therefore, not in acceptable condition for distribution to the Afghan National Army. These weapons needed to be serviced, range-tested and brought up to an acceptable condition for issuance. This occurred because of a lack of oversight to ensure M16s provided met the standard required in the procurement contract. As a result, the Combined Security Transition Command-Afghanistan will be forced to withhold some M16s from distribution to the Afghan National Army until these problems are corrected. (Report No. SPO-2009-006)

### **Criteria for Providing Appropriate Quality Assurance**

FAR Part 46, “Quality Assurance,” states that the contract administration office must maintain suitable records reflecting the nature of Government contract quality assurance actions and decisions regarding the acceptability of products, processes, and requirements, as well as actions to correct defects. It also states that Government contract quality assurance will be performed when necessary to determine whether services meet contract requirements. QASPs should be prepared in conjunction with the preparation of the statement of work. The plans should specify all work requiring surveillance and the method of surveillance.

Not having a defined QASP before the start of contract performance can result in gaps in contract surveillance and a lack of assurance that services and goods are in accordance with the terms of the contract. Additionally, without a proper QASP, contracting officials have no standards for determining whether supplies or services provided by contractors complied with contractual requirements, and may not be able to stop the waste of Government time and money.

### **Report Examples of Quality Assurance/Contracting Officer**

The Special Operations Forces Support Activity contracting officer did not provide adequate contract oversight for 44 service task orders, valued at \$514 million. Specifically, the contracting officer did not develop and implement a QASP for, or assign a COR to, any of the 44 service task orders. Instead, the contracting officer relied on customer surveys, monthly management meetings, and quality deficiency reports submitted by customers to determine whether the Government obtained the products and services it contracted for. Also, the contracting officer designated one COR for all the 2,148 task orders executed in 20 countries. However, one individual is not capable to conduct proper surveillance for 2,148 task orders in 20 countries, and the designated COR confirmed that he did not perform any COR duties. As a result of the lack of CORs and QASPs, the warfighters may not be receiving the quality and quantity in products and services contracted for more than \$514 million. For example, the Government customer of a task order discovered that the contractor improperly

installed a thrust nut lock ring on a C-130 aircraft, but this was discovered only after a test caused damage, which cost the Government approximately \$219,000 to fix. If the contracting officer had designated a COR to this task order, the mistake could have been discovered prior to the testing, which would have relieved the Government of about \$204,000<sup>1</sup> in additional expense. A more somber effect of the improperly installed thrust nut lock ring and the associated parts could have been further damage to the aircraft or loss of life. (Report No. D-2009-083)

Department of State contracting officials did not conduct adequate surveillance for two task orders in excess of \$1 billion. This occurred because contracting officials did not adequately staff in-country CORs for Afghan National Police task orders and did not prepare a QASP for one of the two Afghan National Police task orders. Specifically, by the beginning of 2008, nearly \$675 million was obligated without any evidence of in-country CORs functioning in Afghanistan. Without a proper QASP, contracting officials have no standards for determining whether goods or services provided by contractors comply with contractual requirements. As a result, Department of State personnel provided no assurance to the contracting officer that the Government received all of the goods and services procured by the contractor or that the Department of State received the best value when contracting for services. (Report No. D-2010-042) The following figure shows members of the U.S. Army Corps of Engineers discussing construction goals in Iraq.

**Figure 4. Members of the U.S. Army Corps of Engineers Discuss Construction Goals with a Contractor and a Construction Worker in Mosul, Iraq**



Source: [www.defenseimagery.mil](http://www.defenseimagery.mil)

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<sup>1</sup> The difference between the Government cost to fix the aircraft and the actual expenses represents \$15,000 paid by the contractor to the Government because of the contractor's mistake.

## **Criteria for Assigning Contracting Officer Representatives**

According to DFARS Subpart 201.6, “Career Development, Contracting Authority, and Responsibilities,” April 23, 2008, CORs assist in the technical monitoring or administration of a contract. Additionally, according to DFARS Subpart 201.6, a COR must be a Government employee, qualified by training and experience commensurate with the responsibilities delegated in accordance with Department or agency guidelines. According to the Office of Management and Budget memorandum, “The Federal Acquisition Certification for Contracting Officer Technical Representatives,” November 26, 2007 (Federal COR certification program), all CORs appointed to a contract after the effective date of the memorandum must be certified no later than 6 months from their date of appointment. The Federal COR certification program established competency-based core training and assignment-specific training to achieve and maintain the COR certification. Once certified, CORs must maintain their contracting skills and knowledge through continuous learning. DFARS 201.602-2, “Responsibilities,” also states that COR responsibilities must be in writing and that the responsibilities cannot be redelegated. For that reason, the contracting officer is expected to appoint a properly trained COR.

## **Report Example of Contracting Officer Representatives**

The U.S. Air Forces Central War Reserve Materiel CORs did not adequately document acceptance of services performed by the contractor for more than 4 years. The Executive Coordinating Agency issued 29 quality assurance surveillance reports from September 2000 through March 2005 that documented the inspection of contractor services and discrepancies found during surveillances; however, the quality assurance surveillance reports did not document the contractor’s corrective actions for COR-identified discrepancies or the CORs’ final determination as to the acceptability of the contractor’s corrective actions. This occurred because the CORs did not comply with War Reserve Materiel QASP requirements. As a result, U.S. Air Forces Central officials cannot be certain that the contractor adequately performed services that met War Reserve Materiel contract quality standards for more than half of the contract life.  
(Report No. D-2009-108)

## **Criteria for Using DCAA**

DCAA’s mission is to perform services regarding contracts and subcontracts to all DOD components responsible for procurement and contract administration. The DCAA Contract Audit Manual 7640.1, “Defense Contract Audit Manual,” prescribes auditing policies and procedures and furnishes guidance in auditing techniques for personnel engaged in the performance of the DCAA mission.

DCAA Contract Audit Manual, volume 1, section 6-1007 states that a contractor’s continued participation in the direct billing program will be based on the results of DCAA ongoing surveillances of the contractor’s billing systems. DCAA must perform annual testing of paid vouchers to determine whether the contractor’s internal controls can be relied on for the preparation of public vouchers. The sampling plan used to test paid vouchers should be documented and updated annually.

## Report Example of DCAA

DCAA personnel allowed inaccurate interim public vouchers to be submitted directly to and paid by the Defense Financial and Accounting Service. This occurred because DCAA personnel failed to perform required surveillance of DynCorp's billing system and annual testing of paid interim public vouchers. As a result, Air Force Central Command officials may have overpaid for services that DynCorp performed, paid for services that DynCorp did not perform, paid interim public vouchers that DynCorp did not prepare and submit in accordance with the contract requirements, and used inappropriate funds. (Report No. D-2009-108)

## Criteria for Using DCMA

The DCMA mission statement states that for those contracts delegated to DCMA through the Joint Contracting Command- Iraq/Afghanistan concept of operations and delegation process, DCMA provides contract administration services to U.S. Central Command and subordinate commands in Southwest Asia to ensure delivery of quality products and services to the warfighter-on time and on cost. Additionally:

**Before contract award**, DCMA provides advice and services to help construct effective solicitations, identify potential risks, select the most capable contractors, and write contracts that meet the needs of DOD customers in Federal and allied government agencies.

**After contract award**, DCMA monitors contractors' performance and management systems to ensure that cost, product performance, and delivery schedules are in compliance with the terms and conditions of the contracts.

## Report Examples of DCMA

Oversight of the military units' water supply operations did not occur as required. DCMA is responsible for oversight of the contractor's operations. However, oversight officials from the Multinational Force-Iraq Office of Resources and Sustainment, Multinational Corps-Iraq Preventive Medicine and its detachments, Defense Contract Management Agency Iraq/Afghanistan, Logistics Civil Augmentation Program, and Kellogg, Brown, and Root did not coordinate their oversight efforts and lacked comprehensive inventories of water storage containers; therefore, they were unaware of all water storage sites, and their locations, to visit. As a result, from October 2005 through June 2006 at Camp Q-West, the local brigade medical sick-call records showed 38 cases that an attending medical official said could be attributed to water, such as skin abscesses, cellulitis, skin infections, and diarrhea. (Report No. D-2008-060)

DCMA inspected the M2 gun parts at the contractor's facility and inappropriately approved them for shipment. DCMA inspection records in the contract file lacked adequate documentation on exactly what DCMA inspected and accepted. Specifically, at least 7,100 items did not conform with quality standards for 24 of the 103 contracts, including parts that contractors manufactured incorrectly, parts that did not meet specific quality standards, and

parts that contained inadequate phosphate surface coating to prevent corrosion. As a result, customers were provided nonconforming parts and had to generate product quality deficiency reports causing an increased risk on the warfighter who had to wait for critical M2 gun parts. (Report No. D-2010-035)

### **Criteria for Maintaining Written Procedures**

DFARS Procedures, Guidance, and Information, 201.602-2(ii), states that a COR must maintain a file for each assigned contract, and the file must include, at a minimum:

- a copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and
- documentation of actions taken in accordance with the delegation or authority.

