
March 18, 2004



Acquisition

Contracts Awarded for the Coalition
Provisional Authority by the Defense
Contracting Command-Washington
(D-2004-057)

Department of Defense
Office of the Inspector General

Quality

Integrity

Accountability

Additional Copies

To obtain additional copies of this report, visit the Web site of the Inspector General of the Department of Defense at www.dodig.osd.mil/audit/reports or contact the Secondary Reports Distribution Unit of the Audit Followup and Technical Support Directorate at (703) 604-8937 (DSN 664-8937) or fax (703) 604-8932.

Suggestions for Future Audits

To suggest ideas for or to request future audits, contact the Audit Followup and Technical Support Directorate at (703) 604-8940 (DSN 664-8940) or fax (703) 604-8932. Ideas and requests can also be mailed to:

ODIG-AUD (ATTN: AFTS Audit Suggestions)
Inspector General of the Department of Defense
400 Army Navy Drive (Room 801)
Arlington, VA 22202-4704

Defense Hotline

To report fraud, waste, or abuse, contact the Defense Hotline by calling (800) 424-9098; by sending an electronic message to Hotline@dodig.osd.mil; or by writing to the Defense Hotline, The Pentagon, Washington, DC 20301-1900. The identity of each writer and caller is fully protected.

Acronyms

CONUS	Continental United States
COR	Contracting Officer's Representative
CPA	Coalition Provisional Authority
DCAA	Defense Contract Audit Agency
DCC-W	Defense Contracting Command-Washington
DCMA	Defense Contract Management Agency
FAR	Federal Acquisition Regulation
GSA	General Services Administration
MOBIS	Management, Organizational, and Business Improvement Services
ORHA	Office of Reconstruction and Humanitarian Assistance
PNM	Price Negotiation Memorandum
SAIC	Science Applications International Corporation
WHS	Washington Headquarters Service



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

March 18, 2004

MEMORANDUM FOR COMMANDER, DEFENSE CONTRACTING COMMAND-
WASHINGTON
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on Contracts Awarded for the Coalition Provisional Authority by the
Defense Contracting Command-Washington (Report No. D-2004-057)

We are providing this report for review and comment. We considered management comments from the Office of the Under Secretary of Defense for Policy and the Defense Contracting Command-Washington on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. Based on management comments from the Office of the Under Secretary of Defense for Policy, we changed and redirected Recommendation 1. to the Deputy Secretary of Defense. That recommendation was sent to the Deputy Secretary of Defense under separate correspondence from the Inspector General. We request the Commander, Defense Contracting Command-Washington reconsider his position on Recommendations 2.c. and 2.f. and provide additional comments by May 20, 2004.

Questions should be directed to Mr. John A. Seger at (703) 604-9254 (DSN 664-9254) or Terry L. McKinney at (703) 604-9288 (DSN 664-9288). The team members are listed inside the back cover. See Appendix G for the report distribution.

By direction of the Deputy Inspector General for Auditing:

A handwritten signature in cursive script that reads "David K. Steensma".

David K. Steensma
Director
Contract Management Directorate

Office of the Inspector General of the Department of Defense

Report No. D-2004-057

March 18, 2004

(Project No. D2003CF-0152)

Contracts Awarded for the Coalition Provisional Authority by the Defense Contracting Command-Washington

Executive Summary

Who Should Read This Report and Why? The acquisition and contracting community in DoD as well as the key officials in the Department of the Army who have contract oversight responsibility for rebuilding Iraq should read this report. The report provides insight on the actions that members of the Office of Reconstruction and Humanitarian Assistance/Coalition Provisional Authority and the Defense Contracting Command-Washington took when awarding contracts for humanitarian assistance. The report also provides information regarding post-award oversight by DoD officials of the contractors involved.

Background. In May 2003 the Defense Contract Audit Agency began reviewing contracts that the Defense Contracting Command-Washington awarded for the Office of Reconstruction and Humanitarian Assistance/Coalition Provisional Authority. During the review, the Defense Contract Audit Agency found irregularities in both the award and administration of the contracts and recommended that the Inspector General of the Department of Defense perform an in-depth review. Between February 2003 and August 2003, the Defense Contracting Command-Washington awarded 24 contracts, valued at \$122.5 million. Thirteen of the 24 contracts, valued at approximately \$111 million, were awarded on a sole-source basis to fill urgent needs. Of the 24 contracts, 16 were awarded for services and 8 were awarded for computer equipment. As of November 2003, 7 of the 24 contracts were ongoing. The contracts were primarily for humanitarian assistance, such as media support, and consultants to assist the Office of Reconstruction and Humanitarian Assistance/Coalition Provisional Authority. The contracts we reviewed did not involve rebuilding the infrastructure of Iraq. The Army Corps of Engineers and the U.S. Agency for International Development awarded those contracts, and the General Accounting Office is reviewing them.

The Office of Reconstruction and Humanitarian Assistance was established in January 2003 to rebuild Iraq. The President of the United States placed the office within the DoD. The office began deploying overseas on March 16, 2003, and had approximately 2 months to organize before deploying and beginning its mission. In May 2003, the Office of Reconstruction and Humanitarian Assistance was placed under control of the Coalition Provisional Authority, and in June 2003 DoD dissolved the Office of Reconstruction and Humanitarian Assistance. The Coalition Provisional Authority assumed the functions that the Office for Reconstruction and Humanitarian Assistance previously performed.

Results. The Department of Defense did not plan for the acquisition support that the Office of Reconstruction and Humanitarian Assistance required to perform its mission.

As a result, supplies and services were quickly acquired and contracting rules were either circumvented or liberally interpreted. Specifically,

- personnel who generated contract requirements did not establish firm contract requirements (8 of 24);
- of the 24 contracts awarded, 18 were awarded using General Service Administration Federal Supply Schedules and contracting officers misused General Service Administration Federal Supply Schedules (10 of 18);
- contracting officers inappropriately awarded personal services contracts (10 of 24);
- contracting officers permitted out-of-scope activity (1 contract);
- contracting officers did not support price reasonableness determinations (22 of 24); and
- officials performed little or no Government surveillance on awarded contracts (13 of 24).

As a result, DoD cannot be assured that the best contracting solution was provided, that DoD received fair and reasonable prices for the goods and services, or that the contractors performed the work the contract required.

To preclude future problems, the Deputy Secretary of Defense should designate an office to study existing DoD post-war strategy and establish responsibilities, policies, and procedures for acquisition of goods and services in support of future post-war occupation and relief operations. Also, the Commander, Defense Contracting Command-Washington should analyze any ongoing contracts for personal services, determine the Government liability, and initiate appropriate termination actions. The commander should also comply with the Federal Acquisition Regulation regarding documentation of contract files, appoint trained points of contact or contracting officer representatives for Iraqi contracts, require monthly status reports of the contracts, ensure the Government is refunded overpayments made to contractors, and use Federal Supply Schedules for their intended purposes.

The problems identified are primarily attributed to the need to react quickly to the rapidly changing situation in Iraq in early 2003 and that acquisition support was an afterthought to the Office of Reconstruction and Humanitarian Assistance. We did not identify where actions taken by Government personnel were based on the desire for personal gain despite numerous acquisition problems. We recognize that the Defense Contracting Command-Washington contracting personnel were in a difficult and time-sensitive position. However, the Federal Acquisition Regulation was established to ensure that DoD obtains quality products and services at fair and reasonable prices and the Regulation was not followed for 22 of the 24 contracts. Accordingly, the Commander, Defense Contracting Command-Washington, should perform a review and initiate appropriate administrative actions for contracting officers that did not follow prescribed procedures.

Management Comments and Audit Response. The Staff Director and Special Advisor to the Under Secretary of Defense for Policy suggested that the Recommendation to designate an office to study existing DoD post-war strategy should be revised and

redirected to the Deputy Secretary of Defense. He believed that the recommendation was too general and that it involves the activities and expertise of more than one component within DoD. We agreed with that suggestion and changed and redirected the recommendation to the Deputy Secretary of Defense.

The Commander, Defense Contracting Command-Washington, generally concurred with the majority of Recommendations. However, the commander did not believe he had a basis to obtain a refund on payments for two subject matter experts. The commander acknowledged that the Defense Contracting Command-Washington made mistakes and took shortcuts in supporting the Office of Reconstruction and Humanitarian Assistance. The commander disagreed with the need to perform a review and initiate appropriate administrative action against the contracting officers who circumvented the Federal Acquisition Regulation and misused the General Administration Federal Supply Schedules. The commander further stated that there was no evidence that any contracting officials in his command acted illegally or in bad faith and that it was unconscionable to recommend that administrative action be taken against the contracting officials and not hold senior officials responsible for generating the demands accountable. We believe there is a basis for collecting a refund for any overpayments for the two subject matter experts. Because of the inappropriate contracting actions identified there is a need to perform a detailed review of the contract files and actions and determine if any administrative action is warranted. We request that Commander, Defense Contracting Command-Washington, reconsider his position and provide additional comments to the final report by May 20, 2004. See the Finding section of the report for a discussion of the management comments and the Management Comments section of the report for the complete text of the comments.

Table of Contents

Executive Summary	i
Background	1
Objective	3
Finding	
Contracts for Rebuilding Iraq	4
Appendixes	
A. Scope and Methodology	37
B. Prior Coverage	38
C. Contract Information	40
D. Contract Issues	42
E. Documentation Issues	44
F. Surveillance Information	45
G. Report Distribution	46
Management Comments	
The Office of the Under Secretary of Defense for Policy	49
Administrative Assistant to the Secretary of the Army	50

Background

In May 2003 the Defense Contract Audit Agency (DCAA) began a review of contracts that the Defense Contracting Command-Washington (DCC-W) awarded in support of the Office of Reconstruction and Humanitarian Assistance (ORHA). The Under Secretary of Defense (Comptroller)/Chief Financial Officer requested the review. The DCAA found a number of problems in both the award and the administration of contracts, and on June 10, 2003, the Director, DCAA sent the Inspector General of the Department of Defense (IG DoD) a memorandum recommending that the IG DoD conduct a review. The DCC-W is a division within the Office of the Administrative Assistant to the Secretary of the Army. DCC-W provides support to the Army and the other Defense agencies within the National Capital Region.

Pre-Planning. In October 2002 a senior interagency team was convened to assess the conditions in Iraq and to define sector-by-sector relief and reconstruction plans. The team included representatives from several agencies and Departments including the DoD, the National Security Council, and the Office of Management and Budget. The team developed plans for immediate relief operations and long-term reconstruction in 10 different areas: health, education, water and sanitation, electricity, shelter, transportation, governance, agriculture and rural development, telecommunications, and economic and financial policy.

Formation and Responsibilities of ORHA. On January 20, 2003, President George W. Bush signed National Security Directive 24, that gave DoD responsibility for post-war control of Iraq and established the ORHA. The Secretary of Defense appointed a retired lieutenant general as the head of ORHA. The position description of the Director of ORHA stated:

This Office [ORHA] is established at the direction of the President of the United States, and is located for administrative purposes under Boards, Commissions and Task Forces, Washington Headquarters Services. This Office is under the supervision of the Under Secretary of Defense for Policy.

Furthermore, under “Supervisory Controls” of the position description it stated that:

The employee [Director of ORHA] reports directly to the Under Secretary of Defense for Policy, receiving very broad policy goals, objectives, and policy direction.

The Office of the Under Secretary of Defense for Policy signed this position description on February 11, 2003, but it was not approved and certified by the Director, Administration and Management, Office of the Secretary of the Defense until March 5, 2003, approximately 6 weeks after the Director of ORHA assumed this position.

On May 13, 2003, the Secretary of Defense designated Ambassador L. Paul Bremer as the top administrator for the Coalition Provisional Authority (CPA) and later placed ORHA under the CPA organization. On May 21, 2003, the Deputy Secretary of Defense designated the Secretary of the Army as the DoD Executive Agent for Support of ORHA. As a result, the Secretary of the Army was then responsible for providing administrative, logistics, and contracting support to ORHA/CPA. On June 16, 2003, the Deputy Secretary of Defense issued a memorandum dissolving ORHA and the CPA assumed ORHA functions, responsibilities, and legal obligations.

The mission of ORHA/CPA is to run Iraq until a new Iraqi government is elected. The core priorities of ORHA/CPA are: provide security and immediate humanitarian aid, rebuild Iraqi infrastructure, staff Iraqi ministries, bring to justice the top officials of Saddam Hussein's former regime, rebuild the economy (in large part through the resumed sale of Iraqi oil), and establish a new Iraqi government. ORHA/CPA comprises a front office in Baghdad, Iraq, and a rear office in Washington, D.C. The mission of the ORHA/CPA rear office is to provide the ORHA/CPA front office with the necessary personnel and equipment to accomplish its mission.

Contracting Process. When ORHA was established in January 2003, no written plans or strategies for obtaining acquisition support existed. Effective acquisition planning incorporates a comprehensive plan for fulfilling an agency need in a timely manner and at a reasonable cost. Planning begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, and contract administration.

According to a DCMA acquisition specialist, in February 2003 the Washington Headquarters Services was assigned the responsibility to provide administrative support to ORHA. After learning that ORHA had no acquisition support, the Washington Headquarters Services requested that the Defense Contract Management Agency (DCMA) provide an acquisition specialist who began work on March 3, 2003, to provide ORHA acquisition support. Because one of its missions is to support the Office of the Secretary of Defense, DCC-W provided contracting support to ORHA. Two contracts were awarded before DCMA provided acquisition support. The DCC-W contracting officer provided ORHA personnel with guidance for preparing the required documentation for those two contracts.

After DCMA appointed in early March 2003 an acquisition specialist who would assist ORHA, the ORHA division leaders generated contract requirements and passed those requirements to the DCMA acquisition specialist. The acquisition specialist prepared acquisition documents such as justifications for not fully competing contracts, statements of work, and cost and technical evaluations of contractor proposals. The DCMA acquisition specialist stated he forwarded the completed acquisition documentation to DCC-W, and they awarded the contracts to fulfill the requirements. DCMA eventually provided 3 acquisition specialists and one contracting officer to assist ORHA/CPA.

During early- to mid-March 2003, the requirements were generated very quickly, and ORHA personnel did not give the DCMA acquisition specialist much time to prepare the required acquisition documents before the contracts were awarded and personnel and items deployed overseas. In several cases, the DCMA specialist or DCC-W contracting personnel, or both, had as little as 3 days for contract preparation and award. Of the 24 contracts reviewed, 9 were awarded either prior to or the day that ORHA deployed (March 16, 2003).

According to a DCMA acquisition specialist, the ORHA established a requirements review board in-theater to review and evaluate contract requirements. This board was formalized with a memorandum of agreement between ORHA and DCMA that was signed on April 8, 2003.

Contracting Process With the Requirements Review Board. Through interviewing DoD personnel, we gained an understanding of how the review process worked. The ORHA/CPA front office generated requirements and forwarded them to the Requirements Review Board. The board, located in Baghdad, Iraq, was responsible for approving the requirements. After approval, a “Requirements” form was generated and forwarded to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer for review and approval. This Under Secretary was responsible for funding approval. After a requirement was approved, it was sent to the Army, which was the executive agent for ORHA/CPA. The Army determined the most appropriate office to contract for the work. Generally, services or items that were not construction related and dealt with humanitarian relief were handled by the DCC-W. Other requirements that specifically related to rebuilding the infrastructure of Iraq were given to the Army Corps of Engineers who managed the Army Logistics Civil Augmentation Program. Kellogg, Brown, and Root was one of the prime contractors for the program. According to the office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, contracts for items and services that were to be provided or performed with seized Iraqi funds or vested Iraqi funds were returned to the ORHA/CPA office in Baghdad for award of the contract. On March 28, 2003, DCMA provided one contracting officer who assisted the ORHA/CPA front office. As of October 27, 2003, the Army had a contracting office in Baghdad. That contracting office was composed of 12 to 14 contracting officials.

Current Status of DCC-W Contracts. DCC-W shows that of the 24 contracts DCC-W awarded for the ORHA/CPA office, 7 were ongoing as of November 2003, and 17 have been either terminated early or finalized after the work was performed.

