The seal of the Office of the Special Inspector General for Iraq Reconstruction is a large, circular emblem in the background. It features an eagle with wings spread, perched on a shield with vertical stripes. The eagle holds an olive branch in its right talon and arrows in its left. The shield is positioned in front of the eagle's chest. The seal is surrounded by text in both English and Arabic. The English text reads "INSPECTOR GENERAL" at the top and "RECONSTRUCTION" at the bottom. The Arabic text reads "مفتش العام" at the top and "إعادة إعمار العراق" at the bottom.

REVIEW OF THE USE OF
DEFINITIZATION REQUIREMENTS
FOR CONTRACTS SUPPORTING
RECONSTRUCTION IN IRAQ

SIGIR-06-019
JULY 28, 2006



SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

July 28, 2006

MEMORANDUM FOR OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF
THE ARMY (POLICY & PROCUREMENT)
COMMANDING GENERAL, JOINT CONTRACTING
COMMAND-IRAQ/AFGHANISTAN
COMMANDING GENERAL, GULF REGION DIVISION,
U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Review of the Use of Definitization Requirements
for Contracts Supporting Reconstruction in Iraq (SIGIR-06-019)

We are providing this report for your information and use. We performed the audit in accordance with our statutory duties contained in Public Law 108-106, as amended, which requires that we provide for the independent and objective conduct of audits, as well as leadership and coordination of, and recommendations on, policies designed to promote economy, efficiency, and effectiveness in the administration of such programs and operations and to prevent and detect waste, fraud, and abuse.

We considered comments from the Office of the Deputy Assistant Secretary of the Army (Policy & Procurement) and the Gulf Region Division-Project and Contracting Office, U.S. Army Corps of Engineers, on a draft of this report when preparing the final report. Their comments are addressed in the report where applicable and copies of the comments are included in the Management Comments section of this report.

We appreciate the courtesies extended to the staff. For additional information on this report, please contact Mr. Joseph T. McDermott at (703) 343-7926, or by email at joseph.mcdermott@iraq.centcom.mil; or Mr. Steve Sternlieb at (703) 428-0240, or by email at steven.sternlieb@sigir.mil. For the report distribution, see Appendix C.

Stuart W. Bowen, Jr.
Inspector General

cc: Distribution

**Office of the Special Inspector General
For Iraq Reconstruction**

SIGIR-06-019

July 28, 2006

**Review of the Use of Definitization Requirements for Contracts
Supporting Reconstruction in Iraq**

Executive Summary

Introduction. Congress appropriated \$18.4 billion for security, relief, rehabilitation, and reconstruction in Iraq. The appropriation is known as the Iraq Relief and Reconstruction Fund (IRRF). Overall, as of April 2006, \$16.4 billion in IRRF funds had been obligated. Funds are obligated for contracts, grants, local purchases, and agency operating expenses. Regarding contracts, as of April 2006 the United States awarded 1,678 contracts valued at nearly \$12.1 billion from IRRF. Of these, the Department of Defense (DoD), mostly through the Department of the Army, has awarded 1,647 contracts with a value of nearly \$7.5 billion. Other activities funded through IRRF, such as grants, local purchases, and agency operating expenses were outside the scope of this review.

A variety of contract actions were used in awarding IRRF reconstruction contracts to meet this mandate, including what is referred to in the Defense Federal Acquisition Regulation Supplement (DFARS) as an *undefinitized contract action*. The Federal Acquisition Regulation (FAR), from which the DFARS is based, refers to these actions as *letter contracts*¹. This type of action is used when the contract terms, specifications, or price are not agreed upon before performance is begun². An *undefinitized contract action* is used in two cases: (1) when there is insufficient time to negotiate for a definitive contract to meet the government's needs; and (2) when the government's interest demands that a binding commitment be given so that contract performance can begin immediately³. The DFARS requires that definitization occur (to agree on the contract terms, specifications, and price) the earlier of (1) 180 days after the issuance of an *undefinitized contract action*; or (2) the date on which the amount of funds obligated under the contract action is equal to more than 50% of the not-to-exceed price.

Objective. The overall objective of this audit was to determine whether the definitization process for contracts (including letter contracts and task orders) funded by the IRRF complied with applicable regulations, policies, and procedures and whether such contracts were being definitized in a timely basis. While the Department of State and the U.S. Agency for International Development award contracts using IRRF, neither identified contracts subject to definitization. Therefore, our review focused on contracts awarded by the DoD.

¹ Under the Federal Acquisition Regulation (FAR) section 16.603, a "letter contract" is written as a preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

² Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 217.7401(d).

³ DFARS, Subpart 217.7403.

