

Inspector General

United States
Department of Defense



Army Use of Time-and-Materials
Contracts in Southwest Asia

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

| | | | | | |
|--|------------------------------------|-------------------------------------|----------------------------|---|---------------------------------|
| 1. REPORT DATE 27 AUG 2010 | | 2. REPORT TYPE | | 3. DATES COVERED 00-00-2010 to 00-00-2010 | |
| 4. TITLE AND SUBTITLE Army Use of Time-and-Materials Contracts in Southwest Asia | | | | 5a. CONTRACT NUMBER | |
| | | | | 5b. GRANT NUMBER | |
| | | | | 5c. PROGRAM ELEMENT NUMBER | |
| 6. AUTHOR(S) | | | | 5d. PROJECT NUMBER | |
| | | | | 5e. TASK NUMBER | |
| | | | | 5f. WORK UNIT NUMBER | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Department of Defense Inspector General, 400 Army Navy Drive, Arlington, VA, 22202-4704 | | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) | | | | 10. SPONSOR/MONITOR'S ACRONYM(S) | |
| | | | | 11. SPONSOR/MONITOR'S REPORT NUMBER(S) | |
| 12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES | | | | | |
| 14. ABSTRACT | | | | | |
| 15. SUBJECT TERMS | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT | 18. NUMBER OF PAGES | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT unclassified | b. ABSTRACT unclassified | c. THIS PAGE unclassified | | | |

Additional Copies

To obtain additional copies of this report, visit the Web site of the Department of Defense Inspector General at <http://www.dodig.mil/audit/reports> or contact the Secondary Reports Distribution Unit at (703) 604-8937 (DSN 664-8937) or fax (703) 604-8932.

Suggestions for Audits

To suggest or request audits, contact the Office of the Deputy Inspector General for Auditing by phone (703) 604-9142 (DSN 664-9142), by fax (703) 604-8932, or by mail:

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



Acronyms and Abbreviations

| | |
|--------|---|
| CECOM | Communications and Electronics Command |
| CONUS | Continental United States |
| COR | Contracting Officer's Representative |
| COTR | Contracting Officer's Technical Representative |
| CSC | Computer Sciences Corporation |
| D&F | Determination and Findings |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| FAR | Federal Acquisition Regulation |
| GSA | General Services Administration |
| J&A | Justification and Approval |
| OCONUS | Outside the Continental United States |
| QASP | Quality Assurance Surveillance Plan |
| RDECOM | Research Development and Engineering Command |
| REF | Rapid Equipping Force |
| T&M | Time-and-Materials |
| TSMO | Threat Systems Management Office |
| WSMR | White Sands Missile Range |



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

August 27, 2010

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY
COMMANDER, ARMY MATERIEL COMMAND
EXECUTIVE DIRECTOR, ARMY CONTRACTING
COMMAND
EXECUTIVE DIRECTOR, ARMY COMMUNICATIONS
AND ELECTRONICS COMMAND ACQUISITION
CENTER
DIRECTOR OF CONTRACTING, WHITE SANDS MISSILE
RANGE

SUBJECT: Army Use of Time-and-Materials Contracts in Southwest Asia
(Report No. D-2010-081)

We are providing this report for review and comment. We considered comments from the Army Materiel Command, the Army Contracting Command, the Communications and Electronics Command Acquisition Center, and the Mission Installation and Contracting Command when preparing the final report.

DOD Directive 7650.3 requires that issues be resolved promptly. Some of the comments received were only partially responsive. We request additional comments from the Army Contracting Command and the Communications and Electronics Command Acquisition Center by September 27, 2010. See the Recommendations Table on page ii of this report.

If possible, send management comments in electronic format (Adobe Acrobat file only) to audacm@dodig.mil. Copies of management comments must have the actual signature of the authorizing official for your organization. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

A handwritten signature in blue ink, reading "Richard B. Jolliffe", is positioned above the typed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Army Use of Time-and-Materials Contracts in Southwest Asia

What We Did

We reviewed Army time-and-materials (T&M) contracts and task orders for Southwest Asia to determine if they were awarded and administered in accordance with acquisition regulations. We reviewed 18 contracts and task orders with a total value of \$605,021,129.

What We Found

Army contracting and DOD program officials did not properly award and administer the 18 T&M contracts and task orders for work performed in Southwest Asia. Contracting and program officials:

- awarded contracts and task orders with invalid sole-source justifications or unfair competition (10 of 18),
- did not negotiate reasonable prices (17 of 18), and
- did not justify their use of the T&M contract type (12 of 18).

These conditions occurred because contracting and program officials ignored acquisition regulations. In addition, contracting and program officials did not perform adequate contractor surveillance for the 18 contracts and task orders because of inadequate organization and planning by the Army officials responsible for contractor oversight. We identified potential monetary benefits for the Government of \$3,688,338.

What We Recommend

The Executive Director of the Army Contracting Command should

- conduct a review and initiate appropriate administrative action on the contracting officers responsible for awarding contracts and task orders without adequate competition, sole-source

justifications, or price reasonableness determinations,

- request that the Defense Contract Audit Agency perform reviews on the contracts and task orders reviewed in this report, and
- take corrective action to ensure that contracting officers develop plans for sufficient contract oversight of T&M contracts in Southwest Asia. Contract oversight officials should be located at the place of contractor performance to ensure effective surveillance.

The Director of Contracting of White Sands Missile Range and the Executive Director of the Army Communications and Electronics Command Acquisition Center, should review the contracts and request refunds, where appropriate, from the contractors.

Management Comments and Our Response

The Army Materiel Command reviewed and endorsed its subordinate commands' comments. The Army Contracting Command provided comments responding to all recommendations. These comments incorporated comments from the Mission and Installation Contracting Command and the Communications and Electronics Command Acquisition Center.

The comments generally agreed with the recommendations and were responsive. However, the Army Contracting Command only partially agreed with the recommendations regarding contract oversight, and the Communications and Electronics Command Acquisition Center only partially agreed with the recommendation regarding refunds. We request additional comments by September 27, 2010. Please see the recommendations table on the back of this page.

Recommendations Table

| Management | Recommendations Requiring Comment | No Additional Comments Required |
|---|--|--|
| Executive Director, Army Contracting Command | B.1 | A.1, A.2 |
| Executive Director, Army Communications and Electronics Command Acquisition Center | B.3 | |
| Director of Contracting, White Sands Missile Range (Mission and Installation Contracting Command) | | B.2 |

Please provide comments by September 27, 2010.

Table of Contents

| | |
|--|----|
| Introduction | 1 |
| Objectives | 1 |
| Background | 1 |
| Review of Internal Controls | 2 |
| Finding A. Contract and Task Order Award Procedures | 4 |
| Recommendations, Management Comments, and Our Response | 17 |
| Finding B. Contract Oversight | 19 |
| Recommendations, Management Comments, and Our Response | 29 |
| Appendices | |
| A. Scope and Methodology | 32 |
| B. Prior Coverage | 35 |
| C. Contracting Issues Identified | 38 |
| Management Comments | |
| Army Materiel Command | 40 |
| Army Contracting Command | 41 |
| Mission and Installation Contracting Command | 45 |
| Communications and Electronics Command | 47 |

Introduction

Objectives

Our audit objective was to determine whether time-and-materials (T&M) contracts and task orders for Southwest Asia were awarded and administered in accordance with the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS). We reviewed whether contracting officials justified their use of the T&M contract type, whether they properly competed the contracts, and whether they negotiated fair and reasonable prices. Additionally, we reviewed whether contracting and program officials performed sufficient contract administration and oversight after the contracts were awarded. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

We performed this audit pursuant to Public Law 110-181, “The National Defense Authorization Act for Fiscal Year 2008,” section 842, “Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan,” January 28, 2008. Section 842 requires “thorough audits to identify potential waste, fraud, and abuse in the performance of (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.” We reviewed 18 contract actions that required contractors to perform work in Iraq or Afghanistan.

Background

This is the first of two reports addressing DOD T&M contracts for work performed in Southwest Asia. This report addresses whether T&M contracts awarded by Army Communications and Electronics Command (CECOM) Acquisition Center, Army Research Development and Engineering Command (RDECOM) Acquisition Center, and White Sands Missile Range (WSMR) Army Contracting Activity were awarded and administered in accordance with acquisition regulations. The other report discussed whether Architect and Engineering T&M contracts awarded by the Air Force Center for Engineering and the Environment were awarded and administered in accordance with regulations.

WSMR is an organization within the Mission and Installation Contracting Command. The Mission and Installation Contracting Command, CECOM, and RDECOM are all activities under the Army Contracting Command. The Army Contracting Command is a major subordinate command of the Army Materiel Command.

T&M contracts are the least favorable and most risky contract type because contractor profit is built into its labor rates and, therefore, there is no incentive for the contractor to control costs or work efficiently. FAR 16.601, “Time-and-materials contracts,” states that a T&M contract may be used only when it is not possible at the time of placing the

contract to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. FAR 16.601 also requires that Government officials perform significant surveillance in order to ensure that the contractor works efficiently and that the Government reimburses the contractor only for legitimately incurred costs.

Contracting officials should also prepare a Determination and Findings (D&F) document containing a sufficient justification that no other contract type is suitable. DFARS 216.601, "Time-and-materials contracts," stipulates that the D&F should describe the actions planned to limit future T&M acquisitions.

We reviewed 18 contracts and task orders that were awarded on behalf of 4 Army customers. Of the 18 awards, 12 were made on behalf of the Rapid Equipping Force (REF). In 2003, the Vice Chief of Staff of the Army designated REF the responsibility to work directly with operational commanders to find promising materiel solutions to their identified operation requirements. Selected solutions may be off-the-shelf or near-term developmental items that can be available quickly to allow REF to continue rapidly inserting new technology solutions that address the current battlefield issues of engaged and deployed forces. REF is located at Fort Belvoir, Virginia.

Three of the 18 awards were made on behalf of the Combined Security Transition Command – Afghanistan. This command is a North Atlantic Treaty Organization command. It partners with the Afghan Ministry of Defense and Ministry of Interior to develop capabilities of Afghan National Security Forces to generate, employ, and sustain the force.

Two of the 18 awards were made on behalf of the Army Materiel Command. The Army Materiel Command is the principal materiel developer of the Army. The Army Materiel Command mission is complex and includes developing sophisticated weapon systems, researching lasers, and maintaining and distributing spare parts. Headquartered in Alexandria, Virginia, Army Materiel Command accomplishes its mission through 11 major subordinate commands that direct the activities of numerous depots, arsenals, ammunition plants, laboratories, test activities, and procurement operations.

One of the 18 awards was made on behalf of the Threat Systems Management Office (TSMO). TSMO provides realistic threat scenarios for operational testing and training events. The scenarios use both ground and aviation foreign systems that are reconfigurable to reflect the requirements and parameters for each specific testing and training event. TSMO is located at Redstone Arsenal, Alabama.

Review of Internal Controls

DOD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses at the WSMR Army Contracting Activity, the Army RDECOM Acquisition

Center, and the CECOM Acquisition Center. Contracting officials did not properly compete contracts and task orders, did not perform sufficient price analysis, and did not adequately justify the use of T&M contracts. Additionally, contractor oversight was inadequate for several of the contracts and task orders that we reviewed. Contracting and program officials awarded contracts and task orders without organizing surveillance systems that placed contract oversight officials at the locations where the contractors were working. As a result, oversight officials were not in a position to know if the contractors were working efficiently or billing correctly. Implementing the recommendations in Finding A and Finding B will improve contract award procedures, improve contractor oversight, could result in potential monetary benefits for the Government of \$3,688,338, and will save substantial taxpayer dollars. We will provide a copy of the report to the senior officials responsible for internal controls at these organizations.

Finding A. Contract and Task Order Award Procedures

Army contracting officials did not award T&M contracts and task orders for Southwest Asia requirements in accordance with acquisition regulations. We reviewed 7 contracts and 11 task orders with a total value of \$605,021,129.

The 18 contracts and task orders we reviewed were awarded by 3 contracting offices – CECOM, RDECOM, and WSMR.

Table 1. Summary of Awards

| Contracting Office | # of Awards | Amount |
|---------------------------|--------------------|----------------------|
| CECOM | 2 | \$82,241,728 |
| RDECOM | 9 | \$466,834,777 |
| WSMR | 7 | \$55,944,624 |
| Total | 18 | \$605,021,129 |

Contracting and program officials did not:

- properly compete 3 contracts and 7 task orders valued at \$67,071,750 (officials either conducted unfair competitions or made sole-source awards without adequate justification);
- negotiate reasonable prices for 7 contracts and 10 task orders valued at \$535,189,691; and
- justify their use of the T&M contract type, which is the contract type that exposes the Government to the most cost risk, for 5 contracts and 7 task orders valued at \$566,686,352.

These conditions occurred because contracting and program officials ignored FAR requirements. As a result, the Army did not have the opportunity to obtain cost savings through competition and may have incurred additional costs by not negotiating reasonable prices and by unnecessarily using the riskiest contract type.

