

Inspector General

United States
Department of Defense



Competition Should Be Used for Instructor Services
for the Mine Resistant Ambush Protected Vehicles

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Acronyms and Abbreviations

| | |
|---------|---|
| ADA | Antideficiency Act |
| CLIN | Contract Line Item Number |
| CONUS | Continental United States |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| FAR | Federal Acquisition Regulation |
| FPII | Force Protection Industries, Inc. |
| GAO | Government Accountability Office |
| HUBZone | Historically Underutilized Business Zone |
| J&A | Justification and Approval |
| JPO | Joint Program Office |
| MCSC | Marine Corps Systems Command |
| MRAP | Mine Resistant Ambush Protected |
| NET | New Equipment Training |
| O&M | Operations and Maintenance |
| OCONUS | Outside the Continental United States |
| OEM | Original Equipment Manufacturer |
| SOW | Statement of Work |
| T&M | Time-and-Materials |
| TCC | TACOM Contracting Center |



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

February 3, 2011

MEMORANDUM FOR NAVAL INSPECTOR GENERAL,
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
COMMANDER, MARINE CORPS SYSTEMS COMMAND

SUBJECT: Competition Should Be Used for Instructor Services for the Mine Resistant Ambush Protected Vehicles (Report No. D-2011-036)

We are providing this report for review and comment. The Army awarded a sole-source, high-risk time-and-materials contract for New Equipment Training instructor services, valued at \$55.5 million, when a competitive, fixed-price contract was a better alternative. This is the second report in a series addressing the maintenance support contracts for the Mine Resistant Ambush Protected (MRAP) vehicles. The Assistant Secretary of the Army (Financial Management and Comptroller) and the Executive Director, TACOM Contracting Center, did not respond to the draft report. However, we considered comments from the Commander, Marine Corps Systems Command, who responded on behalf of the Program Manager, Joint Program Office for the Mine Resistant Ambush Protected Vehicles when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. Therefore, we request that the Assistant Secretary of the Army (Financial Management and Comptroller) comment on Recommendation B.1, and the Executive Director, TACOM Contracting Center, comment on Recommendations A.2 and B.2 by March 5, 2011.

If possible, please send a .pdf file containing your comments to audacm@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to 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 black ink, reading "Richard B. Jolliffe".

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Competition Should Be Used for Instructor Services for the Mine Resistant Ambush Protected Vehicles

What We Did

This is the second report in a series addressing the maintenance support contracts for the Mine Resistant Ambush Protected (MRAP) vehicles. We reviewed and evaluated the Army's award of contract W56HZV-09-C-0486 for New Equipment Training instructor services (Instructor Services) for the MRAP vehicles. We determined that the TACOM Contracting Center (TCC) awarded a sole-source, time-and-materials contract for Instructor Services, valued at \$55.5 million, when a competitive, fixed-price contract was a better alternative.

What We Found

TCC officials did not award the most cost-effective type of contract for MRAP vehicle Instructor Services. Specifically, TCC officials inappropriately used an urgent and compelling need to circumvent competition and awarded a sole-source contract to a preferred source on a high-risk time-and-materials basis. This occurred because TCC officials did not adequately plan for competing the procurement and did not assess the historical data of TJ FIG's performance under a prior firm-fixed-price contract. As a result, the contract award may not have provided the best value to the Government.

Further, TCC officials obligated \$23 million for Instructor Services that were not a bona fide need for FY 2009 because TCC officials obligated FY 2009 Operations and Maintenance funds against a 6-month option for services that were not going to be performed until January 2010. The incorrect obligation caused a potential violation of the Antideficiency Act.

What We Recommend

We recommend that the Program Manager, Joint Program Office for the MRAP vehicles, perform an analysis of the current Instructor Services requirements and provide the analysis to TCC for use in awarding future contracts for Instructor Services. We also recommend that the Executive Director, TCC, develop a plan that addresses procedures and milestones for competing follow-on contracts for MRAP Instructor Services and, in addition, perform a review of the contracting officials' actions relating to the circumvention of competition and use of an inappropriate contract type.

We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller) initiate a preliminary review of the potential Antideficiency Act violation for contract W56HZV-09-C-0486. In addition, we recommend that the Executive Director, TCC, develop procedures and train contracting officials on the requirement to treat option periods as separate contracts from base periods when obligating funds for severable services.

Management Comments and Our Response

The Commander, Marine Corps Systems Command, who responded on behalf of the Program Manager, Joint Program Office for the MRAP vehicles, agreed with the recommendation, and the comments were responsive to the intent of the recommendation. We request that the Assistant Secretary of the Army (Financial Management and Comptroller) and the Executive Director, TCC, provide comments in response to this report by March 5, 2011. Please see the recommendations table on the back of this page.

Recommendations Table

| Management | Recommendations Requiring Comment | No Additional Comments Required |
|--|--|--|
| Assistant Secretary of the Army (Financial Management and Comptroller) | B.1.a-c | |
| Program Manager, Joint Program Office for the Mine Resistant Ambush Protected Vehicles | | A.1 |
| Executive Director, TACOM Contracting Center | A.2.a-b and B.2 | |

Please provide comments by March 5, 2011.

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Introduction

Audit Objectives

The overall objective of this series of audits was to determine whether the Mine Resistant Ambush Protected (MRAP) vehicle program and contracting officials were adequately supporting the MRAP vehicle maintenance requirements and appropriately awarding and administering maintenance contracts. During the original audit, we identified issues with the contract awarded to TJ FIG for New Equipment Training (NET) instructor services (Instructor Services). As a result, this audit focuses only on the award of the Instructor Services contract.

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.