Objective

Our objective was to examine contracting procedures that officials at the DCC-W used to award selected contracts for the CPA. Specifically, the audit consisted of a review of documentation that supports the requirements determinations, types of contracts used, use of other than full-and-open competition, and determination of price reasonableness. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior audit coverage related to the objective.

Contracts for Rebuilding Iraq

The DoD did not adequately plan for the acquisition support that the ORHA required to perform its mission. Supplies and services the ORHA/CPA used in rebuilding Iraq were quickly acquired and contracting officers circumvented procedures. ORHA/CPA personnel who generated the contract requirements wanted instant results. In yielding to the pressure, DCC-W contracting officers neither properly awarded nor administered the 24 contracts valued at \$122.5 million. In addition, ORHA/CPA and DCC-W personnel:

- did not establish firm contract requirements (8 of 24),
- misused General Service Administration (GSA) Federal Supply Schedules (10 of 18),
- awarded personal services contracts prohibited by the Federal Acquisition Regulation (FAR) (10 of 24),
- allowed out-of-scope activity (1 contract),
- did not perform or support price reasonableness determinations (22 of 24), and
- conducted inadequate surveillance of awarded contracts (13 of 24).

Urgent requirements, the desire of contracting officers to serve their customers, and a lack of training of the personnel assigned surveillance duties led to the irregularities. As a result, DoD cannot be assured that it was either provided the best contracting solution or paid fair and reasonable prices for the goods and services purchased.

Contracts Reviewed

We reviewed 24 contracts that DCC-W awarded between February 24, 2003, and August 14, 2003, in support of the ORHA/CPA. The contracts were awarded for approximately \$122.5 million; and as of October 10, 2003, about \$38.7 million of the funds have been expended.

- 16 of the 24 were service contracts
 - 9 for individual subject matter experts
 - 2 for linguists who specialized in Arabic
 - 2 for Iraqi Military

-
- 1 for establishment and support of the Iraqi Reconstruction and Development Council
 - 1 for establishment of the Iraqi Free Media Program
 - 1 for information technology support
 - 8 of the 24 were for supplies or computer equipment

Of the 24 awarded, 15 of the contracts valued at \$115.9 million, were awarded on a sole-source basis. Fourteen of the 15 cited urgent requirements as a basis for the sole-source awards. Also, 18 of the 24 contracts were awarded to contractors using Federal Supply Schedules.

Overall, the 24 contracts were awarded to 16 different contractors and all were awarded with appropriated funds from the Government. We did not review the contracts relating to the overall reconstruction and reestablishment of the Iraqi infrastructure.

Of the contracts awarded, eight were awarded on a sole-source basis, citing unusual and compelling urgency and only one responsible source, to Science Applications International Corporation (SAIC), Incorporated. The contracts were valued at \$108.2 million (88.4 percent of all the dollars awarded for the 24 contracts). These contracts were awarded with effective dates between March 5, 2003, and July 18, 2003.

The justifications for not competing the SAIC contracts stated,

We need the immediate services of a fully qualified contractor who has the unqualified support and confidence of the Pentagon leadership and who was prepared to begin work and deploy as soon as possible.

The lead contracting officer stated that SAIC was awarded the contracts because the contracting officer knew that SAIC was in a position to quickly fulfill the requirements and held the required insurance for operating in a hazardous environment. Furthermore, the contracting officer was aware that SAIC had a Federal Supply Schedule for Management, Organizational, and Business Improvement Services (MOBIS). Of the eight contracts awarded to SAIC, seven were awarded before the ORHA/CPA had a requirements review board process established. See Appendix C for further details.

Criteria

The FAR and the Defense FAR Supplement were the primary criteria governing contracting for goods and services. The regulations require orderly processes that include analyses of the requirements, how to best fill requirements by way of market research, analyses of the various types of contracts to use, determinations as to whether fair and reasonable prices are paid, and oversight of the performances and billings after the contracts are awarded.

Many of the contracts reviewed were awarded under the auspices of FAR Subpart 6.302-2, "Unusual and Compelling Urgency," which ultimately eliminated the need for competition. The FAR permits the use of GSA Federal Supply Schedules to obtain commonly used commercial supplies and services at prices associated with volume buying. The FAR also defines what constitutes a personal service and allows for Time and Material contracts. Time and Materials contracts allow that supplies or services be acquired on the basis of direct labor hours at specified fixed hourly rates and materials at cost, including, if appropriate, material handling costs as part of material costs.

The FAR describes measures that contracting officers must follow to award contracts and requires that contracting officers shall not award contracts unless all of the regulations have been met and that purchases are made at fair and reasonable prices.

Acquisition Support

The DoD did not adequately plan for acquisition support when establishing the ORHA. The office was established on January 20, 2003, and according to the former ORHA Director, he did not have an office from which to work until after February 1, 2003. The former ORHA Director stated that he did not start receiving operations and logistics personnel to accomplish the mission until the middle of February. During this time, a formal process for obtaining goods and services was not established. To obtain personnel, the ORHA staff made suggestions to the Director regarding the hiring of key personnel, and if the individuals appeared qualified, the Director told his staff to hire them.

The ORHA did not have any acquisition personnel assigned to the organization until the beginning of March 2003, when DCMA provided an acquisition specialist. According to DCMA, it became involved only after an individual tasked with providing ORHA administrative support for equipment and facilities contacted DCMA because that individual had no knowledge of acquisition procedures. The Director of DCMA then provided acquisition personnel to ORHA, and by the beginning of April 2003, DCMA had three acquisition specialists in Washington, D.C., and one contracting officer in Baghdad.

The DCMA official that assisted ORHA stated that when he arrived at the Pentagon on March 3, 2003, no acquisition plans to buy equipment or hire personnel were in place. Furthermore, because no acquisition personnel were assigned to ORHA, the necessary documentation to begin the acquisition process was not being prepared. The acquisition specialist also stated that ORHA wanted certain subject matter experts and services under contract and equipment needed to be purchased prior to deploying to Kuwait (March 16, 2003) and eventually Iraq. The DCMA specialist began preparing the acquisition documentation to provide the DCC-W contracting officials some idea of the requirements.

On April 8, 2003, ORHA established a formal requirements review board. The board reviewed the proposed contract requirements that ORHA/CPA generated

and validated the needs. Of the 24 contracts reviewed, 15 of the contracts, currently valued at \$114 million, were awarded prior to the board's involvement.

Overall, ORHA lacked the time and type of personnel who could adequately plan and execute the procurements. ORHA had approximately 2 months to staff the office, define its mission, determine requirements, and obtain personnel and supplies needed to begin the mission. A key oversight of the DoD planners was not recognizing earlier in the process the need for acquisition personnel. By the time acquisition personnel became involved, a mindset was in place that prescribed acquisition procedures could not be followed if the goods and services the ORHA officials were demanding were to arrive in a timely manner.

Accordingly, we believe the Deputy Secretary of Defense should designate an office to study the existing DoD post-war strategy and establish clear responsibilities, policies, and procedures for the rapid acquisition of necessary goods and services in support of any future post-war occupation and relief operations. The study should recognize the need to incorporate a provision for acquisition support in the early stages of these operations. This will minimize the problems noted in this report during future operations.

Acquisition Planning and Contract Requirements

ORHA did no acquisition planning and provided little notice or details of contract requirements to contracting officials. Written acquisition plans required for two large contracts were not prepared. As a result, the DCMA specialists had very little time and information needed for preparing the required acquisition documentation before forwarding the requirements to DCC-W. Furthermore, DCC-W acknowledged that it had little time and very little information to use in awarding the contracts.

Generating Requirements. Contract requirements, which expressed the wants of ORHA officials, were generally provided verbally. Under normal circumstances, an integrated team of acquisition specialists and program specialists would prepare an acquisition plan describing the costs of the program, the potential contractors, and how the effort would be monitored. Based on the documentation available, we could not determine the actual dates the requirements were developed for any of the contracts. However, for the contracts awarded to SAIC for subject matter experts, we determined that contracting officials were provided little support for the requirements.

The DCMA specialist who was involved with the contracts explained that ORHA officials would contact and inform him that a specific person needed to be put on contract. The statement of work was then developed based on a brief statement from ORHA officials and the skill level of that specific person. The DCMA specialist felt that a requirements validation process needed to be in place.

To illustrate the attitude of ORHA personnel who were generating requirements the specialist stated that he was told:

. . . these are the people we need to bring on board, and here is going to be the minimum requirements for their job, and make the rest of it happen.

In addition, the DCMA specialist added that ORHA officials neither followed nor tried to learn the acquisition process. Furthermore, an e-mail, from one DCMA specialist, dated March 21, 2003, to another DCMA specialist stated:

Four names, attached, are contractors that [ORHA Official] wants hired for the 'Governance Group.' I'm going to get more details. But wanted to forward to you soonest. Perhaps you can check with SAIC to see if they already have these guys on their list, or any other info.

Contract DASW01-03-F-0537 was awarded 6 days later (March 27, 2003) to fulfill the requirement.

For another subject matter expert who was hired, ORHA received the proposal from the subject matter expert on March 13, 2003, and forwarded the proposal, the statement of work, and the resume of the subject matter expert to the DCMA specialist on March 14, 2003. Contract DASW01-03-F-0516 was awarded 2 days later with an effective date of March 16, 2003, to fulfill the requirement. The DCMA specialist provided the expert's proposal as documentation supporting the contract. The contract files did not contain anything documenting that a requirement existed and that a specific subject matter expert was necessitated. According to the DCMA specialist, a verbal requirement statement from the ORHA official, a proposal, and resume was all he had to support the requirement. Furthermore, no documentation indicated that ORHA planned the requirement before the subject matter expert submitted the proposal. The DCMA specialist wrote the statement of work based on the expert's proposal and brief requirements comments from the ORHA official. The expert who submitted the proposal stated:

The reconstruction of Iraq is going to require a subject matter expert with a detailed and thorough working knowledge of the current situation in Iraq, and with unique subject matter expertise to support the accomplishment of the tasks to be undertaken.

The justification and approval was prepared and signed, indicating the subject matter expert's firm as the contractor. However, that particular subject matter expert was hired under the GSA Federal Supply Schedule for SAIC. According to the contracting officer, when negotiating began, the subject matter expert stated that he wanted the same terms as another subject matter expert hired under the GSA Federal Supply Schedule for SAIC. Because the requirement was urgent and the subject matter expert was deploying overseas that weekend, the contracting officer stated he had no other choice but to award the contract using such a method.

We also questioned other requirements from the standpoint that services contracted were not fully needed. For example, at least one of the subject matter experts worked only a brief period after being personally selected. After reviewing the subject matter expert invoices that the contractor submitted, we

noted that the subject matter expert did not work the full term of the contract. The subject matter expert for SAIC worked only 29 of 92 days (32 percent of the days) scheduled under the base period of the contract DASW01-03-F-0536. The invoiced labor hours totaled about \$14,200 (31.5 percent of the total amount permissible under the contract). Furthermore, travel and administrative expenses totaled about \$6,800 (29 percent of the total invoiced amount).

When we questioned the contracting officer about the relevancy of the requirement and the short amount of time worked, the contracting officer stated that she was not aware that the subject matter expert worked only those few days. She also added that if we wanted to determine whether the subject matter expert was a valuable asset to the Government, we would have to contact the Baghdad office.

Another subject matter expert admitted that his contribution to the ORHA/CPA was “winding down” around July 18, 2003. According to the subject matter expert:

I submitted my last real invoice at about the same time. I have one more invoice to submit for my travel home and then I think I’m finished unless there is something someone wants me to do.

The subject matter expert added that he asked SAIC to modify his contract to change the period of performance. He did not, however, receive a response and was reported to be on vacation in August. The contract was awarded with an effective date on March 16, 2003. The base period for that contract concluded approximately September 11, 2003. SAIC invoiced about \$50,300 on contract DASW01-03-F-0516 from June 21, 2003, through September 12, 2003, including the time the subject matter expert was reported to have been on vacation. DCC-W should determine whether the Government should be refunded any money for this contract.

Written Acquisition Plans. Written acquisition plans were not prepared for contracts DASW01-03-F-0533 and DASW01-03-F-0508, as the Defense FAR Supplement requires. The Defense FAR Supplement requires a written acquisition plan for acquisitions that are either production or services when the total cost of contracts for the acquisition program is estimated at \$30 million or more for all the years or \$15 million or more for any one fiscal year. The program manager or other official responsible for the program is also responsible for acquisition planning. Some of the FAR requirements that a written acquisition plan must include are:

- cost goals for the acquisition and the rationale supporting them,
- prospective sources of supplies or services that meet the need,
- management system the Government will use to monitor the contractor’s effort, and

-
- statement of how the contract will be administered, including how inspection and acceptance corresponding to the performance criteria of the work statement will be enforced.

Contract DASW01-03-F-0533, the Iraqi Free Media Program, was initially awarded for \$15 million, and as of September 30, 2003, was valued at \$82.3 million, and contract DASW01-03-F-0508, the Iraqi Reconstruction and Development Council, was initially awarded for \$7.7 million and was valued at \$24.8 million after exercising 1 option, required written acquisition plans but none were prepared. Both contracts were awarded on a sole-source basis to SAIC from its commercial business services Federal Supply Schedule under GSA. The justification for not competing the Iraqi Free Media contract was that only one acceptable source existed and unusual and compelling urgency. The justification for the Iraqi Reconstruction and Development Council was of unusual and compelling urgency. No documentation existed in the contract file that waived the requirement for a written acquisition plan.

Iraqi Free Media Program. Contract DASW01-03-F-0533, the Iraqi Free Media contract was awarded as a time and materials contract to SAIC on a sole-source basis from its commercial services Federal Supply Schedule under GSA. The contract was awarded on March 11, 2003, for \$15 million and as of September 30, 2003, was valued at \$82.3 million (approximately 71 percent of the costs were for materials). No detailed plan existed that describe and support the costs of the Iraqi Free Media contract. Also, market research that could help determine contractors who were capable of performing the work was not available. In addition, SAIC was not monitored by the ORHA office to ensure work was adequately performed. For example, SAIC was supposed to provide a work plan 5 days after the contract was awarded describing how it would accomplish the contract, but the plan was not provided to the government until 2 months after the contract was awarded. Because of changing requirements, the dollar amount of the contract increased twice.

The total requirements for the contract were not known when the contract was awarded because one of the tasks that SAIC was to perform was to conduct a battle damage assessment of the media in Iraq. Besides ORHA, a second office within the Pentagon provided SAIC with guidance during contract performance which led to increased costs. As a result, the contract was under almost constant revision since award. A modification issued to the contract with an effective date of July 18, 2003, was not signed until September 30, 2003. The value of the contract is \$82.3 million through December 31, 2003. According to DCC-W contracting officials, the contract will not be renewed in December. Although one of the justifications for awarding the current contract to SAIC was that only one source was acceptable, DCC-W is now in the process of competing the requirement.

Iraqi Reconstruction Development Council. Contract DASW01-03-F-0508, the Iraqi Reconstruction Development Council contract, was awarded as a time-and-materials contract to SAIC on a sole-source basis from its commercial business services Federal Supply Schedule under GSA. The contract was awarded on March 5, 2003, for \$7.7 million; however, including the

option periods through November 2003 the value is \$24.8 million. The purpose of the contract was to provide 150 subject matter experts:

. . . in a variety of administrative and technical fields to facilitate the development of effective governmental structures at the local, provincial and national levels in a post-conflict environment.

To perform the requirements of the contract, the subject matter experts were located throughout Iraq. No documentation existed that indicated an acquisition plan detailing the expected cost of the contract or how the Government would conduct surveillance of the 150 individuals. Soon after the contract became effective, costs began to rise. For example, an e-mail from one DCMA specialist to another DCMA specialist stated that 30-percent of the subject matter experts hired were going to quit the contract unless they obtained life insurance. Furthermore, SAIC requested that the Government modify the contract to use different labor categories that were actually higher labor rates than negotiated in the contract because the subject matter experts required higher compensation. Beginning in September 2003, SAIC billed the Government for \$191,000 for four labor rates; however, no documentation exists that shows these rates are part of the contract.