Lack of Competition

Contracting and program officials did not properly compete 10 of the 18 contracts and task orders reviewed, with a total value of \$67,071,750. These officials made awards on the basis of unfair competition or invalid sole-source justifications (see Table 2).

Table 2. Summary of Inadequate Competition and Invalid Sole Source Awards

| Contracting Office | Inadequate Competition | | Invalid Sole Source | |
|--------------------|------------------------|--------------|---------------------|---------------------|
| | # of Awards | Amount | # of Awards | Amount |
| CECOM | 0 | - | 0 | - |
| RDECOM | 5 | \$31,844,309 | 0 | - |
| WSMR | 0 | - | 5 | \$35,227,441 |
| Total | | | | \$67,071,750 |

Army Contracting Agency, WSMR

The Army Contracting Agency at WSMR, New Mexico, awarded contracts and task orders on a sole-source basis without adequate justification. For example, contracting officials awarded task order W9124Q-06-F-1447 to Computer Sciences Corporation (CSC) for \$9.9 million on September 29, 2006, on behalf of the TSMO. The task order was awarded from the CSC General Services Administration (GSA) contract. The task order was for “operation, training, and maintenance of foreign aviation systems at Kabul Afghanistan International Airport.”

Contracting officials made the award to CSC on a sole-source basis, citing FAR 8.405-6(b)(1), “Only one source is capable of responding due to the unique or specialized nature of the work.” The sole-source justification gave reasons that CSC was qualified to do the work, but gave no specific reasons other contractors could not do the work. Thus, the justification presented no evidence that CSC was the only capable source. The justification also included an unexplained assertion that it would take 24 months and cost \$25 million for another contractor to acquire the skills needed to gain proficiency for this effort. This assertion was shown to be false a year later, when CSC was forced to compete for the follow-on contract and lost to Northrop Grumman.

Task order 1447 was 1 of 5 awards that showed a pattern of questionable sole-source awards made by 4 contracting officers at WSMR. Task order 1447 was the fourth in a succession of sole-source awards from 2003 to 2006. The original contract was awarded to Research Analysis and Maintenance, Inc on July 31, 2003, for operation and maintenance support services to be performed at Fort Bliss, Texas. The original contract led to another sole-source contract to Research Analysis and Maintenance, Inc. in 2004, which led to a sole-source contract to CSC in 2005 after Research Analysis and Maintenance, Inc. was determined to be “non-responsible;” CSC was then awarded task order 1447 in 2006. Contracting officials justified the first three awards on a sole-source basis by citing urgency.

The nature of the work evolved dramatically, so much that the scope of work for task order 1447 had little to do with the scope of the original award. Ultimately, the sole-source justification for task order 1447, which was for specialized work in Kabul, was based on a contract awarded 3 years earlier to a different contractor for work performed in Texas. The sole-source justification was inadequate, and there was no legitimate reason why task order 1447 could not have been competed.

In another case, WSMR awarded two task orders to Exponent, Inc. (Exponent) on behalf of REF. WSMR awarded task order W9124Q-06-F-1203 to Exponent on May 23, 2006, for \$3.3 million and awarded task order W9124Q-06-F-1204 1 day later for about \$900,000. Both task orders were awarded from Exponent's GSA contract. Task order 1203 required Exponent to provide REF with engineering support, repair and maintenance, logistical support, and management and administration. Exponent was to provide support to U.S. Military Forces in identifying technological solutions to threats in Iraq and Afghanistan. Task order 1204 required Exponent to provide REF with engineering cell support. Both task orders had a period of performance of 10 months, from June 1, 2006, to March 31, 2007.

Contracting and program officials awarded both task order 1203 and task order 1204 to Exponent on a sole-source basis. The sole-source justifications were almost identical and cited FAR 8.405-6(b)(4), "An urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays." The orders were follow-on orders to task order W9124Q-05-F-1123, which had been awarded to Exponent on a sole-source basis 1 year earlier.

The sole-source justification for task orders 1203 and 1204 did not describe any specific urgent requirement. It stated only that it would cost time (at least 16-20 weeks) to switch contractors because of the logistical issues associated with awarding a competitive contract, including "lead time to issue a solicitation, evaluate new suppliers, negotiate terms, issue the award."

The sole-source justification indicates a lack of planning. FAR 6.301(c) states "Contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning by the requiring activity." With a properly planned competition, contracting officials would have issued the solicitation and evaluated bids for the new contract before the prior task order had expired.

Moreover, the sole-source justification was invalidated because it stated that the 10-month period of performance of task orders 1203 and 1204 would "ensure continued support as well as provide adequate time for a competition to be conducted that will meet future REF needs in the area of robotics engineering." By making this statement, contracting and program officials acknowledged that a 10-month period of performance would allow time to plan a competitive award for the next contract. However, the task order prior to orders 1203 and 1204 had a 1-year period of performance. If a 10-month period of performance was adequate time to plan a competition for the next contract, then a full year should have been enough time to plan a competition for task orders 1203 and 1204.

RDECOM Acquisition Center

As task orders 1203 and 1204 neared their completion in March 2007, problems continued. REF decided to use the contracting office at RDECOM in Aberdeen Proving

Ground, Maryland, to award the next task order to Exponent. Although the sole-source justification for task orders 1203 and 1204 stated that the next award would be made competitively, REF program officials and RDECOM contracting officials again planned to make the award to Exponent on a sole-source basis. They prepared a sole-source justification that was very similar to the justification for task orders 1203 and 1204.

However, this time, the sole-source Justification and Approval (J&A) was rejected by RDECOM legal counsel. The legal counsel stated:

The J&A is not convincing as to sole source. Most of document describes how wonderful incumbent is. Cost of transition is not a reason to go sole source. Schedule transition is not a reason to go sole source.

RDECOM legal counsel rejected the sole-source justification on March 1, 2007, which was 1 month before the period of performance for task orders 1203 and 1204 was to end. With a sole-source award no longer an option, contracting officials decided to conduct a competitive award but also to ensure that the award would be made to Exponent by April 1, 2007. They posted the solicitation for the new contract on the GSA E-Buy Web site on March 14, 2007, and gave potential contractors 2 days to submit a bid. They sent a copy of the solicitation only to Exponent. Naturally, Exponent was the only contractor to submit a bid, thereby winning the “competition.” RDECOM then awarded contract W91CRB-07-D-0013 to Exponent on April 1, 2007, for an estimated price of \$22 million.

Section 2304, Title 10, United States Code requires that contracts be awarded on the basis of full and open competition unless a specific exception applies. FAR 5.203, “Publicizing and Response Time,” states that the contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action. Additionally, FAR 15.201(f) states that contracting officers should avoid creating an unfair competitive advantage for contractors. By conducting a competition that gave the incumbent an unfair competitive advantage, RDECOM contracting officials circumvented the law.

Contracting Officers’ Responsibility

Contracting officers did not properly compete contracts and task orders primarily because they did not follow the applicable regulations. FAR 6.101(a) states that “contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.” FAR 6.301(c) states that “Contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning by the requiring activity.” FAR 8.405-6(g) (2) (iv), which applies to sole-source awards made from GSA schedule contracts, states that the sole-source justification will include “a demonstration of the proposed contractor’s unique qualifications to provide the required supply or service.”

Contracting officials should have been thoroughly familiar with the regulations. FAR 1.602-1(b) states “No contract shall be entered into unless the contracting officer ensures

that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.” Additionally, the contracting officers we interviewed had a range of 2 to 15 years of experience as contracting officers.

Contracting officials did not comply with the FAR. Contracting officials made sole-source awards and conducted a competition with an unfair competitive advantage for requirements that were considered “urgent,” but contracting and program officials had known about these requirements long enough to plan fair competitions. Additionally, contracting officials awarded a sole-source task order from a GSA schedule contract because, according to them, the selected contractor was the only capable source, but they provided no evidence that any effort was made to identify other contractors that could perform the work.

Because contracting officials did not obtain open-market competition for these contracts and task orders, they may not have selected the best contractors for the work and may have spent money that could have been saved through price competition. The commanders of WSMR and RDECOM should conduct a review of these contracts and task orders and, if appropriate, take administrative or disciplinary action against the responsible contracting officers.

Price Reasonableness Determinations

Contracting officials did not negotiate reasonable price ceilings when they awarded 17 of the 18 contracts and task orders, valued at \$535,189,691. As a result, contracting officials had little assurance that the price ceilings were an accurate representation of what the work should cost (see Table 3).

Table 3. Summary of Inadequate Price Reasonableness Determinations

| Contracting Office | Inadequate Price Reasonableness Determinations | |
|--------------------|--|----------------------|
| | # of Awards | Amount |
| CECOM | 1 | \$12,410,290 |
| RDECOM | 9 | \$466,834,777 |
| WSMR | 7 | \$55,944,624 |
| Total | 17 | \$535,189,691 |

Because most of the contracts and task orders were either awarded on a sole-source basis or through a competition with an unfair competitive advantage, the contractors were not submitting price proposals in a competitive environment. Therefore, the contractors had an opportunity to overprice their proposals without fear of losing the award to another contractor. As a result, contracting officers were required to analyze the proposals and, if necessary, negotiate the prices to ensure that the prices they accepted were reasonable.

Contracting officials did not adequately negotiate a reasonable price ceiling for 17 of the 18 contracts and task orders, with a total value of \$535,189,691. In general, contracting officials performed poor analyses of contractor labor rates and did limited analyses on proposed labor hour quantities and the mix of labor categories.

Army Contracting Agency, WSMR

Ideal Innovations, Inc.

Contracting officials at WSMR awarded contract W9124Q-05-C-0534 to Ideal Innovations, Inc. (Ideal Innovations) on April 1, 2005, for \$8.2 million. Contracting officials made a vague statement that the price was reasonable compared to a prior contract, but provided no evidence to support this statement. Contracting officials also stated that they determined that the proposed labor rates were reasonable by comparing the rates to the general schedule pay rates of comparable Government employees and applying overhead costs. Contracting officials prepared the following table.

Table 4. Schedule of Labor Rates

| Labor Category | Rate/Hour | Government Equivalent |
|---|------------------|------------------------------|
| Project Manager | \$129.92 | GS-15 Step 10 |
| Deputy Project Manager | \$129.92 | GS-15 Step 10 |
| Architecture Subject Matter Expert 1 | \$227.59 | SES – Level I |
| Architecture Subject Matter Expert 2 | \$202.30 | None cited |
| Biometric Subject Matter Expert | \$147.24 | SES – Level II |
| Trainer/Operator | \$85.57 | GS-13 Step 10 |
| Outside the Continental United States Manager | \$145.00 | SES – Level II |
| Info Archive Manager Bio System | \$103.70 | GS-14 Step 10 |
| Bio System Engineer | \$88.40 | GS-13 Step 10 |
| Technology Subject Matter Expert | \$227.57 | None cited |
| Technology Science Advisor | \$129.91 | GS-15 Step 10 |
| Database Manager | \$85.57 | GS-15 Step 10 |
| Sr. Intelligence Analyst | \$119.98 | GS-15 Step 9 |
| Project Officer | \$119.98 | GS-15 Step 9 |

This table did not ensure that the rates were reasonable. Contracting officials did not explain how any of the specific labor categories were matched with a “Government Equivalent” general schedule rate. Additionally, the Outside the Continental United States (OCONUS) Manager rate of \$145.00 per hour was compared to the SES – Level II pay rate, while the far more expensive Architecture Subject Matter Expert 1 rate of \$227.59 per hour was compared to the SES – Level I pay rate. If \$145.00 per hour was

comparable to SES – Level II, then obviously someone making \$227.59 per hour would not be comparable to SES – Level I.

Additionally, the categories of Technology Subject Matter Expert and Architecture Subject Matter Expert 2 were not matched to a Government Equivalent. Furthermore, contracting officials did not analyze the individual cost elements (direct cost, indirect costs, and profit) that comprise the full labor rates. Contracting officials could have requested the Defense Contract Audit Agency to review the labor rates and their specific cost elements.

Contracting officials also provided no explanation for why the proposed quantity of labor hours was reasonable. The task order price was based on a total quantity of 55,260 labor hours. The price reasonableness determination made no statement regarding whether this was a reasonable quantity of hours or a reasonable mix of labor categories. Without a determination that the quantity of labor hours is reasonable, the overall price cannot be determined reasonable.

Finally, the task order price also included a “Travel/Materials” line item with an estimated cost of \$1.4 million. Contracting officials also provided no explanation as to why this was a reasonable figure.

Contract 0534 was ultimately modified from \$8.2 million to almost \$10.0 million, as additional work and funding were added.

CSC

Four of the awards we reviewed were task orders awarded from GSA schedule contracts. According to FAR 8.404(d), prices on GSA contracts are considered reasonable. However, GSA schedule contracts establish only direct labor rates. In order to evaluate the overall price of an order, contracting officers need to analyze the selection of labor categories and the quantity of labor hours.