### **Report Examples of Written Procedures**

The Logistics Civil Augmentation Program office did not develop procedures for the oversight and reporting of the Logistics Civil Augmentation Program III contract. Because of the constant rotation of units in theater, the Logistics Civil Augmentation Program Deputy Program Director-Kuwait needs to ensure continuous communication. CORs rotate along with their military units every 6 to 12 months; therefore, training should be conducted whenever new CORs are assigned to the Logistics Civil Augmentation Program contract. The training should focus on completing and understanding the review checklists and include techniques for assessing contractor performance. As a result, organizations involved in the transfer of work may not be fully aware of the procedures or their responsibilities, and the lack of awareness could delay planned transition timelines and disrupt the sequence of events planned for the transfer of work. (Report No. D-2009-114)

According to the CORs and in-country CORs, the CORs are frequently rotated in and out of Afghanistan, but no record is maintained to document the dates of service. The Department of State Foreign Affairs Handbook states that CORs are expected to maintain a file documenting significant actions, such as copies of invoices, correspondence with the contractor, documentation of acceptability of goods and services, and documentation of site visit results. However, none of this documentation was maintained in the COR file. Therefore, because the COR files are not readily available to others and may not be complete, incoming or acting in-country CORs may not have the information and institutional knowledge they need to properly administer and monitor the contract. (Report No. D-2010-042)

## **7. Inherently Governmental Functions**

Inherently governmental functions are those that are intimately related to the public interest, thereby requiring performance by Government employees. Additionally, inherently governmental functions include activities that require the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. Inherently governmental functions fall into two categories: the act of governing (the discretionary exercise of Government authority) and monetary

transactions and entitlements. Contracts should not be issued or awarded for the performance of inherently governmental functions. Examples of inherently governmental functions include:

- awarding contracts and approving contractual documents;
- administering contracts;
- determining whether contract costs are allowable, allocable, and reasonable;
- determining what supplies or services are to be acquired by the Government; and
- determining the disposal of Government property.

### **Criteria for Performing Inherently Governmental Functions**

FAR Subpart 2.101, “Definitions,” defines an inherently governmental function as a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include activities that require either discretion in applying Government authority or judgment in making decisions for the Government.

FAR Subpart 7.503, “Inherently Governmental Functions Policy,” provides examples of inherently governmental functions including:

- determining what supplies or services are required by the Government;
- approving any contractual documents to include documents defining requirements, incentive plans, and evaluation criteria;
- administering contracts, which includes ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or service;
- determining whether contracts are allowable, allocable, and reasonable; and
- directing and controlling Federal employees.

FAR Subpart 37.114, “Special Acquisition Requirements,” states that contractors working in situations where their contractor status is not obvious to third parties are required to identify themselves as contractors. This avoids creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. Agencies must ensure that all contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious must identify themselves.

### **Report Examples of Contractors Performing Inherently Governmental Functions**

Special Operations Forces Support Activity management allowed contractors working for the Special Operations Forces Support Activity Business Management Division to perform inherently governmental functions. Specifically, management and contracting personnel allowed contractors to administer task orders, determine what supplies or services the Government required, and approve contractual documents. The contractors performing

inherently governmental functions did not identify themselves as contractors. For example, in 3 of 46 task orders, valued at approximately \$18 million, contractors working for the Special Operations Forces Support Activity signed contractual documents as a Special Operations Forces Support Activity representative. In addition, contracting personnel took direction and implemented contract changes from contractors working for their customers. These conditions occurred because the Special Operations Forces Support Activity lacked internal controls and standard operating procedures on the performance of inherently governmental functions. As a result, Special Operations Forces Support Activity may not have correctly administered and protected the best interests of the Government for approximately \$82 million in task orders issued under the Special Operations Forces Support Activity contracts. (Report No. D-2009-083)

U.S. Air Forces Central personnel did not provide adequate Government oversight and allowed contractor personnel to perform inherently governmental functions by providing project oversight. U.S. Air Forces Central personnel relied on the contractor to administer oversight of the contractor's own performance. Additionally, U.S. Air Forces Central personnel did not accept Minor Military Construction projects on behalf of the Government and instead allowed the contractor to perform inherently governmental functions by accepting the Minor Military Construction projects. For example, the contractor completed a sandblasting facility in February 2008 but the COR found that the facility was non-operational during a special surveillance conducted on June 22, 2008. The COR identified seven deficiencies that affected facility operations and determined that the facility had not operated effectively since DynCorp's acceptance in February 2008. (Report No. D-2009-108)

## **8. Property Accountability**

Property administration is conducted in order to administer the terms of contract provisions that specify the contractor's obligations to acquire, control, use, care for, report, and dispose of Government property. The contracting officer is responsible for property administration but can delegate responsibility to the contract administration office. A property administration program should be determined by the complexity of the contractor's property control system, the amount of Government property, and other conditions revealed by review of the contracts and correlation of their provisions with the property control system. Use of commercially established property management practices are encouraged unless they are in conflict with contractual requirements or create an unacceptable risk to the Government. It is the Government's policy to rely upon Government contractors to be accountable for and maintain official records of Government property in their possession. The effectiveness of contractor records and other aspects of contractor property control systems are reviewed through Government-conducted property system analyses. Figure 5 shows U.S. Service Members mentoring the Afghan National Army on how to handle munitions logistics.

**Figure 5. U.S. Service Members Mentor the Afghan National Army on the Proper Organization, Storage, and Shipment of Munitions**



Source: [www.defenseimagery.mil](http://www.defenseimagery.mil)

### **Criteria for Maintaining Property Accountability**

DOD Instruction 5000.64, “Accountability and Management of DOD-Owned Equipment and Other Accountable Property,” November 2, 2006, requires that DOD Components establish records and maintain accountability for Government property furnished to contractors. Accountable property records must include the current status and location of the property. At a minimum, an accountable property system of record should include:

- name, part number, and description;
- quantity and status of the property;
- unique item identifier;
- location of property; and
- transaction dates.

In addition, DOD Instruction 5000.64 states that accountable property records shall be established for all property purchased, or otherwise obtained that are sensitive or classified. DOD 4100.39-M “Defense Federal Logistics Information System,” defines small arms, ammunition, explosives, and demolition materiel as sensitive items that require a high degree of protection and control.

### **Report Examples of Property Accountability**

The Multi-National Security Transition Command-Iraq was not always able to demonstrate proper accountability for and management of services, equipment, and construction purchased through the Iraq Security Forces Fund and could not always demonstrate that the delivery of services, equipment, and construction was properly made to the Iraq Security Forces. Specifically, Multi-National Security



Transition Command-Iraq does not have a process for tracking Iraq Security Forces Fund-purchased equipment during the transfer of that equipment to Iraq Security Forces. Consequently, there is no end-to-end audit trail for tracking equipment purchased through the Iraq Security Forces Fund. For example, Multi-National Security Transition Command-Iraq could not account for 18 of 31 heavy tracked recovery vehicles valued at \$10.2 million because a disconnect in the audit trail occurred at the time of Government receipt in Umm Qasr, Iraq, when vehicle identification numbers were not recorded. (Report No. D-2008-026)

DoD considers the implementation of Requiring Radio Frequency Identification a strategic necessity to deliver supplies to the warfighter more quickly and allow tracking of materiel throughout the supply chain. These supply contracts are used to purchase such items as weapon system components, equipment, petroleum, clothing, rations, medical material, and repair parts. To create an automated and sophisticated end-to-end supply chain, DoD must initiate Requiring Radio Frequency Identification technology at the point of origin, DoD commercial suppliers. Unless suppliers—as well as contracting officers, depot commanders, and depot personnel—comply with Requiring Radio Frequency Identification policies, DoD cannot achieve a fully integrated, highly visible, automated end-to-end supply chain. The report found that contracting officers awarded 23 of 220 supply contracts (10 percent) without the required Requiring Radio Frequency Identification clause and that suppliers for 84 of the 197 (43 percent) with the required clause, did not apply Requiring Radio Frequency Identification tags to shipments they sent to depots. Therefore, without all parties appropriately using the Requiring Radio Frequency Identification tracking system, the Government is unable to ensure property accountability was met for the supply contracts reviewed. In addition, if Requiring Radio Frequency Identification is not fully implemented across DoD as intended, Defense Logistics Agency will have spent \$12.2 million on an automated process that must be supplemented by manual input, surveillance, and corrective measures. (Report No. D-2008-135)

## **9. Award Fees**

The objective of an award fee is to create an incentive for contractor performance in areas that are most critical to the Government. Award fee contracts must be structured in ways that will focus the Government's and contractor's efforts to meet or exceed cost, schedule, and performance requirements. The contracting officer, in consultation with the program manager and fee determining official, is required to create the award fee criteria included in the Award Fee Plan. Additionally, award fee provisions must clearly explain how a contractor's performance will be evaluated. The ability to earn award fees must be directly linked to achieving desired program outcomes. The fee determining official reviews the recommendations of the Award Fee Board to determine the amount of award fee earned by the contractor for each evaluation period according to the award fee plan. The amount of award fee earned must correspond to the contractor's overall cost, schedule, and technical performance as measured against contract requirements. In addition, the basis for award fee determinations must be documented in the contract file

to include, at a minimum, a determination that overall cost, schedule, and technical performance is or is not at a satisfactory level.