An acquisition plan that described Government surveillance over the contractor performing throughout Iraq would have been especially important. However, no Government surveillance was performed on the contract in Iraq. As of November 19, 2003, the contract was being modified, which further increased the cost of the contract.

Statements of Work. The statements of work were vague and generally mirrored information either contractors or officials provided for establishing the requirement. For example, an e-mail from one DCMA specialist to the contracting officer stated:

Here is the SOW for the oil SME [subject matter expert]. [Government employee] recommended we pull out the specific tasks that made this classified to expedite, so you will notice the work requirements are quite broad.

The specific tasks the government actually intended the contractor to perform were removed from the statement of work in order to award the contract in time. As a result, the work requirements for this subject matter expert were broad in order to award the contract. Our review of contract folders, statements of work, and e-mails showed that statements of work were developed after the subject matter experts were identified. Furthermore, the subject matter experts were identified by name on five of the statements of work as the specific individual to perform the work.

Generally, ORHA/CPA officials and subject matter experts agreed to work together on the requirements of the contract and the terms of the salary. The information was provided to the DCMA acquisition specialists who prepared statements of work for inclusion in the contract. The contracting officer awarded a contract to the prime contractor (SAIC) who employed the subject matter expert

as either a subcontractor or an employee. Only the subject matter expert could perform the statement of work because of the way it was written. We noted that contract DASW01-03-F-0903 contained a major statement of work tasking that matched identically the resume of a subject matter expert. The statement of work also included the name of the particular subject matter expert being contracted.

Market Research. The FAR Part 10, “Market Research,” requires that market research be conducted for procurements. Market research allows the Government to determine how many contractors are capable of fulfilling the Government requirement as well as promoting more competition for the requirement. Such promotion for competition is especially true for commercial items that many contractors are available to meet the requirements of the Government. Of the 24 contracts reviewed, market research was conducted for 2 contracts and was not conducted for 11 other contracts. For the remaining 11 contracts, we could not determine whether market research was conducted. A DCC-W contracting officer obtained three quotes for three of the contracts competed and four quotes for three other competed contracts. The contracting officer stated that he selected the contractors for consideration based on his knowledge that each contractor could meet the requirement in the time required.

Computer Equipment Purchases. Justifications for the requirement to purchase supplies were also lacking. FAR Subpart 8.404 states that if the value of the delivery order is more than the micro-purchase threshold (\$2,500) and the requirement identifies a “particular brand name, product or feature of a product peculiar to one manufacturer” then “the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency’s needs.”

Of the 24 contracts awarded, 2 were for particular computer hardware and software. One requirement, for example, requested 175 NEC 18” Flat Panel Monitors with a specified part number, particular Hewlett Packard printers and scanners, and Palm Organizers. However, contracting officials did not prepare a written explanation that identified the necessity for these specific items. The contracting officer stated the technical representatives submitted the requirement. The contracting officer would normally question the specificity, but because of the necessity of the requirement, he did not have time.

Use of GSA Schedules

Of 24 contracts reviewed, 18 were awarded using the GSA Federal Supply Schedules as follows:

- 7 were awarded for specific subject matter experts,
- 5 were awarded pertaining to computer software and hardware,
- 2 were awarded for linguists who specialized in Arabic,

-
- 1 was awarded to obtain Iraqi Nationals and other individuals to assist the ORHA/CPA with its mission,
 - 1 was awarded pertaining to the Iraqi military,
 - 1 was awarded for Iraqi Free Media, and
 - 1 was awarded for information technology support.

Federal Supply Schedules. DCC-W contracting officers inappropriately used the GSA Federal Supply Schedules in awarding 10 contracts. Of the 10 contracts, 7 were for specific subject matter experts, 2 were for linguist services, and 1 was for the Iraqi Free Media. Contracting officers can view GSA contracts on the GSA Advantage! Web site. The Web site provides the information necessary for determining and verifying schedule applicability. Contracting officers using the Federal Supply Schedules can also request a publication of the schedules through a written request to GSA.

DCC-W contracting officials stated that they did not review or request the schedules. Instead, DCC-W relied on the contractor to make its own determination as to whether the contractor could or could not comply with the requirement under its GSA schedule. DCC-W did not consistently verify that the proposed GSA schedules corresponded to the contract requirements. The contracting officers trusted that the contractor would appropriately and accurately identify the labor categories on the schedule that related to the requirement. DCC-W had a predetermined dollar range that the subcontractors or employees should have been paid. If the proposed labor category fell into the range, the proposal would be accepted with little or no negotiation.

Labor Category Definitions. Although \$108.2 million of services were purchased from the SAIC Federal Supply Schedules, we could not determine labor category definitions. We questioned the contracting officers about the definitions within the MOBIS schedule that SAIC provided. The contracting officers responded that DCC-W does not have a definition of each labor category, but SAIC could explain the classifications. We then contacted SAIC concerning definitions for each labor category. SAIC responded:

. . . SAIC does not have written descriptions that separate the labor categories on our GSA MOBIS Contract. SAIC established a broad range of categories and rates to allow for flexibility in meeting various agency needs on a case-by-case basis. In other cases, SAIC categorizes individuals based on a number of factors, including skills and experience levels. For example, a more senior individual may be proposed as a Principal Management Consultant whereas a less senior individual may be proposed as a Management Consultant. . . . SAIC does not have an express definition for Management Consultant as that term is used under our GSA MOBIS Contract. Nevertheless, SAIC considers a Management Consultant as an individual capable of providing a wide range of services. . . .

The MOBIS schedule that SAIC provided contained services with broad descriptions such as consultation services, project management services, and support products. If the service fell within the schedule, SAIC would select the labor category (for example, Principal Management Consultant) that best fit the requirement. In the case of two subject matter experts, their labor categories were selected by SAIC based on the salaries that the subject matter experts negotiated with ORHA officials prior to the involvement of SAIC.

Of the 18 contracts awarded, 3 provided labor category definitions within GSA schedules. The logistics schedule for Military Professional Resources, Incorporated, provided a listing of the different position qualifications for each level under each labor category. A contracting official could determine what was being purchased. For example, a Management Consultant III was required to have a Bachelor's degree or equivalent and 8 years of general experience while a Management Consultant IV required a Master's degree or equivalent and 10 years of general experience.

Misuse of Information Technology Schedules and Labor Categories.

DCC-W misused the Information Technology Federal Supply Schedules when awarding two contracts. In the first contract, DASW01-03-F-0507, DCC-W used a GSA schedule entitled Information Technology Professional Services to procure linguist services from MZM, Incorporated. We could not locate documentation within the contract folder that identified the process for choosing a labor category. However, the contracting officer explained that the contractor used the GSA Federal Supply Schedule for its proposal. In our review of that schedule, we noted that no labor category was listed for linguist services and the Information Technology title does not indicate that a linguist would fall within the auspices of the schedule. In the second contract, DASW01-03-F-0397, an Information Technology Federal Supply Schedule was used to award a contract to Unisys for a subject matter expert to provide a study of Northern Iraq. We could not locate a justification for or determine the rationale of how a cultural study relates to an Information Technology Federal Supply Schedule.

A second linguist contract, DASW-01-03-0677, was awarded to Military Professional Resources, Incorporated, using its MOBIS Federal Supply Schedule. The labor category selected for the contract was titled "Education/Training Analyst." The description of the labor category did not allude to linguist support services. A contracting officer at DCC-W stated that he did not review the GSA contracts prior to awarding a contract. He added that noncompliance of a GSA schedule is an issue between GSA and the contractor. We believe that DCC-W should verify the GSA schedules and corresponding labor categories selected by the contractor and determine that the schedule provides the skills needed to accomplish the statement of work. Before awarding contracts using the Federal Supply Schedules, contracting officials must ensure that the appropriate Federal Supply Schedule is used.

Personal Services Contracts

DCC-W inappropriately awarded 10 personal service contracts. The FAR identifies a personal service contract by the employer-employee relationship established between the Government and contractor personnel. That happens when contractor personnel were under relatively continuous supervision and control by a Government officer or a Government employee. The FAR continues by stating that when that type of relationship occurs, the Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Awarding personal service contracts evades the law unless Congress specifically authorized the acquisition by statute.

In addition, the FAR provides descriptive elements that should be used as a guide in assessing whether a proposed contract is personal in nature. Those elements include:

- performance on site;
- services applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission;
- inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees.

Of the 24 contracts, 10 contained requirements that we believe were for personal services. Of the 10 contracts, 7 were awarded to obtain a particular person who would work for ORHA personnel. Three contracts were awarded for groups of individuals under the direction of ORHA personnel. For example, five of the contracts for subject matter experts contained statements of work that similarly stated:

“[Subject Matter Expert] . . . under the direction of the Director, ORHA.

Another statement of work stated,

. . . the Government will assume management, and control responsibilities for the SMEs [subject matter experts]. . .

Personnel could have been hired as Government employees, as some of the top ranking members of the ORHA staff were hired. Hiring these individuals as Government employees would have also reduced the overall cost to the Government for the subject matter experts. Hiring the subject matter experts by way of the Federal Supply Schedules caused the Government to pay contractor overhead costs for very little added benefit. In short, if DoD had hired the subject matter experts as Government employees, the general and administrative costs of the prime contractor could have been avoided.

As of October 14, 2003, CPA notified DCC-W to terminate two contracts with the subject matter experts so they could be hired as Government employees. For one of the contracts, DCC-W contracting officer contended that it was not a personal services contract because the contractor personnel performing the statement of work had an administrative layer acting as an intermediary with the Government. However, the statement of work was clear in that the subject matter expert would receive direction from ORHA personnel. As of October 14, 2003, only three contracts that we consider personal services were still ongoing, and we believe that these contracts should be terminated. If the individuals are still required, they should be hired using procedures required by civil service laws or an applicable statutory exception using an appropriate contract.

Out-of-Scope Work

At least 1 of the 24 contracts reviewed had considerable work performed that was outside the scope of the contract. Contract DASW01-03-F-0533, the Iraqi Free Media contract, was awarded to:

Provide media development, and production support services and training for the Office of Reconstruction and Humanitarian Assistance and the Inter-Agency task force. The media team shall quickly establish a free and independent indigenous media network consisting of radio, television, and print media components to enable the Office of Reconstruction and Humanitarian Affairs to communicate with the indigenous population in a post-conflict environment in the country of Iraq . . . will establish/assist in establishing an initial satellite based interconnectivity between/among various Iraqi ministries as these are reconstituted using already available systems and capabilities provided by the USG [U.S. Government].

From the original value of \$15 million, the contract was modified for about \$3.1 million as a result of unforeseen necessities of the contractor and DoD. Specifically, the contract was modified for security guards and equipment. We believe this work was clearly outside the scope of the contract and should not have been added to this contract. In addition, ORHA personnel allowed a subject matter expert to work on this contract without the approval of the DCC-W contracting officer.

Security Guards. The statement of work for the SAIC Iraqi Free Media contract was first developed in March 2003 without a requirement for security guards. After the contract was awarded, SAIC submitted a proposal that included a security guard allotment. The proposal to add the security guards was not incorporated into the statement of work at that time. However, according to one of the DCMA officials, the security guards were overseas and working on the contract as early as March 21, 2003, before DCC-W contracting officers had authorized the security guards. Furthermore, the Assistant Secretary of the Army for Logistics did not approve and require DCC-W to place the security guards on the Iraqi Free Media contract until April 28, 2003.

The Iraqi Free Media contract was awarded within the auspices of the GSA Federal Supply Schedule MOBIS schedule that SAIC provided. Although that Federal Supply Schedule contains common commercial business labor categories that range from consultation services to support services, a security detail did not correlate to any labor category description within the schedule.

After the contract was awarded, and to complete the established mission within the post-conflict country of Iraq, ORHA officials asked that DCC-W contract for a security detail because of the imminent danger the media team was facing. Furthermore, the ORHA director requested that the security guards be placed in a required training class approximately 3 weeks before DCC-W approved the security guards. The training was required to be completed after the personnel were hired and before deploying overseas.

SAIC corresponded with the DCMA specialist in-theater and explained that the MOBIS schedule was the appropriate vehicle to purchase security guards. SAIC had,

confirmed that SAIC has performed security detail work under the MOBIS Schedule.

The above e-mail was then forwarded to the DCMA acquisition specialist in Washington D.C. who stated:

. . . Seems they [SAIC] are trying to get you to do what we would not agree to do as it is outside the scope of the Media contract. They would love for you to award a separate security contract with them, but that is outside the GSA MOBIS scope also. . . .

We questioned the contracting officer about the placement of the security guards on the contract and she responded,

. . . they [security guards] may be outside the scope of the schedule, but not out of scope of the contract. . . .

The statement of work was eventually revised to include the requirement for the security guards, and according to the contract modification, was added into the contract with a \$3.1 million modification. However, we could not determine the cost of the security guards because the security guards were not identified in the cost breakdown portion of the modification. Furthermore, the contracting officer did not know the cost for the security guards and the contracting officer contacted SAIC at our request. SAIC responded that the security guards were incorporated into the basic contract, not the modification as was indicated by the documentation. Because of incomplete documentation and a lack of knowledge of the contracting officer, we could not determine the cost to the Government to add the security guards.

Equipment Purchases. The original Iraqi Free Media program manager requested that specific equipment be purchased or leased under the contract. A DCMA acquisition specialist explained that the Government purchased and leased

a H2 Hummer [purchased], a Ford C350 pickup truck [purchased], chartered a DC10 cargo jet [leased] to fly all these things over there for his personal – or for his [program manager] use on this contract, all outside the scope of the contract or the statement of work.

The DCMA acquisition specialist added that SAIC requested permission for these items, but that the DCMA specialist refused to allow the items be added to the contract. SAIC then went around the authority of this acquisition specialist to a different office within the Under Secretary of Defense for Policy to gain approval and succeeded.

Neither the contracting office nor the Continental United States (CONUS) point of contact responsible for signing the invoices could dictate the precise amount of the equipment charges. We reviewed the signed invoices and could not specifically identify the charges; however, one category of direct costs titled “Office & Vehicle,” totaled about \$381,000.

Subject Matter Expert. The main purpose of the Iraqi Free Media contract was to provide media development and technical support. However, when a subject matter expert working in Iraq did not receive a contract from the U.S. Agency for International Development, the Director of ORHA sent a memorandum to the contracting authorities of the ORHA/CPA in May 2003, that stated:

we . . . asked him to join the team by means of the SAIC contract. The easiest mechanism available at the time was the Indigenous media contract [Iraqi Free Media contract].

The memorandum continues:

. . . [The subject matter expert] signed on as a direct hire SAIC employee for a period of six months. . . .

The subject matter expert was first placed in charge of determining how to dispose of garbage in Iraq. He was then assigned the role of Senior Ministry Advisor for the Ministry of Youth and Sport. Neither of those roles was within the scope of the Iraqi Free Media contract. The Director of ORHA also stated:

. . . we anticipate . . . [the subject matter expert] would be used on a variety of special projects essentially outside of the Indigenous Media contract’s scope of work.

The official continued:

We anticipated . . . adjustments would be made so that the Indigenous media contract is compensated for the work [the subject matter expert] has done outside of that contract’s scope of work. . . . One solution was and is making contract modifications to permit [the subject matter expert] work to continue outside of Indigenous media through September as planned. . . .

The contracting officer was not aware that the subject matter expert was inappropriately authorized by ORHA on the Iraqi contract until receiving an e-mail from one of the DCMA specialists stating:

Sit down before you read this attachment! I'm still in shock that 'Management' believes this is okay. I'm not sure what to do . . . besides cry.

The attachment referred to in the above e-mail was the May 2003, memorandum quoted above. We questioned the contracting officers about this subject matter expert under the Iraqi Free Media contract. They responded that SAIC did invoice for this individual, but that the contracting officers sought ratification for the amount charged and expected SAIC to refund the Government for the full amount.