Results. There was a lack of clarity regarding the regulatory requirement for definitization of task orders issued under contracts classified as Indefinite-Delivery/Indefinite-Quantity (IDIQ) on the part of the primary U.S. Army organizations involved in awarding and administering different types of contracts for Iraq reconstruction. Specifically, U.S. Army procurement officials with the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A), the U.S. Army Corps of Engineers Gulf Region Division-Project and Contracting Office (GRD-PCO), and the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan (ADASA P&P-I/A) all agreed that the DFARS regulation for definitization did not apply to task orders issued under contracts classified as IDIQ contracts. The basis of this interpretation was the lack of specific language in either the DFARS or the FAR to associate an IDIQ contract as a type of contract that would be subject to the definitization provisions for an *undefinitized contract action*. As such, the application of definitization requirements to task orders issued under IDIQ contracts has been done on a voluntary basis.

On June 2, 2006, as a result of this audit and discussions with U.S. Army officials regarding the DFARS requirement for definitization, the Office of the Army General Counsel, in conjunction with the ADASA (P&P-I/A), has re-examined this issue and now agrees that the provisions of DFARS Subpart 217.74, “is the prescription for *undefinitized contract actions*, which would include task orders, if the terms, specifications or price are not agreed upon before performance is begun under the task order.”

We were unable to determine whether contracts identified as *undefinitized contract actions* were being definitized by the U.S. Army on a timely basis. In our review of the Iraq Reconstruction Management System and the Project Assessment Report databases, both used to track IRRF contract actions, we identified 194 task orders valued at \$3.4 billion, as of the reporting quarter ending March 31, 2006, that were classified as *undefinitized contract actions*, and all were associated with IDIQ contracts. However, the content of these databases, including the fields established to record definitization status, was incomplete. The specific data fields needed to be able to monitor and determine whether definitization occurred; when it occurred; what the definitized value was; and whether this occurred within the 180-day requirement were mostly not being populated in the databases. This is contrary to a September 20, 2005, directive issued by the Iraq Reconstruction Management Office to all agencies with IRRF-funded projects that requires agencies to load and update the Iraq Reconstruction Management System with complete and accurate information.

Conclusion. The lack of clarity among U.S. Army procurement organizations as to the applicability of the DFARS definitization requirement for tasks orders issued under IDIQ contracts diminishes visibility and control over contractor costs by the government. The incomplete nature of the content in the contract databases does not support the DFARS requirement for ensuring that definitization occurs in a timely manner, and thus implementing cost control. Cost containment is essential for contract administration relating to funds control over the IRRF appropriation which is subject to expiration at fiscal year end 2006.

Recommendations. We recommend that the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan:

1. Issue written clarification regarding the applicability of DFARS for definitizing task orders issued under IDIQ contracts in alignment with the opinion of the Office of the Army General Counsel.
2. Consistent with the Iraq Reconstruction Management Office's September 20, 2005, directive that all agencies currently spending IRRF dollars load all IRRF-funded project data in IRMS, issue a directive to JCC-I/A and GRD-PCO requiring that each populates the Iraq Reconstruction Management System and the Project Assessment Report databases with complete and accurate information to monitor *undefinitized contract actions*; and that each ensures that the definitization of *undefinitized contract actions* occurs within established timeframes.

Management Comments and Audit Response. We received written comments on a draft of this report from ADASA (P&P-I/A) and GRD-PCO officials. The ADASA (P&P-I/A)—addressing the contracting activities of JCC-I/A only—generally concurred with the findings and recommendation 1; and all comments received thereof are fully responsive. However, the ADASA (P&P-I/A) did not concur with recommendation 2 that the IRMS or PAR databases be updated because JCC-I/A maintains its own contract database. We also received similar comments from GRD-PCO officials that it maintains other databases that contain undefinitized projects and scheduled completions. SIGIR disagrees with the non-concurrences and has referred to the September 2005 directive issued by IRMO to all agencies that have IRRF funds and projects that requires populating IRMS with complete and accurate information. Additional technical comments received to the draft of this report by the ADASA (P&P-I/A) have been incorporated into this final report as appropriate.

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Introduction

Background

Congress has appropriated \$18.4 billion for security, relief, rehabilitation, and reconstruction in Iraq. The appropriation is known as the Iraq Relief and Reconstruction Fund (IRRF). Overall, 1,678 contracts valued of nearly \$12.1 billion have been awarded from IRRF, as of April 2006⁴. Of these, the Department of Defense (DoD), mostly through the Department of the Army (U.S. Army), has awarded 1,647 contracts with a value of nearly \$7.5 billion. A number of contract types have been used, including firm fixed price and cost plus with various types of award fees. Some of the cost plus contracts utilized were classified as Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts. IDIQ contracts have been used for reconstruction projects in Iraq because of the urgency to initiate work on projects. Task orders are orders placed by the government against IDIQ contracts for individual requirements within stated limits during a fixed period of time.

Detailed contract information is maintained under the direction of the Iraq Reconstruction Management Office and contained in two databases: the Iraq Reconstruction Management System and the Project Assessment Report databases. These databases contain specific fields to allow for the monitoring and recording of definitized contract actions in alignment with contract management. As of March 31, 2006, reports from these databases indicated that 35 IDIQ contracts had been issued by DoD organizations⁵ with a total authorized amount of \$3.4 billion, and that were comprised of 194 task orders. Of those, 184 were associated with U.S. Army organizations.