### **Criteria for Administering Award Fees**

FAR Subpart 16.405-2, “Cost-Plus-Award-Fee Contracts,” states that an award fee is an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to be paid is determined by the Government’s judgmental evaluation of the contractor’s performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

### **Report Examples of Award Fees**

Navy Facilities Engineering Command contracting officials did not adequately support the award fee determinations for the hurricane recovery task orders. Specifically, the Navy failed to capture the information needed to effectively assess how well the contractor controlled costs and did not reconcile the contracting officers’ and technical representatives’ assessments against each other or the characteristics identified in the award fee plan. Moreover, despite numerous performance deficiencies, the Navy authorized the contractor to be paid 94 percent of the available fee for the task orders reviewed for what appeared to be marginal-to-average performance. As a result, Navy Facilities Engineering Command is paying nearly all of the available award fees to the contractor, regardless of whether the acquisition outcomes fell short, met, or exceeded expectations, which demotivates the contractor to strive for excellent performance. (Report No. D-2008-097)

The U.S. Air Forces Central War Reserve Materiel contracting officer may have overpaid award fees for work that was not performed across the entire award fee period and may have authorized additional award fee for contractor performance that was not evaluated. Additionally, U.S. Air Forces Central officials improperly calculated award fee pools and did not adequately support final award fee determinations. These conditions occurred because U.S. Air Forces Central officials did not comply with basic contract requirements for calculating award fees. As a result, U.S. Air Forces Central officials inappropriately authorized an additional \$893,160 in award fees, overpaid the contractor by approximately \$195,000, and cannot justify 4 of 17 final award fee determinations. (Report No. D-2009-108)

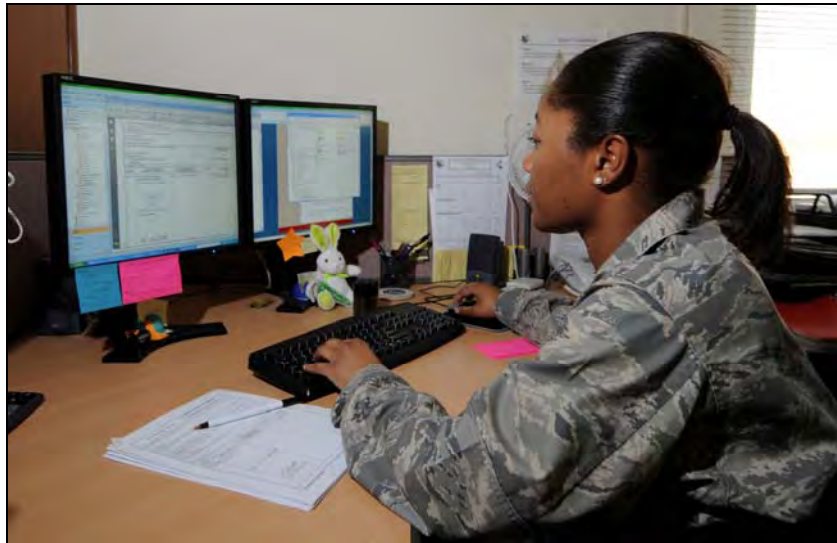
## **10. Financial Management**

DOD officials are responsible for ensuring that DOD organizations maintain control of payments made to vendors and contractors. The maintenance of complete, consistent, and accurate contract files and accounting records is necessary to reduce the potential for violations of the Antideficiency Act and minimize the number and dollar value of problem disbursements. Expenses billed to the Government are limited to costs that are

allowable, allocable, and reasonable. In addition, payments made by the Government should directly correlate to a contractual document, contractor invoice, and acceptance or receiving report. Government payments must also comply with the Prompt Payment Act. The following figure depicts a budget analyst managing reimbursements in southwest Asia.

Contracting deficiencies related to financial management consist of three subcategories: billing, payments, and potential Antideficiency Act violations.

**Figure 6. A Budget Analyst Manages Contractor and Coalition Partner Reimbursements in Southwest Asia**



Source: [www.defenseimagery.mil](http://www.defenseimagery.mil)

### **Criteria for Determining Entitlement of Billings**

DOD FMR, volume 10, chapter 1, states that payment cannot be made without determining entitlement to the payment. Further, receipt of a “proper” invoice, proof of receipt, and acceptance, as well as the contract terms and conditions, determine entitlement. According to the DOD FMR, volume 10, chapter 8, “Commercial Payment Vouchers and Supporting Documents,” May 2008, a contractor is “entitled” to payment when the contracting officer issues a contract, prepares a receiving report, and approves the invoice a contractor submits for payment.

The FAR states that expenses billed to the Government are limited to costs that are allowable, allocable, and reasonable.

### **Report Examples of Incorrect Billings**

U.S. Army Space and Missile Defense Command/Army Forces Strategic Command and Counter Narcoterrorism Technology Program Office officials did not ensure that the contractors were fully entitled to the \$47.9 million paid on the Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity task orders since contracting officials did not require that CORs review contractor bills. Neither the contracting officers nor the CORs

required the contractors to provide supporting documents that described the amounts they billed for labor categories and rates, travel, materials, and other direct costs. For instance, one bill sent to the Government indicated that the contractor provided “material” for approximately \$1.3 million but did not describe or list the material provided. Another contractor bill sent to the Government indicated that the contractor had approximately \$112,500 of travel expenses without describing or itemizing the travel being claimed. Furthermore, the U.S. Army Space and Missile Defense Command/Army Forces Strategic Command contracting officer failed to formalize an agreement with DCMA officials to certify that goods and services billed by the contractors were received. As a result, DOD officials paid the contractors for goods and services that may not have been allowable or reasonable. (Report No. D-2009-109)

The Bureau of International Narcotics and Law Enforcement Affairs Afghanistan, Iraq, and Jordan Support personnel did not conduct sufficient invoice reviews as required by their delegation letters. These invoice reviews are necessary to determine whether the contractor was entitled to payment for submitted invoices, or to prepare and maintain the supporting documents necessary to show contractor entitlement to payment. Even though this review was in accordance with the Prompt Payment Act, the process did not address whether contractor invoices costs were allowable, allocable, or reasonable. The Afghanistan, Iraq, and Jordan Support personnel emphasized that they had identified \$322 million in invoices that were approved even though they were not allowable, allocable, or reasonable. Furthermore, the Invoice Reconciliation Team estimated that approximately 50 percent of the approved invoices had errors. This occurred because Department of State CORs that were responsible for overseeing DOD funds did not follow internal control procedures that established that in-country CORs were to review contractor invoices to determine if the costs were allowable, allocable, or reasonable prior to payment and validate deliverables. As a result, Department of State officials incorrectly paid the contractor for goods and services under two of the task orders supporting the Afghan National Police contract. (Report No. D-2010-042)

### **Criteria for Authorizing Contract Payments**

FAR 32.905, “Payment Documentation and Process,” states that a payment will be based on receipt of proper invoice and satisfactory contract performance.

DOD FMR, volume 11a, chapter 3, section 030502, states that payment shall be made promptly upon the written request (or billing) of the agency or unit filling the order. Payment may be made in advance or upon delivery of the services, equipment, and construction ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of services, equipment, or construction provided.

According to the *Foreign Affairs Handbook*, volume 14, handbook 2, “Contracting Officer’s Representative,” the COR must maintain a copy of all invoices and vouchers and a payment register, indicating the balance of funds remaining. Without these necessary documents, it is impossible to determine whether invoices approved for payment by the COR were allowable, allocable, or reasonable within the contract scope.

The United States Code (31 U.S.C. 3325) requires the agency to “disburse money only as provided by a voucher certified by an officer or employee of the executive agency having written authorization from the head of the agency to certify vouchers.” The DOD FMR implements 31 U.S.C. 3325 by providing guidance on the authorization and certification of payment vouchers and the separation of duties between the certifying and disbursing officials.

### **Report Examples of Incorrect Payments**

The internal controls over commercial payments made by seven Army contingency disbursing stations were inadequate for commercial payment support. We estimate that the Army made \$1.4 billion in commercial payments that lacked minimum documentation to make a valid payment. We also estimate that the Army made an additional \$6.3 billion of commercial payments that did not comply with other statutory and regulatory requirements. Specifically, there were 125 payments not supported by the minimum documentation and information, which includes properly prepared receiving reports, invoices, and certified vouchers. An additional 537 commercial payments had the minimum documentation required but did not meet other documentation and information requirements, such as taxpayer identification number, method of disbursement, and contact information. In addition, DOD did not ensure that \$1.8 billion of seized and vested assets payments made to Iraqi representatives were adequately accounted for and auditable. In addition, DOD did not maintain a complete audit trail for \$134.8 million in Commander’s Emergency Response Program payments made to representatives of foreign governments. As a result, DOD was unable to provide reasonable assurance that the seized and vested asset funds were accounted for as prescribed and that Commander’s Emergency Response Program funds provided to Coalition Partners were used for the purposes intended. (Report No. D-2008-098)

United States Marine Corps officials did not properly authorize vouchers for 9,675 payments totaling \$310.4 million in accordance with 31 U.S.C. 3325 and the DOD FMR. In addition, the Marine Corps officials used disbursing personnel to both certify vouchers and make disbursements, duties that should have been performed by separate personnel. As a result, United States Marine Corps payments are at increased risk for unauthorized modification, erroneous payments, or disclosure of classified information. The report found that the Marine Corps officials made 32 duplicate payments, totaling \$2.5 million, and did not take collection on these erroneous payments. These duplicate payments included instances where the United States Marine Corps overpaid a vendor

\$225,064 by paying the same invoice three times and paid for the same invoice and receiving report at multiple locations. (Report No. D-2010-037)

### **Criteria for Identifying Potential Antideficiency Act Violations**

The Antideficiency Act is codified in 31 U.S.C. 1301 and other sections. The purpose of the Antideficiency Act is to enforce the constitutional budgetary powers of Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Specifically, 31 U.S.C. 1301—the Purpose Statute—states that an appropriation must be applied to objects that the appropriations were made for, except as otherwise provided by law. In addition, 31 U.S.C. 1341 states that an officer or employee of the U.S. Government may not authorize an amount that exceeds the expenditure or appropriation threshold.

According to 31 U.S.C. 1502(a), appropriations are available only for the bona fide needs of an appropriation's period of availability. The bona fide needs rule states that the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability, or to complete contracts properly made within that period of availability and obligated consistent with 31 U.S.C. 1501. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

Volume 3, chapter 15 of the DOD FMR states that, at fiscal year end, installations must ensure that obligations are accurately stated in view of the most current information available. Installations should review and validate unfilled project orders funded by expiring accounts, cancel orders that will not be started by January 1 of the ensuing fiscal year, and review estimated obligations for possible overstatement or understatement.