This is the second in a series of reports addressing maintenance support for MRAP vehicles. The first report discussed the oversight of Field Services Representatives and NET instructors (Instructors) from the five MRAP original equipment manufacturers (OEMs). For this report, we limited our scope to the award of the Instructor Services contract to TJ FIG. See the Appendix for a discussion of our scope and methodology.

Background on Instructor Services Supporting the MRAP Vehicle Program

MRAP vehicles are multi-mission platforms capable of mitigating the effects of improvised explosive devices, mines, and small arms fire. In November 2006, the Joint Program Office (JPO) for MRAP vehicles (JPO MRAP) was established to manage the acquisition of MRAP vehicles to meet the needs of all of the Services. Marine Corps Systems Command (MCSC) managed the JPO MRAP and MRAP vehicle procurement for all of the Services. A division of the JPO MRAP at TACOM Life Cycle Management Command in Warren, Michigan, manages the logistics supportability strategy to effectively, efficiently, and economically sustain the family of MRAP vehicles.



Source: DefenseImagery.mil and MARCORSYSCOM.usmc.mil

Variants of MRAP Vehicles

New Equipment Training Instructors

In January 2007, MCSC contracting officials awarded a contract to each of the following contractors for MRAP vehicles:

- General Dynamics Land Systems-Canada;
- BAE Systems Tactical Vehicle Systems, LP;
- BAE Systems Land and Armaments, LP;
- Force Protection Industries, Inc.; and
- NaviStar Defense, LLC

To facilitate the sustainment of the MRAP vehicles and because requirements for the MRAP vehicles were new and unfamiliar, MCSC contracting officials procured Instructor Services from the five original MRAP vehicle manufacturers. Specifically, the Instructors were required to:

- provide MRAP vehicle Operator NET and Field-Level Maintainer NET to Service members in the Continental United States (CONUS) and Outside the Continental United States (OCONUS), and
- cross-train other OEM Field Service Representatives, Instructors, mechanics, and Government support personnel at the MRAP University in CONUS.

In February 2008, according to JPO MRAP officials and MCSC officials, there was an urgent need to provide Relief in Place/Transfer of Authority training at Camp Buehring in Kuwait, but the five MRAP contractors could not provide the total requirement for Instructors. To supplement the Instructors procured from the five MRAP contractors, the JPO MRAP officials arranged to obtain additional Instructors from the contractor TJ FIG. An MCSC contracting official stated that after receiving a request from JPO MRAP officials, Force Protection Industries, Inc. (FPII), one of the MRAP OEMs, awarded a firm-fixed-price subcontract to TJ FIG in March 2008 to provide the additional Instructors. Under the subcontract with FPII, MCSC contracting officials ordered 1,010 manmonths¹ of Instructor Services, valued at about \$40 million, from TJ FIG.

On July 31, 2009, upon completion of the FPII subcontract with TJ FIG, the TACOM Contracting Center (TCC) awarded a sole-source contract (W56HZV-09-C-0486) directly to TJ FIG for Instructor Services. The services consisted of furnishing Mobile Training Teams that provided training services, which included Operator NET and Field-Level Maintainer NET at various CONUS and OCONUS locations. The quantity of the Instructor Services was undefinitized with a total obligated amount of about \$55.5 million.

On July 28, 2010, contract W56HZV-09-C-0486 was definitized for approximately \$27.4 million and the remaining \$28.1 million was de-obligated from the contract. For the purpose of this report, we used \$55.5 million, the estimated value of the contract before definitization.

Internal Controls Not Effective for Contracting Practices

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, 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 for the TCC in the procurement of Instructor Services for the MRAP program. The TCC officials did not comply with competition requirements and did not adequately support the use of a time-and-materials (T&M) contract to procure Instructor Services from TJ FIG. In addition, TCC officials did not comply with the Bona Fide Needs Rule and may have violated the Antideficiency Act (ADA). Implementing the recommendations contained in this report should correct the internal control weaknesses we identified. We will provide a copy of the report to the senior official responsible for internal controls in the Department of the Army.

¹A manmonth is a unit of measure that represents one Instructor under contract performing services for 1 month.

Finding A. Questionable Contracting Practices Used to Procure TJ FIG Instructor Services

TCC officials did not use the most cost-effective type of contract to procure MRAP vehicle Instructor Services. Specifically, TCC officials inappropriately used an urgent and compelling need to circumvent competition requirements and awarded a sole-source, high-risk T&M contract, valued at \$55.5 million, to TJ FIG for Instructor Services. This occurred because TCC officials did not adequately plan for competing the procurement and did not assess the historical data of TJ FIG’s performance under a prior firm-fixed-price contract. Also, the award and multiple extensions of the original subcontract with TJ FIG over 17 months demonstrated JPO MRAP’s preference for awarding a contract directly to TJ FIG. As a result, the contract awarded may not have provided the best value and put the Government at risk for higher costs.

Use of a Sole-Source Contract for Instructor Services Based on an Urgent and Compelling Need Decision

TCC awarded a sole-source contract to TJ FIG for Instructor Services even though other sources were available for competition. The contract, awarded on July 31, 2009, was valued at \$55.5 million for a performance period of 6 months with the option to extend it for another 6 months.

TCC awarded a sole-source contract to TJ FIG for Instructor Services even though other sources were available for competition.

The Federal Acquisition Regulation (FAR) Part 6, “Competition Requirements,” requires that contracting officers promote and provide for full and open competition in soliciting offers and awarding Government contracts. If full and open competition is not possible, the contracting officer is required to prepare a sole-source justification for contracting for other than full and open competition.