Price Reasonableness

We were unable to determine whether DoD paid a fair and reasonable price for 22 of 24 contracts reviewed. The DCC-W contract files did not contain adequate documentation showing that price reasonableness determinations were conducted for 17 contracts. Independent Government estimates, technical and cost evaluations, and price negotiation memorandums (PNM) were either not prepared or not in the contract file. PNMs, when prepared, did not contain enough information to conclude that the price was fair and reasonable. Also, the government paid additional costs to the contractor in the form of handling fees and other fees. In addition, limited competition was conducted for five contracts under the Federal Supply Schedules. The FAR requires that contracting officers obtain fair and reasonable prices for services and items purchased. The FAR also requires that the contracting office maintain contract files that include documents such as government estimates, records of negotiations, and justifications and approvals.

The FAR 15.405, "Price Negotiations," states that the contracting officer provide the rationale that supports the negotiation result in the PNM, and FAR Subsection 15.406-3, "Documenting the Negotiation," states that the contracting officer shall document in the contract file the principal elements of the negotiated agreement. Included in the section is a requirement to document that the price paid was fair and reasonable. Other documentation that assists the contracting officer with determining whether the price is fair and reasonable is the independent Government estimate and the cost and technical evaluation. The Government estimate provides an early assessment of the expected cost of procurements. The cost and technical evaluation is an assessment of a contractor's cost as well as the contractor's technical proposal.

In addition, FAR Section 4.801, "Government Contract Files – General," states that the head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions. The documentation in these files should be sufficient to constitute a complete history of the transaction: providing a complete background as a basis

for informed decisions at each step in the acquisition process, supporting actions taken, providing information for reviews and investigations, and furnishing essential facts in the event of litigation or congressional inquiries. See Appendix E for a list of missing documentation.

Reasonable Pricing. The contract files did not contain adequate documentation that supported whether the prices paid for 22 contracts were fair and reasonable. The absence of documentation was the result of the urgency in which the contracts were awarded. Specifically, for at least two subject matter expert contracts, ORHA officials and the subject matter expert agreed to the salaries before the requirement was provided to the contracting officials. As mentioned earlier, the contractor then used a labor category from Federal Supply Schedule contract that equated to the agreed amount. In other words, the contracting officer backed into the contract award amount. Whether the amount was fair and reasonable remains questionable and was largely determined by how well the ORHA official negotiated with the subject matter expert when the requirement and salary were established. The contracting officer maintained that the contract was fair and reasonable because the labor rate was listed in a Federal Supply Schedule, which is considered fair and reasonable because those rates are based on competition. Furthermore, the contracting officer explained that documentation was not necessary. However, the contracting officer still must determine that the mix of labor categories proposed is fair and reasonable.

Contract DASW01-03-P-0465 was awarded to an American Indian-owned firm on a sole-source basis for a protocol officer. The requirement for this contract was generated by ORHA, and according to the contracting officer, the former ORHA Director specifically identified the individual he wanted. The protocol officer was a co-worker of the former ORHA Director when both were employed by the same contractor. To avoid an appearance of or a conflict of interest, the protocol officer relinquished her employment with the contractor, and was hired by the American Indian-owned firm.

The contract was negotiated as a time and materials contract for \$595 per day, or \$107,100 for labor, with an initial period of performance of 6 months. According to the PNM located in the file, the rate was negotiated extensively and was in line with similar efforts. Furthermore, the PNM referenced the cost evaluation and stated that the evaluator found the proposal acceptable. However, we could not determine to which similar efforts the PNM referred, and the cost and technical evaluation the contracting officer referred to in the PNM stated that the labor rate appeared excessive—a clear conflict with the contracting officer’s statement about the cost and technical evaluation. The contracting officer and the cost and technical evaluator both stated that the initial proposed rate was negotiated down to \$595 per day. The contract file did not contain a written proposal reflecting the initial proposed rate (according to the contracting officer and the DCMA acquisition specialist this was done through the telephone). However, the file did contain a written proposal for \$595 per day. In addition, the cost and technical evaluation stating that the labor rate appeared excessive was completed one day before the contract was awarded.

A modification increased the labor rate to \$950 per day or approximately \$164,000, in order “to settle the contractor’s claim for an Equitable Adjustment

due to the constructive increased level of performance required of the protocol officer.” The modification was signed because the responsibilities of the protocol officer increased after she assumed the duties of a lieutenant colonel who had relocated. The contractor submitted an invoice for about \$39,000 and the Government paid it identifying retroactive payments from June 1 through September 19, 2003.

We believe the CPA should terminate contract DASW01-03-P-0465 and assign a military officer capable of performing as the protocol officer. We determined that if a lieutenant colonel with 26 years of service was performing the job of the protocol officer, the Government would pay approximately \$42,000 for the 6-month period instead of the approximately \$164,000 DCC-W awarded for the protocol services.

Government Estimates and Evaluations. Of the 24 contracts reviewed, 21 did not have independent Government estimates prepared that could provide evidence that fair and reasonable prices were paid. DCC-W contracting officers stated that they did not have confidence that personnel in the ORHA knew how to prepare an estimate and because of the urgent requirements, did not have time to find qualified personnel to prepare the estimates. DCC-W did not document this fact in the contract files. Of the 15 contracts awarded on a sole-source basis, 6 did not have cost and technical evaluations in the contract file. We could not determine whether the evaluations were prepared and not placed in the file or not prepared at all. A DCC-W contracting officer stated that documentation was not in the file because of the speed with which the requirements were generated and required to be awarded, and because they did not have adequate personnel to keep up with filing requirements. She further stated that DCC-W is hiring contractor personnel on a temporary basis to fully document the contract files.

Price Negotiation Memorandums. The contracting office should prepare the PNM at the conclusion of negotiations, with the contractor documenting the rationale for why the price the Government paid is a fair and reasonable price. The PNMs were either not prepared or not available for four contract files initially valued at approximately \$18.7 million. On three occasions, the audit team requested the PNMs and DCC-W did not provide the documentation on three of the four contracts. Accordingly, we could not determine how the contracting officer determined that the prices were considered fair and reasonable.

We could not determine how the contracting officer obtained a fair and reasonable price for the Iraqi Free Media contract. We could not locate the PNMs for the initial contract, valued at \$15 million, or the first modification, valued at \$3.1 million. The DCC-W contracting officials did not respond to our requests to provide the PNMs. The DCAA stated in its report of this contract that the labor rates used were not fair and reasonable. DCAA reported that profit rates for the labor categories rose up to 249 percent.

For contract files in which PNMs were prepared, we noted inconsistencies within the PNMs. For example, 4 of the 14 PNMs, stated:

The contracting officer deems this price fair and reasonable based on the competition obtained and the fact that the rates for contractor personnel are from a GSA Federal Supply Schedule.

The four contracts were not competed but were awarded on a sole-source basis to SAIC seeking the services of specific personnel named as subject matter experts. The contracting officer stated that the rationale was an oversight and that he did not review all price negotiation memorandums a DCC-W contract specialist generated. He noted that the contract specialist was capable of producing sufficient work and he did not have time to thoroughly read each PNM. Of the 14 PNMs, 7 stated that the price was fair and reasonable based on similar efforts. Neither the PNM nor the contracting officer identified similar efforts. She commented that the similar efforts occurred in Afghanistan but could not provide any more specific information.

Short time frames and urgent conditions do not excuse a contracting officer from obtaining a fair and reasonable price and not documenting these conditions in the contract files.

Additional Costs. Audits that DCAA performed on two of the contracts showed that DCC-W paid questionable prices to SAIC. DCAA performed cost-incurred audits of two contracts DCC-W awarded for ORHA/CPA, valued at \$48.3 million. DCAA determined that the labor rates SAIC used were not reasonable and recommended to the contracting officer instead that it use an adjusted wrap rate. Furthermore, DCAA questioned \$5.9 million for handling fees, open market items, and other fees.

Handling Fees. DCAA determined that SAIC was not complying with the FAR regarding how it charged a handling fee for open market item purchases. The FAR Subpart 16.601 allows the contractor to charge material at “other than at cost” if the materials are normally sold to the general public and in the normal course of its business. However, DCAA reported that:

SAIC does not regularly sell the OMIs [Open Market Items] proposed on this [as stated in the Iraqi Free Media and Iraq Reconstruction and Development Council Reports] contract to the general public; therefore, the application of profit to the OMIs [open market items] is not compliant with FAR 16.601.

SAIC responded that the handling fee is “a fair and reasonable profit given the types of purchases, urgency of the effort and influence of the OMIs [Open Market Items] on the program.”

Even after DCAA reported that the handling fee was profit to the DCC-W contracting officer, he allowed SAIC to charge in September 2003 a handling fee of 3.6 percent on the \$51.3 million modification to the Iraqi Free Media time and materials contract (\$36.2 million was materials). As a result, SAIC may obtain approximately \$1.2 million in handling fees for the modification of the Iraqi Free Media.

We reviewed the eight contracts awarded to SAIC in support of the ORHA/CPA. Of the eight contracts awarded under a GSA Federal Supply Schedule, six contracts contained an invoiced handling fee multiplied against reimbursable costs. Six SAIC proposals similarly stated, “SAIC has included the following OMIs, [Open Market Items] inclusive of a reasonable handling charge in our

pricing.” The proposed amount was then incorporated into the contract with little or no negotiation. SAIC did not state the exact handling fee percentage within the proposal or within the cost element breakdown. SAIC mentioned that only the open market items are “inclusive” of the fee. We determined the handling fee of 4.5 percent after reviewing invoices, submitted by SAIC. As of October 10, 2003, about \$635,000 was invoiced as a handling fee. We believe that fee should be refunded to DoD and be eliminated from future SAIC billings on contracts.

Other Fees. Of six subject matter expert contracts awarded to SAIC, five contain administration charges denoted through hourly executive labor categories. The contracting officer explained that on more than one occasion he tried to negotiate the ceiling amount of the labor category. The contracting officer further explained that the contractor would charge hours to the labor categories for any involvement, for example, payroll or meetings.

On the price negotiation memorandum for four of these contracts, it states that:

The Contracting Officer negotiated with the contractor, SAIC, to reduce the number of hours for the Executive Management Consultant I in the option periods. . . .

For only four of these five contracts, the contractor revised its proposal to decrease the amount for Executive Management Consultant I within the option periods. However, DCC-W did not exercise option periods for four of the five contracts. SAIC charged administrative categories of \$209.47 per hour for the Executive Management Consultant I position and \$77.84 per hour for the Management Consultant II position, amounts that are allowed through the Federal Supply Schedule. SAIC charged the five subject matter expert contracts for administration charges totaling about \$8,600.

Contract DASW01-03-P-0366 was awarded to RONCO Consulting Corporation which contained an “other direct cost” multiplier of 10 percent. The DCC-W contracting officer did not know the purpose of the other direct cost multiplier or why RONCO received it. As of August 31, 2003, RONCO invoiced about \$8,900 as the other direct cost multiplier, 4-percent of its total invoices. We believe that the cost multiplier is a superfluous fee and should not have been included in the contract.

Limited Competition. DCC-W did not obtain adequate competition for five contracts awarded for supplies and information technology services. Four contracts were awarded using GSA Federal Supply Schedules and one contract was awarded using a National Institutes of Health Schedule. Of the five contracts, two contracts were based on three quotes and three contracts were based on four quotes. The contracting officer selected the companies for consideration based on his personal knowledge of whether the contractor could meet the short delivery time required to meet the ORHA schedule. Although contracts were awarded to the contractors offering the lowest bid (of the limited competition), we cannot conclude whether the prices paid were fair and reasonable because the pool of potential contractors was limited based on the contracting officers personal experiences. The supplies that were purchased were

common and many vendors have the ability to supply the Government the required goods or services. For example, printers, desktop computers, and laptops were purchased. Reviewing quotes from more companies for these contracts may have resulted in lower prices. Furthermore, the FAR intends for as many quotes as practical be reviewed, not just three.

Surveillance

Of the 24 contracts, 13 did not have adequate surveillance of contractors. Also, those assigned to perform surveillance were not trained and provided no assurance that the Government was getting what it paid for. According to FAR Section 16.601(b)(1), a time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used. Of the 24 contracts reviewed, 14 were time and materials contracts. The remaining 10 contracts were firm-fixed price contracts.

The “DCC-W Acquisition Guide” states that the contracting officer’s representative (COR) is the requiring activity’s technical expert and is responsible for monitoring the performance of the contract. COR duties usually include receiving the briefings and deliverables, signing the receiving reports, and monitoring contractor performance to protect the Government’s interest. The contracting officer appoints the COR at the time of award. The COR must possess the qualifications and experience equivalent to the duties assigned.

The designation of the COR is ordinarily made for the life of the contract, and the COR must have enough scheduled time remaining with the activity to serve as the COR at least through the base period of the contract. In addition, the COR is required to maintain adequate records to sufficiently describe the performance of duties as a COR during the life of the contract. For the contracts reviewed, DCC-W stated that points of contact were assigned instead of CORs. Points of contact provided the same type of surveillance as if a COR were assigned. According to a contracting officer, DCC-W assigns a point of contact for all contracts using the GSA Federal Supply Schedule and simplified acquisition procedures because CORs must undergo 20 to 40 hours of training. Because DCC-W awards many contracts using the GSA Federal Supply Schedule and simplified acquisition procedures, having a large number of individuals receive the required training is difficult. As a result, DCC-W uses the term point of contact, and the assigned point of contact provides the surveillance.

Of the 24 contracts reviewed, 13 were assigned both a CONUS and an in-theater point of contact, 8 were assigned only a CONUS point of contact (all of which did not require an in-theater point of contact), and 1 had neither a CONUS nor in-theater point of contact listed in the contract. Furthermore, we could not determine whether 2 other contracts had points of contact assigned. According to a DCC-W contracting officer, a CONUS and an in-theater points of contact should have been assigned to each contract to ensure that proper surveillance was being conducted. The contracting officer stated that the point of contact names

for the contracts came from the ORHA/CPA rear office and that DCC-W had nothing to do with these selections.

CONUS Surveillance. We contacted either the in-theater point of contact or the CONUS point of contact for seven of eight contracts that purchased supplies to ensure that the equipment had been received. As of October 30, 2003, we received confirmation that equipment was delivered for all eight contracts, with minor discrepancies. Of the 16 remaining contracts, 1 did not have an in-theater or CONUS point of contact listed; therefore, we could not determine whether the services were rendered. Another contract had a CONUS point of contact, but we were unable to determine whether the services were rendered. For the remaining 14 contracts, 2 individuals in the ORHA/CPA rear office received and approved the invoices. The individual that received and approved 13 of the 14 contracts did not have contracting background, did not monitor contractor performance, and did not receive any training relating to performing contractor surveillance.

The CONUS point of contact that approved the 13 of 14 contracts stated he approved the invoices when he received verbal confirmation that the contract was going well but did not trace the invoices to the labor rates listed in the contract. In addition, the CONUS point of contact was unaware of the material allocations under the direct cost portions of the invoices and did not consistently verify how these costs were applicable to the contracts. For example, SAIC invoiced approximately \$7 million for one allocation as of August 15, 2003. The CONUS point of contact approved and signed the invoices without verifying whether the Government received the material.

Contract deliverables did not come to the contracting office but were to be sent to the one CONUS point of contact assigned 13 of the 14 contracts. However, the individual stated that he did not receive the contract deliverables unless the contractor sent them to him specifically. All of the 14 contracts had some type of deliverable requirement, but he received only contract deliverables for one of the contracts.

According to a DCC-W contracting officer, the Defense Finance and Accounting Service would compare the invoices received to the contract and would pay only what the contract stated. In reviewing the invoices received from the ORHA/CPA rear office, one contract billed more than what was allowable under various labor categories before the modifications were implemented increasing the labor category ceiling.

For example, SAIC invoiced about 250 hours more than the ceiling for one labor category within the base period. However, when a modification was awarded that extended the period of performance and increased this labor category ceiling, SAIC was then within the labor category allotment. Another contractor had employees who worked more than what was allowable under the labor categories of its contract, but according to the contractor, did not plan to bill for the overages until DCC-W approved a contract modification.