### **Report Examples of Potential Antideficiency Act Violations**

The Army Technology Applications Program Office did not comply with appropriations laws and regulations when funding a task order. This occurred because the Technology Applications Program Office incorrectly funded the task order with \$63.6 million in procurement funds, when it should have funded the task order with Research, Development, Test, and Evaluation funds. The task order increased the performance envelope of a major end item already in production and required the developmental testing of the new prototype. This may have caused a violation of section 1341, title 31, United States Code. (Report No. D-2009-083)

The U.S. Air Forces Central War Reserve Materiel contracting officer obligated at least \$6 million in Operations and Maintenance funds for Minor Military Construction projects in 1 fiscal year when the projects were not programmed and approved until a later fiscal year. For example, U.S. Air Forces Central officials obligated FY 2003 funds for 39 MMC projects that were not approved until FY 2004 or later. In some cases, Minor Military Construction requirements were not approved until 4 years after U.S. Air Forces Central personnel claimed the War Reserve Materiel contracting officer obligated funds. This occurred because the

War Reserve Materiel contracting officer did not consistently apply the bona fide needs rule when executing Minor Military Construction projects with Operations and Maintenance funds. In addition, we could not determine whether \$50 million obligated to the War Reserve Materiel contract for Minor Military Construction violated the bona fide needs rule because the contract modifications did not properly identify the Minor Military Construction projects or link obligated funds to specific Minor Military Construction projects. As a result, the War Reserve Materiel contracting officer used expired Operations and Maintenance funds to execute Minor Military Construction projects and may have violated the Antideficiency Act. (Report No. D-2009-108)

# What Has Been Done Based On Our Audits

We reviewed 32 Audit reports and 2 SPO reports that involve high-risk areas of contract management and identify actions that need to be taken to correct future contracting issues. The following encompasses the recommendations made and the actions taken.

## Requirements<sup>2</sup>

We made 16 recommendations addressing inadequate requirements. Nine of the 16 recommendations are closed<sup>3</sup> and 7 remain open.<sup>4</sup> Our recommendations were for management to ensure all requirements are fully defined and properly compete all requirements in accordance with the Competition in Contracting Act. For example, we recommended that the Executive Director, Logistics Civil Augmentation Program, ensure that performance work statements accurately reflect warfighter requirements. According to the Logistics Civil Augmentation Program Project Management Office, to correct this issue they have developed and trained the Iraq, Afghanistan, and Kuwait Deputy Program Directors and their staffs on the Logistics Civil Augmentation Program IV requirements generation process to development appropriate performance work statements.

## Contract Documentation

Thirty recommendations were made to correct contract documentation. Seventeen of these are closed; the remaining 13 are open. Generally, we recommended that management develop and maintain a contract file that could reconstruct the history of the contract and provide adequate documentation to support all contractual actions. For example, we recommended that the Commander, U.S. Army Contracting Command, Southwest Asia-Kuwait, comply with FAR Subpart 4.8, "Government Contract Actions," regarding the retention of sufficient contract files that would constitute a complete history for contracts under its purview. The U.S. Army Contracting Command, Southwest Asia-Kuwait office has re-established management control processes to correct and improve contract file maintenance in accordance with FAR Subpart 4.8.

## Contract Type<sup>5</sup>

We made 12 recommendations addressing the selection of contract type. Two of the 12 recommendations are closed and 10 remain open. For example, we recommended that the Executive Director, Logistics Civil Augmentation Program, require the procuring contracting officer to establish a plan to identify goods and services within the task orders that could be acquired using firm-fixed-price, and develop firm-fixed-price task order requirements. In response, the Commander, U.S. Army Sustainment Command, stated

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<sup>2</sup> Requirements consist of two subcategories: Unclear/Changing requirements and Out of Scope requirements.

<sup>3</sup> A closed recommendation means that the actions taken by management satisfied the intent of the recommendation.

<sup>4</sup> An open recommendation is a recommendation that we are still tracking to ensure that agreed-upon actions are implemented.

<sup>5</sup> Contract type consists of three subcategories: firm-fixed-price, cost type, and commercial acquisition.



that for future task order competitions, the contracting will document the rationale for the contract type selected in the competition plan.

## **Source Selection**

We made seven recommendations addressing contract source selection. Three of the seven recommendations are closed and four remain open. For example, we recommended that the Commander, Marine Corps Systems Command, direct the Assistant Commander for Contracts to ensure that future procurements for Mine Resistant Ambush Protected vehicles are properly competed or justified on a sole-source basis. In response, the Marine Corps Systems Command incorporated the recommendation into its acquisition strategies for the Mine Resistant Ambush Protected vehicle Category II and sole-source award Mine Resistant Ambush Protected vehicle Category III procurements.

## **Contract Pricing**

We made 34 recommendations addressing contract pricing. Twenty of the 34 recommendations are closed and 14 remain open. For example, we recommended that the Commanding Officer, Naval Facilities Engineering Command Southeast, request a refund of \$1.4 million from Kellogg, Brown, and Root for the unreasonable lease charge and fees associated with cooking equipment purchase by Commercial Marketing Corporation. As a result of the recommendation, the Naval Facilities Engineering Command Southeast withheld \$1.6 million from invoices for unreasonable lease charges, fees, and applicable overhead costs associated with the subcontract with Commercial Marketing Corporation. On March 5, 2009, DCAA disapproved \$1.6 million of contract costs. On May 1, 2009, the Naval Facilities Engineering Command Southeast issued a Contracting Officer Final Decision to Kellogg, Brown, and Root, demanding payment of \$1.6 million. Additionally, the Naval Facilities Engineering Command Southeast executed two deductive contract modifications to recover the funds.

## **Oversight and Surveillance<sup>6</sup>**

We made 155 recommendations to improve oversight and surveillance. Ninety-five of the 155 recommendations are closed and 60 remain open. Generally, we recommended that management develop a QASP and properly designate and train CORs. For example, we recommended that the Commander, U.S. Army Corps of Engineers, Gulf Region Division, develop and implement a QASP for transportation services, specifically for future contracts, that clearly outlines roles and responsibilities for monitoring contractor performance. As a result of the recommendation, the contracting officer issued a modification to incorporate a QASP into the contract. The QASP identified the roles and responsibilities of quality assurance personnel and specifically requires quality assurance personnel to administer and monitor the contractor's performance for the contracting officer.

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<sup>6</sup> Oversight and surveillance consists of six subcategories: Acceptance, Contracting Officer, COR, DCAA, DCMA, and Written Procedures.

## **Inherently Governmental Functions**

We made 12 recommendations to eliminate the performance of inherently governmental functions by contractors. Four of the 12 recommendations are closed and 8 remain open. For example, we recommended that the Director, Special Operations Forces Support Activity, develop internal controls to ensure that Special Operation Forces Support Activity Business Management Division contractors and Government personnel follow all elements of the FAR regarding inherently governmental activities. To prevent future inherently governmental issues, the Special Operations Forces Support Activity implemented an internal policy that directs all Special Operations Forces Support Activity contractors to clearly identify themselves as contractors in all situations where their contractor status is not obvious. Additionally, the internal policy states that Special Operations Force Support Activity contractors are not authorized to sign or approve contractual documentation, including documentation that defines requirements.

## **Property Accountability**

We made 66 recommendations to improve property accountability. Forty-two of the 66 recommendations are closed and 24 remain open. For example, we recommended that the Director, Gulf Region Division Contracting Division, reconcile and resolve inventory discrepancies with the contractor. As a result, Gulf Region Division Internal Review evaluators compared December 2008 inventory reports and found a difference of 10 vehicles, or 1.5 percent, because different counting methods were used to create the reports.

## **Award Fee**

We made eight recommendations addressing the award fee process. Two of the eight recommendations are closed and six remain open. For example, we recommended that the Commander Officer, Naval Facilities Engineering Command Atlantic, establish procedures to verify that award fee assessments made by the contracting officer and technical representatives are reconciled against each other and ensure that written statements matched the performance ratings. In response to the recommendation, the Global Contingency Construction Standard Operating Procedures Users Guide was revised to address the award fee process. Specifically, the Global Contingency Construction Standard Operating Procedures Users Guide requires the contracting officer to collect the award fee evaluation from the technical representatives, but allows the contracting officer to provide input.

## **Financial Management<sup>7</sup>**

We made 49 recommendations addressing financial management. Eighteen of the 49 recommendations are closed and 31 remain open. For example, we recommended that the Director, Gulf Region Division Contracting Division, review all prior invoices and reconcile the services received and services billed with the contractor. To address this

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<sup>7</sup> Financial Management consists of three subcategories: Billing, Payments, and Potential Antideficiency Act Violations.

issue, all elements of the task order will be reviewed by the U.S. Army Corps of Engineers and the Army Audit Agency, including invoice reconciliation, as part of the closeout process.

# What Needs To Be Done

The effectiveness of contractor support for expanded U.S. operations in Afghanistan could be compromised by the failure to extract and apply lessons learned from Iraq. As we surge into Afghanistan, it is critical that we review the shortfalls identified and develop a framework to achieve better contracting for contingency operations in Afghanistan and future contingencies. Based on our review of the reported deficiencies, we believe the following steps need to be taken to improve the contracting process in current and future contingency operations. These steps are not all-inclusive in a contingency contracting environment and should be considered in unison with Federal and DOD guidance and the contracting process flow chart (See page iii).

- **Contract Documentation**

Complete and detailed documentation is essential to all phases of the contracting process. The contracting officer should ensure that a complete and well-documented contracting file, to include pre-award consideration on requirements, acquisition strategy, pre-award pricing, the basic contract, and all the modifications or task orders, exists for the life of the contract. The contracting officer should ensure appropriate financial management occurs for the life of the contract to include the type and amount of funds being obligated to the contract.