For example, as previously discussed, contracting officials at WSMR awarded task order W9124Q-06-F-1447 to CSC on a sole-source basis on September 29, 2006, with an estimated price of \$9.9 million. The \$9.9 million included \$7.8 million of labor costs and \$2.1 million of other direct costs. The price reasonableness determination stated that the price was reasonable because “the proposed price is in accordance with GSA schedule rates.” Again, there was no explanation for why the labor hours or other direct costs were reasonable. Additionally, CSC added a 70 percent “danger & hardship” markup to its OCONUS GSA rates because the work was to be performed in Afghanistan. The price reasonableness determination did not provide an explanation for this 70 percent markup. Contracting officials should have explained why 70 percent was an appropriate markup.

Additionally, like task order 0534 with Ideal Innovations, the price reasonableness determination for task order 1447 included a vague statement that the overall price was reasonable compared to a prior contract. This statement was not supported and was part of a disturbing price analysis trend at WSMR. Although FAR 15.404-1(b) (2) (ii) does

allow price reasonableness determinations to be made through comparisons to prior contracts, WSMR inappropriately used this technique. Under FAR 15.404-1(b)(2)(ii), a price comparison can only be used if both the validity of the comparison and the reasonableness of the previous price can be established.

In this case,

- task order 1447 with CSC was considered reasonable based on a comparison to task order 0557 with CSC,
- task order 0557 was considered reasonable based on a comparison to contract 0158 with Research Analysis and Maintenance Inc.,
- contract 0158 was considered reasonable based on a comparison to contract 0100 with Research Analysis and Maintenance, Inc., and,
- contract 0100 had no price reasonableness determination in the file.

In summary, this price reasonableness “chain” began with contract DABK39-03-0100, which was a 3-month, \$3 million contract awarded to Research Analysis and Maintenance, Inc. in 2003 for work performed in Texas. There was no record of how this contract’s price was determined to be reasonable. This contract was ultimately used as the basis for the price reasonableness determination for contract W9124Q-06-F-1447, which was awarded 3 years later to a different contractor for work performed in Afghanistan. This was not a legitimate method of price analysis.

Exponent

When contracting officials at WSMR awarded task orders W9124Q-06-F-1203 and W9124Q-06-F-1204 to Exponent, they again stated that the overall prices were reasonable simply because the labor rates came from Exponent’s GSA contract. Contracting officials gave no explanation for why the proposed quantity of labor hours was reasonable or for why the labor categories were appropriate.

RDECOM Acquisition Center

Exponent

As discussed earlier, contracting officials at RDECOM awarded the follow-on contract to Exponent after a competition where Exponent had an unfair competitive advantage. Therefore, Exponent did not prepare its price proposal in a legitimately competitive environment. The follow-on contract was contract W91CRB-07-D-0013. The estimated value at the time of award was \$22.1 million; it was eventually increased to \$31.8 million. It was an indefinite-delivery, indefinite-quantity contract, which meant that the contract established terms such as labor rates, and Exponent would perform work under task orders awarded from the contract.

In this case, the contract did not actually establish firm T&M labor rates. It established only the following labor rate ranges. The average rates charged on the invoices tended to be in the middle area of the ranges (see Table 5 for the T&M labor categories and rates).

Table 5. Schedule of Labor Rate Ranges

| T&M Labor Categories | Range Per Hour | Average Rate Charged |
|--|-----------------------|-----------------------------|
| Principal Engineer/Scientist | \$220-\$840 | \$301.67 |
| Managing Engineer/Scientist (Senior) | \$145-\$331 | \$253.95 |
| Managing Engineer/Scientist (Standard) | \$145-\$331 | \$227.70 |
| Engineer/Scientist (Senior) | \$85-\$273 | \$182.92 |
| Engineer/Scientist (Standard) | \$85-\$273 | \$161.22 |
| Software Engineer/Developer (Senior) | \$85-\$273 | \$173.52 |
| Software Engineer/Developer (Standard) | \$85-\$273 | \$138.75 |
| Technician | \$45-\$147 | \$114.10 |
| Non-Technical Support | \$25-\$341 | \$89.50 |

The use of labor rate ranges violated FAR 16.601(a)(1), which states that T&M contracts provide for acquisition of services on the basis of “direct labor hours at specified fixed hourly rates.” The ranges for this contract came from Exponent’s GSA schedule contract. The ranges were far too wide (as much as a \$620 per hour range for the Principal Engineer) to be considered reasonable for any given task order. Nonetheless, contracting officials awarded three of the four task orders we reviewed without preparing a price reasonableness determination. These were task orders 1, 4, and 18.

For task order 11, contracting officials prepared a “Fair and Reasonable Determination and Best Value Determination” memorandum. This document stated “The labor categories and rates proposed are in accordance with those already agreed-to per contract W91CRB-07-D-0013 and therefore are considered fair and reasonable.” This price reasonableness determination was totally inadequate, as the contracting officer could not legitimately conclude that a labor rate is reasonable simply because it falls within a \$620 per hour range. The price reasonableness determination did not conform with the proposal analysis techniques listed in FAR 15.404-1.

As a result, contracting officials did not make an adequate price reasonableness determination for any of the four task orders we reviewed from contract W91CRB-07-D-0013. The total value of these orders, including modifications, was \$21.1 million.

MPRI

Contracting officials at RDECOM also awarded contract W91CRB-05-D-0014 to MPRI on May 1, 2005. The contract originally had a 4-year period of performance, but it was eventually extended by 6 months to October 31, 2009. The estimated value of the contract at the time of award was \$150 million, but it was ultimately modified to \$428.5 million. The contract was for advisory support and mentoring services for the Afghanistan Defense Sector Development and Fielding Program.

This was another indefinite-delivery, indefinite-quantity contract, which meant that the contract established labor rates, while work was actually paid for on task orders awarded

from the contract. The contract award established nine labor categories. To determine the reasonableness of the labor rates, contracting officials analyzed the most expensive labor category (Program Manager - \$124.51 per hour) and one other labor category (Senior Trainer - \$91.00 per hour). This was the extent of their analysis of the labor rates. Contracting officials did not analyze the other seven labor categories. The seven unanalyzed labor categories accounted for approximately 40 percent of the labor hours worked.

Additionally, contracting officials' analysis of the Senior Trainer labor rate did not particularly support their conclusion that the rate was reasonable. They compared MPRI's rate of \$91.00 per hour to another contractor that paid its Senior Trainers \$84.00 per hour. This means that MPRI's rate was 8 percent higher than the rate the contractor used for comparison.

Therefore, contracting officials did not demonstrate that eight of the nine labor rates were reasonable when they awarded the contract. As a result, any task order awarded using these labor rates did not have an adequate price reasonableness determination.

The same day contracting officials awarded the contract, they also awarded task order 1 from the contract. When task order 1 began, it included the nine labor categories established when the contract was awarded. Task order 1 originally had a period of performance of 1 year, from May 1, 2005, to April 30, 2006. However, it was modified 22 times as the period of performance was extended to October 31, 2009, making the total period of performance 4 and a half years. The total price of task order 1 rose from \$26 million to \$323 million. Because the labor rates were not properly analyzed, there is no assurance that this price was reasonable at all.

The lack of sufficient analysis of the labor rates for this contract caused contracting officials to overspend millions of dollars. To illustrate, contracting officials analyzed the MPRI Senior Trainer rate of \$91.00 per hour by comparing it to a rate that was \$7 less per hour. MPRI Senior Trainers worked an average of 26,500 hours per month for the first 4 years of task order 1. If contracting officials had negotiated the proposed rate to the rate used for comparison, the Government would have saved about \$8.9 million on this labor category alone (26,500 hours * \$7 * 48 months). Again, Senior Trainer was one of only two labor categories that contracting officials actually analyzed. We cannot determine if the Army overspent on the other seven labor categories because they were not analyzed.

As the task order progressed, several new labor categories were added. Some of the new categories were re-classifications of the original categories that had not been sufficiently analyzed when the contract was awarded. As a result, none of the new labor rates were demonstrated to be reasonable. For example, within 1 year after task order 1 was awarded, several of the Senior Trainers were promoted to a new job titled "Section Chief" and received an 18.4 percent raise. Because the Senior Trainer rate was not shown to be reasonable, neither the Section Chief rate nor the 18.4 percent raise could be shown to be reasonable.

Additionally, contracting officials allowed unsupported increases to the labor rates during the performance of task order. For example, for the second year of the task order, contracting officials allowed an 8.8 percent rate increase for the labor category Continental United States (CONUS) Logistics Support. Contracting officials stated that the increase was reasonable because the contractor originally proposed a 22.2 percent increase and, by negotiating it to 8.8 percent, they had achieved “savings.” Negotiating the increase down partially from the original offer does not mean that the negotiated increase is reasonable if the original offer was excessively high.

Also, contracting officials allowed MPRI to escalate its labor rates higher than MPRI initially proposed. When contract W91CRB-05-D-0014 was awarded, MPRI and contracting officials agreed that the labor rates would escalate at 3.5 percent annually. However, contracting officials allowed the rates to increase at an overall average of 5.84 percent annually. Task order 1 was for 4 and a half years and included the original nine labor categories. Because the rates were allowed to escalate at an average of 5.84 percent annually, the Government spent an extra \$7.8 million total on the task order during years 2, 3, and 4.

Contracting Officers’ Responsibilities

Contracting officers did not follow the FAR criteria regarding price reasonableness determinations. FAR 15.402, “Pricing policy,” requires contracting officers to “Purchase supplies and services from responsible sources at fair and reasonable prices.” FAR 15.404, “Proposal analysis,” describes several proposal analysis techniques that can be used to evaluate price reasonableness.

For the contracts and task orders that we reviewed, the contracting officials did not adequately perform their responsibilities. Contracting officials awarded contracts and task orders after performing a limited, insufficient price analysis that did not ensure that the price was reasonable. As a result, the Government may have overpaid for services or paid unreasonably high prices.

Justifying the Use of T&M Contracts

Contracting officials did not adequately justify their use of the T&M contract type for 12 of the 18 contracts and task orders reviewed, with a total value of \$566,686,352 (see Table 6).

Table 6. Summary of Awards Made Without Adequate Justification for T&M

| Contracting Office | Inadequate T&M Justification | |
|---------------------------|---|----------------------|
| | # of Awards | Amount |
| CECOM | 2 | \$82,241,728 |
| RDECOM | 3 | \$428,500,000 |
| WSMR | 7 | \$55,944,624 |
| Totals | 12 | \$566,686,352 |

T&M contracts are the riskiest contract type for the Government. FAR 16.601(a) defines a T&M contract as a contract that “provides for acquiring supplies or services on the basis of (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) Materials at cost, including, if appropriate, material handling costs as part of material costs.”

Because profit is included in the hourly labor rate, the contractor earns profit for every additional hour worked. Thus, T&M contracts provide no incentive to the contractor for cost control or labor efficiency. FAR 16.601(b) requires that a T&M contract be used only when it is not possible at the time of award to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty. Therefore, a T&M contract may be used only after the contracting officer executes a D&F that no other contract type is suitable.

Of the 18 contracts and task orders we reviewed, 6 had an adequate D&F for using a T&M contract. Eight did not have a D&F, and the other four had an inadequate D&F. Thus, based on our review, contracting officials did not do an adequate job of justifying their use of T&M contracts. Other contract types, such as cost-plus-fixed-fee or cost-plus-award-fee, can be used when the duration and cost of the work is unknown. While these contract types do reimburse contractors for their incurred costs, they do not provide additional profit for each additional hour worked.

Some of the D&Fs that were prepared just quoted the FAR criteria for when a T&M contract is appropriate, but these D&Fs did not give an explanation for why those contracts or task orders met the criteria. When preparing a D&F, contracting officials should specifically explain why the work to be performed is appropriate for a T&M contract. This will help ensure that they do not use a T&M contract when a less risky contract type would be more appropriate.

In one example, contracting officials at CECOM awarded task order W909MY-05-F-0045 to Logistics Solutions Group for \$3 million. The task order file included a D&F for using a T&M contract, but the D&F cited a different contract number. The D&F was so vague that we could not determine from reading it whether it was actually meant for a different contract or if this was just a typographical error.

Contracting officials did not follow the FAR criteria regarding justification for using T&M contracts. FAR 16.601(c)(1) states that a T&M contract may only be used if “The contracting officer prepares a determination and findings that no other contract type is suitable.” Contracting officials either did not prepare these D&Fs or prepared D&Fs that did not sufficiently justify that a T&M contract was appropriate. As a result, the Government was at a higher risk of excessive cost growth on these contracts and task orders.

It is also noteworthy that several of the contracts and task orders that we reviewed were follow-on awards to earlier contracts and task orders. Three of the awards had at least four predecessor contracts or task orders. Contracting officials could have tried to use the

knowledge obtained from the earlier contracts and task orders to define the requirements well enough to use a less risky contract type on the new contracts and task orders. In the future, contracting officials should consider transitioning from the T&M contract type as knowledge is gained about the required work.

The 8 contracting officers we interviewed had an average of 7.5 years (ranging from 2 to 15) of experience as contracting officers. Therefore, they should have been knowledgeable enough about the FAR to prevent the problems discussed in this report.