Furthermore, SAIC also worked “unbillable hours” for this contract, whereas the labor categories were not incorporated into the original contract, but individuals were actively working. SAIC explained that it would invoice for these labor

categories once the contract was modified to incorporate the additional labor categories. However, we reviewed invoices submitted by SAIC between September 13, 2003, and October 10, 2003, for this contract and noted that SAIC invoiced for the referenced labor categories, totaling about \$191,000. The contracting officer explained on October 28, 2003, that a modification was currently being processed, but no new labor categories were added to the contract. Accordingly, SAIC invoiced about \$191,000 for unauthorized labor categories. For each of the contracts there was no indication that ORHA/CPA personnel knew that the contractor was approaching the ceiling for the various labor categories.

In-Theater Surveillance. Problems also existed with the in-theater points of contact. A DCC-W contracting officer stated that points of contact did not want the responsibility of providing surveillance over the contracts, and once in Baghdad, Iraq, many of the individuals could not be located. To determine the level of involvement on 11 contracts requiring an in-theater point of contact, we asked an auditor of the IG DoD staff located in Baghdad, Iraq, to perform a review.

Of the 9 points of contact assigned to the 11 contracts, the auditor could not locate any of the points of contact. The auditor discovered that the nine in-theater points of contact were no longer in Baghdad, Iraq, or performing as the point of contact. We could not determine whether the contracting officer assigned new in-theater points of contact for the 11 contracts. DCC-W contracts were not receiving the necessary surveillance on the time and materials contracts as required by the FAR.

Reassigning CONUS Points of Contact. In addition, the DCC-W contracting officers did not reassign the CONUS point of contact. For example, we e-mailed the CONUS point of contact listed for one of our contracts and were informed by him that he was no longer the point of contact. He stated that he had no responsibilities for this contract, such as receiving and signing invoices, and had no files regarding the contract. The point of contact simply conducted administrative aspects of this contract. He provided a name of the new CONUS point of contact. When we contacted that individual, he informed us that he had not received any invoices for the contract but was aware that DCC-W exercised two option periods. In reviewing the contract file at the DCC-W contract office, we did not find a modification changing the point of contact. When asked, the DCC-W contracting officer was unaware of the change. The DCC-W contracting officers should require that the point of contact provide monthly status reports of these contracts.

Need for Contract Surveillance. The following three contracts are examples of why contract surveillance is necessary for all contracts. To protect the Government's interest, appropriate and adequate contract surveillance must be conducted.

- DCC-W awarded contract DASW01-03-F-0533 to SAIC for establishing the Iraqi Free Media Program. Although the contract had an assigned in-theater point of contact, the lack of surveillance was a serious issue. The DCMA acquisition specialist noted that

expenditures were adding up much faster than the funds available and no one was providing any oversight for SAIC effort. At the beginning of the Iraqi Free Media contract, SAIC had excessive purchases and had deployed personnel into the theater without informing the proper individuals. At the time, the Government was unsure of what SAIC would be doing because SAIC had not submitted its proposal; SAIC started the contract with a verbal confirmation from the contracting officer. The in-theater point of contact was located in Kuwait and was not participating in the surveillance of this contract. To correct this situation, the DCC-W contracting officer assigned a new in-theater point of contact.

On August 8, 2003, the acting CONUS point of contact submitted a letter to the DCC-W contracting officer stating that he had been unable to verify the information submitted in an invoice by SAIC for approximately \$10 million. However, he signed this invoice on July 14, 2003, "subject to audit and review at a later date."

In addition, a July 2003 DCAA report stated that most employees and subcontracted labor personnel working in-country on this contract did not personally prepare daily or weekly timesheets. The DCAA review indicated that the labor hours recorded in the contractor's books and billed to the Government may not be accurate. In an in-country review of 25 employees, DCAA reported that none of the 25 employees had prepared timecards or had any technical instructions for recording their time. DCAA identified the above instance as a significant internal control deficiency of the contractor.

- DCC-W awarded contract DASW01-03-F-0508 to SAIC for establishing the Iraq Reconstruction and Development Council. Section 5.5 of that contract states that, "the Government shall assume all responsibility for the management and control of the SME's [subject matter experts] while working under this contract." According to a July 2003 DCAA report, the subject matter experts working in-country on this contract did not personally prepare daily or weekly timesheets. No systematic process existed for recording and reporting of employee time. SAIC informed DCAA that they do not monitor the comings and goings of the subject matter experts and that tracking of subject matter experts is a function solely belonging to the Government. During interviews conducted with the subject matter experts on this contract, DCAA found that individuals filled out and signed invoices in the United States before departing for Iraq. The acting CONUS point of contact then certified these invoices through contact with the Iraqi Reconstruction and Development Council Baghdad office, which performed the surveillance function for this contract and was run by SAIC personnel.

According to the CONUS point of contact, the contract needs more administrative supervision at the Baghdad ORHA/CPA front office. The CONUS point of contact stated that no one in the Government checks the hours individuals worked under this contract unless someone files a complaint.

-
- DCC-W awarded contract DASW01-03-F-0397 to Unisys Corporation for a subject matter expert on the Kurds. The subject matter expert would be a project coordinator for classified projects in Northern Iraq and was required to submit his contract deliverables to the Coordinator of the Northern Region, who was a Government employee. When the CONUS point of contact received an invoice for the services of this subject matter expert, the CONUS point of contact contacted the Government employee in charge to inform him of his authorization of payment. The CONUS point of contact received notification that as of June 12, 2003, the Government employee was no longer in Iraq and that the subject matter expert was now the Coordinator of the Northern Region, previously a Government position with added responsibility.

On August 24, 2003, DCC-W exercised the first option of the subject matter expert firm-fixed price contract, which extended it to November 23, 2003. The Government terminated this contract and hired him through a special appointment on October 7, 2003. Because the subject matter expert was the Coordinator of the Northern Region while employed by Unisys, the subject matter expert was operating as a Government employee for approximately 4 months.

Conclusion

Our review of the ORHA/CPA and DCC-W handling of 22 of the 24 contracts has disclosed significant weaknesses. In each phase of the acquisition process, ORHA/CPA and DCC-W cut corners from generating the initial requirement to surveillance of the contractor. Many of the problems can be attributed to the post-conflict turmoil and the need to react quickly. However, a larger contributing factor was the lack of planning for and emphasis on the need for acquisition support. The need for acquisition support was more of an afterthought than a key function necessary to accomplish the mission. Such a lack of planning resulted in:

- no staffing assigned to assist in developing requirements,
- avoiding FAR procedures in order to award contracts to specific people,
- using the Federal Supply Schedules improperly,
- allowing out-of-scope procurements,
- documenting the contract files inadequately,
- purchasing goods and services without assurance of fair and reasonable prices, and
- little or no surveillance on time and materials contracts.

Overall, the above problems did not result from Government personnel desiring to make personal gains. To the contrary, personnel involved in these contracts had a common interest and performed whatever tasks were needed to accomplish the job. The contracting officers did not make good faith efforts to document or ensure that the Government's interest was adequately protected. The contracting officers have a responsibility to ensure that the FAR was followed. We recognize that the contracting officers were in a difficult position of attempting to serve their customers. However, we believe that it was incumbent upon the contracting officers to not short cut the acquisition process. Accordingly, we believe that DCC-W should initiate a review and take appropriate administrative action against the contracting officers that did not follow appropriate FAR and GSA Federal Supply Schedule procedures.

Management Comments on the Finding and Audit Response

DCC-W Comments. The Commander, DCC-W acknowledged that shortcuts were taken by his office. The commander also stated that the draft report represented a serious injustice to the personnel in his command, was riddled with faulty assumptions, erroneous conclusions, and egregious misinterpretation of contract law and procedures and requested that the report be withdrawn in its entirety. He further stated that based on the findings and recommendations of the draft report, if practiced during the critical time periods addressed, that his contracting officials would have failed to provide the urgently needed supplies and services to ORHA and CPA. The draft report failed to recognize the critical and time sensitive nature of the awarding these contracts and the flexibility allowed under the FAR.

Audit Response. We disagree with the commander that the report is riddled with faulty assumptions, misinterpretation of contract law and procedures. In our opinion, the contracting officers did not adequately document required information in the contract files, misused the GSA Federal Supply Schedules, awarded personal service contracts, and did not ensure that contracts, once awarded, were properly monitored by Government representatives. For example, contracting officials did not adequately support that the prices paid were fair and reasonable, which is required by the FAR. In addition, DCC-W misused the flexibility offered by the GSA Federal Supply Schedules. Contracting officials used Information Technology Federal Supply Schedules to hire consultants and interpreters, used a MOBIS Federal Supply Schedule to hire specific personnel and buy services that were not on the respective schedules. Furthermore, approximately 71-percent of the total cost of the Iraqi Media contract (\$82.3 million) was for material, not consultants (which is the intended purpose of the MOBIS schedule). DCC-W contracting officials inappropriately awarded personal service contracts, which are not allowed without special permission. The DCC-W contracting officials also did not ensure that the contracts were properly monitored in Iraq.

We did recognize the urgent conditions under which DCC-W awarded the contracts and did not question the use of the exception of urgency to non-competitively award most of the contracts. However, urgency does not permit the

contracting officers to abandon the rules. Contracting officers are responsible for ensuring that all requirements are met prior to awarding contracts, even under urgent conditions. If the commander believed that the contracting officers could not have awarded the contracts in accordance with the FAR under the urgent circumstances that existed at that time, he should have assigned additional resources to the tasks.

Recommendations, Management Comments, and Audit Response

Revised and Redirected Recommendation. We revised and redirected Recommendation 1. based on comments received from the Office of the Under Secretary of Defense for Policy. Recommendation 1. was redirected to the Deputy Secretary of Defense and was sent to him under separate correspondence from the Inspector General.

1. We recommend that the Deputy Secretary of Defense designate an office within the Department of Defense to study existing DoD post-war strategy and establish responsibilities, policies, and procedures for the rapid acquisition of necessary goods and services in support of any future post-war occupation or relief operations.

2. We recommend that the Commander, Defense Contracting Command-Washington:

a. Analyze the seven ongoing contracts for subject matter experts and determine the liability to the Government if the contracts are terminated. For contracts having no or limited liability to the Government terminate immediately. Terminate all contracts at the end of current contract period.

Management Comments. The Commander, DCC-W concurred in part, stating that all contracts for subject matter experts were completed as of December 31, 2003. As a result, no contracts were required to be terminated. The commander stated that DCC-W contracting officers did not avoid FAR procedures in awarding contracts to specific people and that the contracts awarded for the subject matter experts were not necessarily personal service contracts, although some of the contract language was imprecise, it was never the intent of the contracting officer to award personal service contracts. Furthermore, the commander stated that DCC-W had no knowledge that the contracts were actually administered as personal service contracts and that the subject matter experts were all hired as subcontractors, however, the Government did provide quality assurance and oversight.

Audit Response. According to FAR Section 2.101(b), "Definitions," a personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees. FAR Section 37.104(a), "Personal Services Contracts," continues by stating that a personal services contract is characterized by the employer-employee relationship

it creates between the Government and the contractor's personnel. FAR Section 37.104(d) provides a list of descriptive elements that should be used as a guide in assessing whether or not a proposed contract is personal in nature.

In our opinion, based on the FAR and the information that was provided by the DCC-W contracting officers (and other individuals involved with these contracts), 10 of the 24 contracts reviewed were personal services contracts. We based this determination on the objectives and work requirements listed in the Statements of Work for the 10 contracts. The statement of work identified the work to be performed under the contract, and the statements of work clearly identified an employer-employee relationship between the Government and the subject matter expert. Although the acquisitions had to be completed quickly, it was still the DCC-W contracting officers responsibility to assess the statements of work, ensure that the contracts were not personal service contracts, and rewrite or require that the statements of work be rewritten. None of these actions were accomplished. In addition, we did discuss the use of some of the subject matter experts with an in-theater point of contact and confirmed that at least one contract was under the direct supervision of the Government. We agree that DCC-W did not know that the contracts were administered as personal services because the contracting officials did not ensure that the contracts were properly monitored. DCC-W contracting officials could not provide us current information on who, in Iraq, was actually monitoring the contractors. Many of the personnel assigned to monitor the contractors by the DCC-W contract officers were not in Iraq for the full term of the contract and DCC-W did not reassign a point of contact.

b. Complete the documentation of contracts awarded for the Office of Reconstruction and Humanitarian Assistance/Coalition Provisional Authority required by the Federal Acquisition Regulations and ensure that each future contract is awarded in accordance to applicable regulations and that all contract documentation is prepared.

Management Comments. The Commander, DCC-W concurred but noted that the documentation will be less than comprehensive because some documentation will be difficult or impossible to reconstruct. In addition, the commander stated that the audit had a narrow view and interpretation of the FAR, Defense FAR Supplement, and Army FAR Supplement requirements without consideration of the flexibility those regulations are intended to provide the contracting officer. The commander also stated that the review was looking for documentation generally required only in FAR Part 15 contracts such as price negotiation memorandums. Furthermore, only 2 of the 24 contracts were awarded under provisions of FAR Part 15, but that most of the contracts were established under the requirements of FAR Part 8 which are more abbreviated over that required by FAR Part 15.

Audit Response. The contracting officer is responsible for maintaining a complete, auditable contract file and that was not done. According to FAR Section 4.801(b), "Government Contract Files – General," the documentation in the files shall be sufficient to constitute a complete history of the transaction. DCC-W contracting officers were not in compliance with this regulation. Although not specifically stated in FAR Part 8, the contracting officer still must make a determination of a fair and reasonable price. Furthermore, the contracting

officers use of the flexibility provided by using Federal Supply Schedules goes well beyond what was envisioned in FAR Part 8. In fact, to claim that FAR Part 8 was even followed when purchases were made from the Federal Supply Schedules is using the FAR flexibility to the maximum. FAR 4.803(a), "Contents of Contract Files," lists government estimates and records of price reasonableness as several types of documentation that make a contract file sufficient to constitute a complete history of the transaction.

c. Obtain refunds from overpayments made to the contractor on contracts DASW01-03-F-0533 and DASW01-03-F-0516 for the subject matter experts and all SAIC contracts containing material handling fees in the amount of \$634,834.34. The following, are material handling fees SAIC billed the Government for specific contracts.

Contract DASW01-03-F-0533	\$454,637.43
Contract DASW01-03-F-0508	178,892.46
Contract DASW01-03-F-0537	718.04
Contract DASW01-03-F-0536	302.54
Contract DASW01-03-F-0512	200.42
Contract DASW01-03-F-0500	83.45

Management Comments. The Commander, DCC-W concurred with seeking refunds of material handling fees to the extent that these fees included unauthorized profits. The commander nonconcurred with obtaining overpayments for the subject matter experts. And stated that there was no legal basis to determine whether subject matter experts were overpaid.

The commander stated that the subject matter experts were paid in accordance with the labor rates established in the GSA Federal Supply Schedules, which had previously been determined to be fair and reasonable under the GSA process. In addition, the commander disagreed that DCC-W did not obtain adequate competition on five contracts awarded for supplies and information technology services. The commander stated that DCC-W complied with the FAR and DFAR requirements of reviewing GSA Federal Supply Schedule pricing of three vendors and nothing more was required, especially in light of the urgency of the requirements.

Audit Response. The amounts identified in the recommendation were the actual amounts billed by SAIC on its invoices (through October 10, 2003). The amount DCAA identified was based on the total dollar amount of the "Open Market Items" listed contract. As a result, DCC-W should determine whether SAIC applied the material handling fee on additional invoices that have been submitted.

We disagree with the statement that there was no legal basis to determine whether subject matter experts were overpaid. For one of the subject matter experts, we recommended that DCC-W determine whether the Government continued to pay the contractor for the subject matter expert after his mission was completed. The period of performance and invoices were through September 12, 2003, however, e-mails indicated that the subject matter expert completed his duties in July 2003. The intent of the recommendation was for DCC-W to ensure that if the subject matter expert completed assigned tasks in July 2003, that the Government still did

not pay for his services up until September 12, 2003. We believe there is a legal basis for DCC-W to accomplish this recommendation. The second subject matter expert recognized in the recommendation referred to was possibly paid through the Iraqi Free Media contract but was performing work clearly outside the scope of the contract, performing duties such as garbage disposal and youth sports in Iraq. There were indications that this individual was paid under the Iraqi Free Media contract and the intent of the recommendation was to recover inappropriate payments. See the audit response to Recommendation 2.d. for more information regarding this subject matter expert.