TCC officials stated that the sole-source award for Instructor Services was based on FAR 6.302-2, “Unusual and Compelling Urgency,” which permits other than full and open competition when unusual and compelling urgency prevents full and open competition. Furthermore, TCC officials stated in the justification and approval (J&A) document that the requirement for training could not be satisfied through full and open competition because the competitive acquisition process would not support the requirement in the short timeframe available for procurement, and delaying the MRAP training acquisition would have had an adverse impact on soldier welfare. However, the limited timeframe was caused by JPO MRAP officials’ failure to plan for competition during the approximate 18-month period between identifying a requirement for training and awarding contract W56HZV-09-C-0486 for Instructor Services. According to an MCSC contracting official, the JPO MRAP requested MCSC contracting officers to obtain TJ FIG’s services by subcontracting through FPIL, so that JPO MRAP officials could complete J&A paperwork needed for a sole-source contract to TJ FIG. In addition,

TCC officials attempted to award a contract for Instructor Services to XMCO, Inc., as an Alaska Native 8(a) set-aside, intending to use TJ FIG as a subcontractor when an initial sole-source award could not be supported.

TCC's award of a sole-source contract to TJ FIG for Instructor Services eliminated the potential savings that may have occurred had multiple contractors competed for the award. The Administrator, Office of Federal Procurement Policy, described the potential benefits of a competitive award in a May 31, 2007, memorandum, which stated that competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results.

Prior Use of TJ FIG as FPII Subcontractor

According to an MCSC contracting official, JPO MRAP officials requested FPII, one of the OEMs that also provided Instructor Services, to subcontract Instructor Services to TJ FIG. The MCSC contracting official also stated that in February 2008, JPO MRAP officials requested that MCSC contracting officials allow TJ FIG to provide Instructors to fill an urgent requirement for training. MCSC contracting officials awarded an order for 30 TJ FIG Instructors under the FPII MRAP contract for a performance period of 3 months. An MCSC contracting official explained that this was done in order to provide JPO MRAP with sufficient time to complete documentation needed to support a sole-source J&A. The subcontract with FPII was extended for an additional 3 months because, according to an MCSC contracting official, JPO MRAP officials did not complete the required J&A paperwork in time to award a contract without a delay in service. An MCSC contracting official stated that JPO MRAP officials did not forward the J&A paperwork to MCSC until July 2008. When the MCSC contracting official was preparing to award a sole-source contract to TJ FIG, the subcontract with FPII was extended twice for 4 additional months. However, MCSC contracting officials were unable to award a sole-source contract to TJ FIG because MCSC legal counsel determined that the J&A was insufficient and that the Instructor Services needed to be competed. According to an MCSC contracting official, in December 2008, MCSC contracting officials forwarded the J&A paperwork to the TCC because they assumed that most of the sustainment efforts for MRAP vehicles were transitioning to the Army. The subcontract with FPII was extended for 6 additional months so that the TCC could award a contract to TJ FIG. In addition, 55 CONUS Instructors from TJ FIG were added to the subcontract for a 6-month performance period. On July 8, 2009, the subcontract with FPII was again extended for an additional month with 41 OCONUS Instructors and 54 CONUS Instructors procured from TJ FIG. The subcontract was extended 5 times for a total performance period extension of 14 months in addition to the 3 months originally ordered.

Unsuccessful Attempt to Award a Sole-Source Contract to XMCO, Inc.

In March 2009, TCC officials attempted to award a contract to XMCO, Inc. as an Alaska Native 8(a) set-aside instead of competing the effort. TCC officials may have intended for XMCO, Inc. to use TJ FIG as a subcontractor. The Training Acquisition Plan required XMCO, Inc. to develop a transition plan to engage and work with TJ FIG, which could have resulted in a prime-subcontractor relationship. Additionally, a JPO MRAP logistics and acquisition requirements specialist confirmed that XMCO, Inc. intended to use TJ FIG as a subcontractor. However, a May 4, 2009, Government Accountability Office (GAO) bid protest decision stopped the contract award to XMCO, Inc. The GAO decision required that before awarding a sole-source contract to an Alaska Native 8(a) set-aside, a contracting activity must determine whether two or more Historically Underutilized Business Zone (HUBZone) small businesses can fill the requirement. If two or more HUBZone small businesses are able to fill the requirement, then the contracting activity must compete the requirement among HUBZone small businesses. TCC officials found that 95 HUBZone small businesses could potentially fill the requirement, and as a result, they could not award a contract to XMCO, Inc.