Conclusion

The primary benefit of contracting is to enable DOD to obtain superior products and services at reasonable prices through open-market competition. When competition is eliminated, much of the benefit is lost. Army contracting officials neglected to properly compete T&M contracts for Southwest Asia, and they did not obtain the best value as a result. Contracting officials also did not negotiate reasonable prices.

Contracting and program officials need to properly plan competitive procurements so that they can obtain the best services at the best prices. Sole-source contracts should be the exception, not the norm. If an incumbent contractor truly will provide the best value to the Government, then that contractor should be able to win an open competition anyway. DOD can ensure that incumbent contractors continue to provide their best services and prices by making the incumbent contractors earn their contract awards in a competitive environment. If a different contractor can provide better services and prices than an incumbent, the other contractor should be allowed to compete for the award.

When competition is not possible, contracting officials must perform appropriate analysis to ensure that all elements of the negotiated price are reasonable. Analysis should not be limited to a contractor's labor rates. Contracting officials should also ensure that the appropriate labor categories are used. In a sole-source situation, there is nothing to stop a contractor from, for example, proposing a Senior Analyst when the work could be performed by a Junior Analyst who costs half as much money. Contracting officials also need to ensure that the contractor has proposed a reasonable number of labor hours and reasonable other direct costs, such as travel and material costs.

Army contracting officials also exposed the Army to greater risk of monetary loss by not properly justifying the use of the riskiest contract type. Contracting officials need to do a better job of justifying their use of T&M contracts. In particular, they should explain why they cannot use cost reimbursable or firm-fixed-price type contracts, which are less risky. Cost reimbursable contracts can also be used when the duration and scope of the work is uncertain, but cost reimbursable contracts do not reward the contractor with additional profit for additional incurred costs, as T&M contracts do.

When preparing a D&F for a T&M contract, contracting officials need to thoroughly explain why the extent and cost of the work are uncertain enough to require a T&M contract. The D&F should not be treated merely as a formality that just restates the FAR criteria for when a T&M contract is appropriate without explaining why that specific

contract meets those criteria. If contracting officials cannot sufficiently explain why the contract meets the criteria, then a different contract type should be used.

Due to the consistency and the severity of the contracting improprieties made by the contracting officials, we are making the following recommendations.

Recommendations, Management Comments, and Our Response

A.1. We recommend that the Executive Director, Army Contracting Command:

a. Perform a review of the contracts and task orders discussed in this report (see Appendix C for a list of the contracts and task orders). The review should focus on contracting officers' compliance with competition requirements, price reasonableness determinations, and justifications for the use of the time-and-materials contract type.

b. If appropriate, initiate administrative action on the contracting officers who awarded the contracts and task orders.

Army Contracting Command Comments

The Army Contracting Command Deputy Director agreed. The Deputy Director stated that the actions would be completed by the second quarter of 2011.

Our Response

The Deputy Director's comments were responsive. No additional comments are required.

Communications and Electronics Command Acquisition Comments

The CECOM Acquisition Center Executive Director submitted comments related to Recommendation A.1.a. The Executive Director addressed our conclusion that the contracting officer's price reasonableness determination for task order W909MY-05-F-0045 was inadequate. The Executive Director agreed with our conclusion but stated that it was an isolated oversight, not a systemic problem. The Executive Director also addressed the justification for using the T&M contract type on task orders 0240 and W909MY-05-F-0045. He agreed that the contracting officer had failed to prepare a D&F for using the T&M contract type for task order 0240. He stated that a D&F for task order W909MY-05-F-0045 was prepared, but the contracting officer failed to sign it and include it in the contract file. He stated that all future T&M contracts and task orders will include a detailed justification for the contract type.

Our Response

The CECOM Acquisition Center comments are responsive. No additional comments are required.

A.2. We recommend that the Executive Director, Army Contracting Command establish a written plan to review the invoices for the 18 contracts and task orders (see Appendix C for a list of the contracts and task orders); request the Defense Contract Audit Agency’s assistance in reviewing invoices for allowable, allocable, and reasonable costs; obtain reimbursements for incorrect charges; and report the amounts reimbursed on a periodic basis to the DoD Inspector General as part of the follow-up process.

Army Contracting Command Comments

The Army Contracting Command Deputy Director agreed. The Deputy Director stated that the actions would be completed by the second quarter of 2011.

Our Response

The Deputy Director’s comments are responsive. No additional comments are required.

Communications and Electronics Command Acquisition Center Comments

The CECOM Acquisition Center Executive Director partially agreed. The Executive Director affirmed that CECOM requested a DCAA audit of task order 0240. However, the Executive Director stated that the DCAA – Hampton Roads, Virginia, office declined to audit the invoices for task order W909MY-05-F-0045 because this task order was from a GSA schedule contract.

Our Response

The Executive Director’s comments are partially responsive. We spoke with DCAA Headquarters personnel, and they informed us that DCAA has authority to audit a DoD task order from a GSA contract if the task order was paid for with DoD funds. Task order W909MY-05-F-0045 was awarded by the CECOM Acquisition Center and paid for with DoD funds. Therefore, the CECOM Acquisition Center should again request that DCAA review the invoices from this task order for allowable, allocable, and reasonable costs. No further comments are required.

Finding B. Contract Oversight

Army contracting and program officials did not sufficiently monitor contractor performance for T&M contracts and task orders performed in Southwest Asia. We reviewed 18 contracts and task orders valued at \$605,021,129, which were awarded on behalf of 4 customers. Surveillance was inadequately performed on all 18 task orders and contracts we reviewed. Specifically, Army contracting officials and DOD program officials:

- did not verify the accuracy of contractor invoices,
- did not place enough oversight officials in the country where the work was performed,
- did not have an adequate filing system to maintain surveillance documentation,
- did not develop Quality Assurance Surveillance Plans (QASP) outlining what surveillance would be performed, and
- allowed unauthorized labor rate increases and other unallowable costs on contracts and task orders.

These conditions occurred because of inadequate organization and planning by the Army officials responsible for contract oversight. Further, contracting and program officials did not properly designate qualified contracting officer's representatives (CORs) to ensure that work was performed effectively and efficiently for 10 of the 18 contracts and task orders we reviewed. As a result, the Government did not have assurance that contractors worked efficiently or that contractor invoices for work performed were accurate.

Criteria

T&M contracts are risky to the Government because there is no incentive to contractors to control costs or labor efficiency. FAR 16.601(a) defines a T&M contract as a contract that "provides for acquiring supplies or services on the basis of (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) Materials at cost, including, if appropriate, material handling costs as part of material costs." On a T&M contract or task order, the Government reimburses the contractor based on actual cost of materials and direct labor hours at specified fixed hourly rates that include wages, indirect costs, and profit. This type of contract or task order does not encourage efficient contractor performance because the contractor gets reimbursed for all incurred costs plus a profit based on those costs. Therefore, appropriate Government oversight, or contract surveillance, is required to provide reasonable assurance that efficient methods and effective cost controls are used throughout the life of the contract or task order.

FAR 46.101, "Definitions," defines Government contract quality assurance as "the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity." One way to ensure quality assurance is to develop a QASP. FAR 46.401

states that these plans should specify all work requiring surveillance and the method of surveillance. It also requires the Government to conduct quality assurance to ensure the contractor is performing in accordance with the statement of work. In addition DFARS Subpart 201.6, “Contracting Authority and Responsibilities,” requires contracting officers to assign in writing a qualified representative to assist in monitoring the administration and technical aspects of the contract. Surveillance of contractor performance and cost is essential to protect the interests of the Government.

FAR 37.1, “Service Contracts – General,” prescribes the policies and procedures for the acquisition and management of services by contract. Specifically, FAR 37.102(f) states, “Agencies shall establish effective management practices. . .to prevent fraud, waste, and abuse in service contracting.” FAR 37.102 also states, “(g) Services are to be obtained in the most cost-effective manner, without barriers to competition. . .” and “(h) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.”

DFARS 201.602-2, “Responsibilities,” states that the COR:

- (i) Must be a Government employee, unless otherwise authorized in agency regulations;
- (ii) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;
- (iii) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office;
- (iv) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and
- (v) Must be designated in writing, and a copy furnished the contractor and the contract administration office—
 - (A) Specifying the extent of the COR's authority to act on behalf of the contracting officer;
 - (B) Identifying the limitations on the COR's authority;
 - (C) Specifying the period covered by the designation;
 - (D) Stating the authority is not redelegable; and
 - (E) Stating that the COR may be personally liable for unauthorized acts.

Contracts and Task Orders Reviewed

We reviewed 18 T&M contracts and task orders from 4 different commands and customers with a total value of \$605,021,129 (see Table 7).

Table 7. Summary of Contract Actions Reviewed

| Customer | No. of Task Orders and Contracts | Contracting Office | Amount |
|--|---|---------------------------|----------------------|
| Rapid Equipping Force | 12 | WSMR & RDECOM | \$75,579,401 |
| Combined Security Transition Command – Afghanistan | 3 | RDECOM | \$428,500,000 |
| Threat Systems Management Office | 1 | WSMR | \$18,700,000 |
| Army Materiel Command | 2 | CECOM | \$82,241,728 |
| Total | 18 | | \$605,021,129 |

Surveillance Issues

Contracting and program officials did not perform sufficient surveillance on any of the 18 contracts and task orders we reviewed. Specifically, Army contracting officials and DOD program officials did not check and review contractor invoices, did not place enough oversight officials where the work was performed, did not have an adequate filing system to maintain surveillance documentation, did not prepare QASPs, and permitted unauthorized labor rate increases on two contracts and task orders.

Invoices

Army contracting officials and DOD program officials did not verify the accuracy of contractor invoices for any of the task orders and contracts we reviewed valued at \$605,021,129. This occurred because contracting officials did not properly assign CORs, and program officials were not located in a position to properly monitor the progress of the work on the contracts and task orders.

For instance, WSMR awarded contract W9124Q-05-C-0534, valued at \$9,974,600, on April 1, 2005, to Ideal Innovations. Additionally, 1 month later, WSMR awarded contract W9124Q-05-C-0250, valued at \$11,292,922, to Ideal Innovations. Both contracts were awarded on behalf of REF in support of the Biometric Identification System for Access project. Neither contract had a designated COR.

With no CORs assigned to either contract, REF had several different officials review and approve the Ideal Innovations invoices for each month. These officials were all located in Fort Belvoir, Virginia, while the work was performed in Iraq. These officials were not in a position to know if the invoices accurately represented the work performed. Some of Ideal Innovations employees billed up to 372 hours per month, so it was necessary for REF to have adequate surveillance in place to ensure that the invoices were accurate.

Some Ideal Innovations employees worked on both contracts. For example, for the month of August 2005, one individual billed more than 100 hours to each contract. The invoices were reviewed by different REF officials, thus it is unlikely that they would have detected any possible double-billing. If REF had assigned an in-country COR to monitor the contracts, REF would have been in a far better position to verify that the work was properly performed and that the invoices were accurate.

It is imperative for contract surveillance officials to be able to verify the invoice labor hours for T&M contracts. T&M contracts allow the contractor to charge a fixed profit for every labor hour that is worked. The contractor has no incentive for cost control or labor efficiency. Therefore, it is important for contractor surveillance officials to review contractor invoices for accuracy and sufficient cost breakdowns. The invoices should be reviewed by officials who observe the work and are knowledgeable about the contract and its progress. DOD officials, for all 18 task orders and contracts, were unable to adequately review the invoices because the CORs and other personnel who approved the invoices were not located near where the work was being performed.

Oversight Officials

Contracting and program officials did not designate a COR at the time of award for 10 of the 18 contracts and task orders. Contracting and program officials also did not place enough oversight officials in the country where the work was being performed. Contracting and program officials should make an effort to place CORs at the location of contractor performance to ensure that the contractor is carrying out the duties and functions that are required of them efficiently and effectively. If placing a COR at the location of contractor performance is not feasible, the COR still needs to coordinate his or her surveillance efforts with other surveillance officials who are at the location of the performance. Without onsite surveillance, it is difficult for the Government to have assurance that the contractor completes its work in accordance with contract requirements or that the contractor invoices are accurate.

For example, Combined Security Transition Command – Afghanistan was the customer for one indefinite-delivery, indefinite-quantity contract (W91CRB-05-D-0014) and two task orders awarded from it (task orders 1 and 8) that we reviewed with a total value of \$428,500,000. The contract and the two task orders were awarded by RDECOM. The contract was awarded to MPRI to assist the Afghanistan Government in security institutions, policies, programs, and procedures.

Contracting and program officials had not planned and organized a sufficient contractor surveillance structure. Specifically, the contracting officer's technical representative (COTR) in Afghanistan attempted to conduct significant oversight, but he was impeded by other program and contracting officials. In January 2006, the COTR stated that he would not approve an invoice because he wanted an explanation for \$27,000 spent on office supplies and \$2,000 spent on "non-labor costs." MPRI refused to provide supporting documentation. As a result, contracting officials and other program officials decided to "take the COTR out of the approval process" and pay the invoice anyway. The contracting officer stated that the COTR was taking too long to approve the invoices.