U.S. Army Organizations Responsible for Contract Management. Several U.S. Army organizations have responsibility for contract management in Iraq. These include the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan (ADASA P&P-I/A); Joint Contracting Command-Iraq/Afghanistan (JCC-I/A); and the U.S. Army Corps of Engineers Gulf Region Division-Project and Contracting Office (GRD-PCO)⁶. The U.S. Army is DoD's executive agent for administrative matters in Iraq.

Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan (ADASA P&P-I/A). Provides administrative and contracting support to U.S. organizations in Iraq, including the Department of State, Chief of Mission, GRD-PCO, and Multi-National Force-Iraq. In addition, ADASA P&P-I/A provides administrative and contracting support for Iraq reconstruction to the JCC-I/A; the Project and Contracting Office-Washington, DC; and the Offices of the Secretary of Defense, as well as provides reach-back to U.S.-based contracting agencies.

⁴ Estimate based on Special Inspector General for Iraq Reconstruction (SIGIR) compilation of contract information submitted by agencies responsible for IRRF. This information was not audited or verified. In addition, there are other activities funded through IRRF, such as grants, local purchase, and agency operating expenses that are outside the scope of this report. See SIGIR Quarterly Report to Congress, Appendix G, April 2006.

⁵ The DoD organizations with IDIQ contracts were GRD-PCO, the United States Air Force Center for Environmental Excellence and the United States Navy.

⁶ Until December 4, 2005, the Project and Contracting Office and the U.S. Army Corps of Engineers Gulf Region Division were separate organizations. They were merged to form GRD-PCO.

Joint Contracting Command-Iraq/Afghanistan (JCC-I/A). The head of contracting activity, JCC-I/A, has the responsibility to administer contracts. The JCC-I/A was established in 2004 to consolidate contracting activities and reports through the Deputy Assistant Secretary of the Army (Policy and Procurement) to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology.

Project and Contracting Office (PCO). National Security Presidential Directive 36, “United States Government Operations in Iraq,” May 11, 2004, established the PCO and directed the PCO to provide acquisition and project management support for activities in Iraq. On June 22, 2004, the Deputy Secretary of Defense established the PCO within the Department of the Army and directed the PCO to provide support for all activities associated with financial, program, and project management for both construction and non-construction IRRF activities.

U.S. Army Corps of Engineers Gulf Region Division (GRD). The Gulf Region Division provides engineering services in the Iraq combat theater to Multi-National Force-Iraq, the Department of State, the U.S. Agency for International Development, and the Iraqi government with planning, design, and construction management support for military and civil infrastructure construction. The responsibilities of the PCO were consolidated with those of the GRD on December 4, 2005, to form GRD-PCO.

Objective

The overall objective of this audit was to determine whether the definitization process for contracts (including letter contracts and task orders) funded by the IRRF complied with applicable regulations, policies, and procedures and whether such contracts were being definitized in a timely basis. While the Department of State and the U.S. Agency for International Development award contracts using IRRF, neither identified contracts subject to definitization. Therefore, our review focused on contracts awarded by the DoD.

For a discussion of the audit scope and methodology, and a summary of prior coverage, see Appendix A. For definitions of the acronyms used in this report, see Appendix B. For a distribution list for this report, see Appendix C. For a list of the audit team members, see Appendix D.

Definitization Requirements

A variety of contract actions were used in awarding IRRF reconstruction contracts, including what is referred to in the Defense Federal Acquisition Regulation Supplement (DFARS) as an *undefinitized contract action*. The Federal Acquisition Regulation (FAR), from which the DFARS is based, refers to these actions as *letter contracts*⁷. This type of action is used when the contract terms, specifications, or price are not agreed upon before performance is begun⁸. An *undefinitized contract action* is used in two cases: (1) when there is insufficient time to negotiate for a definitive contract to meet the government's needs; and (2) when the government's interest demands that a binding commitment is given so that contract performance can begin immediately⁹.

The DFARS requires that definitization occur (to agree on the contract terms, specifications, and price) the earlier of (1) 180 days after the issuance of an *undefinitized contract action*; or (2) the date on which the amount of funds obligated under the contract action is equal to more than 50% of the not-to-exceed price.

Lack of Clarity in Regulations. In discussions with U.S. Army procurement officials with the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) and the U.S. Army Corps of Engineers Gulf Region Division-Project and Contracting Office (GRD-PCO), none of these U.S. Army officials interpreted the FAR nor DFARS requirement for definitization as applicable to “task orders” issued under IDIQ contracts. This view was also shared by officials of the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan (ADASA P&P-I/A).

FAR 16.501-1 defines an Indefinite-Delivery “task order contract” as a contract that does not procure or specify a firm quantity of services (other than minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract. An Indefinite-Quantity contract limits the government's obligation to the minimum quantity specified in the contract during a fixed period. This type of contract can be used when the government cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period¹⁰.