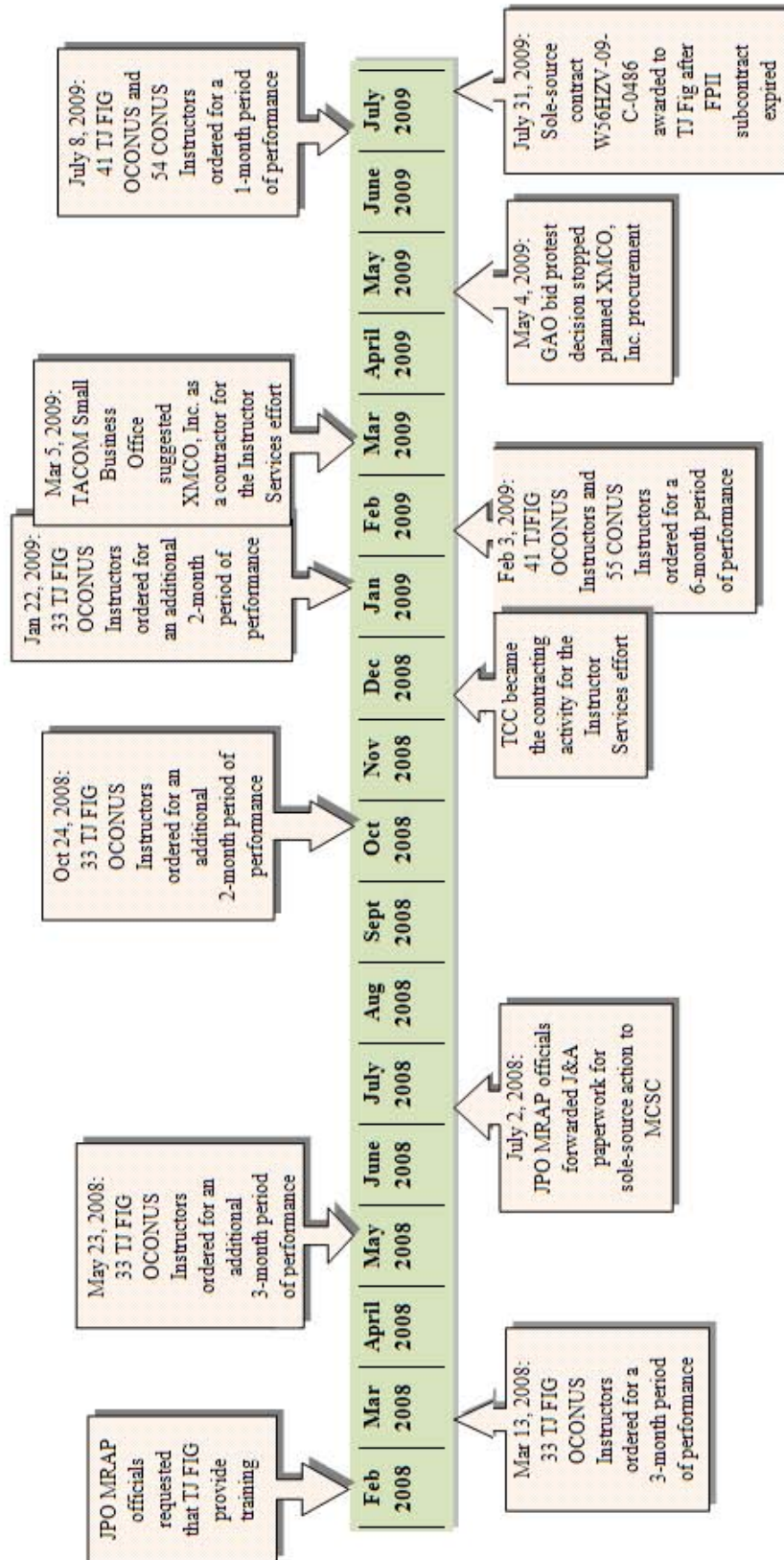
Sole-Source Award Was Based on Compelling Urgency

If JPO MRAP had planned and requested the MCSC Contracting Office or the TCC to compete the effort when the requirement was initially identified in February 2008, there would have been no need for the urgency.

As a result of the GAO decision, TCC officials did not have adequate time to award a contract for Instructor Services competitively. Therefore, on July 31, 2009, TCC officials awarded a sole-source contract to the incumbent subcontractor, TJ FIG, on the basis of unusual and compelling urgency. The \$55.5 million sole-source contract awarded to TJ FIG could have been avoided had the

procurement been properly planned and pursued as a competitive award from the start. If JPO MRAP had planned and requested the MCSC Contracting Office or the TCC to compete the effort when the requirement was initially identified in February 2008, there would have been no need for the urgency. JPO MRAP's preference to award the Instructor Services effort to TJ FIG ultimately generated the unusual and compelling urgency. The following page shows the timeline of events that led to the TCC assuming the responsibility as the contracting activity for the Instructor Services effort, the TCC's attempt to award a contract to XMCO, Inc., and the award of contract W56HZV-09-C-0486 to TJ FIG.

Timeline of Instructor Services Procurement From TJ FIG



Army Officials Inappropriately Awarded a High-Risk, Time-and-Materials Contract

TCC officials did not adequately support the use of a T&M contract for Instructor Services. TCC officials awarded a T&M contract to TJ FIG because they determined that the work performed under the contract could not be established in advance. Specifically, TCC officials stated that the number of vehicles available for training and the number of soldiers that needed to be trained would be too difficult to predict. In addition, the contracting officer stated in the determination and findings that the actual cost of performance could not be estimated with any reasonable degree of confidence at the time of award to permit establishing a firm-fixed-price or cost-reimbursement-type contract. The rationale that the contracting officer provided in the determinations and findings is questionable because the contract awarded to TJ FIG contained specific estimates regarding the number of Instructors needed to provide training, the number of soldiers that needed to be trained, and the number of vehicles needed at each training location. In addition, before TCC officials awarded a prime contract to TJ FIG, the same services were ordered under firm-fixed-price contract line item numbers (CLINs) for the 17 months that TJ FIG performed as a subcontractor to FPPII. Therefore, contracting officials could have used the knowledge obtained from the previous subcontract with TJ FIG through the FPPII contract to define the requirements in enough detail to use a fixed-price contract type.

Estimates Listed in the Contract

According to FAR 16.601(c), a T&M contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. T&M contracts provide no positive profit incentive to the contractor for cost control or labor efficiency.

Additionally, T&M contracts contain fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor. This makes T&M contracts a riskier contract type for the Government because it enables the contractor to earn profit for every additional hour of work performed. The statement of work (SOW) provided estimates for the extent of

T&M contracts provide no positive profit incentive to the contractor for cost control or labor efficiency.

of the work to be performed during the first 90 days of the contract. The SOW stated that approximately 69 and 51 TJ FIG personnel were to be used to perform CONUS and OCONUS training efforts, respectively. In addition, the SOW listed nine CONUS training locations, one training location in Germany, and one training location in Kuwait. The SOW also stated that approximately 400 students would be trained at each of the CONUS locations; 300 students would be trained at the Germany location, and 400 students would be trained per 2-week class at the Kuwait location. The SOW further stated that 12 to 15 vehicles would be needed at each CONUS training location, 40 vehicles were projected to be issued to the Germany location, and 65 vehicles had been issued to the Kuwait location.