They decided that future invoices would be paid unless they were significantly different from the contract. Contracting and program officials decided to rely on a Defense Contract Audit Agency closeout audit after the contract was complete to ensure that the invoices were accurate.

A Defense Contract Audit Agency closeout audit is not sufficient to ensure invoice accuracy on a contract of this magnitude. The contract has a value of over \$428 million and is being performed in several locations in Afghanistan. Also, as this is a T&M contract, the specific work requirements are uncertain. An onsite COTR who monitors the contract on a continual basis is in a far better position to ensure that invoice charges are accurate and allowable than Defense Contract Audit Agency auditors who review the invoices after the contract ends.

In another example, WSMR awarded two task orders on behalf of REF to Exponent. These task orders were W9124Q-06-F-1203 and W9124Q-06-F-1204. They were awarded in May 2006 and had a total value of \$4,439,532. The task orders were for various engineering support functions. Like the Ideal Innovations contracts discussed previously, these task orders did not have a COR, and the invoices were reviewed and approved by various officials at Fort Belvoir who were not in a position to know if the invoices were accurate. We interviewed a REF official who was stationed in Afghanistan who oversaw Exponent's work on a regular basis. He said that he was never asked to review Exponent's invoices, but that he could have done so if he had been assigned that responsibility. This individual, or someone in a similar position, should have been assigned as the COR because he was in a good position to monitor contractor work and verify that the invoices were accurate.

A COR has been assigned to the follow-on contract with Exponent, contract W91CRB-07-D-0013. The official is located in Fort Belvoir, Virginia. He stated that he has had numerous problems with the invoices for the contract, and he stated that he believes that the contract needs "a complete and thorough review and audit."

Surveillance Documentation

Contracting and program officials did not have an adequate system to maintain surveillance documentation for 12 of the 18 task orders and contracts, valued at \$94,279,401. REF was the customer for 11 of these 12 task orders and contracts, and the Threat Systems Management Office was the customer for the other task order. The filing systems were generally inadequate, were consistently missing invoices, and contained very little other surveillance documentation because of a high rate of employee turnover and a lack of properly trained CORs. It is necessary for surveillance officials to maintain surveillance documentation so that other surveillance officials will have access to all pertinent information, such as any problems the contractor has had in the past. This will allow future surveillance officials to perform better oversight.

To illustrate, RDECOM awarded task order 4 from contract W91CRB-07-D-0013 to Exponent on March 31, 2008. The COR did not follow the QASP for the contract. The QASP stated that "surveillance will be accomplished on a continual and random basis.

The method used for evaluation will be based on schedules, reports, observation, customer feedback, adherence to proposed costs, and review of deliverables.” The QASP further stated the COR is also responsible for maintaining surveillance logs to record information on observations and any noted defects found.

The REF file for task order 4 did not include any of the documentation required by the QASP. It did not include schedules, reports, documentation of observation, customer feedback, reviews of deliverables, or any surveillance logs. Thus, there was no documentation to show that work was performed efficiently or if it was in accordance with the Statement of Work. The lack of surveillance documentation will make contractor surveillance more difficult for future CORs and other surveillance officials. This is especially problematic because of the high turnover rate of CORs and COTRs in Southwest Asia.

QASPs

Contracting officials did not prepare QASPs for the 12 of the 18 contracts and task orders we reviewed. FAR 46.103, “Contracting Officer Responsibilities,” states, “Contracting offices are responsible for-(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies and services.” For services, the activity responsible for technical requirements is also responsible for creating a QASP.

Labor Rate Increases

Contracting and program officials also allowed unauthorized labor rate increases on two contracts and task orders, valued at \$88,531,437. As a result, the Army overpaid at least \$330,107 for the services it received. For example, the Army Material Command was the customer for task order 0240 from contract DAAB07-03-D-B0009. The task order was awarded on August 25, 2006, to Lockheed Martin Integrated Systems, Inc. and had a total value of \$69,831,437.

This task order contained discrepancies in three labor categories. The first labor category was Systems Analyst. The task order included the category “Systems Analyst Level 2,” at a rate of \$42.90 per hour. However, the invoices included 4203.5 hours that were charged to “Systems Analyst Level 3,” at a rate of \$47.03, for a total of \$197,690, while Systems Analyst Level 3 was not an authorized labor category on the task order. Since Systems Analyst Level 3 was not an allowable labor category, the 4203.5 hours should have been charged at the Systems Analyst Level 2 rate of \$42.90. The total amount charged should have been \$180,330. This is an overcharge to the Government of \$17,360. The contracting officer should review this situation to determine whether this work could have been performed by a Systems Analyst Level 2.

The second labor category with a discrepancy was “Analyst Level 1.” Many of the individuals in this labor category charged a rate of \$77.68 for Option Year 1. However, the task order stated that all employees in this labor category would charge a rate of

\$62.93 for Option Year 1. A total of 4,390 hours were invoiced for this labor category at the higher rate. Therefore, the Government overpaid for the labor by a total of \$64,752.

The third labor category was “Proj Mgr/Task Ldr2 Contractor.” The rate invoiced was \$97.34, but the rate listed in the task order was \$80.64. A total of 1,269.7 hours were invoiced for this labor category. If the \$80.64 rate had been used, then the Government would have saved a total of \$21,204. In total, the three labor category discrepancies on this task order caused the Government to overpay a total of \$103,316. The contracting officer should review these discrepancies and obtain a refund if warranted.

Task Order W9124Q-06-F-1447

One task order encompasses all the previously discussed surveillance problems. WSMR awarded task order W9124Q-06-F-1447 on behalf of TSMO to CSC on September 29, 2006. The task order had a 2-year period of performance and a total value of \$18,700,000. The task order required CSC to provide operation, training, and maintenance of foreign aviation systems at Kabul Afghanistan International Airport. TSMO was the customer and was responsible for performing surveillance functions for this task order. The task order included additional work that CSC was to perform in Alabama, and as a result, the task order included both CONUS and OCONUS work.

Surveillance was poorly planned by TSMO and the contracting officials at WSMR in New Mexico. When the task order was awarded, no CORs were officially assigned by the contracting officer. One individual, located in Alabama, was designated by the task order as the “TSMO Government POC [point of contact],” and he functioned as the CONUS COR for the task order. No OCONUS CORs were sent to Afghanistan to monitor the OCONUS work until March 14, 2007, which was almost 6 months into the task order’s 1-year performance period. As a result, contract oversight was nonexistent, and the work performed was not verified as required during the first half of the task order. No invoices were even prepared by the contractor during this period.

On March 14, 2007, TSMO sent a primary OCONUS COR to Afghanistan, along with an alternate OCONUS COR. The primary OCONUS COR was in Afghanistan through the end of May 2007, and he was replaced by another primary OCONUS COR in August 2007. This second primary OCONUS COR remained in Afghanistan through the end of the task order performance period.

Even after the OCONUS CORs arrived in Afghanistan, problems with invoices persisted. The first primary OCONUS COR stated that CSC submitted invoices to him, but the invoices were very inaccurate and did not represent the work that was actually performed. He refused to approve any invoices until they were corrected. However, at the time he departed Afghanistan in May 2007, CSC had still not provided him with an acceptable invoice.

An invoice was finally approved on August 31, 2007. This invoice covered the period of September 29, 2006, to June 29, 2007, a period of 9 months. The invoice was for \$8,253,561. It was approved by the CONUS COR in Alabama, who stated “I have

reviewed CSC invoice BVN001 and believe to the best of my ability that the cost are accurate.” Regarding this invoice, the CONUS COR told us, “There was great confusion over who was the COR responsible for the oversight of the contractor at the time. The KO [contracting officer] had assigned a COR and two ACOR’s [alternate CORs] all with exactly the same duties.”

The Government had very little assurance that this invoice was accurate. There was no OCONUS COR monitoring the contractor for the first 6 months, and the invoice was approved by the CONUS COR in Alabama who was not in a position to know if the OCONUS charges were accurate. Furthermore, the OCONUS COR refused to certify the invoices prior to his departure because they were inaccurate.

Ultimately, TSMO and WSMR approved and paid five invoices certified by three different program officials for task order W9124Q-06-F-1447. Some of the invoices had overlapping performance periods, as two of them covered the full 1-year performance period of the task order:

BVN0001: \$8,253,561 (9/26/06 - 6/29/07)

BVN0002: \$2,156,643 (6/30/07 - 8/24/07)

BVN0003: \$4,407,452 (8/25/07 - 9/28/07)

BVN9004: \$3,747,089 (9/29/06 - 9/30/07)

BVN9005: \$135,255 (9/29/06 - 9/30/07)

The total of the five invoices was \$18,700,000, which is the exact amount of money that had been funded to the task order.

The fact that TSMO did not require CSC to prepare separate invoices for the CONUS and OCONUS charges exacerbated problems. This made it more difficult for all of the various CORs to review them. As previously stated, WSMR paid Invoice BVN0001 after it was approved by the CONUS COR. WSMR paid Invoices BVN0002 and BVN0003 after the alternate OCONUS COR “concurred” with them. However, we spoke with the alternate OCONUS COR, and he told us that he intended to verify only that the OCONUS labor charges were accurate. He did not intend to certify the entire vouchers for payment.

Invoices BVN9004 and BVN9005 were reviewed by the second primary OCONUS COR, who arrived in Afghanistan in August 2007. However, he was only there for the last 2 months of the task order, and these two invoices covered the full year. This second primary OCONUS COR told us that he had difficulty working with the WSMR contracting office. The contracting officials never provided him with a COR appointment letter or a list of the CSC labor rates. He also said that he had not been trained on how to review invoices. He said that he did approve Invoice BVN9005, which was for a relatively small charge of \$135,255. He also signed Invoice BVN9004, and contracting officials paid it as a result.

However, he informed us that although he signed this invoice, he did not intend to approve it for payment. He told us:

I went down to Huntsville and sat in a meeting with CSC, TSMO, and two representatives from White Sands Missile Range. They all assured me I did not need to worry about the individual labor charge, but the end state that Mi17 helicopters were maintained and operated in Kabul Afghanistan.

In summary, there is virtually no assurance that the invoices were accurate. Given all of the confusion surrounding the task order between the various CORs, it is clear that the dollar amounts of the final two invoices were simply calculated to make the total invoice charges equal the total dollar amount that had been funded to the task order. These invoices included \$7,760 in labor charges from October and November of 2007, which should not have been allowable because they were after the task order performance period had ended.

CSC was allowed to improperly raise its OCONUS labor rates. When CSC submitted its price proposal for the task order, CSC used its Year 5 GSA schedule labor rates. CSC used the Year 5 rates to compute the total task order price and called them the “billable rates.” This price proposal was accepted, and these rates became the contracted rates for this task order. Thus, the Year 5 GSA schedule rates should have been in effect for the entirety of the task order. The task order was awarded on September 29, 2006. The CSC GSA schedule has a yearly cycle of February 4 to February 3 of the following year. After February 3, 2007, CSC raised its OCONUS billing rates on task order 1447 to match its Year 6 GSA schedule rates. There was no modification to the task order to authorize this increase. Because CSC contracted to use the Year 5 GSA rates for the entirety of task order 1447, contracting officials should not have allowed them to increase the rates. As a result of this rate increase, the Army overspent roughly \$226,791 on the task order.

We also spoke with the Officer in Charge of the program, and he informed us about other problems with the task order. He said that with 4 months left in performance period, CSC mistakenly believed that they had lost the follow-on competition to DYNCORP. DYNCORP had actually won a competition for different work. As a result of this mistake, CSC awarded a subcontract to DYNCORP to transition the work to them. Later, when CSC realized that they had not lost the re-compete of this work, they were now in a situation where they had a competitor working for them on a subcontract. This created a conflict of interest. CSC then forced the DYNCORP employees to sit around and do no work, but CSC still had to pay them because they were on a subcontract. DYNCORP’s labor charges were ultimately paid by the Government, so the Government paid DYNCORP employees who were doing nothing. More than \$3.35 million was paid to DYNCORP employees on this task order.

Due to the conflict of interest, DYNCORP was unable to bid on the follow-on competition to this task order, and CSC had to exclude its knowledgeable employees in Afghanistan from the bidding process. Northrop Grumman won the contract and then subcontracted the work to DYNCORP.

On this task order, a lack of planning by WSMR and TSMO led to poor contract oversight. The Government had almost no assurance that it received the services it paid for. Not surprisingly, most of the surveillance officials we interviewed were displeased with CSC's performance on this task order. WSMR should review this task order and obtain any refunds that are due as a result of the conditions discussed in this section.