- **Requirements**

Program personnel must ensure that clear, complete, well-defined requirements exist for the entire contract. When conditions do not allow for clearly defined requirements for the entire contract, the contracting officer should use a type of contract structure that allows well-defined requirements to be developed for segments of work, such as task orders or basic ordering agreements.

- **Acquisition Strategy**

Contracting officers must prepare an acquisition strategy that considers the contract type, a source selection strategy, a pricing strategy, and funding. When preparing the acquisition strategy, program personnel should document market research to assist in establishing a source selection strategy and must develop a detailed, specific solicitation.

- **Contract Type**

When determining whether the contract should be fixed price or a cost-type, the contracting officer should consider the procurement history and, if applicable, evaluate prior work to support the contract type decision. Contracts should be structured to allow for fixed price and cost-type line items when appropriate. Contract type is important to future surveillance considerations. The more cost-type work that is included, the more surveillance assets will be required.

- **Source Selection**

The contracting officer must have well-defined and measurable source selection criteria and well-documented selection decisions that appropriately discuss price and technical tradeoffs for competitive procurements. For negotiated procurements, prices must be properly supported and documented.

- **Contract Pricing**

The contracting officer should have robust pre-award pricing support. As a general rule, DCAA is used to provide pricing support for pre-award proposals for contract cost support and DCMA is used to provide technical support for labor hours, labor mix, and procurement quantities. To the extent available, DCAA and DCMA should be brought into the process early and used throughout the life of the contract. In addition, for cost-type contracts, DCAA should review the accounting and business system of the proposed contractors. Contractors must be able to account for and properly record costs. If DCAA and DCMA are not used, suitable pricing and technical expertise or both should be used. Furthermore, pricing and technical support decisions should be detailed and documented.

All aspects of the negotiation, specifically the price negotiation memorandum, should be documented in detail to allow an independent party to understand the conclusions negotiated. The contracting officer must have certified cost or pricing data for sole-source procurements unless an exception applies. If certified cost or pricing data are used in negotiation, the contracting officer should document that he or she relied on the data. If an exception applies, other cost or pricing data should be obtained to the extent necessary. Comparison of independent government cost estimates to proposed price should normally not be the primary or only basis for establishing price reasonableness. Independent government cost estimates, when used, should be detailed and well-documented as to the basis for the supporting documentation. Use of prior price history for other contracts should be closely scrutinized. Relying on prior prices without knowing how those prices were established or the scope of the other awards relative to the anticipated procurements does not provide an appropriate comparison. As an example, prior prices on a contract action for \$200,000 likely could not be relied on to establish price reasonableness for a newly proposed contract for \$3 million.

- **Oversight and Surveillance**

Both program and contracting personnel must ensure a well-documented surveillance approach is in place. QASPs and surveillance logs should be measurable and documented to show the quality and quantity of actual surveillance performed. Because of the magnitude of surveillance issues found in our audit work, a robust surveillance system is essential. Program and contracting personnel must ensure that sufficient contract oversight occurs and that oversight personnel are adequately trained.

When evaluating the amount of oversight needed for a contract, the following should be considered:

- contract type,
- products versus services,
- criticality of product and service, and
- number of locations.

For example, a cost-type service contract with contract performance at multiple locations will require a much more robust oversight staff. Contracts that allow for award fee should be well documented with measurable criteria, and award fee decisions must be well documented. Contract oversight personnel should perform realistic and measurable reviews and ratings of contractor performance. It is crucial that contractors do not perform inherently governmental functions such as oversight and surveillance, especially for cost-type contracts.

- **Acceptance and Payment**

The contracting officer should ensure that the Government is accepting the supplies and services being provided by the contractor and that acceptance and inspection are adequately documented. Additionally, the contracting officer should ensure that a documented process is in place for the review and approval of interim vouchers including requirements for detailed supporting documentation to be included with the payment voucher. DCAA should be included in the interim voucher review process whenever possible.

There is a critical shortage of qualified contract management personnel in theater and those who are there are stretched too thin. In particular, the process for designating and training CORs to check contractor performance in theater is broken. DOD should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in country rather than from Iraq, which is currently the case.

# Appendix A. Scope and Methodology

This non-audit service report is to provide DOD field commanders and contract managers with the systemic contracting issues identified in DOD IG products issued from October 1, 2007 through April 1, 2010, that involve high-risk areas of contract management and identify actions that need to be taken to correct these issues for future contracting. Specifically, we reviewed 32 Audit reports and 2 SPO reports related to contracting in contingency operations with the primary focus being work done in Iraq and Afghanistan. In addition, we reviewed 19 DCIS investigations dealing with contingency contracting issues. (Appendix C)

We reviewed the findings, conclusions, and recommendations contained in these 34 reports and 19 DCIS investigations; however, we did not review the supporting documentation from any of these reports. Based on our review, we grouped the deficiencies discussed in the products into the following 10 issue areas in the contracting process:

1. Requirements,
2. Contract Documentation,
3. Contract Type,
4. Source Selection,
5. Contract Pricing,
6. Oversight and Surveillance,
7. Inherently Governmental Functions,
8. Property Accountability,
9. Award Fees, and
10. Financial Management.

## Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

## Prior Coverage

During the last 5 years, the DOD IG issued two reports on the summary of audit reports dealing with contingency contracting. Unrestricted DOD IG reports can be accessed at <http://www.dodig.mil/audit/reports/>.

### ***DOD IG***

DOD IG Report No. D-2009-071, "Summary of DOD Office of Inspector General Audits of Acquisition and Contract Administration," April 22, 2009

DOD IG Report No. D-2008-086, "Challenges Impacting Operations Iraq Freedom and Enduring Freedom Reported by Major Oversight Organizations Beginning FY 2003 through FY 2007," July 18, 2008

# Appendix B. Issue Areas by Audit Report

Report #s	Requirements		Contract Documentation	Contract Type			Source Selection	Contract Pricing	Oversight and Surveillance						Inherently Governmental Functions	Property Accountability	Award Fees	Financial Management		
	Unclear/ Changing	Out of Scope		Firm- Fixed- Price	Cost type	Commercial Acquisition			Acceptance	Contracting Officer	CORs	DCAA	DCMA	Written Procedures				Billing	Payments	Potential ADA
D-2008-026			X						X	X	X			X		X			X	
D-2008-038									X				X						X	
D-2008-060			X										X			X				
D-2008-067	X		X					X												
D-2008-097	X		X		X			X		X							X			
D-2008-098																			X	
D-2008-107								X												
D-2008-119	X		X					X	X	X										
D-2008-135										X						X				
D-2009-007	X															X				
D-2009-041							X	X		X										
D-2009-046		X		X			X	X												
D-2009-075																X				
D-2009-076	X		X					X		X									X	
D-2009-083			X						X	X					X					X
D-2009-085			X				X		X	X						X				
D-2009-091	X		X							X										
D-2009-095			X						X	X						X			X	
D-2009-096			X						X	X	X		X							
D-2009-099																X				
D-2009-100																X				
D-2009-102			X				X	X												
D-2009-108	X	X	X		X			X	X	X	X				X	X	X	X	X	X
D-2009-109			X	X	X	X		X	X	X						X		X	X	X
D-2009-114	X				X								X	X		X	X			
D-2010-022	X		X					X		X						X				
D-2010-027																X				
D-2010-035			X						X	X			X							
D-2010-037			X							X									X	
D-2010-042	X		X						X	X	X	X		X	X	X		X	X	
D-2010-046	X									X			X							
D-2010-049			X							X							X			
SPO-2009-006									X							X				
SPO-2009-007										X	X		X			X				



# Appendix C. National Procurement Fraud Task Force\*

## Prosecuted Investigations

We reviewed 19 DCIS investigations involving fraudulent contracting activity in Southwest Asia from October 1, 2007 through April 1, 2010. In order to better identify the warning signs of fraudulent activities, we organized the investigations to fit within the contracting process. However, not all areas are identified, but as discussed earlier in the report, fraud can occur at any point in the process, so it is important to know how to identify the indicators. Table C-1 on page 42 shows details of the 19 investigations.

### Source Selection

- Richard E. Long entered into an agreement with WATEC, Inc. by which he would receive secret payments from WATEC, Inc. in exchange for Long's recommendation that every water-purification contract be awarded to WATEC, Inc., either as the primary contractor or as a subcontractor. As a result, WATEC, Inc. was awarded contracts worth more than \$66 million. WATEC, Inc. made payments to Long totaling approximately \$549,700. Long was convicted of 18 counts of bribery, 6 counts of wire fraud, and 1 count of money laundering. (*Former Army Official and Tennessee Businessman Convicted in Water Contract Scheme, 2/19/2009*)
- Terry Hall was charged with bribing two Army Majors who served as Army contracting officials at Camp Arifjan. According to the indictment, Hall operated several companies that had contracts with the U.S. Military in Kuwait. As a result of the bribes, the companies allegedly received approximately \$21 million from contracts to deliver bottled water and to erect security fencing for DOD in Kuwait and Iraq. In exchange, one of the Army Majors are alleged to have received more than \$2.8 million in money and other valuable items from Hall. DOD paid Hall approximately \$6.4 million. Hall allegedly paid the other Army Major at least \$200,000 in exchange for these and other official acts. (*Civilian Contractor, U.S. Army Major, and His Wife Indicted for Alleged Bribe Scheme Involving Contracts at Camp Arifjan in Kuwait, 5/6/2009*)
- U.S. Army Captain Bryant Williams was charged in an indictment for allegedly steering more than \$500,000 in U.S. Army contracts to favored contractors in exchange for tens of thousands of dollars in bribe payments while he was

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\* The National Procurement Fraud Task Force was formed in October 2006 to promote the early detection, identification, prevention, and prosecution of procurement fraud associated with the increase in Government contracting activity. The National Procurement Fraud Task Force includes the U.S. Attorney's Office, the Federal Bureau of Investigation, the Inspectors General Investigative Services community [that is, DCIS], and a number of other Federal law enforcement agencies.