Not only did the SOW estimate the number of training locations, students to be trained at each location, and vehicles needed at each location for the first 90 days of contract

performance, the SOW also contained requirements for the Instructors' duty hours for the entire contract. For CONUS Instructors, the SOW required the normal duty week of 5 days, 10 hours a day, with an option of 10 additional hours if directed by the Government. For OCONUS Instructors, the SOW required a duty week of 7 days, 12 hours a day.

In addition to the estimates and duty hour requirements in the contract, the JPO also received guidance from the Army Forces Command in the form of a memorandum, "PDTE² MRAP," which detailed the number of MRAP vehicles to be distributed at various CONUS locations. The Army Forces Command guidance stated that 644 MRAP vehicles were to be assimilated into the CONUS training base in 2009. The Army Forces Command guidance also identified the locations that would receive MRAP vehicles and the number of MRAP vehicles that would be provided to each identified location.

Even if the estimates had not been included in the contract, TCC officials still should have considered the prior fixed-price work experience when making the contract type decision. FAR 16.104(d) states that complex requirements usually result in greater risk to the Government. As a requirement recurs or as production begins, the cost risk should shift to the contractor and a fixed-price contract should be considered. Because contract W56HZV-09-C-0486 was awarded pursuant to the subcontract with FPII that provided similar services, the requirements for TJ FIG's Instructor Services were recurring in nature. Therefore, TCC officials should have considered a fixed-price contract when awarding contract W56HZV-09-C-0486 to TJ FIG. When we discussed this issue with TCC officials, they stated that they had considered the use of a fixed-price contract before awarding contract W56HZV-09-C-0486. However, TCC officials could not provide any documentation supporting their assertion that they had considered a fixed-price contract for this sole-source award to TJ FIG.

Training Services Previously Ordered Under a Firm-Fixed Price Contract

TCC officials could also estimate the work as evidenced by the subcontract with TJ FIG through FPII MRAP vehicle contract M67854-07-D-5031. MCSC contracting officials ordered Instructor Services, valued at approximately \$39.6 million, from TJ FIG for 17 months, using the firm-fixed-price CLINs under the FPII MRAP vehicle contract. If more Instructors were needed than originally ordered, MCSC contracting officials could modify the delivery order by incorporating the instructor increase into the existing CLIN for the Instructors. For example, MCSC contracting officials used CLIN 2000 to initially order 90 manmonths of Instructor Services. When the additional requirement of 9 manmonths arose, MCSC contracting officials placed the increased requirement against CLIN 2000 for a total of 99 manmonths. Furthermore, if the Instructors' performance period needed to be extended, then MCSC contracting officials created a new CLIN for the extension period. For example, when the subcontract was extended from June 30, 2009, to July 31, 2009, MCSC contracting officials added CLIN 2007 to the contract in

² PDTE is an acronym for pre-deployment training equipment.

order to obtain an additional 41 manmonths of Instructor Services. In our opinion, TCC officials could have reasonably used similar contracting methods when they ordered Instructor Services from TJ FIG.

Summary

Although TJ FIG was the incumbent subcontractor under a prime contract providing Instructor Services in CONUS and Kuwait, TCC officials should have competed the effort when awarding a prime contract to TJ FIG. TCC officials used the basis of unusual and compelling urgency to award contract W56HZV-09-C-0486 as a sole-source contract; however, the unusual and compelling urgency was caused by JPO MRAP's delays in trying to continue to award the Instructor Services effort to TJ FIG. Additionally, TCC officials should not have awarded contract W56HZV-09-C-0486 as a T&M contract because information pertaining to the extent of work required was available. Specifically, the contract included the estimated number of soldiers that were expected to be trained and the vehicles required at each training location. Further, TJ FIG was the incumbent subcontractor who provided the same services under firm-fixed-price CLINs to JPO MRAP through the FPII MRAP vehicle contract. TCC officials should have exercised more diligence and professional care in performing their duties as contracting officials.

Management Actions

JPO MRAP officials made a recommendation to the TCC to procure follow-on Instructor Services through competition among small businesses. TCC officials coordinated with the TACOM Small Business Office to facilitate a small business 8(a) set-aside competition. However, current actions indicate that the TCC has not taken adequate steps to compete the effort for Instructors. Specifically, on July 28, 2010, TCC officials extended the sole-source contract W56HZV-09-C-0486 for an additional 5 months with an option for another 7 months. We question the need for a 5-month extension plus an option when TCC should have started planning to compete a follow-on contract in July 2009 after contract W56HZV-09-C-0486 was awarded. The Under Secretary of Defense for Acquisition, Technology, and Logistics signed a June 28, 2010, memorandum that provides a framework for restoring affordability to the DoD's purchases of goods and services. The framework calls for the support of a continuous competitive environment and the phase-out of T&M type contracts. By extending contract W56HZV-09-C-0486, TCC officials did not take appropriate actions to execute the direction of the Under Secretary of Defense for Acquisition, Technology, and Logistics for restoring affordability in Defense spending.

Recommendations, Management Comments, and Our Response

A.1. We recommend that the Program Manager, Joint Program Office for the Mine Resistant Ambush Protected Vehicles, perform an analysis of the current instructor service requirements and provide the analysis to the TACOM Contracting Center for use in awarding future contracts for Instructor Services.