Potential Monetary Benefits

If contracting officials obtain the refunds previously discussed for task order 0240 from contract DAAB07-03-D-B0009 and task order W9124Q-06-F-1447, the Government could receive potential monetary benefits of up to \$3,688,338. This consists of:

- unauthorized labor rate increases resulting in \$103,316 of overpayments on task order 0240 from contract DAAB07-03-D-B0009,
- unauthorized labor rate increases resulting in \$226,791 of overpayments on task order W9124Q-06-F-1447,
- payments of \$3,350,471 for subcontractor employees who may not have been doing any work on task order W9124Q-06-F-1447, and
- payments of \$7,760 for work performed after the period of performance had expired on task order W9124Q-06-F-1447.

Conclusion

T&M contracts for work performed in Southwest Asia are among the riskiest contracts awarded by the Government. Because a fixed profit is built into every labor hour worked, contractors have no financial incentive to control costs. The location of the work makes monitoring contractor performance far more difficult than for contracts within the United States or other more stable areas around the world.

Therefore, contracting and program officials need to improve their planning and organization of contractor surveillance efforts. Contracting officials should assign a properly trained COR when the contract is awarded. The COR preferably should be located in the country where the work is performed. At the very least, the COR should have a contract oversight structure in place to allow the COR to obtain reasonable assurance that the contractor performs in accordance with contract requirements, works efficiently, and prepares accurate invoices. If it is not feasible for the COR to be located near the place of contractor performance, then the COR should coordinate his/her efforts with other surveillance officials who are located at the place of performance. Invoices should be reviewed and verified by surveillance officials who are in a position to know if the invoices are accurate. The COR should maintain documentation of surveillance efforts so that knowledge and lessons learned are passed on to other CORs.

Recommendations, Management Comments, and Our Response

B.1. We recommend that for contracts awarded for work in Southwest Asia, the Executive Director, Army Contracting Command:

a. Appoint a contracting officer's representative who has the qualifications outlined in the Defense Federal Acquisition Regulation Supplement at the time of award of contracts and task orders and prepare a detailed Quality Assurance Surveillance Plan outlining what oversight is required and how it will be performed.

Army Contracting Command Comments

The Army Contracting Command Deputy Director partially agreed. The Deputy Director stated that in March 2010 the Army Contracting Command issued Army Contracting Command Pamphlet 70-1, "Interim Army Contracting Command - Contracting Officer's Representative Policy Guide," which already covered procedures for appointing properly trained CORs. The Deputy Director noted that the pamphlet did not address QASPs because the DFARS addresses QASP requirements.

Our Response

The Deputy Director's comments are partially responsive. Despite the DFARS QASP guidance, 12 of the 18 contracts and task orders we reviewed were awarded without a QASP. Thus, the Army Contracting Command needs to take steps to ensure that existing guidance is followed and that contracts awarded for work in Southwest Asia include a QASP. We request that the Army Contracting Command provide additional comments in response to the final report.

b. Appoint a contracting officer's representative who will be located where the work will be performed, when possible. At a minimum, contractor invoices should be reviewed by a surveillance official who is in a position to know if the invoices are accurate.

Army Contracting Command Comments

The Army Contracting Command Deputy Director partially agreed. The Deputy Director stated that the March 2010 pamphlet does not require that the COR be located where the work is performed and that this is at the discretion of the contracting activity, considering the complexity of the contract requirements and type of contract. The Deputy Director stated that a qualified and trained COR would be able to review the contractor invoices and assess their accuracy.

Our Response

The Deputy Director's comments are partially responsive. It is not effective for invoices for work performed in Afghanistan or other locations in Southwest Asia to be reviewed and approved by CORs located in the continental United States. These CORs are not in a

good position to know if the invoices are accurate or not. For an example of the problems and confusion that can occur when surveillance officials are not located where the work is performed, see the discussion of task order W9124Q-06-F-1447 on page 25 of the report. Additionally, our recommendation did not state that a COR absolutely must be located in the country where the work is performed; we stated “at a minimum, contractor invoices should be reviewed by a surveillance official who is in a position to know if the invoices are accurate.” If it is not feasible for a COR to be located where the work is performed, then the invoices should be reviewed by another surveillance official who is located where the work is performed. We request that the Army Contracting Command provide additional comments in response to the final report.

c. Require contracting officer’s representatives to organize and maintain contractor oversight documentation so that oversight documentation will be available to other surveillance officials.

Army Contracting Command Comments

The Deputy Director partially agreed. The Deputy Director stated that the March 2010 pamphlet provided guidance on maintaining comprehensive COR files. The Deputy Director stated that the pamphlet included guidance on the content of COR files and that it also provided guidance on physical performance checks by Army Contracting Command contracting activities and on COR file reviews by the contracting officer.

Our Response

The Deputy Director’s comments are partially responsive. The Deputy Director did not address that oversight documentation needs to be maintained so that oversight documentation will be available to other surveillance officials. Although we commend the Army Contracting Command for issuing guidance on the content of COR files, the Army Contracting Command needs to ensure that oversight documentation will be available to successor surveillance officials who are assigned to follow-on contracts. We request that the Army Contracting Command provide additional comments in response to the final report.

B.2. We recommend that the Director of Contracting, White Sands Missile Range, review task order W9124Q-06-F-1447 and request a refund for:

a. Unauthorized increases in Outside the Continental United States labor rates.

b. Payments made for subcontractor employees who were not actually working.

c. Payments made for work performed after the task order period of performance had expired.

d. Any other invoice discrepancies.

Army Contracting Command Comments

The Army Contracting Command Deputy Director responded on behalf of the Director of Contracting of White Sands Missile Range. The Deputy Director agreed. The Deputy Director stated that the Mission and Installation Contracting Command would pursue a refund for overpayments on the task order by August 16, 2010.

Our Response

The Deputy Director's comments are responsive. No further comments are required.

B.3. We recommend that the Executive Director, Army Communications and Electronics Command Acquisition Center, review task order 0240 from contract DAAB07-03-D-B0009 with Lockheed Martin Integrated Systems, Inc. and request a refund of \$103,316 from the contractor for overpayments resulting from incorrect billing rates on the invoices.

Army Contracting Command Comments

The Army Contracting Command Deputy Director responded on behalf of the Executive Director of the CECOM Acquisition Center. The Deputy Director partially agreed. The Deputy Director stated that it appeared a refund might be necessary for two of the three labor categories discussed in the report, and that the contracting officer would investigate those two categories to determine if a refund is due.

The Deputy Director did not agree with us on the third labor category, Systems Analyst. We stated in the draft report that the task order included the category Systems Analyst Level 2, at a rate of \$42.90 per hour. We reported that the contractor billed 7,115 hours for the category Systems Analyst Level 3, at a rate of \$47.03 per hour. We stated, that because the task order did not include the category Systems Analyst Level 3, the Government was entitled to a refund of the difference between the two labor categories: \$29,385 ($[\$47.03 - \$42.90] * 7115$ hours).

The Deputy Director disagreed that the labor category Systems Analyst Level 3 was not included in the task order. He stated that it was added to the order on modification 50 (which was issued on April 21, 2008); and therefore, no refund was required.

Our Response

The Deputy Director's comments are partially responsive. Although the Deputy Director is correct that Systems Analyst Level 3 was added on modification 50, several of the invoices that included charges for Systems Analyst Level 3 were for work performed before the issuance of modification 50. A total of 4,203.5 hours were billed to the category Systems Analyst Level 3 before modification 50 was issued. Therefore, the Government may be entitled to a refund for this labor category of \$17,360 (instead of \$29,385, as we had originally reported). We request that CECOM Acquisition Center provide additional comments in response to the final report.

Appendix A. Scope and Methodology

We conducted this performance audit from December 2008 through May 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As mentioned in the “Background” section of this report, this is the first of 2 reports addressing T&M contracts for work performed in Southwest Asia. Originally, we intended to write one report. However, when determining which contracts and task orders to review, we identified only one Air Force site and several Army sites. In addition, during our Air Force site visit, we determined that contracting officials awarded those task orders for Architect and Engineering services, which have different award procedures than other types of contracts and task orders. Army contracting officials did not use Architect and Engineering award procedures for the contracts and task orders we reviewed. To make these distinctions clear, we separated the Air Force and Army findings into two audit projects.

For this report, we reviewed the award procedures and administration of 18 contracts or task orders and interviewed contracting and program personnel involved in the process. Each task order or contract had documentation related to the pre-award process and administration that had to be analyzed. In some instances, to comply with the audit objectives, we had to review prior contracts or task orders which were not part of our scope, because the contract action we audited referred to a previous contract or task order. In addition, as part of this audit, we analyzed hundreds of invoices. This analysis included comparing each labor category and rate to the categories and rates approved in the task order. In addition, we interviewed DoD personnel assigned oversight duties. For some of the orders, this required contacting multiple people assigned to oversight responsibilities because those personnel were assigned in short increments and then rotated out with new personnel replacing them. We expended time tracking these rotating personnel to their current assignment.

Overall Audit Scope

We used two database systems to identify the scope for the audit—the Federal Procurement Data System and the Electronic Document Access System. The Federal Procurement Data System is used to collect data about Government procurements. The DOD IG Data Mining Division input data from the Federal Procurement Data System into a database, which the audit team used to run queries. The queries identified contract actions awarded in FY 2007 and FY 2008 that were T&M with work performed in Iraq or Afghanistan. We used the information gathered from the Federal Procurement Data System to search the Electronic Document Access system. The Electronic Document Access system is an online document access system designed to provide acquisition related information for use by all of DOD. The Electronic Document Access system provides copies of the actual contract or task order so we used the system to identify the

original and current value of the contracts and task orders we had identified through our queries of the Federal Procurement Data System.

Using the Federal Procurement Data System, we identified 258 contract actions issued in FY 2007 and 2008 with a total obligated amount of \$658.5 million. These 258 contract actions consisted of contracts, task orders, and modifications. The 258 contract actions represented 58 contracts or task orders.

We eliminated all contract actions related to contract F34601-97-D-0425 because of a separate, ongoing audit. The DOD IG issued DOD IG Report No. D-2010-047, “Repair and Maintenance Contracts for Aircraft Supporting Coalition Forces in Afghanistan, Iraq, and Kuwait,” discussing that contract on March 26, 2010. Excluding those contract actions, 166 contract actions remained related to 51 contracts or task orders with a total obligated amount of \$202.1 million. We used the Electronic Document Access system to identify the amount of those contracts and task orders at the end of CY 2008. At the end of CY 2008, the 51 contracts or task orders had a value of \$976.6 million.

We selected contracts and task orders that had a product or service code that was in the “Support Services – Professional, Administrative & Management” category or with values of at least \$10 million to review. These criteria reduced our scope to 26 contracts or task orders with a value of \$929 million, which is 95.1 percent of the value of the 51 contracts or task orders previously identified.

Of the 26 contract actions with a value of \$929 million, we judgmentally selected to review 14 contracts or task orders with a value of \$254.7 million. We chose these contracts and task orders based on the type of work being performed, the number of contracts and task orders at that site, and the location of the site. We added an additional contract to review at one of the sites. Therefore, we selected 15 contracts or task orders with a total value of \$261.2 million awarded by 4 contracting offices to review. Of these 15 contracts and task orders, the Army awarded 11 of them, valued at \$170.0 million.

Army Scope

In addition to the 11 Army T&M contracts and task orders we initially selected, we identified and reviewed 5 additional T&M task orders and 2 additional T&M contracts as a result of our site visits and in conjunction with interviews of contracting and program officials. Thus, we reviewed a total of 18 contracts and task orders awarded by the Army. The total value of the 18 contracts and task orders was \$605,021,129. Ten of the awards were sole source, and the other 8 were competitive.

Army Methodology

We conducted site visits to WSMR, New Mexico; Headquarters Army Materiel Command, Virginia; CECOM, Virginia; REF, Virginia; and RDECOM, Maryland. During these visits, we reviewed contract documentation and interviewed contracting and program officials responsible for contract award and administration. We conducted follow-up correspondence over telephone and e-mail.

We reviewed 7 contracts and 11 task order files to determine whether:

- Army contracting officials complied with competition requirements,
- Army contracting officials paid fair and reasonable prices for products and services,
- Army contracting officials adequately justified the use of a T&M type contract with a D&F in accordance with FAR 16.601(c),
- Army contracting officials created an acquisition plan if required by DFARS 207.1, and
- DOD program officials conducted sufficient contract oversight to ensure that contractors efficiently completed their requirements and prepared accurate invoices.

Use of Computer-Processed Data

We used computer-processed data from two different databases to identify contracts and task orders to review. We used the Federal Procurement Data System with support from the DOD Office of the Inspector General Data Mining Division in order to obtain queries to determine procurements issued in FY 2007 and FY 2008. We used the information from the Federal Procurement Data System queries in conjunction with the Electronic Document Access system to obtain contract and task order documentation. We used the two systems to identify T&M contracts for professional services.

We did not perform a reliability assessment of the computer-processed data as the results did not materially affect the findings, conclusions, or recommendations of the audit report. We used the data only to identify which orders to review, and once the orders matched our search criteria, we used only the documentation from the contract files to support our findings and recommendations.

Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DOD Inspector General (IG), Army Audit Agency, Air Force Audit Agency, Special Inspector General for Iraq Reconstruction, and the Special Inspector General for Afghanistan Reconstruction have issued 23 reports discussing T&M contracts, Southwest Asia, and Government contract oversight issues. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DOD IG reports can be accessed at <http://www.DODig.mil/audit/reports>.

Unrestricted Army reports can be accessed from .mil and gao.gov domains over the Internet at <https://www.aaa.army.mil/>.

Naval Audit Service reports are not available over the Internet.

Air Force Audit Agency reports can be accessed from .mil domains over the Internet at <https://afkm.wpafb.af.mil/ASPs/CoP/OpenCoP.asp?Filter=OO-AD-01-41> by those with Common Access Cards.

Special Inspector General for Iraq Reconstruction (SIGIR) unrestricted reports can be accessed over the Internet at <http://www.sigir.mil/Default.aspx>.

Special Inspector General for Afghanistan Reconstruction (SIGAR) unrestricted reports can be accessed over the Internet at <http://www.sigar.mil/Default.aspx>.

GAO

GAO Report No. 09-579, “Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program,” June 24, 2009

GAO Report No. 09-643T, “Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts,” April 23, 2009

GAO Report No. 08-269, “Defense Contracting: Contract Risk a Key Factor in Assessing Excessive Pass-Through Charges,” January 25, 2008

GAO Report No. 07-273, “Defense Contracting: Improved Insight and Controls Needed over DOD’s Time-and-Materials Contracts,” June 29, 2007

GAO Report No.06-838R, “Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse,” July 2006

GAO Report No. 05-274, “Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts,” March 17, 2005

DOD IG

DOD IG Report No. D-2010-078, "Air Force Use of Time and Materials Contracts in Southwest Asia," August 16, 2010

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

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

DOD IG Report No. D-2009-007, "Procurement and Use of Nontactical Vehicles at Bagram Air Field, Afghanistan," October 31, 2008

DOD IG Report No. D-2008-097, "Hurricane Relief Effort Costs on the Navy Construction Capabilities Contract," May 23, 2008

DOD IG Report No. D-2007-036, "Contracting Practices at the Major Range and Test Facilities Base," December 27, 2006

DOD IG Report No. D-2006-061, "Acquisition: Source Selection Procedures for the Navy Construction Capabilities Contract," March 3, 2006

DOD IG Report No. D-2006-010, "Acquisition: Contract Surveillance for Service Contracts," October 28, 2005

DOD IG Report No. D-2006-007, "Acquisition: Contracts Awarded to Assist the Global War on Terrorism by the U.S. Army Corps of Engineers," October 14, 2005

Army

Army Report No. A-2006-0091-ALL, "Audit of Management of the Theater Transportation Mission (Task Order 88), Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom," April 4, 2006

Army Report No. A-2006-0083-ALL, "Audit of Retrograde Operations (Task Order 87), Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom," March 21, 2006

Air Force

Air Force Report No. F2008-0004-FC1000, "Competition in Multiple Award Service Contracts," April 3, 2008

Air Force Report No. F2008-0001-FC1000, "Management and Oversight of the Acquisition of Services Process," October 1, 2007

SIGIR

SIGIR Report No. 09-017, "Need To Enhance Oversight of Theater-Wide Internal Security Services Contracts," April 24, 2009

SIGIR Report No. 07-001, "Logistics Civil Augmentation Program Task Order 130: Requirements Validation, Government Oversight, and Contractor Performance," June 22, 2007

SIGIR Report No. 05-023, "Management of Rapid Regional Response Program Contracts in South-Central Iraq," January 23, 2006

SIGIR Report No. 05-007, "Administration of Iraq Relief and Reconstruction Fund Contract Files," April 30, 2005

SIGAR

SIGAR Report No. 09-1, "Contract Oversight Capabilities of the Defense Department's Combined Security Transition Command-Afghanistan (CSTC-A) Need Strengthening," May 19, 2009

Appendix C. Contracting Issues Identified

| Order Number | Amount | Inadequate D&F for T&M Contracts | Inadequate Competition | Inadequate Sole Source Justification | Inadequate Price Analysis | Inadequate Surveillance |
|-------------------------------|---------------|----------------------------------|------------------------|--------------------------------------|---------------------------|-------------------------|
| CECOM | | | | | | |
| DAAB07-03-D-B0009 (0240) | \$69,831,438 | • | | | | • |
| W909MY-05-F-0045 ¹ | \$12,410,290 | • | | | • | • |
| RDECOM | | | | | | |
| W91CRB-07-D-0013 | \$31,844,309 | | • | | • | • |
| W91CRB-07-D-0013 (TO 0001*) | \$6,950,381 | | • | | • | • |
| W91CRB-07-D-0013 (TO 0004*) | \$5,318,049 | | • | | • | • |
| W91CRB-07-D-0013 (TO 0011*) | \$7,239,914 | | • | | • | • |
| W91CRB-07-D-0013 (TO 0018*) | \$1,557,200 | | • | | • | • |
| W91CRB-05-D-0014 | \$428,500,000 | • | | | • | • |
| W91CRB-05-D-0014 (TO 0001*) | \$322,722,369 | • | | | • | • |
| W91CRB-05-D-0014 (TO 0008*) | \$32,082,773 | • | | | • | • |
| W91CRB-07-P-0227 | \$6,490,469 | | | | • | • |

Appendix C. Contracting Issues Identified (con't)

| Order Number | Amount | Inadequate D&F for T&M Contracts | Inadequate Competition | Inadequate Sole Source Justification | Inadequate Price Analysis | Inadequate Surveillance |
|-------------------------------|----------------------------------|----------------------------------|------------------------|--------------------------------------|---------------------------|-------------------------|
| WSMR | | | | | | |
| W9124Q-06-C-0111 | \$2,113,309 | • | | • | • | • |
| W9124Q-06-C-0128 | \$9,424,260 | • | | | • | • |
| W9124Q-06-C-0250 | \$11,292,922 | • | | | • | • |
| W9124Q-05-C-0534 | \$9,974,601 | • | | • | • | • |
| W9124Q-06-F-1203 ¹ | \$3,419,786 | • | | • | • | • |
| W9124Q-06-F-1204 ¹ | \$1,019,745 | • | | • | • | • |
| W9124Q-06-F-1447 ¹ | \$18,700,000 | • | | • | • | • |
| Total | \$605,021,129² | | | | | |

1. GSA Federal Supply Schedule task order.

2. This value does not include the value of the task orders (those with *) we reviewed from contracts W91CRB-05-D-0014 and W91CRB-07-D-0013. We reviewed the basic contracts from which these task orders were awarded, so to include the value of the task orders from these contracts would have been double-counting.

Army Materiel Command Comments



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-5527

AMCIR

03 AUG 2010


MEMORANDUM FOR DODIG, ATTN: [REDACTED] 400 Army Navy Drive,
Arlington, VA 22202-4704

SUBJECT: DoD OIG Draft Report: Army's Use of Time-and-Materials Contracts for Southwest
Asia (Project No. D2009-D000CF-0095.000) (D0938)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject draft report and the responses provided by the Army Contracting Command (ACC), the Mission and Installation Contracting Command (MICC), and the CECOM Contracting Center. AMC endorses the enclosed responses from ACC, MICC, and CECOM Contracting Center.

2. The AMC point of contact is [REDACTED]

- 3 Encls
1. ACC Reply
 2. MICC Rreply
 3. CECOM Contracting Center
Reply (includes 8 attachments)


JOHN F. WHARTON
Brigadier General, U.S. Army
Chief of Staff

Army Contracting Command Comments



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-5527

AMSCC-IR

MEMORANDUM THRU Director, Internal Review and Audit Compliance Office,
Headquarters, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA
22060

FOR Program Director, Acquisition and Contract Management, Inspector General,
Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: U.S. Army Contracting Command (ACC) Reply to Department of Defense
Inspector General (DODIG) Draft Report: Army's Use of Time-and-Materials Contracts
for Southwest Asia (Project No. D2009-D000CF-0095.000) (D0938)

1. Reference memorandum/report, DOD Inspector General, 18 May 10, subject:
Army's Use of Time-and-Materials Contracts for Southwest Asia (Project No. D2009-
D000CF-0095.000)

2. The responses to the recommendations identified within the referenced report are
enclosed.

3. The ACC points of contact are [REDACTED]

4 Encl

1. ACC Reply
2. MICC Reply
3. CECOM Contracting Center Reply

JEFFREY P. PARSONS
Executive Director

Encl 1

Printed on Recycled Paper

**HEADQUARTERS, U.S. ARMY CONTRACTING COMMAND
REPLY TO DODIG DRAFT REPORT: ARMY'S USE OF TIME-AND-MATERIALS
CONTRACTS FOR SOUTHWEST ASIA,
REPORT NO. D2009-D000CF-0095.000**

Recommendation A1. We recommend that the Executive Director, Army Contracting Command:

a. performs a review of the contracts and task orders discussed in this report (see Appendix C for a list of the contracts and task orders). The review should focus on contracting officers' compliance with competition requirements, price reasonableness determinations, and justifications for the use of the time-and-materials contract type.

b. if appropriate, initiate administrative action on the contracting officers who awarded the contracts and task orders.

ACC Response: Concur. ACC will request a Program Management Review (PMR) of the contracts and task orders cited in the report, focusing on the contracting officer's compliance with competition requirements, price reasonableness determination, and justification for the use of time and materials contract. Administrative actions on the contracting officers who awarded the contracts and task orders will be taken, if appropriate. The actions will be completed by the 2nd quarter 2011.

Recommendation A2. We recommend that the Executive Director, Army Contracting Command, establish a written plan to review the invoices for the 18 contracts and task orders (see Appendix C for a list of the contracts and task orders); request the Defense Contract Audit Agency's assistance in reviewing invoices for allowable, allocable, and reasonable costs; obtain reimbursements for incorrect charges; and report the amounts reimbursed on a periodic basis to the DoD Inspector General as part of the follow-up process.

ACC Response: Concur. ACC will direct the appropriate contracting offices to develop a plan to review the invoices for the contracts and task orders cited in Recommendation A.1.a. to include Defense Contract Audit Agency's assistance in reviewing invoices for allowable, allocable, and reasonable costs. If DCAA identifies any allowable costs or incorrect charges, we will pursue recovery and report the amounts reimbursed on a periodic basis to the DoD Inspector General as part of the follow-up process. The actions will be completed by the 2nd quarter 2011.

Recommendation B1. We recommend that for contracts awarded for work in Southwest Asia, the Executive Director, Army Contracting Command:

a. Appoint a contracting officer's representative who has the qualifications outlined in the Defense Federal Acquisition Regulation Supplement at the time of award of contracts and task orders and prepare a detailed Quality Assurance Surveillance Plan outlining what oversight is required and how it will be performed.

Encl 1

b. Appoint a contracting officer's representative who will be located where the work will be performed, when possible. At a minimum, contractor invoices should be reviewed by a surveillance official who is in a position to know if the invoices are accurate.

c. Require contracting officer's representatives to organize and maintain contractor oversight documentation so that oversight documentation will be available to other surveillance officials.

ACC Response: Concur with comments. ACC has issued guidance pertaining to recommendations B.1.a, b, and c. The action was completed on 26 March 2010.

B.1.a: On 26 March 2010 ACC published ACC Pamphlet 70-1, Interim Army Contracting Command - Contracting Officer's Representative Policy Guide. This document provides guidance to AMC's contracting activities, pending issuance of DoD policy, on appointing qualified, properly trained and ethically aware CORs prior to award. ACC's interim guide covers COR duties, responsibilities and training. The requirement for a QASP is covered in DFARS Subpart 246.401, so ACC did not duplicate that coverage in our Interim Guide.

B.1.b: ACC Pam 70-1 does not require that the COR be located where the work is performed. This is left up to the discretion of the Contracting Officer and the requiring activity considering the complexity of the contract requirements and type of contract. A qualified and trained COR would be able to review contractor invoices and assess their accuracy.

B.1.c: ACC Pam 70-1 Para 11 provides guidance on maintaining comprehensive COR files. The content of the COR files will vary according to the duties and responsibilities assigned to the COR. The previous paragraph in ACC Pam 70-1, Para 10, entitled COR Performance Management, provides guidance on physical performance checks by ACC contracting activities and COR file reviews by the Contracting Officer. Appendix C to ACC Pam 70-1 is a COR File Review Checklist that is designed to promote consistency in COR files across ACC.

B.2. We recommend that the Director of Contracting, White Sands Missile Range, review task order W9124Q-06-F-1447 and request a refund for:

- a. Unauthorized increases in Outside the Continental United States labor rates.
- b. Payments made for subcontractor employees who were not actually working.
- c. Payments made for work performed after the task order period of performance had expired.
- d. Any other invoice discrepancies.

ACC Response: Concur. The MICC will review file documentation and invoices to prepare the request. The letter to the contractor will be sent on 30 July 2010. The contractor will be given a suspense date of 16 August 2010 to refund the overpayment to the government or justify why a refund as requested is not appropriate. If the contractor does not respond by 16 August 2010, the Contracting Officer will issue a Final Decision in the matter and pursue appropriate remedies under the contract.