stationed in Baghdad, Iraq, serving as a procurement officer. As such, Williams' duties included participating in the solicitation of bids, assisting in the selection of contractors, and overseeing the administration and completion of U.S. Army contracts that were worth between \$2,500 and \$200,000. Williams unlawfully demanded and accepted tens of thousands of dollars in bribe payments in exchange for abusing his position to steer more than \$500,000 in U.S. Army contracts to favored contractors. (*Manhattan U.S. Attorney Charges U.S. Army Captain With Accepting Bribes While Stationed in Iraq, 8/17/2009*)

- A former U.S. Army contracting officer, John Cockerham, was responsible for awarding contracts for services to be delivered to troops in Iraq, including bottled water. In return for awarding the contracts, he received more than \$9 million in bribe proceeds. Once Cockerham agreed to take money in exchange for awarding contracts, he directed the contractors to pay his wife and sister, among others, in order to conceal the receipt of bribe payments. (*Army Officer, Wife, and Relative Sentenced in Bribery and Money Laundering Scheme Related to DOD Contracts in Support of Iraq War, 12/2/2009*)

### **Oversight and Surveillance**

- Wallace A. Ward, a former Kellogg, Brown, and Root employee, conspired to accept payments from drivers, who in fact were selling their fuel to parties outside the airfield, in return for providing the drivers with false documents showing that the truckloads of fuel had been delivered to the airfield. According to the indictment, more than 80 truckloads of fuel were diverted for sale outside the airfield between May and September 2006, involving more than 784,000 gallons of fuel valued at more than \$2.1 million. (*Former Kellogg, Brown, and Root Employee Sentenced for Scheme to Defraud the U.S. Department of Defense, 4/11/2008*)
- AEY Inc., Efraim Diveroli, David Packouz, Alexander Podrizki, and Ralph Merrill were indicted by a Federal grand jury on wide-ranging fraud charges in connection with their provision of ammunition to Afghanistan. Mr. Diveroli was charged with making false statements to the U.S. Army regarding the country of origin of the ammunition. AEY was required to certify that it was providing serviceable and safe ammunition to Afghanistan. The contract prohibited delivery of ammunition acquired, directly or indirectly, from a Communist Chinese military company. The indictment alleges that the defendants submitted false Certificates of Conformance to the Army attesting that the ammunition they were providing was manufactured and originated in Albania, when, in fact, the ammunition came from China. To accomplish this, the defendants Efraim Diveroli, David Packouz, and Alexander Podrizki would direct others to assist in the packaging of ammunition to be delivered to Afghanistan, and would provide instructions to remove Chinese markings from containers in order to conceal that the ammunition was manufactured and originated in China. (*Munitions Supplier, His Company, and Others Indicted for Lying to Army on Government Munitions Contract, 6/20/2008*)

- Raschad L. Lewis, a former fuel section employee of Kellogg, Brown, and Root, conspired to accept payments from drivers, who in fact were selling their fuel to parties outside the airfield, in return for providing the drivers with documents falsely showing that the truckloads of fuel had been delivered to the airfield. According to evidence presented in court, more than 48 truckloads of fuel were diverted for sale outside the airfield between May and September 2006, valued at more than \$800,000. (*Former Military Contractor Sentenced for Participating in Scheme to Steal Large Quantities of Fuel from U.S. Army in Afghanistan, 8/21/2009*)

### **Property Accountability**

- Harith Al-Jabawi and U.S. Army Chief Warrant Officer, Joseph Crenshaw, were charged with participating in a scheme to steal fuel from Camp Liberty in Baghdad, Iraq. Al-Jabawi was only capable of obtaining fuel from Camp Liberty if a uniformed military personnel assisted him. Crenshaw assisted Al-Jabawi to the fuel depot several times. In exchange, Mr. Crenshaw received several thousand dollars. Al-Jabawi and Crenshaw were charged with conspiracy to bribe a public official. Al-Jabawi was also charged with making false statements to the Department of Defense in order to gain access to U.S. military installations in Iraq. (*U.S. Government Contractor Arrested for Participating in Scheme to Steal Fuel From Camp Liberty, Baghdad, Iraq, 7/8/2008*)
- Lee William Dubois, a former DOD contractor, pleaded guilty to using fraudulently obtained documents to enter the Victory Bulk Fuel Point in Camp Liberty, Iraq, and presented false fuel authorization forms to steal aviation and diesel fuel for subsequent sale on the black market. To retrieve and transport the stolen fuel from the Victory Bulk Fuel Point, Dubois admitted he and his co-conspirators employed approximately 10 individuals to serve as drivers and escorts of the trucks containing the stolen fuel. These individuals were able to enter the Victory Bulk Fuel Point illegally by using Government-issued common access cards that were falsely obtained. Dubois and his co-conspirators stole approximately 10 million gallons of fuel worth approximately \$39.6 million. Dubois received at least \$450,000 in personal profits from the subsequent sale of the fuel on the black market. Co-conspirators Robert Jeffery, Robert Young, and Michel Jamil received more than \$1 million in personal profits. (*Former Department of Defense Contractor Sentenced for Participation in Scheme to Steal Fuel From U.S. Army in Iraq, 8/25/2009 (Dubois, Jeffery, Jamil, Young)*)

**Table C-1. DCIS Prosecuted Investigations From  
October 1, 2007 Through April 1, 2010**

<b>Case Names</b>	<b>Date</b>	<b>Source Selection</b>	<b>Oversight and Surveillance</b>	<b>Property Accountability</b>
Ward	4/11/2008		X	
AEY Inc., Diveroli, Packouz, Podrizki, Merrill	6/20/2008		X	
Al-Jabawi, Crenshaw	7/8/2008			X
Wilkinson, Cartwright	7/29/2008	X		
Momon	8/13/2008	X		
West, Boyd, Ramin, Ramin, Alam, Bahkshi, Northern Reconstruction Organization, and Naweed Bahkshi Company	8/27/2008	X		
Long	2/19/2009	X		
Cobos, Azar, Sima Salazar Group	4/9/2009		X	
Hall	5/6/2009	X		
AZ Corporation, Top's Construction	6/19/2009		X	
Cliffton	8/7/2009	X		
Williams	8/17/2009	X		
Lewis	8/21/2009		X	
Dubois, Jeffery, Jamil, Young	8/25/2009			X
Lodin, Farooqi	11/13/2009	X		
Jeffery, Young, Dubois, Jamil	11/30/2009			X
Cockerham, Cockerham, Blake, Pettaway	12/2/2009	X		
Murray	12/16/2009	X		
Schmidt	3/4/2010	X		

## Ongoing Investigations

DCIS groups the investigations into three predominant investigative categories for the Global War on Terror Investigations: Public Corruption; Procurement Fraud; and Theft and Technology Protection. Public Corruption includes bribery, gratuities, and conflicts of interest. Procurement Fraud includes false claims and statements, undelivered products, defective products, and cost/labor mischarging. Theft and Technology Protection includes theft of funds, property, equipment, and supplies, and export violations (U.S. technology and vehicles).

**Table C-2. DCIS Open Investigations as of December 31, 2009**

<b>Predominant Investigative Category for Global War on Terror Investigations</b>	<b>Number Ongoing</b>	<b>Subject Types</b>
Public Corruption - Bribery - Gratuities - Conflicts of interest	94	U.S. and foreign contractor personnel, U.S. Military, Government personnel
Procurement Fraud - False claims and statements - Undelivered products - Defective products - Cost/labor mischarging	88	U.S. and foreign contractor personnel, U.S. Military, Government personnel
Theft and Technology Protection - Theft of funds, property, equipment, and supplies - Export violations: U.S. technology and vehicles	38	U.S. and foreign contractor personnel, U.S. Military, Government personnel
Miscellaneous - Terrorism-Related Acts	9	U.S. contractor personnel, U.S. Military, Government personnel

# Appendix D. Fraud Indicators in the Contracting Process

The need to maintain high ethical standards and procurement integrity is always important for DOD contracting officers; however, this requirement can be challenging in a deployed environment where the expectations and business habits of suppliers may be affected by varying cultural, political, and economic conditions. Additionally, the pressures to meet mission requirements can be even more intense in a contingency contracting environment.

Fraud is the misrepresentation of a material fact with the intent to deceive. Fraud may occur at any stage in the Federal Government procurement process. Although poor management decisions or negligence may lead to indications of fraud, the difference between fraud and negligence is intent.

Common fraud offenses include:

- bribery, kickbacks, and gratuities;
- making or using a false statement;
- falsely making or altering a document;
- making or presenting a false claim;
- companies conducting business under several names;
- collusive bidding;
- conflict of interest;
- conspiracy to defraud;
- disclosure of proprietary source selection sensitive information;
- insufficient delivery of contracting items; and
- failure to meet specifications.

## Requirements Fraud Indicators

The potential for fraud is created when the need assessment is not adequately or accurately developed. Sloppy or carelessly written specifications make it easy for a contractor to overcharge or deliver less than expected. Fraud indicators regarding requirements definition include, but are not limited to, the Government:

- failing to state requirements functionally to the maximum extent possible (specifications that are vague make it difficult to reasonably compare estimates);
- defining statements of work and specifications to fit products or capabilities of a single contractor, which effectively excludes competition;
- splitting requirements to use simplified acquisition procedures in order to avoid review and approval; and
- modifying the contract shortly after award in order to make material changes in the requirements or statement of work.

## **Contract Documentation Fraud Indicators**

Dishonest individuals may attempt to hide evidence of fraudulent activity by omitting certain documents from a contract file or including outdated information. Fraud indicators relating to contract documentation include, but are not limited to:

- a pattern of missing documents or documentation with outdated information in the contract file;
- contract documents that are altered, backdated, or modified to cover deficiencies;
- contract awards made without adequate documentation of all pre-award and award actions; and
- invoices that do not have adequate supporting documentation or supporting documentation is incomplete.