Although an IDIQ contract type is intrinsically “undefinitized” by its “indefinite” statement of terms, specifications, or price; it is not specifically referred to as an *undefinitized contract action* in the DFARS. In fact, both the FAR and DFARS are silent as to definitizing *task orders* issued under IDIQ contracts. Despite this lack of clarity, JCC-I/A and GRD-PCO officials stated that the definitization of *task orders* issued under IDIQ contracts was done voluntarily as a matter of practice, rather than in accordance with a specific requirement.

⁷ Under the Federal Acquisition Regulation (FAR) section 16.603, a “letter contract” is written as a preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

⁸ Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 217.7401(d).

⁹ DFARS, Subpart 217.7403.

¹⁰ FAR 16.504(a) and (b).

We discussed this interpretation of the non-applicability of DFARS definitization requirements for IDIQ task orders with officials of JCC-I/A, GRD-PCO, and ADASA P&P-I/A. The Chief of Policy, ADASA P&P-I/A, advised us that task orders under IDIQ contracts, “nowhere fall within the definition of an undefinitized contract action in either FAR or DFARS”. We were also told that since the FAR and DFARS did not apply to task orders issued under IDIQ contracts there was no regulatory requirement to definitize such task orders. Although the U.S. Army saw no regulatory requirement, these officials believed that contracting officers have a fiduciary responsibility to protect the government, including the timely definitization of task orders under IDIQ contracts. As such, officials told us that the U.S. Army seeks to follow the FAR and DFARS requirements on a voluntary basis to the extent possible in a contingency environment, although it is not required to do so.

As a result of this audit and our discussions with U.S. Army officials, the Office of the Army General Counsel in conjunction with ADASA P&P-I/A, has re-examined the applicability of the FAR and DFARS to task orders under IDIQ contracts in response to our inquiries. We were advised on June 2, 2006, that undefinitized task orders would fall within the definition of an *undefinitized contract action* if the terms, specifications or price are not agreed upon before performance is begun under the task order. Specifically, the U.S. Army officials stated that FAR Part 16.504 sets forth regulatory requirements that apply to IDIQ contracts and DFARS Subpart 217.74 provides the prescription for *undefinitized contract actions*, to include definitization timelines.

Contract Management for Definitization

Several information management systems have been established to support all organizations responsible for reporting IRRF project and funding information. These include the Iraq Reconstruction Management System (IRMS) and the Project Assessment Reports (PAR) database. IRMS is meant to provide a unified common operating picture of the reconstruction programs in order to synchronize and coordinate efforts across U.S. government agencies and from Iraqi national, provincial, and local government levels. It is a web-based reconstruction database that the Director of the Iraq Reconstruction Management Office directed on September 20, 2005, be used by all U.S. government agencies in Iraq for situational awareness, data management and reporting for U.S. government funded reconstruction and managed work. The September 2005 directive required that all agencies currently spending IRRF dollars load and update all IRRF-funded project data in IRMS. The PAR report is compiled by the Iraq Reconstruction Management Office and is issued to Congress as part of the Quarterly 2207 Report submission required under Public Law 108-106 to provide an estimate of the cost required to complete each project under IRRF.

To monitor the status of completed definitization actions, information is needed for each contracting action on the date definitization occurred and/or the identification of the definitized value. In addition, there are three measures for determining when definitization should occur. Whichever measure occurs first takes precedence. One measure is based on time, generally within 180 days of when the contractor has been issued a notice to proceed.¹¹ The other two measures are based on project status: under the FAR it is before completion of 40% of the work to be performed; under the DFARS it is before the date on which the amount obligated is equal to more than 50% of the not-to-exceed price. Therefore to monitor whether definitization is occurring in a timely manner, the data elements required are: (1) either the date the government provided the contractor notice to proceed or the not-to-exceed dollar amount placed on the task order; (2) the percentage of work completed; and (3) the funds obligated.

Lack of Complete Data. In our review of data elements contained in IRMS as of June 2006 and the PAR database as of March 2006, we found that the combined set of data contained all of the data fields necessary to monitor whether definitization has occurred—the definitization date and definitization value. However, these data fields were mostly not being populated. The failure to include complete information in IRMS was reported in our April 2006 audit of IRMS.¹² In reviewing data in IRMS and PAR on the definitization status of 194 task orders under IDIQ contracts, which were valued at \$3.4 billion, we found that:

- The fields related to definitization contained data for only 19 of the 194 task orders issued under those contracts.
- Of the 19, there were 14 task orders, with both the definitization date and definitization value; and 5 task orders which had the definitization value but not the definitization date.
- The total dollar amount shown as definitized was \$312 million or about 9% of the total authorized amount of \$3.4 billion for all 194 task orders.

¹¹ This is usually the date the government issues the task order.

¹² Special Inspector General for Iraq Reconstruction, *The Evolution of the Iraq Reconstruction Management System*, SIGIR-06-001, April 24, 2006.

Without the definitization date and value, we were unable to determine either whether definitization occurred, but data was not entered in the relevant fields; or whether definitization did not occur.