Commander, Marine Corps Systems Command Comments

The Commander, MCSC, responded on behalf of the Program Manager, JPO MRAP. The Commander, MCSC, agreed, stating that the Program Manager, JPO MRAP, was performing an analysis of the Instructor Service requirements and would provide the results of the analysis to the TCC. He further stated that the JPO MRAP and the TCC have coordinated efforts to pursue competition for Instructor Services, and the projected contract award date is June 2011.

Our Response

The comments were responsive, and no further comments are required.

A.2. We recommend that the Executive Director, TACOM Contracting Center:

a. Develop a plan that addresses procedures for seeking, promoting, and sustaining competition for follow-on contracts for Mine Resistant Ambush Protected vehicle Instructor Services. The plan should also provide specific milestones for competing future contracts for Instructor Services.

b. Perform a review of the contracting officials actions relating to the circumvention of competition and use of an inappropriate contract type for the procurement of the Instructor Services for the Mine Resistant Ambush Protected Vehicle program, and initiate, as appropriate, any administrative actions warranted by the review.

Management Comments Required

We granted the U.S. Army Materiel Command an extension to the date by which we needed to receive comments. Despite the extension, the U.S. Army Materiel Command did not provide comments to the draft report.

Finding B. Violation of the Bona Fide Needs Rule and Potential Violation of the Antideficiency Act

TCC officials obligated \$23 million for Instructor Services that were not a bona fide need for FY 2009. TCC officials did not meet the Bona Fide Needs Rule because they obligated FY 2009 Operations and Maintenance (O&M) funds for a 6-month option period award that did not begin until January 2010. Obligating the FY 2009 funds for the option work to be performed in FY 2010 resulted in a potential ADA violation.

Noncompliance With the Bona Fide Needs Rule

TCC officials obligated \$23 million in FY 2009 O&M funds for Instructor Services procured from TJ FIG that were not a bona fide need for that year. According to the Bona Fide Needs rule as defined by section 1502, title 31, United States Code, “Balances Available,” the balance of an appropriation or fund limited for obligation to a definite period is available only for the payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. The appropriation or fund is not available for expenditure beyond the period unless authorized by law. However, an exception exists for contracts that procure severable services that extend across fiscal years.

The contract awarded to TJ FIG was an undefinitized contractual action with an obligated value of approximately \$27.2 million and a ceiling price of approximately \$55.5 million. Of the \$27.2 million, TCC officials obligated approximately \$15.9 million against the

Consequently, TCC officials obligated \$23 million in FY 2009 O&M funds for a contract option that had a period of performance from January 2010 through July 2010.

6-month base period CLINs that had a period of performance from July 2009 to December 2009 and \$11.3 million against a 6-month option period CLIN that had a period of performance from January 2010 to July 2010. The option period CLIN was exercised on July 31, 2009, the date the base contract was awarded. TCC officials obligated the \$27.2 million of FY 2009 O&M funds in accordance with Defense

Federal Acquisition Regulation Supplement (DFARS) 217.7404-4(a) “Limitations on Obligations,” which limits obligations to no more than 50 percent of the not-to-exceed price before definitization. In September 2009, the \$27.2 million obligated value was increased to \$55.5 million after the Acting Assistant Secretary of the Army (Acquisition, Logistics, and Technology) waived the limitations in accordance with DFARS 217.7404-5(b)(1), which states that the head of an agency may waive limitations for undefinitized contractual actions if the head of the agency determines that the waiver is necessary to support a contingency operation. However, the purpose of the waiver was to use funds that were to expire in FY 2009 for undefinitized contractual actions. As a result, TCC officials increased the original \$11.3 million obligation for the option period CLIN by an additional \$11.7 million for a total obligation of \$23 million. Consequently, TCC officials obligated \$23 million in FY 2009 O&M funds for a contract option that had a period of performance from January 2010 through July 2010. As such, the

Instructor Services obtained under the option CLIN could not have been a bona fide need for FY 2009.

Severable Services Crossing Fiscal Years

Severable services are defined as services that are continuing and recurring in nature. Additionally services are considered severable if they can be divided into components that independently meet an agency's needs. An agency realizes the benefit of severable services at the time they are provided even though the contract has not been performed to completion. Examples of severable services include lawn maintenance, janitorial, and security services. TJ FIG provided training that consisted of individual 40-hour sessions for each class, and Instructors were deployed to training sites to provide the 40-hour sessions whenever the need arose for soldiers to be trained. Therefore, the training services would be considered severable services.

An exception to the Bona Fide Needs Rule exists for contracts ordering severable services that cross fiscal years. Section 2410a, title 10, United States Code, "Contracts for Periods Crossing Fiscal Years: Severable Services Contracts; Leases of Real or Personal Property," allows for contracts that procure severable services that cross fiscal years to be financed through funding available during the year the contract was awarded, as long as the contract period does not exceed one year. Although contract W56HZV-09-0486 procured severable services with a period of performance that began in FY 2009 and ended in FY 2010, the exception would apply only to the base period CLINs and not the option period CLIN that began in FY 2010. Defense Finance Accounting Service Regulation 37-1, chapter 8, "Obligation Management," states that option years are treated as new contracts; therefore, when a severable service contract has renewal options, funds are obligated only for the basic period. TCC should not have obligated FY 2009 O&M funds for the option CLIN on contract W56HZV-09-C-0486 because the period of performance for the option CLIN did not begin until January 2010. Therefore, the bona fide need existed in FY 2010, not FY 2009, and TCC officials had no basis for obligating the \$23 million of FY 2009 O&M funds.