## **Contract Type Fraud Indicators**

In a fixed-price contract, the risk of performance falls on the contractor. Cost-reimbursement contracts shift the risk of performance to the Government and the contractor agrees to provide its best effort to complete the contract requirements. The high risk to the Government in cost-reimbursement contracts may provide an opportunity for fraud to occur.

## **Source Selection Fraud Indicators**

The contracting officer is required to select the proposal that represents the best value to the Government. While the contract award process has been designed to efficiently ensure the delivery of goods and services, the complex procedures involved in source selection may provide an opportunity for fraud to exist. The fraud indicators relating to source selection include, but are not limited to:

- improper relationships between Government and contractor personnel;
- the Government's failure to perform market research to determine evaluation factors, contracting method, or whether commercial items or nondevelopmental items would meet the Government's needs;
- the Government restricting procurement to exclude or hamper any qualified contractor;
- the Government revealing information about procurements to one contractor that is not revealed to another;
- the Government accepting late or nonresponsive proposals, or accepting proposals from nonresponsible offerors;
- the Government improperly disqualifying offerors;
- the Government exercising favoritism towards a particular contractor during the evaluation process;
- the Government awarding contracts to contractors with poor records of performance;
- the Government awarding contracts that include items other than those contained in the bid specifications; and
- the Government's approval of a justification for less than full and open competition based on improper reasons or inaccurate facts.

## **Contract Pricing Fraud Indicators**

Contracting officers must purchase supplies and services at fair and reasonable prices. Failure to implement procedures to obtain fair and reasonable prices may create opportunities for fraudulent activities, including kickbacks, bribes, and gratuities, that may be unknowingly included in the contract price. Fraud indicators relating to contract pricing include, but are not limited to:

- the Government not preparing estimates or preparing estimates after solicitations are requested,
- the Government and contractor utilizing unqualified personnel to develop cost or pricing data used in estimates,
- government estimates and contract award prices are consistently very close,
- the Government approves items that are of lesser value but the contract cost is not reduced, and
- the contractor issuing an engineering change proposal soon after the award of a contract.

Collusive bidding, price fixing, or bid rigging are commonly used as interchangeable terms that describe illegal anti-competitive activity. These are activities that involve agreements or informal arrangements among competitors to limit competition. Indicators of these anti-competitive activities include: the existence of fewer than five bidders, constant winners, constant losers, and close groupings of final bid prices.

## **Oversight and Surveillance Fraud Indicators**

Shortages in quality assurance and surveillance staffing is a major challenge to DOD. The increasing level of contract support along with urgencies of the war efforts has spread the availability of quality assurance and surveillance staff thin. Failure to properly monitor contract performance enables fraud. Fraud indicators related to contract oversight and surveillance include, but are not limited to:

- contractors awarding subcontracts to unsuccessful bidders;
- the Government providing materials or services to contractors even though contractors are being paid to provide the materials or services;
- the administrative contracting officer approving modifications;
- contractors failing to meet terms but no compliance efforts are undertaken;
- the Government certifying receipt of goods without performing inspections;
- the user frequently complaining of poor quality of supplies or services provided under a contract—this may indicate that contractors are delivering something less than what you are paying for; and
- the Governments' failure, untimely, or inappropriate closeout of contracts.

## **Inherently Governmental Fraud Indicators**

Contractors performing inherently Governmental functions can increase the Government's exposure to fraud. Fraud indicators relating to inherently Governmental functions include, but are not limited to:

- Increased workloads and responsibilities that prohibit ongoing DOD monitoring of each contractor's work; and
- Contractors certifying payments for vendor goods, services, or salaries.



## **Property Accountability Fraud Indicators**

DOD continues to face ongoing challenges with its ability to accurately account for, monitor, and report inventory amounts. Fraud indicators relating to property accountability include, but are not limited, to:

- inadequate management oversight and physical inventory control;
- unreliable property inventory data;
- inventory records disclose unusual patterns when compared to physical inventory reviews that cannot be reasonably explained;
- inventory items marked with incorrect disposal condition codes, such as repairable or scrap, when they should be labeled excellent; and
- failure to return Government-furnished equipment.

## **Award Fee Fraud Indicators**

The amount of award fee a contractor earns is based on the contractor's overall cost, schedule, and technical performance measured against contract requirements. Collusion between the contractor and Government personnel may result in unwarranted high award fee payments. Fraud indicators relating to award fees include, but are not limited to:

- failure to properly document contractor performance;
- the fee determining official's failure to properly document award fee determinations that differ from Award Fee Review Board recommendations; and
- the award fee granted is not reflective of the contract oversight and surveillance assessments.

## **Financial Management Fraud Indicators**

One of the most common abuses found in the procurement system is cost mischarging. This is due in large part to the fact that many high-dollar Government research and development and service contracts are awarded as cost-type contracts. Mischarging can occur in a number of situations, with a variety of results. Fraud indicators relating to financial management include, but are not limited to:

- the contractor submitting invoices or claims without detail or supporting documentation to the Government;
- the Government paying contractors twice for the same items or services without an attempt to recoup the overpayments;
- the Government not regularly reconciling contract payments, daily transactions, and inventory;
- the contractors' failure to correct known system deficiencies;
- contractors or suppliers complaining that they are not being paid in a timely manner—this may indicate fraudulent manipulations and diversion of Government resources through supply or finance operations; and
- the Government's failure to deobligate funds.

# Appendix E. Commission on Wartime Contracting Interim Report and DOD's Response

In 2008 Congress established the COWC in Iraq and Afghanistan in response to increasing indications of widespread waste, fraud, and abuse in Government contracting. The COWC Interim Report, entitled "At What Cost-Contingency Contracting in Iraq and Afghanistan," to Congress was issued in June 2009, and can be accessed online at

[www.wartimecontracting.gov/docs/CWC\\_Interim\\_Report\\_At\\_What\\_Cost\\_06-10-09.pdf](http://www.wartimecontracting.gov/docs/CWC_Interim_Report_At_What_Cost_06-10-09.pdf). The COWC Interim Report addresses problems in our system of framing, managing, and overseeing contracts that support American military, diplomatic, and reconstruction activities. Among other findings, the COWC Interim Report identified eight issues of immediate concern.

To evaluate the COWC Interim Report, DOD created the Task Force on Wartime Contracting. DOD engaged multiple stakeholders to analyze the COWC Interim Report, focusing on the COWC issues of immediate concern. DOD's response contains three sections: Section I is background and accomplishments, Section II addresses the COWC Interim Report's eight issues of immediate concern, and Section III addresses additional issues raised in the COWC Interim Report. This appendix summarizes DOD's response to the COWC eight issues of immediate concern. The complete DOD response can be accessed at [www.acq.osd.mil/dpap/pacc/cc/docs/TFWC\\_Rpt\\_to\\_USD.pdf](http://www.acq.osd.mil/dpap/pacc/cc/docs/TFWC_Rpt_to_USD.pdf).

## Section I: DOD's Related Accomplishments

DOD has dedicated considerable effort to improving contracting in expeditionary operations. Specifically, DOD has done the following:

- 1) Issued clear guidance in doctrine, instructions, regulations, and policy to provide consistent ground rules for both the operational and support communities. DOD established organizational approaches that work for the warfighter.
- 2) Established two primary points of contact for theater support needs.
  - a. The Director, Defense Procurement and Acquisition Policy, has a dedicated team of contingency contracting professionals, and
  - b. The Assistant Deputy Under Secretary of Defense (Program Support) supports the program management community engaged in operational contract support.
- 3) Consolidated all its theater support-contracting mission under the Army Materiel Command, with its subordinate command—the Expeditionary Contracting Command—tasked with primary execution.

- 4) DOD implemented tools and electronic solutions as shown in the examples below:
- a. An extensive array of tools and electronic solutions—both implemented and in development—to optimize the acquisition process for operational contract support of the warfighter.
    - The *Joint Contingency Contracting Handbook* is an existing tool that is regularly updated.
    - Second edition of the handbook includes Web site availability for immediate use and DOD can update the Web site in real-time with any new procedures and guidelines.
    - The handbook is used as a foundation for the Defense Acquisition University course, Contingency Contracting (CON 234).
  - b. Robust set of training materials—including formal classroom courses, continuous learning modules, and handbooks—to prepare contracting, as well as noncontracting, personnel to manage contract support in contingency operations.

## **Section II: Addresses the COWC's Eight Issues of Immediate Concern**

The COWC Interim Report contains 55 observations; approximately two-thirds (35) relate directly to the 8 issues of immediate concern. The remaining one-third (20) are ancillary (do not directly correlate to an issue of immediate concern). Of the 35 observations, the Department already had significant initiatives underway addressing 94 percent of those observations. The following table is the Task Force's analysis of these 35 COWC observations, which directly tie to the COWC issues of immediate concern. The scorecard information is grouped by DOD progress, and then presented in the order in which the COWC observation appears in the COWC Interim Report. The related COWC issues of immediate concern also appear in the scorecard, replicated here. The DOD response can be accessed from the Internet link provided at the end of the second paragraph of this appendix. The Scorecard is on pages vii through viii of the Internet link.