To monitor whether definitization was conducted in a timely manner, data is needed at the task order level on (1) either the date the government provided the contractor notice to proceed, or the not to exceed dollar amount placed on the task order; (2) the percentage complete; and (3) the funds obligated. Neither the notice to proceed date nor the not-to-exceed amount was contained in IRMS as of June 2006 or in the PAR report for the quarter ending March 31, 2006. IRMS and PAR did contain data fields for both the percentage complete and the funds obligated. However, we could not determine percentage complete because many task orders have multiple projects whose percentage complete are individually reported. Specifically, in reviewing IRMS and PAR reports we found measuring the percentage complete for task orders to be inconclusive. This is primarily because GRD-PCO manages projects as opposed to task orders. Many task orders have multiple projects with each project assigned a separate Unique Record Indicator. In the IRMS and PAR reports each project shows its percentage complete, which varies from project to project, but there is no correlation of the overall completion rate of the task order the projects are derived from. Without a measurement for the percentage complete at the task order level, the IRMS and PAR reports do not provide senior managers with the necessary data to assess if *undefinitized contract actions* requiring definitization are being completed within regulatory requirements.

Without management information systems that can be used by senior management officials to provide for visibility and assess definitization status, contracting officers are the only source of information on definitization status. In discussions with GRD-PCO contracting officials we were told that they depend on their contracting officers to complete definitization in a timely manner. When we asked whether any definitization actions were found to have occurred in an untimely basis, ADASA P&P-I/A, in a response coordinated with both JCC-I/A and GRD-PCO, told us that the timeliness of definitization is not a data point that is currently being tracked. We also asked ADASA P&P-I/A how then were IDIQ contracts reviewed for timeliness and were told that the contracting officers are responsible for their contracts, including ensuring the timeliness of definitization, and that the JCC-I/A Principal Assistant Responsible for Contracts monitors open contracting items assigned to the contracting officers under his/her purview.

Conclusion and Recommendations

Conclusion

The lack of clarity among U.S. Army procurement organizations as to the applicability of the DFARS definitization requirement for task orders issued under IDIQ contracts diminishes visibility and control over contractor costs by the government. The incomplete nature of the content in the contract databases does not support the DFARS requirement for ensuring that definitization occurs in a timely manner, and thus implementing cost control. Cost containment is essential for contract administration relating to funds control over the IRRF appropriation which is subject to expiration at fiscal year end 2006.

Both the Government Accountability Office and the Army Audit Agency have reported on the importance of definitization to the government. In March 2005, the Government Accountability Office reported that definitization is important because until the task order estimate is formalized, the contractor has no real incentive to control costs, as increased project costs potentially mean a higher project estimate, potentially resulting in a higher award fee.¹³ In August 2004, the Army Audit Agency reported that if definitization does not occur, the government's risk will be significantly increased because of limited visibility and control over contractor costs, and the Army will not be able to achieve the benefits associated with contract definitization.¹⁴

Recommendations

We recommend that the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan:

1. Issue written clarification regarding the applicability of DFARS for definitizing task orders issued under IDIQ contracts in alignment with the opinion of the Office of the Army General Counsel.
2. Consistent with the Iraq Reconstruction Management Office's September 20, 2005, directive that all agencies currently spending IRRF dollars load all IRRF-funded project data in IRMS, issue a directive to JCC-I/A and GRD-PCO requiring that each populates the Iraq Reconstruction Management System and the Project Assessment Report databases with complete and accurate information to monitor *undefinitized contract actions*; and that each ensures that the definitization of *undefinitized contract actions* occurs within established timeframes.

Management Comments and Audit Response

We received written comments on a draft of this report from ADASA (P&P-I/A) and GRD-PCO officials. The ADASA (P&P-I/A)—commenting on JCC-I/A contracting activities only—concurred with our recommendation for ADASA (P&P-I/A) to issue

¹³ U.S. Government Accountability Office, *Defense Logistics: High-Level DOD Coordination is Needed to Further Improve Management of the Army's LOGCAP Contract*, GAO-05-328, Mar. 2005

¹⁴ U.S. Army Audit Agency, *Definitization of Task Orders-Audit of Logistics Civil Augmentation Program*, A-2004-0438-AML, Aug. 2004.

written clarification to the applicability of the DFARS that would be in alignment with the opinion of the Office of the Army General Counsel regarding definitizing task orders issued under IDIQ contracts. GRD-PCO commented that ADASA (P&P-I/A) can not issue directives for the DFARS, only the Army Federal Acquisition Regulation. We were not suggesting that ADASA (P&P-I/A) issue DFARS directives, but simply that the ADASA (P&P-I/A) issue written clarification on the applicability of DFARS for definitizing task orders issued under IDIQ contracts given the lack of clarity on the part of the primary Army organizations involved in awarding and administering different types of contracts for Iraq reconstruction. We have accordingly clarified our recommendation.