The acquisition strategy for contract W56HZV-09-C-0486 stated that the contract was awarded with an option period because JPO MRAP calendar year funding constraints necessitated the award of the action in two parts. TCC officials explained that the contract was initially established with an option period because only the first 6 months of funding was available. However, the remainder of the funding became available immediately before the award date, and as a result, TCC officials awarded the option at the same time as the base contract. When we asked why the option period remained on the contract, TCC officials stated that the option period remained on the contract to show that the CLIN ordered was originally established as an option. This noncompliance with the Bona Fide Needs Rule may lead to a potential ADA violation. DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 2, states that the ADA prohibits obligations and expenditures in excess of or before an appropriation and is the primary foundation for the administrative control of funds.

Management Actions

After we informed TCC officials of the Bona Fide Needs Rule violation that could result in an ADA violation, they modified contract W56HZV-09-C-0486. On July 16, 2010, TCC officials modified the contract to extend the original 6-month period of performance (July 2009 to December 2009) for an additional 6 months. JPO MRAP and TCC officials asserted that it was always the intention to award a contract to TJ FIG for 12 months of services as referenced throughout the contract including contract sections B, F, and I. The contract option was established only for funding purposes. In addition, TCC officials modified the 6-month option period CLIN (CLIN 0002AA) that originally covered Instructor Services from January to July 2010 to be used only for materials, travel, and other direct costs.

JPO MRAP and TCC officials may have intended for contract W56HZV-09-C-0486 to be a 12-month contract, but the contract was constructed to include a 6-month base period and a 6-month option period as illustrated by various sections of the contract. Contract W56HZV-09-C-0486, awarded on July 31, 2009, includes the following language regarding period of performance.

- Section A, Executive Summary, paragraph 1.1 states:

This contract has a period of performance of six (6) months with the option to extend for another six (6) months. The total period of performance to include the option is one (1) year.

- Section B, Supplies or Services and Prices/Costs, contains CLIN information including performance completion date of July 31, 2010, for each CLIN listed.
- Section C, Statement of Work, paragraph C.5, Period of Performance, states that “Base Period Effort is July 2009 – December 2009, and Option Period is January 2010 – July 2010.”
- Section F, Deliveries or Performance, paragraph F.1.1, Period of Performance, states:

The period of performance for this contract is six (6) months with the option to extend for another six (6) months. The total period of performance including the option is twelve (12) months.

- Section I, Contract Clauses, Option paragraph states:

Based on the exercise by the Government of the option described in CLIN 0002AA above, the term of this contract shall be 12 months ending on the performance completion date stated above at CLINS 0001AA, 0001AB, and 0002AA.

Various sections of the contract may have referred to a 12-month performance, but the 12-month performance was used in the context of the total period of performance of the 6-month base period with the 6-month option exercised. In addition, though the 6-month

option was exercised at the time the base contract was awarded, the exercise of the option did not constitute one continuous contract for 12 months. An option period is considered a separate contract action. Because TCC officials did not award the contract as a 12-month contract or modify the contract to remove the option period before the base period expired, the intentions of JPO MRAP and TCC officials bear no legal substance.

Furthermore, the TCC's action to modify the original 6-month period of performance almost 7 months after the period ended was not appropriate and did not eliminate the Bona Fide Needs Rule violation that resulted in a potential ADA violation. The base period constituted a separate contract from the option period; and therefore, TCC officials did not have the legal authority to modify the base contract because it no longer existed.

Recommendations, Management Comments, and Our Response

B.1. We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller):

a. Initiate a preliminary review of the potential \$23 million Antideficiency Act violation on contract W56HZV-09-C-0486.

b. Comply with the reporting requirement in DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 2, "Administrative Control of Funds and Antideficiency Act Violations," if any violations occurred.

c. Provide a copy of the preliminary review report and the final investigation report to the Department of Defense Office of Inspector General.

Management Comments Required

We did not receive comments from the Assistant Secretary of the Army (Financial Management and Comptroller) on the draft report.

B.2. We recommend that the Executive Director, TACOM Contracting Center, develop procedures and train contracting officials on the requirement to treat option periods as separate contracts from base periods when obligating funds for severable service contracts as required by Defense Finance and Accounting Service Regulation 37-1, chapter 8, "Obligation Management."

Management Comments Required

We granted the U.S. Army Materiel Command an extension to the date by which we needed to receive comments. Despite the extension, the U.S. Army Materiel Command did not provide comments to the draft report.

Appendix. Scope and Methodology

We conducted this performance audit from December 2009 through November 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We collected, reviewed, and analyzed documents that were dated from November 2006 through July 2010. Specifically, we reviewed the FPII subcontract to TJ FIG, contract W56HZW-09-C-0486 and its modifications, the TJ FIG justification and approval, the determination and findings to use a T&M contract, and the quality assurance surveillance plan.

We reviewed applicable contracting regulations including the FAR and the DFARS. We interviewed contracting and program office personnel from the Joint Program Offices at Marine Corps System Command and TACOM Life Cycle Management Command. We also went to Kuwait in July 2009 to perform fieldwork for the first of the series of MRAP audits. In Kuwait, we visited Camp Buehring. While in Kuwait, we interviewed TJ FIG personnel. We limited the scope of this audit to include only TJ FIG Instructors.

Use of Computer-Processed Data

We relied on computer-processed data from the Electronic Document Access Web site. Electronic Document Access is a web-based system that provides online access to acquisition-related documents. We used these documents to evaluate the contracts to TJ FIG for Instructor Services and to determine the number of TJ FIG Instructors ordered under the subcontract with FPII. We compared our analysis of the contracts with data provided by the contracting office to verify the number of TJ FIG Instructors ordered. From these procedures, we are confident that the Electronic Document Access Web site was sufficiently reliable for the purpose of acquiring contract documents for our analysis of TJ FIG Instructors.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the DoD Inspector General (DoD IG), and the U.S. Army Audit Agency (AAA) have issued five reports discussing the MRAP vehicles. Unrestricted GAO reports can be assessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted AAA reports can be found at <http://www.aaa.army.mil/reports.htm>.