## Task Force's Analysis of COWC Observations

COWC Issue of Immediate Concern	COWC Observation	TFWC Team Lead	DoD Impetus	DoD Progress
4	Business systems audits are not conducted in a timely manner. (Observation 16, COWC report page 28)	DCAA	+	On Track
4	Contract audit functions require additional emphasis. (Observation 18, COWC report page 29)	DCAA	+	On Track
3	GAO has identified savings obtainable through greater LOGCAP efficiency. (Observation 26, COWC report page 47)	USA	+	On Track
3	DCAA has identified unnecessarily high spending. (Observation 27, COWC report page 48)	USA	+	On Track
1	Lessons learned in closing and transitioning bases in Iraq indicate needs for: (1) comprehensive transition guidance, (2) a way to synchronize requirements, (3) a better mechanism to terminate contracts for providing support on the base, and (4) synchronization of operations and logistical support. (Observation 29, COWC report page 50)	J-4	+	On Track
1	Work in the pipeline may be unnecessary. (Observation 30, COWC report page 51)	J-4	+	On Track
1	Disposition of property will require a number of decisions. (Observation 31, COWC report page 55)	J-4	+	On Track
8	Private security contractor incidents initiated reform. (Observation 35, COWC report page 63)	ADUSD(PS)	+	On Track
8	Legislative remedies are improving security contract management. (Observation 36, COWC report page 64)	ADUSD(PS)	+	On Track
8	There has been a significant decline in incidents involving the use of force by State Department private security contractors since 2007. (Observation 37, COWC report page 66)	ADUSD(PS)	+	On Track
8	The government must ensure that security contractor source selection under multiple-award IDIQ contracts is truly based on best-value analysis. (Observation 38, COWC report page 67)	ADUSD(PS)	+	On Track
8	Legal accountability for security contractors remains unresolved in Iraq. (Observation 39, COWC report page 68)	ADUSD(PS)	+	On Track
8	Inconsistent rules of engagement and use of force impact security posture. (Observation 42, COWC report page 72)	ADUSD(PS)	+	On Track
2	The contingency contracting workforce remains understaffed. (Observation 1, COWC report page 8)	DPAP	+	Challenges
2	Training for military CORs is often inadequate. (Observation 4, COWC report page 11)	DPAP	+	Challenges
2	Data systems are inadequate to measure contingency contracting activity. (Observation 6, COWC report page 14)	DPAP	+	Challenges
6	Contingency contracting lessons learned are not shared effectively. (Observation 8, COWC report page 17)	J-4	+	Challenges
4	Ineffective contractor business systems increase the likelihood of waste. (Observation 15, COWC report page 27)	DCMA	+	Challenges
4	Contracting officials make ineffective use of contract withhold provisions. (Observation 19, COWC report page 31)	DCMA	+	Challenges
5	Subcontractor cost-control management is ineffective. (Observation 21, COWC report page 34)	USA	+	Challenges
3	Both LOGCAP program management and contracting offices have been chronically understaffed. (Observation 22, COWC report page 41)	USA	+	Challenges
2	Other oversight staffing shortages also exist. (Observation 25, COWC report page 44)	DPAP	+	Challenges
3	Regular efficiency reviews are needed. (Observation 28, COWC report page 49)	USA	+	Challenges

COWC Issue of Immediate Concern	COWC Observation	TFWC Team Lead	DoD Impetus	DoD Progress
6	Far-flung bases and rotating units exacerbate the property management problem in Afghanistan. (Observation 34, COWC report page 58)	J-4	+	Challenges
2	Subject-matter-expert support is insufficient to oversee static security services. (Observation 40, COWC report page 70)	DPAP	+	Challenges
2	Ineffective contractor oversight risks contract noncompliance. (Observation 41, COWC report page 71)	DPAP	+	Challenges
3	The time from requirement identification to notice to proceed is too long. (Observation 33, COWC report page 58)	USA	+	Challenges
8	Management of the Armed Contractor Oversight Directorate in Afghanistan poses potential conflict of interest. (Observation 43, COWC report page 73)	ADUSD(PS)	+	Challenges
8	Oversight of contractor weapons possession requires enhancement. (Observation 44, COWC report page 74)	ADUSD(PS)	+	Challenges
2	There are often inadequate numbers of qualified CORs assigned to contractor oversight in Iraq and Afghanistan. (Observation 2, COWC report page 9)	DPAP	✓	Major Challenges
2	COR appointments are not increasing with the requirements. (Observation 3, COWC report page 10)	DPAP	✓	Major Challenges
4	Lack of resources within DCAA is a significant factor contributing to ineffective audit coverage. (Observation 5, COWC report page 13)	DCAA	+	Major Challenges
2	Lack of CORs is particularly acute for LOGCAP. (Observation 23, COWC report page 42)	DPAP	+	Major Challenges
2	More logistics subject-matter experts are needed. (Observation 24, COWC report page 43)	DPAP	+	Major Challenges
2	Understaffing severely impedes efficient and effective execution of the logistics mission. (Observation 32, COWC report page 57)	DPAP	+	Major Challenges
<b>Total</b>				
8 Issues	35 Observations	8 Teams	33 Proactive 2 Reactive	29 Traction 6 Major Challenges

Key:

Why We Are Engaged		How We Are Progressing	
+	<b>Proactive/Independent:</b> DoD self-initiated activity (independent of COWC report)		<b>On track:</b> DoD making good progress
-	<b>Inactive:</b> DoD not engaged in an initiative		<b>Challenges:</b> DoD making progress by facing challenges
✓	<b>Reactive/Dependent:</b> DoD initiative begun in response to COWC report		<b>Major Challenges:</b> DoD not gaining sufficient traction

## **Section III: Additional Issues Raised by the COWC Interim Report**

This section provides an overview of the ancillary observations in the COWC Interim Report. The 20 ancillary observations fall into four broad categories (or focus areas) outside the eight issues of immediate concern:

- a. inherently governmental (2 observations),
- b. operational contract support (3 observations),
- c. oversight community (4 observations), and
- d. reconstruction (11 observations).

The complete information on these issues is detailed in DOD's response found in the COWC Interim Report in Section III, pages 85 through 88; the Internet link to the report is [www.acq.osd.mil/dpap/pacc/cc/docs/TFWC\\_Rpt\\_to\\_USD.pdf](http://www.acq.osd.mil/dpap/pacc/cc/docs/TFWC_Rpt_to_USD.pdf).

## **Appendix F. DOD Inspector General Reports**

We reviewed 32 Audit reports and 2 SPO reports related to contracting in contingency operations with the primary focus being on work done in Iraq and Afghanistan. All audit reports can be found online at <http://www.dodig.mil/Audit/reports/index.html>.

### **Audit Reports**

DOD IG Report No. D-2010-049, "U.S. Army Corps of Engineer's Use of Award Fees on Contracts in Iraq and Afghanistan," April 1, 2010

DOD IG Report No. D-2010-046, "Contracting for Tactical Vehicle Field Maintenance at Joint Base Balad, Iraq," March 3, 2010

DOD IG Report No. D-2010-042, "DOD Obligations and Expenditures of Funds Provided to the Department of State for the Training and Mentoring of the Afghan National Police," February 9, 2010

DOD IG Report No. D-2010-037, "Internal Controls Over United States Marine Corps Commercial and Miscellaneous Payments Processed Through the Deployable Disbursing System," January 25, 2010

DOD IG Report No. D-2010-035, "Defense Logistics Agency Contracts for M2 Machine Gun Spare Parts in Support of Operations in Southwest Asia," January 11, 2010

DOD IG Report No. D-2010-027, "Army's Management of the Operations and Support Phase of the Acquisition Process for Body Armor," December 8, 2009

DOD IG Report No. D-2010-022, "Management of Nontactical Vehicles in Support of Operation Iraqi Freedom," November 20, 2009

DOD IG Report No. D-2009-114, "Transition Planning for the Logistics Civil Augmentation Program IV Contract," September 25, 2009

DOD IG Report No. D-2009-109, "Contracts Supporting the DOD Counter Narcoterrorism Technology Program Office," September 25, 2009

DOD IG Report No. D-2009-108, "U.S. Air Forces Central War Reserve Materiel Contract," September 23, 2009

DOD IG Report No. D-2009-102, "Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command," September 18, 2009

DOD IG Report No. D-2009-100, "Afghanistan Security Forces Fund Phase III - Accountability for Equipment Purchased for the Afghanistan National Police," September 22, 2009

DOD IG Report No. D-2009-099, "Afghanistan Security Forces Fund Phase III-Accountability for Equipment Purchased for the Afghanistan National Army," August 12, 2009

DOD IG Report No. D-2009-091, "Information Operations Contracts in Iraq," July 31, 2009

DOD IG Report No. D-2009-095, "Contracting for Transportation Services for U.S. Army Corps of Engineers, Gulf Region Division," July 29, 2009

DOD IG Report No. D-2009-096, "Contracts for the U.S. Army's Heavy-Lift VI Program in Kuwait," July 28, 2009

DOD IG Report No. D-2009-085, "Contracting for Nontactical Vehicles in Support of Operation Enduring Freedom," June 8, 2009

DOD IG Report No D-2009-083, "Logistics Support Contracting for the United States Special Operations Command," May 28, 2009

DOD IG Report No. D-2009-075, "Afghanistan Security Forces Fund Phase III-Accountability for Weapons Distributed to the Afghanistan National Army," May 21, 2009

DOD IG Report No. D-2009-076, "Afghanistan Security Forces Fund Phase III-U.S. Army Corps of Engineers Real Property Accountability," April 14, 2009

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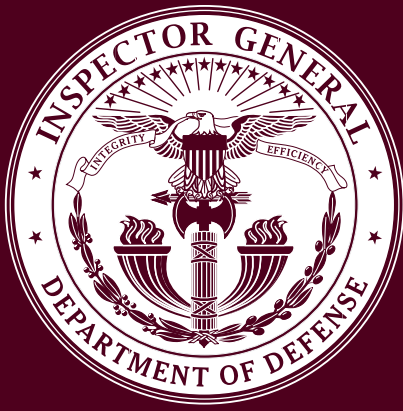
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