Both ADASA (P&P-I/A) and GRD-PCO officials non-concurred with our recommendation that ADASA(P&P-I/A) issue a directive to JCC-I/A and GRD-PCO requiring that each populate the IRMS and PAR databases. The ADASA (P&P-I/A) stated that the IRMS and PAR are program management vs. contract management tools and that JCC-I/A maintains its own contract database; should not be directed to update the IRMS or PAR databases; and provides copies of all contract actions, including task orders and related modifications, to the respective program management team so that they may update IRMS and PAR as needed. However, the ADASA (P&P-I/A) told us during this review that the definitization of IDIQ contracts in Iraq is not a data point that is currently being tracked. Furthermore, IRMS is the system that has been chosen for reporting and managing the IRRF. GRD in non-concurring stated that no directive is required and that GRD-PCO databases already contain undefinitized projects and scheduled completions. Nonetheless, we believe that IRMS and PAR are important management tools and that without management information systems that can be used by senior management officials to provide for visibility and assess definitization status, contracting officers are the only sources of information on definitization status. We previously reported that although some progress has been made in developing IRMS, there continues to be delays in providing accurate data for reporting and that a complete and accurate IRRF database that is accessible by the U.S. government activities and their respective management via an automated solution is the key to the success of the IRRF program¹⁵. We have, therefore, retained the recommendation.

Technical comments to the draft of this report were also provided by the ADASA (P&P-I/A) and have been incorporated into this final report as appropriate. Regarding the comment that FAR 32.503-6 is not applicable, we note that DFARS refers to FAR 32.503-6, but for clarification we have deleted citation as it does not change the underlying discussion. Regarding the ADASA (P&P-I/A) comment that there are only two undefinitized task orders on one of the contracts in the oil sector, ADASA(P&P-I/A) emphasized that its comments were applicable exclusively to JCC-I/A and not inclusive of any other U.S. Army contracting activities whose contracts may also involve undefinitized task orders. As the report states, the 194 task orders relate to all DoD entities. The 184 of these 194 task orders pertain to GRD-PCO, and none are executed by JCC-I/A. The concern we raised in the report is the inability to discern the status of definitization from the project management databases, which includes JCC-I/A and other organizations.

¹⁵ Special Inspector General for Iraq Reconstruction, *The Evolution of the Iraq Reconstruction Management System*, SIGIR-06-001, April 24, 2006.

Appendix A. Scope and Methodology

This audit was initiated on January 27, 2006 (Project No. 6005). The objective of this audit was to determine whether the definitization process for contracts funded by the Iraq Relief and Reconstruction Fund (including letter contracts and task orders) complied with applicable regulations, policies, and procedures and whether such contracts were being definitized on a timely basis. While the Department of State and the U.S. Agency for International Development award contracts using the Iraq Relief and Reconstruction Fund, neither identified contracts subject to definitization. Therefore, our review focused on contracts awarded by the Department of Defense (DoD).

To determine whether the definitization process for Iraq Relief and Reconstruction Funded (IRRF) contracts complied with applicable regulations, policies, and procedures governing timely definitization of task orders issued under Indefinite-Delivery, Indefinite-Quantity (ID/IQ) contracts, we took the following actions.

- We researched the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) and identified the specific guidance on the definitization criteria for contracts. Specific citations used:
 - FAR Sections 16.603; 16.501-1; 16.504 (a through c); 16.505(b)(3); and 32.503-6
 - DFARS Subparts 216.5; 217.7401(d); and 217.7403
- We held discussions with representatives of key DoD organizations involved with Iraq reconstruction contracting: the GRD-PCO and the JCC-I/A, as well as the ADASA P&P-I/A, the U.S. Army office responsible for Iraq procurement policy, who also consulted with the Office of the Army General Counsel.

Following these discussions we identified and verified with appropriate U.S. Army officials that task orders issued under IDIQ contracts were determined to be the only *undefinitized contract actions* identified as subject to definitization in accordance with the DFARS, and as contained in the contract databases included in this review.

To determine whether such contracts were being definitized on a timely basis we took the following actions.

- We reviewed the FAR and DFARS to identify the parameters within which contracts are to be definitized.
- We reviewed key project databases, IRMS and PAR, to ascertain the extent to which they contained information related to definitization.
- We held discussions with representatives of key DoD organizations involved with Iraq reconstruction contracting—the GRD/PCO and the JCC-I/A—as well as the ADASA P&P-I/A, the U.S. Army office responsible for Iraq procurement policy regarding how they monitor definitization status.

We conducted this review from April through June 2006, in accordance with generally accepted government auditing standards.