Although DCC-W stated that labor rates in the GSA Federal Supply Schedules are determined to be fair and reasonable, an October 2002 memo from the DCC-W legal office to the commander expressed concern that in many instances the labor rates appear to be extremely high for services provided and that once the rates are accepted by the GSA, that rates are impervious to market forces. Regarding the purchases of supplies and equipment using GSA Federal Supply Schedules, DCC-W correctly stated that it conformed to regulations and sought the required number of contractors prior to awarding contracts. We were concerned that the contracting officer only sought bids from contractors he knew, and had experience dealing with, which in effect, limited competition. Furthermore, the items bought were common computer peripheral equipment, therefore researching other contractors' prices through the GSA Advantage! on-line shopping service would not have affected the urgency of the procurements.

We request that the commander provide additional comments on the need to collect for overpayments for two subject matter experts.

d. Issue guidance requiring the use of Federal Supply Schedules for its intended purposes. Ensure that contracting officers verify that goods or services purchased are within the scope of the Federal Supply Schedule and that labor categories purchased from the Federal Supply Schedules reflect the service performed.

Management Comments. The Commander, DCC-W concurred and stated that DCC-W established and published a "Guide for Ordering Services Exceeding \$100,000 from GSA Federal Supply Schedules," in March 2003. The entire DCC-W workforce received training in April 2003 to emphasize verifying the intended purpose of the schedules by reviewing the GSA Federal Supply Schedule contracts before issuing a schedule order along with verification that appropriate labor categories are used. Additional sessions to reinforce this training are currently planned for Spring 2004. Furthermore, contracting officers will be trained by April 2004 regarding scope of contract.

The commander disagreed that the labor categories were too broad or ill defined, and stated that this was beyond the responsibility of DCC-W as it must conform to the parameters of the contracts. Furthermore, labor rates under the Federal Supply Schedules have been accepted as reasonable by GSA and that there was nothing improper in having the vendors provide details of the GSA schedules, which is a widely used practice throughout DoD.

The commander also disagreed that adding a security requirement to the Iraqi Free Media Contract was not out of scope but that it was an integral requirement for successful completion of the contract. The commander disagreed that the subject matter expert that was improperly placed on the Iraqi Free Media contract was actually paid. The contracting officer directed the contractor to remove all costs for the subject matter expert from the contract. The contractor was told the only means for reimbursement was to file a claim under ratification procedures, and as of January 2004 no claim had been filed.

Audit Response. We agree that there is nothing improper in having the vendors provide details of their GSA schedules. What we are questioning is the fact that the contractors are selecting the GSA schedules and the labor categories for the contracts and the contracting officers are not validating that information. When asked about the GSA Federal Supply Schedules, the contracting officers informed us that they do not receive a copy of or review the GSA schedules nor do they verify the selected labor categories. Had DCC-W reviewed the schedules, the contracting officers may have determined that using Information Technology GSA schedules for consultants and linguists was not appropriate. In addition, the Inspector General for GSA recently issued an audit report that cited numerous violations by DoD for misusing Information Technology GSA schedules.

Furthermore, DCC-W used the GSA schedule to “back” into salaries for subject matter experts based on agreed amounts with the subject matter expert. Instead of identifying a particular labor category to fulfill the requirement, as is usually done, DCC-W contracting personnel identified a particular person and a salary amount and then determined which labor category best fit the salary.

The contracting officer has a duty to determine whether prices are fair and reasonable and we found no evidence that this was done. The contracting officers unorthodox use of the Federal Supply Schedules make a determination of fair and reasonable pricing that much more important. Specifically, the contracting officer agreed to a price with the individual or contractor before going to the Federal Supply Schedules. Accordingly, the prices in the schedules bore no relationship to what was being performed or paid for the services. The schedules were only a vehicle to award the contract. Using the schedules resulted in overhead costs that could have been avoided if the services were acquired directly from the subject matter experts.

We believe that that DCC-W contracting officers used an inappropriate contracting method to obtain security for the Iraqi Free Media contract. One of the DCMA acquisition specialists in Iraq sent an email to the acquisition specialist in Washington D.C., warning that SAIC was performing security functions outside the scope of the contract. Because of a lack of documentation in the DCC-W contract file, we could not determine the cost of the security guard requirement. The only information regarding the cost of the security detail was a proposal from SAIC for “Security Team Equipment and Materials,” totaling approximately \$433,000, but contained no further information. The most accurate information we have been able to obtain from DCC-W regarding the amount for the security was in its comments to the draft report that stated, “The costs for this were not substantial when compared to the overall costs of the contract.” Using the GSA Federal Supply Schedule titled, “Management, Organizational, and

Business Improvement Services” was out of scope for hiring security guards. A separate contract for security guards should have been awarded to a company specializing in security guard services.

We disagree with the statement from the commander that the subject matter expert was not paid for on the Iraqi Free Media Contract. Because of a lack of documentation in the contract file, we relied on the contracting officer’s statement that the subject matter expert working out of scope on the Iraqi Free Media contract was paid. Furthermore, we determined that the government paid for the labor category that this individual was employed (as reported by the DCAA) as of a May 23, 2003, invoice. The labor category, Principal Management Consultant II was billed by SAIC for 6,529.5 hours (for the period of performance from inception of the contract until May 23, 2003), which was 876.5 hours over the ceiling for this labor category at that time. The next invoice adjusted the same labor category by 876.5 less hours to adjust it back to the ceiling. However, there was no additional documentation explaining the excess for the labor category or no documentation explaining why the Government paid the amount (including the excess 876.5 hours). Furthermore, there was no documentation showing that the hours adjusted were those of the subject matter expert working out of scope. The invoices we reviewed showed that the SAIC invoiced the Government for the Principal Management Consultant II labor category.

e. Assign trained points of contact or contracting officer representatives to each ongoing contract that supports the Iraqi effort and ensure that the contracting officer obtains monthly reports from the contracting officer representative or the point of contact of each contract.

Management Comments. The Commander, DCC-W concurred and stated that DCC-W will work with requiring activities to establish better oversight practices.

f. Perform a review and initiate appropriate administrative action for the contracting officers who willingly made improper interpretations of and circumvented the Federal Acquisition Regulation and misused the General Services Administration Federal Supply Schedules.

Management Comments. DCC-W nonconcurred with the recommendation. The commander stated the report highlighted a number of weak areas and short cuts taken by DCC-W contracting officers. He further stated that the DCC-W staff will make a thorough review of the contract files cited in the report, and would revise policies and guidelines, improve business processes, and conduct training of the acquisition workforce. However, the commander stated that DCC-W emphatically objected to the statement in the report that the contracting officers “willingly” made improper interpretations of and circumvented the FAR and misused the GSA Federal Supply Schedules. The commander further stated that there was no evidence known to him of any bad faith, willful misconduct, or illegal activities by DCC-W employees.

Audit Response. The DCC-W contracting officers were under unique and trying circumstances in awarding these contracts and the report did not take exception to the use of compelling urgency to award the contracts. However, we do believe that DCC-W contracting officers inappropriately used the GSA Federal Supply

Schedules and the contracting officers knew they were making liberal interpretations of the FAR requirements.

Although a lack of planning for acquisition support was a major factor in creating the problems noted in this report, we believe that the contracting officers had a key role and should have acted appropriately. Specifically, it was well within the contracting officers rights to take no action on the procurements until the requirements were known and justified, a reasonable contracting approach, and a fair and reasonable price ascertained. As a minimum, the contracting officer could have elevated the concerns they shared with each other in e-mails to higher command levels. We found no evidence of contracting officers seeking assistance from higher levels. Instead, we found evidence that the contracting officers wanted to assist their customer while knowing that their actions were not consistent with regulations. The contracting officer must protect the Government's best interest.

One contracting officer acknowledged that hiring the security guards for the Iraqi Free Media contract was out of scope of using the GSA schedules but did so because it was within scope of the contract (in the contracting officer's opinion). A second contracting officer inappropriately sent SAIC a Government cost estimate for a modification to the Iraqi Free Media contract while the modification was still being processed. In the e-mail, referring to the Iraqi Free Media contract, the contracting officer provided the SAIC point of contact a string of e-mails that included other e-mails between the DCMA specialist and ORHA rear-office personnel discussing the independent government estimate for a modification increasing the Iraqi Free Media contract and the lack of Government surveillance over the contract. The contracting officer then told the SAIC point of contact:

This one may be coming to a head!

Disregard message after reading.

It was inappropriate for a contracting officer to communicate this information to the contractor.

The recent issuance of a GSA Inspector General audit report, "Audit of Federal Technology Service's Client Support Centers," January 8, 2004 regarding the misuse of information technology service schedules, and found similar conditions to what we found and further supports the need for the recommendation. After the contracting files are reviewed, the commander can then make an informed decision on whether any administrative action is warranted. Accordingly, we request the Commander, DCC-W to provide additional comments on the recommendation.

Appendix A. Scope and Methodology

This audit was performed as a result of a June 10, 2003, memorandum to the Inspector General of the Department of Defense from the Director DCAA. The memorandum recommended a review of contracts DCC-W or Washington Headquarters Service awarded in support of the rebuilding Iraq by the ORHA/CPA. As a result, we reviewed 24 contracts valued at \$122.5 million. The contracts were awarded between February 2003 and August 2003. Of the contracts reviewed, 15 were awarded on a sole-source basis and 9 were awarded based on competition. In addition, 16 contracts were for services and 8 were for supplies or computer equipment. See Appendix C for details.

We examined the contracting procedures DCC-W officials used in awarding the contracts for the ORHA/CPA. Specifically, we reviewed documentation that supported the requirements determinations, types of contracts used, use of other than full-and-open competition, and determinations of price reasonableness.

During our audit, we visited the DCC-W contracting office and the ORHA/CPA rear office. We interviewed DCC-W contracting personnel involved in awarding and modifying the contracts. We also interviewed ORHA/CPA rear office personnel responsible for receiving and processing invoices and key Government and contractor personnel involved with either the contract requirement, contract award process, or contract surveillance. In addition, we performed work located in Baghdad, Iraq, to determine the level of surveillance conducted on the contracts.

We reviewed the contract files that DCAA used in conducting its analysis, the official contract files DCC-W maintained, and DCAA audit reports for 2 of 24 contracts. In addition, we reviewed e-mails, PNMs, Federal Supply Schedules, justifications for other than full-and-open competition, cost and technical evaluations, Government estimates (when available), and contract modifications. We also conducted an analysis of invoices prepared through October 10, 2003, for 15 of 24 contracts.

We performed this audit from July 2003 through December 2003 in accordance with generally accepted government auditing standards. Our scope was limited in that we did not review the DCC-W management control program because that was not an announced objective. We also did not review contracts the Washington Headquarter Services awarded because their dollar value was low and the contracts were less significant than those DCC-W awarded.

Use of Computer-Processed Data. We did not rely on computer-processed data.

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the Department of Defense. This report provides coverage of the high-risk area to “Improve processes and controls to reduce contract risk.”

Appendix B. Prior Coverage

During the last 5 years, the Inspector General of the Department of Defense (IG DoD) and the Defense Contract Audit Agency (DCAA) have issued three reports each related to this subject. The Inspector General, U.S. Agency for International Development has issued three memorandums addressing contracting for Iraq. Also, the Inspector General of the General Services Administration has issued two reports addressing using Federal Supply Schedules.

IG DoD

IG DoD Report No. D-2004-015, “Contracts for Professional, Administrative, and Management Support Services,” October 30, 2003

IG DoD Report No. D-2003-029, “Contract Actions Awarded to Small Business,” November 25, 2002

IG DoD Report No. D-2001-129, “Contracting Officer Determinations of Price Reasonableness When Cost or Pricing Data Were Not Obtained,” May 30, 2001

DCAA

DCAA Report No. 4171-2003B28000007, “Report on Application of Agreed-Upon Procedures to SAIC Proposal No. 01-1792-71-2004-413-R1 Exercise of Option Period 2 – Under GS-23F-8006H/DASW01-03-F-0533 Iraqi Media Network,” September 15, 2003

DCAA Report No. 4171-2003B17900006, “Report on Application of Agreed-Upon Procedures on Science Applications International Corporation (SAIC) Research and Development Company (Company 1) Costs Incurred and the Revised Proposal Under Contract DASW01-03-F-0508,” July 9, 2003

DCAA Report No. 4171-2003B17900005, “Report on Application of Agreed-Upon Procedures to Science Applications International Corporation, Research and Development Company (SAIC, Company 1), Costs Incurred Under the Base Period and Proposal for 30-day Extension of Contract No. DASW01-03-F-0533, Iraqi Free Media Program,” July 3, 2003

Agency for International Development

Inspector General, United States Agency for International Development, Memorandum 03-003, “USAID’s Compliance with Federal Regulations in Awarding the Iraq Infrastructure Reconstruction Contract,” July 23, 2003

Inspector General, United States Agency for International Development, Memorandum 03-002, "USAID's Compliance with Federal Regulations in Awarding the Iraq Personnel Support Services Contract," June 20, 2003

Inspector General, United States Agency for International Development, Memorandum 03-001, "USAID's Compliance with Federal Regulations in Awarding the Iraq Education Sector Contract," June 6, 2003

General Services Administration

Inspector General, General Services Administration, Report Number A020144/T/5/Z04002, "Audit of Federal Technology Service's Client Support Centers," January 8, 2004

Inspector General, General Services Administration, Special Report, "MAS Pricing Practices: Is FSS Observing Regulatory Provisions Regarding Pricing?" August 24, 2001

Appendix C. Contract Information

Contract Number	Contractor Name	Contract Description	Effective Date	Contract Amount	Sole-Source Award	GSA Schedule
DASW01-01-A-0069 Order Numbers 2704 and 2708	Advanced Systems Development, Incorporated	Information Technology Support	March 25, 2003 August 14, 2003	\$259,958.56		X
DASW01-03-F-0640	Dataline, Incorporated	Communications Equipment, Support and Training	April 15, 2003	\$1,107,851.89	X (Urgent)	X
DASW01-03-F-0466	Dell Marketing, LP	Computers and Software	March 12, 2003	\$513,678.88		X
DASW01-03-F-0407	Force 3	Computer Hardware and Software	March 3, 2003	\$274,651.95		
DASW01-03-P-0557	Giesecke & Devrient America, Incorporated	Authenticating Machines	June 18, 2003	\$66,200.00	X (Urgent)	
DASW01-03-F-0592	Intelligent Enterprise Corporation	Computer Hardware and Software	April 9, 2003	\$19,835.00		X
DASW01-03-F-0912	International Global Systems, Incorporated	Computer Hardware & Software	June 20, 2003	\$157,383.40		X
DASW01-03-P-0412	Jerold Schulman International, Incorporated	Desktop Administration Tool	April 10, 2003	\$3,376.00		
DASW01-03-F-0510	Military Professional Resources, Incorporated	Iraqi Army Reconstruction Support Program	March 14, 2003	\$706,832.74	X (Urgent)	X
DASW01-03-F-0677	Military Professional Resources, Incorporated	Linguists (Translators)	April 28, 2003	\$1,901,962.00		X
DASW01-03-F-0507	MZM, Incorporated	Linguists (Translators)	March 21, 2003	\$2,427,264.00		X
DASW01-03-P-0465	Native American Industrial Distributors, Incorporated	Protocol Officer	May 5, 2003	\$195,017.00	X (Urgent)	
DASW01-03-F-0396	Red River Computer Company	Computers	Feb 27, 2003	\$972,592.90		X
DASW01-03-P-0366	RONCO Consulting Corporation	Disarmament, Demobilization and Reintegration (DDR) of the Iraqi Armed Forces	March 14, 2003	\$419,792.60	X (Urgent)	
DASW01-03-C-0032	S&K Technologies, Incorporated	Administrative Support	July 18, 2003	\$4,950,384.80	X	
DASW01-03-F-0508	SAIC	Iraq Reconstruction and Development Council	March 5, 2003	\$24,811,833.30	X (Urgent)	X
DASW01-03-F-0533	SAIC	Iraqi Free Media Program	March 11, 2003	\$82,350,556.66	X (Urgent)	X
DASW01-03-F-0516	SAIC	SME * - Military Ministry Coordinator	March 16, 2003	\$201,011.00	X (Urgent)	X

* Subject matter expert

Appendix C. Contract Information, cont'd.