B.3. We recommend that the Executive Director, Army Communications and Electronics Command Acquisition Center, review task order 0240 from contract DAAB07-03-DB0009 with

Encl 1

Lockheed Martin Integrated Systems, Inc. and request a refund of \$115,341 from the contractor for overpayments resulting from incorrect billing rates on the invoices.

ACC Response: Partially concur. A refund is not required for the charges related to Systems Analyst Level 2. Modification 30 to Task Order 0240 added the Systems Analyst Level 2 labor category at a rate of \$42.90 per hour (see attachment 7). Subsequently, Modification 50 for additional work was negotiated in the amount of \$2,460,861.41. Under this modification, the contractor requested the addition of six (6) labor categories that were approved by the Contracting Officer Representative (COR)/Technical Lead. The request included labor rate for System Analyst Level 3 @ \$47.03 (see attachment 8).

The Contracting Officer will review the charges for Analyst Level 1 @ a rate of \$77.68 and if necessary request reimbursement for the difference in Labor rates. The relevant negotiation memorandum supports the lower labor rate of \$62.93. In addition the CECOM Contracting Center Officer will review charges for "Proj Mgr/Task Ldr2 Contractor" @ a rate of \$97.34, and if necessary request reimbursement for the difference in Labor rates. In this case the negotiation memorandum supports a labor rate of \$80.64. The Contracting Officer will request DCAA review of the invoices for allowable, allocable, and reasonable costs by June 4, 2010 and will obtain reimbursement for all incorrect charges, if deemed necessary.

Encl 1

Mission and Installation Contracting Command Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
MISSION AND INSTALLATION CONTRACTING COMMAND
2107 17th STREET, BLDG 4197, SUITE 15
FORT SAM HOUSTON, TX 78234-5015

CCMI-CG

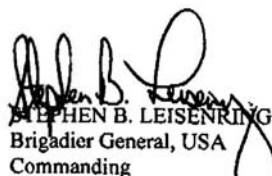
JUN 03 2010

MEMORANDUM FOR Army Contracting Command, Internal Review and Audit Compliance Office, [REDACTED] 9301 Chapek Road, Fort Belvoir, VA 22060-5527

SUBJECT: Draft Report on Army's Use of Time-and-Materials Contracts in Southwest Asia, (Project D2009-D00OCF-0095.000)

1. We reviewed the subject draft report. In accordance with AR 36-2, our written comments are enclosed.
2. We concur with recommendations B.2.
3. The point of contract for this action is [REDACTED]

Encl


STEPHEN B. LEISENRING
Brigadier General, USA
Commanding

Encl 2

Encl 2

MISSION AND INSTALLATION COMMAND COMMENTS
Audit of Army's Use of Time-and-Materials Contracts for Southwest Asia
Project D2009-D00OCF-0095.000

Recommendation B.2: We recommend that the Director of Contracting, White Sands Missile Range, review task order W9124Q-06-F-1447 and request a refund for:

- a. Unauthorized increases in Outside the Continental United States labor rates.
- b. Payments made for subcontractor employees who were not actually working.
- c. Payments made for work performed after the task order period of performance had expired.
- d. Any other invoice discrepancies.

Command Comments.

Concur. We will review the file documentation and invoices to prepare our request. Our letter to the contractor will be sent on 30 July 2010. We will give the contractor a suspense of 16 August 2010 to refund the over payment to the government or justify why a refund as requested is not appropriate. If the contractor does not respond by 16 August 2010 the Contracting Officer will issue a Final Decision in this matter and pursue appropriate remedies under the contract.

Enc2

Communications and Electronics Command Comments



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY CONTRACTING COMMAND-CECOM CONTRACTING CENTER
ABERDEEN PROVING GROUND, MARYLAND 21010-5401

REPLY TO
ATTENTION OF

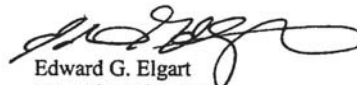
CCCE

MEMORANDUM FOR Executive Director, United States Army Contracting Command, ATTN:
AMSCC-IR, [REDACTED] 9301 Chapek Road, Fort Belvoir, VA 22060-5527

SUBJECT: U.S. Army Contracting Command-CECOM Contracting Center Reply to
Department of Defense Inspector General (DODIG) Draft Report: Army's Use of Time-and-
Materials Contracts for Southwest Asia (Project Number D2009-D000CF-0095.000)

1. Command comments on the subject report can be found at enclosure 1.
2. Point of contact is [REDACTED]

Encl
as


Edward G. Elgart
Executive Director
CECOM Contracting Center
Army Contracting Command

Encl 3

Encl 3

**CECOM CONTRACTING CENTER (CCCE)-
ARMY CONTRACTING COMMAND (ACC)
REPLY TO DEPARTMENT OF DEFENSE -
OFFICE OF INSPECTOR GENERAL (DoDIG) DRAFT REPORT:
Army's Use of Time-and-Materials (T&M) Contracts for Southwest Asia
Report No. D2009-D000CF-0095.000**

AUDIT CONCLUSION:

The auditors found that:

Army contracting and Department of Defense (DoD) program officials did not properly award and administer the eighteen (18) Time and Materials (T&M) contracts and task orders for work performed in Southwest Asia. Out of the eighteen (18) contracts, the CECOM Contracting Center is responsible for two (2). Those contracts include DAAB07-03-D-B009, Task Order 0240 in the amount of \$69,831,438 and W909MY-05-F0045 in the amount of \$12,410,290. Contracting and program officials (1) Did not negotiate reasonable prices; (2) Did not justify their use of the T&M contract type; (3) Did not perform adequate contractor surveillance for the contracts and task orders.

ADDITIONAL FACTS:

PRICE REASONABLENESS DETERMINATIONS:

Page 8 of the draft report discusses price reasonableness determinations and specifically mentions CECOM in Table 3. However, after reading through the report, the CECOM Contracting Center could not find information related to the aforementioned inadequate price reasonableness determination. The CECOM Contracting Center contacted the DoDIG and was sent the following via an e-mail:

“This is a summary of our evaluation of CECOM's price reasonableness determination for contract W909MY-05-F-0045. We did not take exception to the price reasonableness determination for the initial award of the contract, which was based on price competition between two bidders.

We took exception to subsequent non-competitive increases to the price on Modifications 12, 13, 14, and 15, which altogether totaled approximately \$2,261,000. In each instance, we determined that the price reasonableness determination did not include a sufficient analysis of the contractor's proposed labor hours. In each instance, the Price Reasonableness Memorandum included a statement that the technical evaluator had determined that the proposed labor hours were adequate. However, in each case, the technical evaluation in the contract file did not actually mention the proposed labor hours. As a result, we determined that the price reasonableness determination for contract W909MY-05-F-0045 was inadequate.”

Encl 3

RECOMMENDATIONS FOR THE EXECUTIVE DIRECTOR ARMY CONTRACTING COMMAND

Although the CECOM Contracting Center was not specifically tasked to send a response for the recommendations in Part A of the draft report, we would like to take this opportunity to respond to the facts represented in both the "Price Reasonableness Determination" and "Justifying the Use of T&M Contracts" sections.

In response to the "Price Reasonableness Determinations" section and the additional facts stated above, Contract Number W909MY-05-F-0045, Modifications 12, 13, 14 and 15 were written to provide continuous support pending award of the new follow-on effort being awarded by Redstone Arsenal contracting activity. The new award was delayed and each modification under Contract Number W909MY-05-F-0045 granted a 60 day extension in order to prevent a break in service. Each increase was supported by a technical evaluation, price reasonableness memorandum and within scope determination. The technical evaluation accepted the labor hour "rates" and Other Direct Costs (ODCs). The overarching statement in paragraph (d) of the technical evaluation indicated that the contractor's proposal was reasonable and acceptable and recommended acceptance. As it is not a function of the technical community to review rates, the Contracting Officer assumed the technical office was actually referring to labor hours and therefore used the "accepted hours" to develop the Government's objective (see Attachments 2 through 5). The proposed rates for the extension were based on the General Services Administration (GSA) Schedule rates identified under Option 2 of Contract Number W909MY-05-F-0045. The CECOM Contracting Center concurs that the technical evaluation did not mention the acceptance of labor hours. We believe that this is not a systemic issue, however an isolated oversight.

In the "Justifying the Use of T&M Contracts" section, the DoDIG points out that Contracting Officials did not adequately justify their use of the T&M contract type for 12 of the 18 contracts and task orders reviewed. Of those 12 contracts, two (2) were at the CECOM Contracting Center (DAAB07-03-D-B009, Task Order 0240 in the amount of \$69,831,438 and W909MY-05-F0045 in the amount of \$12,410,290). The DoDIG specifically points out on page 16 that officials at CECOM awarded Contract Number W909MY-05-F0045 to Logistics Solutions Group for \$3 million. The contract file included a Determinations and Findings (D&F) for Use of a T&M contract, but the D&F cited a different contract number. The D&F was so vague that we could not determine from reading it whether it was actually meant for a different contract or if this was just a typographical error.

The CECOM Contracting Center concurs that the file copy of the D&F to Use a T&M Contract does have the wrong contract number and program name. However, a search of the electronic files found an unsigned corrected version of the D&F (see Attachment 1) with the correct contract number and program name. It appears that the corrected version was either not signed by the previous Contracting Officer or it was signed but inadvertently omitted from the contract file. The D&F for Use of a T&M Contract for Contract Number DAAB07-03-D-B009, Task Order 0240 could not be located in the contract file, therefore, we concur that it appears that the

Encl 3

2

previous Contracting Officer did not prepare the required D&F for the use of T&M type order. All future contracts and orders to be awarded on a T&M basis will include a detailed justification documenting the necessity for use of that type of contract/order.

In addition, recommendation A.2 requests that the Executive Director, Army Contracting Command, establish a written plan to review the invoices for the 18 contracts and task orders; request the Defense Contract Audit Agency's (DCAA) assistance in reviewing invoices for allowable, allocable, and reasonable costs; obtain reimbursements for incorrect charges; and report the amounts reimbursed on a periodic basis to the DoD Inspector General as part of the follow-up process.

With respect to Contract Number DAAB07-03-D-B009, Task Order 0240, the Contracting Officer has been in contact with representatives from DCAA. A formal request to audit all invoices relating to this order will be made by the Contracting Officer no later than 4 June 2010. DCAA will perform an audit to determine the allowability, allocability and reasonableness of the invoice charges. Upon receipt of the audit, the Contracting Officer will review the results and if necessary request repayment of any charges determined to be excessive.

The labor rates utilized for the period of performance extensions under Contract Number W909MY-05-F-0045 were the same as negotiated for Option 2 and match the contractor's GSA Schedule rates. A request for audit was initiated by Defense Contract Management Agency (DCMA) in March 2010 (see Attachment 6). DCAA, Hampton Road VA, stated that "This is a GSA contract under LSG's GSA schedule GS-10F-0281P. DCAA does not perform audits of GSA contracts. We will not be initiating an audit of the final voucher." Excess funds were de-obligated in the amount of \$224,830.00 via Modification P00017 dated 15 April 2010. No further action will be taken on this contract.

RECOMMENDATIONS FOR THE EXECUTIVE DIRECTOR, CECOM CONTRACTING CENTER

DRAFT REPORT RECOMMENDATION B.3: We recommend that the Executive Director, Army Communications and Electronics Command Acquisition Center, review Task Order 0240 from Contract DAAB07-03-D-B009 with Lockheed Martin Integrated Systems, Inc. and request a refund of \$115,341 from the contractor for overpayments resulting from incorrect billing rates on the invoices.

COMMAND COMMENTS AND ACTION TAKEN

Partially concur with findings of B.3. A refund is not required for the charges related to Systems Analyst Level 2. Modification 39 to Task Order 0240 added the Systems Analyst Level 2 labor category at a rate of \$42.90 per hour (see Attachment 7). Subsequently, Modification 50 for additional work was negotiated in the amount of \$2,460,861.41. Under this modification, the contractor requested the addition of six (6) labor categories that were approved by the

We adjusted the dollar amount of the suggested refund based on this response.

Encl 3

3

Contracting Officer Representative (COR)/Technical Lead. The request included labor rate for System Analyst Level 3 @ \$47.03 (see Attachment 8).

The Contracting Officer will review the charges for Analyst Level 1 @ a rate of \$77.68 and if necessary request reimbursement for the difference in Labor rates. The relevant negotiation memorandum supports the lower labor rate of \$62.93. In addition, the CECOM Contracting Officer will review the charges for "Proj Mgr/Task Ldr2 Contractor" @ a rate of \$97.34, and if necessary request reimbursement for the difference in Labor rates. In this case the negotiation memorandum supports a labor rate of \$80.64. The Contracting Officer will request DCAA review of the invoices for allowable, allocable and reasonable costs by June 4, 2010, and will obtain reimbursements for all incorrect charges, if deemed necessary.

Encl 3

4



Inspector General Department of Defense