GAO

GAO Report No. GAO-08-884R, "Rapid Acquisition of Mine Resistant Ambush Protected Vehicles," July 15, 2008

DoD IG

DoD IG Report No. D-2010-068, "Government Oversight of Field Service Representative and Instructor Services in Support of the Mine Resistant Ambush Protected Vehicle Program," June 17, 2010

DoD IG Report No. D-2009-046, "Procurement and Delivery of Joint Service Armor Protected Vehicles," January 29, 2009

DoD IG Report No. D-2007-107, "Procurement Policy for Armored Vehicles," June 27, 2007

AAA

AAA Report No. A-2009-0221-ALA, "Effect of Mine Resistant Ambush Protected Vehicle Upon Tactical Vehicle System Requirements," September 21, 2009

Department of the Navy Comments



THE ASSISTANT SECRETARY OF THE NAVY

(RESEARCH, DEVELOPMENT AND ACQUISITION)

1000 NAVY PENTAGON

WASHINGTON DC 20350-1000

JAN 04 2011

MEMORANDUM FOR DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Department of Defense Inspector General (DoDIG) Draft Report D2009-D000CK-0100.001, "Competition Should Be Used for Instructor Services for the Mine Resistant Ambush Protected Vehicles"

The Department of the Navy (DoN) has reviewed the DoDIG Draft Report D2009-D000CK-0100.001 and agrees with DoDIG's recommendation A.1. The Marine Corps has already taken action based on this recommendation to ensure that future contracting actions related to Instructor Services be awarded competitively.

The DoN has no comments for recommendations A.2, B.1 or B.2. The responses to those recommendations should be provided by the US Army.

A handwritten signature in black ink, appearing to read "SJS", is positioned above the name Sean J. Stackley.

Sean J. Stackley

Attachments:
As stated

U.S. Marine Corps Systems Command Comments



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:

7500
RFR-80
22 Dec 10

From: Commandant of the Marine Corps (RFR)
To: Assistant Secretary of the Navy, Research, Development
and Acquisition (RD&A)

Subj: HEADQUARTERS, U. S. MARINE CORPS OFFICIAL COMMENTS TO
DEPARTMENT OF DEFENSE INSPECTOR GENERAL DRAFT AUDIT
REPORT D2009-D000CK-0100.001, "COMPETITION SHOULD BE USED
FOR INSTRUCTOR SERVICES FOR THE MINE RESISTENT AMBUSH
PROTECTED VEHICLES," DATED NOVEMBER 22, 2010

Ref: (a) DODIG memo of November 22, 2010

Encl: (1) Marine Corps Official Comments

1. Reference (a) requested a review and comments to the subject DODIG draft audit report. Official comments are provided at the enclosure.

2. Enclosure (1) was coordinated with Headquarters, U. S. Marine Corps, Programs and Resources Department; the Marine Corps Systems Command; the Joint Program Office for the Mine Resistant Ambush Protected Vehicles; Counsel for the Commandant; and the Office of the Assistant Secretary of the Navy, Financial Management and Comptroller.

3. A follow-on implementation status report on Marine Corps actions taken in response to DODIG audit recommendation A.1 will be provided by 30 June 2011.

4. Point of contact for this matter is [REDACTED],
Headquarters, U. S. Marine Corps Senior Audit Liaison Officer,
email [REDACTED] or phone [REDACTED]
[REDACTED]

A handwritten signature in cursive script, appearing to read "C. K. Dove", is located above the typed name.

C. K. DOVE
By direction

Copy to:
NAVINGEN (N4)



UNITED STATES MARINE CORPS
MARINE CORPS SYSTEMS COMMAND
2200 LESTER ST
QUANTICO, VIRGINIA 22134-6050

IN REPLY REFER TO:
DFM
23 Dec 10

From: Commander, Marine Corps Systems Command
To: Deputy Commandant for Programs and Resources,
Fiscal Division Audit and Review Branch

Subj: COMMENTS ON DODIG DRAFT REPORT DATED NOVEMBER 22, 2010
(D2009-D000CK-0100.001) "COMPETITION SHOULD BE USED FOR
INSTRUCTOR SERVICES FOR THE MINE RESISTANT AMBUSH
PROTECTED VEHICLES"

Ref: (a) DODIG Draft Report dated November 22, 2010 (D2009-
D000CK-0100.001) "Competition should be used for
Instructor Services for the Mine Resistant Ambush
Protected Vehicles"

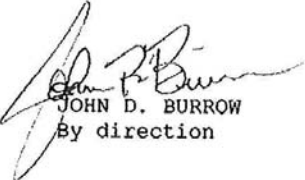
1. The following provides Marine Corps Systems Command (MCSC)
comments on the reference:

a. DODIG RECOMMENDATION A.1. DODIG recommends that the
Program Manager, Joint Program Office for the Mine Resistant
Ambush Protected Vehicles, perform an analysis of the current
instructor service requirements and provide the analysis to
the TACOM Contracting Center (TCC) for use in awarding future
contracts for Instructor Services.

USMC RESPONSE: Concur.

The Joint Program Office for the Mine Resistant Ambush
Protected Vehicles (JPO MRAP), Program Manager is performing
an analysis of the instructor service requirements and will
provide the results to TCC upon its completion. Additionally,
JPO MRAP is pursuing competition for instructor services and
has been working hand-in-hand with the TCC on this action.
Acquisition documentation is currently being reviewed by legal
and we anticipate a competitive solicitation issued in January
2011 with a projected award date of June 2011.

2. Any questions, please contact [REDACTED] at
[REDACTED].


JOHN D. BURROW
By direction



Inspector General Department of Defense