Use of Computer-Processed Data. Computer processed data from the Iraq Reconstruction Management System database as of March 31, 2006 and from the Project Assessment Report as of March 31, 2006, were used in this report. We did not audit these project management systems during this review. However, SIGIR previously audited the Iraq Reconstruction Management System and found similar issues relating to incomplete data. See:

- *Management of the Iraq Relief and Reconstruction Fund: The Evolution of the Iraq Reconstruction Management System* (SIGIR-06-001, April 24, 2006)
- *Review of Data Entry and General Controls in the Collecting and Reporting of the Iraq Relief and Reconstruction Fund* (SIGIR-06-003, April 28, 2006)

Prior Coverage. The following audits related to the definitization of task orders have been issued within the past five years:

- Special Inspector General for Iraq Reconstruction, *Letter Report: Task Order 0044 of the Logistics Civilian Augmentation Program III Contract* (SIGIR-05-003, November 23, 2004)
- Army Audit Agency, *Definitization of Task Orders – Audit of Logistics Civil Augmentation Program*, (A-2004-043, August 2004- AML)
- U.S. Government Accountability Office, *Defense Logistics: High Level DoD Coordination is Needed to Further Improve the Management of the Army’s LOGCAP* (GAO-05-328, March 22, 2005)
- U.S. Government Accountability Office, *Military Operations: DOD’s Extensive Use of Logistics Support Contracts Requires Strengthened Oversight* (GAO-04-854, July 19, 2004)
- U.S. Agency for International Development, *USAID Audit of USAID’s Compliance with Federal Regulations in Awarding the Contract for Security Services in Iraq to Kroll Government Services International*, (A-267—05-005-P, January 6, 2005)

Appendix B. Acronyms

ADASA (P&P-I/A)	Assistant Deputy Assistant Secretary of the Army for Policy and Procurement – Iraq/Afghanistan
DFARS	Defense Federal Acquisition Regulation Supplement
DoD	Department of Defense
FAR	Federal Acquisition Regulation
GRD-PCO	Gulf Region Division–Project and Contracting Office, U.S. Army Corps of Engineers
IDIQ	Indefinite-Delivery, Indefinite-Quantity
JCC-I/A	Joint Contracting Command – Iraq/Afghanistan
IRMS	Iraq Reconstruction Management System
IRRF	Iraq Relief and Reconstruction Fund
PAR	Project Assessment Report

Appendix C. Report Distribution

Department of State

Secretary of State

Senior Advisor to the Secretary and Coordinator for Iraq

U.S. Ambassador to Iraq

Director, Iraq Reconstruction Management Office

Mission Director-Iraq, U.S. Agency for International Development

Inspector General, Department of State

Department of Defense

Secretary of Defense

Deputy Secretary of Defense

Director, Defense Reconstruction Support Office

Under Secretary of Defense (Comptroller)/Chief Financial Officer

Deputy Chief Financial Officer

Deputy Comptroller (Program/Budget)

Inspector General, Department of Defense

Director, Defense Contract Audit Agency

Director, Defense Finance and Accounting Service

Director, Defense Contract Management Agency

Department of the Army

Assistant Secretary of the Army for Acquisition, Logistics, and Technology

Principal Deputy to the Assistant Secretary of the Army for Acquisition,
Logistics, and Technology

Deputy Assistant Secretary of the Army (Policy and Procurement)

Director, Project and Contracting Office

Commanding General, Joint Contracting Command-Iraq/Afghanistan

Assistant Secretary of the Army for Financial Management and Comptroller

Chief of Engineers and Commander, U.S. Army Corps of Engineers

Commanding General, Gulf Region Division

Auditor General of the Army

U.S. Central Command

Commanding General, Multi-National Force-Iraq

Commanding General, Multi-National Security Transition Command-Iraq

Commander, Joint Area Support Group-Central

Other Federal Government Organizations

Director, Office of Management and Budget

Comptroller General of the United States

Inspector General, Department of the Treasury

Inspector General, Department of Commerce

Inspector General, Department of Health and Human Services

Inspector General, U.S. Agency for International Development

President, Overseas Private Investment Corporation

President, U.S. Institute for Peace

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

U.S. Senate

Senate Committee on Appropriations

Subcommittee on Defense

Subcommittee on State, Foreign Operations and Related Programs

Senate Committee on Armed Services

Senate Committee on Foreign Relations

Subcommittee on International Operations and Terrorism

Subcommittee on Near Eastern and South Asian Affairs

Senate Committee on Homeland Security and Governmental Affairs

Subcommittee on Federal Financial Management, Government Information and International Security

Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

U.S. House of Representatives

House Committee on Appropriations

Subcommittee on Defense

Subcommittee on Foreign Operations, Export Financing and Related Programs

Subcommittee on Science, State, Justice and Commerce and Related Agencies

House Committee on Armed Services

House Committee on Government Reform

Subcommittee on Management, Finance and Accountability

Subcommittee on National Security, Emerging Threats and International Relations

House Committee on International Relations

Subcommittee on Middle East and Central Asia

Appendix D. Audit Team Members

This report was prepared and the review was conducted under the direction of Joseph T. McDermott, Assistant Inspector General for Audit, Office of the Special Inspector General for Iraq Reconstruction. The staff members who contributed to the report include:

James R. Adams

Roger H. Florence

Kenneth A. Littlefield

Teravy Mol

Steven H. Sternlieb

Management Comments

Assistant Deputy Assistant Secretary of the Army (Policy and Procurement)-Iraq/Afghanistan

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

July 7, 2006

SFAE-PCO-C

MEMORANDUM FOR OFFICE OF SPECIAL INSPECTOR GENERAL FOR IRAQ
RECONSTRUCTION, ATTN: MR. KENNETH A. LITTLEFIELD, CRYSTAL PARK ONE,
2001 CRYSTAL DRIVE, ARLINGTON, VA 22202

SUBJECT: Response to SIGIR-06-019 Draft Report on Definitization Requirements

The following response to the subject report, is submitted and is applicable exclusively to the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) contracting activities. This response is not inclusive of any other contracting activities whose contracts in Iraq/Afghanistan may also involve undefinitized task orders.