Contract Number	Contractor Name	Contract Description	Effective Date	Contract Amount	Sole-Source Award	GSA Schedule
DASW01-03-F-0512	SAIC	SME * - Technical Support for Iraq's Governmental Infrastructure	March 22, 2003	\$87,461.40	X (Urgent)	X
DASW01-03-F-0500	SAIC	SME * - Oil Infrastructure	March 26, 2003	\$477,284.09	X (Urgent)	X
DASW01-03-F-0537	SAIC	Democracy Governance Group	March 27, 2003	\$235,231.28	X (Urgent)	X
DASW01-03-F-0536	SAIC	SME * - United Nations and Intrastate Coordination	March 27, 2003	\$64,027.76	X (Urgent)	X
DASW01-03-F-0903	SAIC	SME * - Sr. Executive Assistant to the Oil Advisory Board and the Oil Reconstruction Group	May 16, 2003	\$55,174.20	X	X
DASW01-03-F-0397	Unisys Corporation	SME * - Situation Affecting the Kurds	Feb 24, 2003	\$255,000.00	X (Urgent)	X
Totals				\$122,514,381.41	15	18

* Subject matter expert

Appendix D. Contract Issues

Contract Number	Contractor Name	Contract Requirements Not Firm	Misused GSA Schedules	Prohibited Personal Services Contracts	Out-of-Scope Activity	Inadequate Price Reasonableness Determinations	Inadequate Surveillance
DASW01-01-A-0069 Order Numbers 2704 and 2708	Advanced Systems Development, Incorporated					X	
DASW01-03-F-0640	Dataline, Incorporated					X	
DASW01-03-F-0466	Dell Marketing, LP					X	
DASW01-03-F-0407	Force 3					X	
DASW01-03-P-0557	Giesecke & Devrient America, Incorporated						
DASW01-03-F-0592	Intelligent Enterprise Corporation					X	
DASW01-03-F-0912	International Global Systems, Incorporated					X	
DASW01-03-P-0412	Jerold Schulman International, Incorporated						
DASW01-03-F-0510	Military Professional Resources, Incorporated			X		X	X
DASW01-03-F-0677	Military Professional Resources, Incorporated		X			X	X
DASW01-03-F-0507	MZM, Incorporated		X			X	X
DASW01-03-P-0465	Native American Industrial Distributors, Incorporated			X		X	X
DASW01-03-F-0396	Red River Computer Company					X	
DASW01-03-P-0366	RONCO Consulting Corporation			X		X	X
DASW01-03-C-0032	S&K Technologies, Incorporated					X	
DASW01-03-F-0508	SAIC	X		X		X	X
DASW01-03-F-0533	SAIC	X	X		X	X	X

Appendix D. Contract Issues, cont'd.

Contract Number	Contractor Name	Firm Contract Requirements	Misused GSA Schedules	Prohibited Personal Services Contracts	Out-of-Scope Activity	Inadequate Price Reasonableness Determinations	Inadequate Surveillance
DASW01-03-F-0516	SAIC	X	X	X		X	X
DASW01-03-F-0512	SAIC	X	X	X		X	X
DASW01-03-F-0500	SAIC	X	X	X		X	X
DASW01-03-F-0537	SAIC	X	X			X	
DASW01-03-F-0536	SAIC	X	X	X		X	X
DASW01-03-F-0903	SAIC	X	X	X		X	X
DASW01-03-F-0397	Unisys Corporation		X	X		X	X
Totals		8	10	10	1	22	13

Appendix E. Documentation Issues

Contract Number	Contractor Name	PNM	J&A	Cost/Tech Evaluation	IGE
DASW01-01-A-0069 Order Numbers 2704 and 2708	Advanced Systems Development, Incorporated	X	*		X
DASW01-03-F-0640	Dataline, Incorporated			X	X
DASW01-03-F-0466	Dell Marketing, LP		*	X	X
DASW01-03-F-0407	Force 3			X	X
DASW01-03-P-0557	Giesecke & Devrient America, Incorporated			X	
DASW01-03-F-0592	Intelligent Enterprise Corporation		*	X	X
DASW01-03-F-0912	International Global Systems, Incorporated		*	X	X
DASW01-03-P-0412	Jerold Schulman International, Incorporated		*	X	X
DASW01-03-F-0510	Military Professional Resources, Incorporated			X	X
DASW01-03-F-0677	Military Professional Resources, Incorporated		*		X
DASW01-03-F-0507	MZM, Incorporated		*	X	X
DASW01-03-P-0465	Native American Industrial Distributors, Incorporated		*		X
DASW01-03-F-0396	Red River Computer Company		*	X	X
DASW01-03-P-0366	RONCO Consulting Corporation				X
DASW01-03-C-0032	S&K Technologies, Incorporated		*	X	X
DASW01-03-F-0500	SAIC				X
DASW01-03-F-0508	SAIC				X
DASW01-03-F-0512	SAIC				X
DASW01-03-F-0516	SAIC				X
DASW01-03-F-0533	SAIC	X		X	
DASW01-03-F-0536	SAIC				X
DASW01-03-F-0537	SAIC	X		X	X
DASW01-03-F-0903	SAIC	X	X	X	
DASW01-03-F-0397	Unisys Corporation				X
Missing Documentation Totals		4	1	14	21

J&A Justification and Approval for Other Than Full and Open Competition

IGE Independent Government Estimate

X Documentation was missing from the contract file.

* A J&A is not required on contracts that were competed or sole-source 8(a) contracts.

Appendix F. Surveillance Information

Contract Number	Contractor Name	CONUS POC Assigned	In-theater POC Assigned	Adequate Surveillance
DASW01-01-A-0069 Order Numbers 2704 and 2708	Advanced Systems Development, Incorporated	Yes	*	Unknown
DASW01-03-F-0640	Dataline, Incorporated	Yes	*	Yes
DASW01-03-F-0466	Dell Marketing, LP	Yes	*	Yes
DASW01-03-F-0407	Force 3	Yes	*	Yes
DASW01-03-P-0557	Giesecke & Devrient America, Incorporated	Yes	Yes	Yes
DASW01-03-F-0592	Intelligent Enterprise Corporation	Yes	*	Yes
DASW01-03-F-0912	International Global Systems, Incorporated	Yes	Yes	Yes
DASW01-03-P-0412	Jerold Schulman International, Incorporated	Yes	*	Yes
DASW01-03-F-0510	Military Professional Resources, Incorporated	Yes	Yes	No
DASW01-03-F-0677	Military Professional Resources, Incorporated	Yes	Yes	No
DASW01-03-F-0507	MZM, Incorporated	Yes	Yes	No
DASW01-03-P-0465	Native American Industrial Distributors, Incorporated	Yes	Yes	No
DASW01-03-F-0396	Red River Computer Company	Yes	*	Yes
DASW01-03-P-0366	RONCO Consulting Corporation	Yes	Yes	No
DASW01-03-C-0032	S&K Technologies, Incorporated	Unknown	Unknown	Unknown
DASW01-03-F-0508	SAIC	Yes	Yes	No
DASW01-03-F-0533	SAIC	Yes	Yes	No
DASW01-03-F-0516	SAIC	Yes	Yes	No
DASW01-03-F-0512	SAIC	Yes	Yes	No
DASW01-03-F-0500	SAIC	Yes	Yes	No
DASW01-03-F-0537	SAIC	Yes	Unknown	Unknown
DASW01-03-F-0536	SAIC	Yes	Yes	No
DASW01-03-F-0903	SAIC	Yes	*	No
DASW01-03-F-0397	Unisys Corporation	Yes	Unknown	No
Totals		23	13	

* These contracts did not require an in-theater POC because the supplies or services were to be provided in the United States.

Appendix G. Report Distribution

Coalition Provisional Authority

Administrator, Coalition Provisional Authority
Inspector General, Coalition Provisional Authority

Office of the Secretary of Defense

Under Secretary of Defense for Policy
Under Secretary of Defense for Acquisition, Technology, and Logistics
 Director, Defense Procurement and Acquisition Policy
Under Secretary of Defense (Comptroller)/Chief Financial Officer
 Deputy Chief Financial Officer
 Deputy Comptroller (Program/Budget)

Department of the Army

Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
Office of the Administrative Assistant to the Secretary of the Army
 Commander, Defense Contracting Command-Washington
Auditor General, Department of the Army

Department of the Navy

Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Defense Agencies

Director, Defense Contract Management Agency
Director, Defense Contract Audit Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
Office of the Inspector General, General Services Administration

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Subcommittee on Foreign Operations, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Foreign Relations
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Subcommittee on Foreign Operations, Export Financing and Related Programs,
Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency and Financial Management, Committee
on Government Reform
House Subcommittee on National Security, Emerging Threats, and International
Relations, Committee on Government Reform
House Committee on International Relations

Office of the Under Secretary of Defense for Policy

Final Report
Reference



OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

15 January 2004

MEMORANDUM FOR PROGRAM DIRECTOR, CONTRACT MANAGEMENT
DIRECTORATE, OFFICE OF INSPECTOR GENERAL (Mr. Terry L. McKinney)

SUBJECT: Report on Contract Awarded for the Coalition Provisional Authority by the Defense Contracting Command-Washington (Project No. D2003CF-0152)

You have requested the Under Secretary of Defense for Policy to Comment on the above report. He has asked me to convey the following comments on behalf of his office:

The Under Secretary of Defense for Policy and concerned elements within his office have reviewed the report. In addition to discussions that he and his staff members have had with you and your colleagues, and the various oral comments provided during those discussions, our principal comments relate to Recommendation 1 at page 29 of the report, which states:

We recommend that the Under Secretary of Defense for Policy study the existing DoD strategy for post-war occupation and relief operations and incorporate very early into the strategy, a provision for acquisition support.

Our office believes that this recommendation is too general for purposes of this report. We suggest that it be revised to recommend that DoD should develop clear policies and procedures, to the extent they may be lacking, for the rapid acquisition of necessary goods and services in support of any future post-war occupation and/or relief operation.

We also suggest that the revised recommendation be addressed to the Secretary or the Deputy Secretary of Defense, since it involves the activities and expertise of several components and offices of DoD. While the Under Secretary of Defense for Policy has broad responsibilities for policy development and implementation within OSD, he does not have any responsibility for providing acquisition support.

Finally, we note that you have only requested comments from the Under Secretary of Defense for Policy and the Commander, Defense Contracting Command-Washington. Since some of the contracts mentioned in the report became effective after the Secretary of the Army was made DoD Executive Agent for Support of ORHA (on 21 May 2003), we suggest you consider inviting comments from the Secretary of the Army. As the subject of the report is acquisition, you may also wish to consider inviting comments from the Under Secretary of Defense for Acquisition, Technology and Logistics.

Thank you for the opportunity to comment on the report.

Michael H. Mobbs
Staff Director and Special Advisor to the
Under Secretary of Defense for Policy



Redirected
and Changed
Recommendation 1
Page 30

Administrative Assistant to the Secretary of the Army



DEPARTMENT OF THE ARMY
ADMINISTRATIVE ASSISTANT TO THE SECRETARY
105 ARMY PENTAGON
WASHINGTON DC 20310-0105

JAN 16 2004

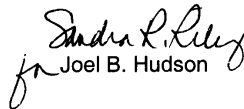
MEMORANDUM FOR Inspector General, Department of Defense

ATTN: Contract Management Directorate

SUBJECT: DoDIG Draft Report – Report on Contracts Awarded for the Coalition Provisional Authority by the Defense Contracting Command – Washington (Project No. D2003CF-0152).

1. The subject report has been reviewed and our comments to the finding and recommendation are attached. We concur with recommendations 2.a – e and non-concur with recommendation 2.f.
2. Any questions concerning this should be directed to my Internal Review Directorate (SAAA-JDRP-IR), attention Mr. Donald Friend, (703) 602-1959, Room 10E50 Taylor Building, Crystal City.

Encl


for Joel B. Hudson

CF: USAAA (w/encl)



DEPARTMENT OF THE ARMY
DEFENSE CONTRACTING COMMAND - WASHINGTON
5200 ARMY PENTAGON
WASHINGTON, DC 20310-5200



16 January 2004

In reply
Refer to:

JDRP-CC-Z

MEMORANDUM FOR DODIG

Subject: Contracts Awarded for the Coalition Provisional Authority by the Defense Contracting Command-Washington, Draft Project No. D2003CF-0152

1. This memorandum constitutes DCC-W's comments to the DODIG draft report dated December 19, 2003, Project No. D2003CF-0152.

2. **DCC-W Response in Brief:**

a. The report, as written, represents a serious injustice to the hardworking contracting officers and specialists of this command. It is riddled with faulty assumptions, erroneous conclusions, and egregious misinterpretation of contract law and procedures. The findings and recommendations in this report, if practiced during the critical time periods addressed herein, would have straight-jacketed contracting officials and resulted in the complete failure to provide urgently needed supplies and services to the Coalition Provisional Authority and our fighting forces in Iraq. As noted by the General Accounting Office in a recent report, "Operation Iraqi Freedom is one of the largest logistics supply and support efforts that the U.S. military has ever undertaken." GAO-04-305-R, Defense Logistics, December 18, 2003. The DODIG reviewers completely failed to recognize the critical and time sensitive nature of awarding these contracts and the flexibility allowed by the Federal Acquisition Regulations. This highly-negative report utterly fails to credit the many outstanding achievements of DCC-W contracting officials during one of the most intense and demanding times ever experienced, but focuses instead on the lack, or perceived lack, of following routine regulations and policies. We acknowledge that some short-cuts were taken in an effort to accomplish the mission, and better documentation should have been accomplished in several instances. The report also correctly notes some areas for continued training and process improvement. There is not one shred of evidence, however, that any DCC-W contracting official acted illegally or in bad faith.

b. We request that this report be withdrawn in its entirety. Although there are some constructive recommendations that will assist us in our future contracting practices, the report is so fundamentally flawed that it cannot withstand scrutiny. We strongly recommend that the DODIG work with DCC-W to fashion a solid, factually based report. The following paragraphs address the specific findings and recommendations of this report.

3. DODIG Findings (Conclusions) and Recommendations for the Commander DCC-W:

a. Finding: Avoided FAR procedures in order to award contracts to specific people.

Additional Facts: Disagree with specific statements and the implications of the finding. The following comments are submitted for accuracy and objectivity.

- DCC-W contracting officers did not “avoid” FAR procedures. They utilized the tools available to them in the FAR, including Federal Supply Schedule (FSS) contracts under FAR Part 8, to meet the urgent ORHA/ CPA requirements.
- A basic premise of the IG comments is that many of the contracts for subject matter experts were “personal services” because the contract statement of work indicated a direct link between the SME and the government manager on site. Some of the contract language may be imprecise, but was only meant to imply quality assurance and general contract oversight, not supervision of employees. It was never the intent of the contracting officer to create personal services contracts.
- The determination of personal versus non-personal must be completed from a holistic approach. One, two, or even three factors from the FAR, which are provided as “indicators,” does not prove the action is or is not personal in nature. A key factor in determining whether or not a contractor is providing personal services is missing from the audit report and that is “whether the contractor is subject to the supervision and control of the Government.” Admittedly, some of the statements of work, prepared in haste in support of this urgent requirement, contain poor word choices and do not reflect the contracting officer’s intent. Notwithstanding the language, however, there is no legal privity of contract with subcontractors. The use of a prime contractor creates a “buffer” between the Government and the subject matter experts (SMEs) and makes a personal services contract extremely unlikely.
- DCC-W has no knowledge that the contracts were actually administered as personal services contracts. The SMEs were all hired as subcontractors and no privity of contract between the government and the subcontractor existed. As acknowledged throughout the IG audit, the acquisition piece was an abbreviated process that was reactive based on the urgency of the requirement. It is true that a more methodical acquisition process would have clarified that language, but would not have negated the need for independent work by the SMEs. Quality assurance and oversight would still have come directly from the government as, in fact, occurred.
- The short term and immediate nature of the SME requirements necessitated fast identification of individuals who could perform. The SME requirements were needed immediately but required for only a short contract term (well under one

year); these requirements were best supported by a fast reaction contract versus direct government hire. Many of the contracts were actually completed in advance of actual scheduled contract termination date.