Page (i), third paragraph, last sentence: This states, "If the contractor does not submit a timely proposal for definitization, the contracting officer may suspend or reduce progress payments." Reference is made to FAR 32.503-6 which is the subpart related to progress payments based upon costs. This subpart has no relationship to cost reimbursement contracts. Cost contracts are not paid based upon progress payments. None of the clauses prescribed in this subpart 32.502-4, contract clauses, are included in cost reimbursement contracts. Payment is made based upon allowable and allocable incurred costs in accordance with appropriate cost reimbursement contract clauses.

Page (ii), last paragraph: This states that SIGIR identified 194 task orders valued at \$3.4 billion as of the reporting quarter ending March 31, 2006 that were classified as "undefinitized contract actions" (UCA). There are currently **two (2) undefinitized task orders** on one of the DB contracts in the Oil Sector. All other task orders have an estimated cost to complete with the negotiated fee. The JCC-IA issues very few new task orders.

Responses to Recommendations.

Recommendation 1: Issue written clarification to DFARS in alignment with the opinion of the Office of the General Counsel regarding the applicability of DFARS for definitizing task orders issued under ID/IQ contracts.

Concur: Please note for the record that task orders obligated and awarded without an agreed upon cost to complete with related fee should be definitized, or negotiated, within the guidelines of UCA's – within six months or before expenditure of 50% of the obligation. The JCC-IA limits its liability to 50% of the available funds on all NTPs.

Recommendation 2: Issue a directive to JCC-IA and GRD-PCO requiring that each populate the IRMS and PAR databases with complete and accurate information to monitor UCA' and ensures that the definitization of UCAs occurs within established timeframes.

Noncur: IRMS and PAR are *program* management (vs. contract management) tools. The JCC-IA maintains its own contract database and should not be directed to update the IRMS or PAR databases. The JCC-IA diligently provides copies of all contract actions, including task orders and related modifications, to the respective program management team so that they may update IRMS and PAR as needed.



Lee Thompson
Assistant Deputy Assistant Secretary of the Army
(Policy and Procurement) – Iraq/Afghanistan

Management Comments

Gulf Region Division, U.S. Army Corps of Engineers



REPLY TO
ATTENTION OF

CEGRD-CG


DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
GULF REGION DIVISION
BAGHDAD, IRAQ
APO AE 09316

10 July 2006

MEMORANDUM FOR Special Inspector General for Iraq Reconstruction, US Embassy Annex,
M-202, Old Presidential Palace, APO AE 09316

SUBJECT: SIGIR Draft Audit Report – Review of the Use of Definitization Requirements for
Contracts Supporting Reconstruction in Iraq (SIGIR-06-019)

1. This memorandum provides the U.S. Army Corps of Engineers, Gulf Region Division response to the subject draft project assessment report.
2. The Gulf Region Division reviewed the subject draft report. The report concluded there was a lack of clarity among Army procurement organizations as to the applicability of the DFARS definitization requirement for task orders issued under ID/IQ contracts. Recommendations were directed to the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement. See the enclosure for additional information concerning the draft report recommendations.
3. We appreciate your assessment of the subject project. Thank you for the opportunity to review and provide written comments before the report is published.
4. If you have any questions, please contact Mr. Eric Tichay at (540) 665-5021 or his email Eric.P.Tichay@tac01.usace.army.mil.


WILLIAM H. McCOY
Major General, USA
Commanding

COMMAND REPLY

SIGIR Draft Audit Report – Review of the Use of Definitization Requirements for
Contracts Supporting Reconstruction in Iraq (SIGIR-06-019)

Recommendation and Command Comments

Page iii.

Recommendations. We recommend that the Assistant Deputy Assistant Secretary of the Army for Policy and Procurement-Iraq/Afghanistan:

Draft Report Recommendation. Issue written clarification to DFARS in alignment with the opinion of the Office of the Army General Counsel regarding the applicability of DFARS for definitizing task orders issued under ID/IZ contracts.

GRD-PCO Comments. Assistant Deputy Assistant Secretary of the Army for Policy and Procurement can not issue directives for the DFAR only the AFAR. DFARS must be changed by the Defense Acquisition Regulations Council.

Draft Report Recommendation. Issue a directive to JCC-I/A and GRD-PCO requiring that each populate the Iraq Reconstruction Management System (IRMS) and the Project Assessment Report (PAR) databases with complete and accurate information to monitor *undefinitized contract actions*; and ensures that the definitization of *undefinitized contract actions* occurs with established timeframes.

GRD-PCO Comments: No directive is required. GRD-PCO databases already contain undefinitized projects and scheduled completions.

Enclosure