Recommendations: Analyze the seven ongoing contracts for subject matter experts and determine the liability to the Government if the contracts are terminated. For contracts having no or limited liability to the Government - terminate immediately. Terminate all contracts at the end of the current contract period.

Action Taken/Planned: Concur in part. A review has been completed as of the date of this response. It was found that all subject matter experts (SMEs) were hired through a prime contractor. These contracts are all complete as of 31 December 2003. In fact, many of the subcontracts were completed prior to the end of the contract term and DCC-W is in the process of determining excess funds to be de-obligated and returned to the requiring activity. No termination was required.

Target Date: Already complete.

b. Finding: DCC-W used the Federal Supply Schedules improperly.

Additional Facts: Disagree with specific statements and the implications of the finding. The following comments are submitted for accuracy and objectivity:

- The audit, page 12 indicates that DCC-W "misused" GSA FSS (10 of 18 contracts). DCC-W disagrees with the sweeping nature of this assertion. In fact, FAR Part 8 affords a great deal of discretion to the contracting officer on determining the appropriate schedule to meet the Government's requirements. GSA FSS contracts have been fully competed, and are intended to provide agencies, including DCC-W, with an expedited method of procuring common supplies and services. It must be remembered that all GSA FSS labor categories and rates have been accepted as reasonable by the General Services Administration. To the extent that the reviewer believes that some of these accepted labor categories are too broad or ill defined, this is beyond the responsibility of DCC-W as we must conform within the parameters of these contracts when using them.
- The assertion of misuse of the schedules centers on the reviewer's belief that the contracting officer improperly relied on the vendors to determine if a FSS schedule would match the requirement. There is nothing improper in having the vendors provide details of their GSA schedules and is, in fact, a widely used practice throughout DOD. The schedules are extensive, written very broadly to cover multiple areas, and the contractors can more quickly recommend which schedule best meets the requirements. Contracting personnel always have the opportunity to search GSA Advantage to validate details provided by the contractor and obtain additional relevant information.

- We do agree that contracting officers generally should verify the GSA schedules and corresponding labor categories selected by the contractor and determine that the schedule provides the skills needed to accomplish the statement of work. This is an area for continued training. It must be recalled, however, that this was an incredibly fast-paced environment, with immense demands made on the contracting officers. The use of GSA schedules, in which prices and labor categories have been pre-established by GSA, was considered preferable to any other alternative in the short time available to conduct these procurements.

Recommendation(s): Issue guidance requiring the use of Federal Supply Schedules for its intended purposes. Ensure that contracting officers verify that labor categories purchased from the Federal supply schedules reflect the service performed.

Action Taken/Planned: Concur with recommendations. DCC-W has been aggressively working to ensure that all of its' contracting officers are fully trained on the proper use of the GSA Federal Supply Schedules. We established and published a "Guide for Ordering Services Exceeding \$100,000 from GSA Federal Supply Schedules," in March 2003 that was written based on GSA guidance, FAR/DFARS/AFARS requirements and included information provided under Section 803 of the Defense Authorization Act 2002. In addition, DCC-W policy staff and representatives from the legal office provided training to the entire DCC-W workforce in April 2003. This training emphasized verifying the intended purpose of the schedules and verification that appropriate labor categories are used. It is noted that most of the contracts reviewed by the IG were already in process before this training was completed and training impact on those contracts would have been minimal. DCC-W is in the process of reviewing its 2003 FSS Guide, with a view toward providing further details on the appropriate use of labor categories on FSS delivery orders. DCC-W also is preparing new training materials to further strengthen contracting officials' knowledge of the GSA FSS ordering process.

Target Date: Training and Guide revisions to be complete NLT 30 April 2004.

c. Finding: Allowed out-of-scope procurements.

Additional Facts: Disagree with the finding. The following comments are submitted for accuracy and objectivity:

- The report maintains that there was "out-of-scope" activity occurring on awarded contracts. It indicates a security requirement was added as an in-scope modification to a professional services GSA federal schedule contract but was actually an out-of-scope modification. DCC-W disagrees that this should be considered out-of-scope. The security requirement was integral to the mission on the Iraqi Free Media Contract. Simply put, the contractor could not have accomplished its mission without the security detail.

-
- The security of contract personnel as well as security of the work sites was considered incidental yet critical to successful completion of the contract requirements. The contract necessitated contractor personnel to travel throughout the country, and the dangerous conditions mandated the provision of security. By definition, this is an "in-scope" modification. The costs for this were not substantial when compared to the overall costs of the contract. Based on these circumstances, the contracting officer determined in good faith that this new requirement was an "in-scope" change to the contract.
 - Another example provided by the reviewer of an out of scope requirement was the reported improper assignment of an SME. The contracting officer was unaware of this assignment of the SME by the contractor and once informed, took corrective action. The contractor was directed to remove all costs for the SME from the contract. Further, contractor was told the only means for reimbursement is to file a claim under ratification procedures. That action would then be reviewed to determine if the ratification is supportable. As of this date, the contracting officer has received no request for payment for the SME expenses. Because the SME that was improperly assigned has never been incorporated into the contract requirement, there is no "in" or "out" of scope change and a scope issue does not apply.

Recommendation: Ensure that contracting officers verify that goods or services purchased are within the scope of the Federal supply schedule.

Action Taken/Planned: Concur. DCC-W will ensure that its contracting officials are properly trained on the issue of "scope of contract." DCC-W will also make this a matter for review when conducting in-house audits of contract files by the PRINCIPAL ASSISTANT RESPONSIBLE FOR CONTRACTING (PARC) staff.

Target Date: Training to be conducted NLT 30 April 2004.

d. Finding: Documentation in the contract files is inadequate.

Additional Facts: Disagree with some of the specific statements of the finding. The following comments are submitted for accuracy and objectivity:

- The reviewer seems to have taken a very narrow view and interpretation of the FAR/DFARS/AFARS requirements without consideration of the flexibility those regulations are intended to provide the contracting officer. These regulations were significantly revised after passage of the Federal Acquisition Streamlining Act of 1994 and the Clinger-Cohen Act in 1996. The revised regulations provide the contracting officer additional flexibility to make good business decisions.
- As an example of this narrow view of the regulation, the audit notes a lack of price negotiation documentation. Points provided indicate the reviewer was

looking for documentation generally required only in FAR Part 15 contracts such as "price negotiation memorandums." However, only 2 of the 24 contracts reviewed were awarded under the provisions of FAR 15. The bulk of the reviewed contracts were established under FAR Part 8. While there are some similarities, requirements under FAR Part 8 are much abbreviated over that required by Part 15. DCC-W agrees, however, that even under FAR Part 8 the files should include documentation of fair and reasonable price.

Recommendations: Complete the documentation of contracts awarded for the Office of Reconstruction and Humanitarian Assistance/Coalition Provisional Authority required by the Federal Acquisition Regulations and ensure that each future contract is awarded in accordance with applicable regulations and that all contract documentation is prepared.

Action Taken/Planned: Concur with recommendation. Contracts are currently undergoing review for inclusion of additional documentation, where possible. It is noted that even with the best of efforts, the documentation will be less than comprehensive as some of the documentation will be difficult or impossible to reconstruct after the fact. Future contract actions will be closely monitored to assure documentation is included, as appropriate.

Target Date: Reviews to be completed by 20 February 2004. Additional documentation to be completed by 15 March 2004.

e. Finding: Purchasing goods and services without assurance of fair and reasonable prices.

Action Taken/Planned: Disagree with specific statements and the implications of the finding. The following comments are submitted for accuracy and objectivity:

- The review provided statements such as:
 - "overpayments were made on the SME contracts by paying non-value added fees such as subcontractor O/H."
 - "use of the FSS caused the Government to pay contractor overhead costs for very little added benefit."
 - "if DOD had hired the subject matter experts the G&A cost of the prime could have been waived"
- The above statements are conjecture at best. The SME's were paid in accordance with the agreed rate of the Federal Supply Schedule. While there may be concern by the IG reviewer that the labor rate is higher than might be obtained by direct government hire, the rates have been determined to be fair and reasonable "market rates" under the GSA process, reference FAR 8.404(a)(ii). Even if lower costs "might" have been attainable under open market

procedures or by direct government hire, there is no contract provision under the GSA FSS contract to renegotiate the rates, just a recommendation to seek a "discount" from the established rate. In addition, CPA had limited direct hire authority at that time and availability of other SMEs was unknown.

- The report further indicates that DCC-W personnel did not "obtain adequate competition" on five contracts awarded for supplies and information technology services, and that allowing more companies to bid "may have resulted in lower prices." In addition to constituting pure speculation, this comment demonstrates a fundamental misunderstanding of the contracting process. The contracting officer obtained at least three quotes for each of these contracts, and award was made to the vendor submitting the lowest bid. The report acknowledges as much, yet completely ignores FAR 8.4(b)(2), which requires only that the contracting officer "consider reasonably available information about the supply or service offered under MULTIPLE AWARD SCHEDULE contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors" When contracting for services, the contracting officer need only solicit a sufficient number of vendors to obtain three quotes. See DFARS 208.404-70(c)(1). Nothing more is required, especially considering the urgency of these requirements in support of the CPA.

Recommendation: Obtain refunds from overpayments made to the contractor on contracts DASW01-03-F-0533 and DASW01-03-F-0516 for the subject matter experts and all SAIC contracts containing material handling fees in the amount of \$634,864.34. The following, are material handling fees SAIC billed the Government for specific contracts.

Contract DASW01-03-F-0533	\$454,637.43
Contract DASW01-03-F-0508	178,892.46
Contract DASW01-03-F-0537	718.04
Contract DASW01-03-F-0536	302.54
Contract DASW01-03-F-0512	83.45

Action Taken/Planned: Concur with recommendations to seek refund of material handling fees to the extent that these fees included unauthorized "profit." Any profit paid on material handling fee is not appropriate and DCC-W will require SAIC to refund the fees or demonstrate that the fees exclude any profit.

Non-concur with the recommendation to seek overpayments on SMEs. There is no legal basis to determine that the SMEs were overpaid. Absent other extenuating circumstances, no demand will be made for a refund.

Target Date: Request SAIC to provide refund of fees NLT 27 Feb 04 if not justified as excluding profit. Withhold final payment on other contracts if refund is not promptly provided.

f. Finding: Little or no surveillance on time and materials contracts.

Recommendation(s): Assign trained points of contact or contracting officer representatives to each ongoing contract that supports the Iraqi effort and ensure that the contracting officer obtains monthly reports from the contracting officer representative or the point of contact of each contract.

Action Taken/Planned: Concur. DCC-W is aware this is a problem. In an effort to ensure surveillance could be accomplished, the contracting officer assigned both an in-theater POC and a local (out-of-theater) POC to the larger contracts. The fluidity of the political environment has created a significant challenge. DCC-W will work with the requiring activities to establish better oversight practices. It will remain a challenge until more stability in the supporting forces is established. DCC-W will develop and institute a policy on oversight of invoices, provide more in-depth training to CORs, and require feedback from CORs or POCs and contractors as appropriate to the circumstances on future requirements.

Target Date: On-going. Oversight policy to be developed NLT 30 Mar 04. Additional training of CORs to commence NLT 30 April 2004.

g. Finding: Contracting officers made improper interpretations of and circumvented the FAR and misused the GSA Federal Supply Schedules.

Additional Facts: Disagree with specific statements and the implications of the finding. The following comments are submitted for accuracy and objectivity:

- DCC-W acknowledges that there were mistakes made and shortcuts taken in our support to CPA. Our personnel did the very best they could to make prudent, defensible contracting decisions while handling a massive increase in workload and meeting virtually impossible time frames. There was no way that DCC-W could complete all the steps a contracting office ordinarily performs, prior to award. Actions such as developing acquisition plans, conducting market research, and documenting every decision made in support of the CPA mission in Iraq were necessarily shortened/abbreviated. We would request the IG or any other reviewing authority to provide DCC-W guidance on how to comply with all these requirements and, for example, award a critical requirement in three days.
- DCC-W position is that if acquisition was simply a "conformance" transaction, all contracts could/would look the same. But, this is not the nature of federal contracts, especially in the services area. The GSA schedules are, by their nature, very flexible, and intentionally so. The reviewer(s) apparently feel this flexibility should not be used - even in a justified "Urgent and Compelling" situation. It is possible the reviewer does not agree the situations were "urgent

and compelling" - but that is a contracting officer determination - not a decision that can be made in hindsight.

- The reviewer(s) acknowledge there is no evidence of personal gain on the part of any of the government employees. The need for performance and the urgency of the response was evident and well demonstrated in the national and local media. Although the need was evident, it is acknowledged and unfortunate that time was not taken to better document the files. The reviewer(s) did not take these circumstances into consideration nor did they adequately acknowledge the flexibility allowed in the process for the contracting officers but took a very literal and strict view of the regulations. This strict interpretation apparently lead the reviewer(s) to indicate the contracting personnel abused the process and stated disciplinary action should be taken on specific contracting officer(s).

Recommendation(s): Perform a review and initiate appropriate administrative action for the contracting officers who willingly made improper interpretations of and circumvented the Federal Acquisition Regulation and misused the General Services Administration Federal Supply Schedules.

Action Taken/Planned: Nonconcur. The report has highlighted a number of weak areas and short cuts taken. I have directed my staff to conduct a thorough review of the contract files mentioned in this report. We will revise policies and guidelines, improve business processes, and conduct training of our acquisition workforce after this review is completed. We emphatically object to the allegation that contracting officials "willingly" made improper interpretations of and circumvented the FAR and misused the GSA FSS. There is no evidence known to me of any bad faith, willful misconduct, or illegal activities by DCC-W employees. The reviewer(s) appear to expect "permission" within the regulations for any acquisition action - however acquisition reform established that the contracting officer must make business decisions and removed many prior "prohibitions" to allow good business decisions.


Target Date: Review/ action to be completed NLT 30 March 2004.

4. CONCLUSION:

a. In addition to containing numerous factual and legal errors, this report is woefully lacking in objectivity and balance. The report correctly notes (p. 28) that a large contributing factor to the "significant weaknesses" found was the "lack of planning for and emphasis on the need for acquisition support," yet it blithely makes just one recommendation to senior policy officials to study the existing strategy for postwar occupation and relief operations and incorporate the provision of acquisition support. Where are the recommendations to analyze the requirements generation process on the 24 procurement actions named in the report? To issue new guidance? To conduct additional training? To ensure the nomination of CORs on all actions? To revise faulty

statements of work? The reviewers have the temerity to recommend that DCC-W initiate administrative action against its (relatively) lower level contracting officials who worked unbelievable hours to meet DoD's demands as quickly as possible, yet implicitly exonerate all senior officials directly responsible for generating these demands. This result is unconscionable.

b. DCC-W will take aggressive action to assure future contracts are better documented prior to award. Those urgent requirements that must be awarded prior to documenting all actions will be aggressively managed to assure all regulatory requirements are met and appropriate documentation included in the contract file. Additional training to include effective award and management of GSA schedule awards and procedures for documenting fair and reasonable pricing will be "reinforced" through training and workshops within the DCC-W organization. A comprehensive oversight program is currently in draft that will include better management of both pre and post award procedures. Finally, DCC-W will increase participation in contract administration activity during contract performance to assure appropriate checks and balances are in place and the government receives the best product or service possible.


Joe E. Conley
Colonel, QM
Commanding

Team Members

The Contract Management Directorate, Office of the Deputy Inspector General for Auditing of the Department of Defense prepared this report. Personnel of the Office of the Inspector General of the Department of Defense who contributed to the report are listed below.

David K. Steensma
Terry L. McKinney
John A. Seger
Stacie A. Rimmer
Julie A. Yerkes
Melinda A. Schreyer
Monica L. Noell
Theresa Tameris