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Inspector General
United States
Department of Defense

Army Contracting Command-Redstone Arsenal's Management of Undefinitized Contractual Actions Could be Improved

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Acronyms and Abbreviations

ACC-RSA	Army Contracting Command-Redstone Arsenal
AMCOM	Army Aviation and Missile Command
DCAA	Defense Contract Audit Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DPAP	Defense Procurement and Acquisition Policy
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GAO	Government Accountability Office
IG	Inspector General
PNM	Price Negotiation Memorandum
UCA	Undefinitized Contractual Action
U.S.C.	United States Code

INSPECTOR GENERAL
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August 12, 2011

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/ CHIEF FINANCIAL OFFICER
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Army Contracting Command-Redstone Arsenal's Management of Undefinitized Contractual Actions Could Be Improved (Report No. D-2011-097)

We are providing this report for your information and use. We considered management comments on a draft of this report when preparing the final report. This report is the fifth in a series of reports and is part of a congressionally mandated periodic review of DoD use of undefinitized contractual actions. Army Contracting Command-Redstone Arsenal contracting personnel did not consistently comply with statutory and DoD requirements for managing undefinitized contractual actions, resulting in the Army assuming additional risk in the award and negotiation process and possibly paying more profit than necessary.

The comments from the Chief of Staff, Army Aviation and Missile Command, conformed to the requirements of DoD 7650.3. Therefore, no additional comments are required.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9071 (DSN 664-9071).

Bruce Burton
Deputy Assistant Inspector General
Acquisition and Contract Management

Results in Brief: Army Contracting Command-Redstone Arsenal's Management of Undefinitized Contractual Actions Could Be Improved

What We Did

Public Law 99-591, section 908(b) requires the DoD Inspector General to periodically audit undefinitized contractual actions (UCAs) and submit a report to Congress. This is the fifth in a series of reports discussing DoD compliance with section 2326, title 10, United States Code.

We reviewed 43 UCAs with a total not-to-exceed value of about $3.1 billion awarded by the Army Contracting Command-Redstone Arsenal (ACC-RSA) from FY 2004 through September 18, 2009, to determine whether ACC-RSA contracting personnel complied with the restrictions of the United States Code and whether they appropriately justified and definitized UCAs at reasonable prices.

What We Found

ACC-RSA contracting personnel did not consistently comply with statutory and DoD requirements for managing UCAs for 40 of the 43 UCAs that we reviewed. ACC-RSA contracting personnel did not:

- definitize 16 UCAs within the 180-day time frame because of inadequate contractor proposals, prolonged negotiations, and changing Government requirements;
- reflect the contractor's reduced risk in the Government's negotiation position for 7 UCAs because they did not follow applicable guidance;
- adequately support their profit determination for 22 UCAs because they did not adequately document their consideration of reduced cost risk or the inputs used to create the profit objective;
- obligate funds within allowable limits for 2 UCAs because they miscalculated the obligation amount and decreased the not-to-exceed value without adjusting the amount obligated;
- obligate funds in accordance with the contractor's funding requirements for 7 UCAs because they did not take steps to comply with the Office of Defense Procurement and Acquisition Policy requirements for obligating funds; and
- properly justify using 3 UCAs because of poor acquisition planning.

ACC-RSA contracting personnel properly authorized UCA requests and adequately documented their determination of price reasonableness for all 43 UCAs.

As a result, ACC-RSA contracting personnel's negotiation positions on price did not consider incurred costs for three UCAs, resulting in profit positions that were about $800,000 higher than they would have been had incurred cost been considered. Therefore, the Government may have paid more profit than was necessary.

What We Recommend

Army contracting personnel should comply with Federal and DoD policy for UCAs, better coordinate with customers to identify changes in Government requirements, and should revise local acquisition guidance to include procedures for escalating prolonged negotiations and to require contracting personnel to adequately document the profit determination for UCAs.

Management Comments and Our Response

The Chief of Staff, Army Aviation and Missile Command, agreed with our recommendations and provided responsive comments on the recommendations. No further comments are required. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commanding General, Army Aviation and Missile Command		1.
Principal Assistant Responsible for Contracting, Army Contracting Command-Redstone Arsenal		2.a-f

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Introduction

Audit Objectives

We determined Army Contracting Command-Redstone Arsenal (ACC-RSA) compliance with restrictions on undefinitized contractual actions (UCAs) imposed by section 2326, title 10, United States Code (10 U.S.C. § 2326 [2009]), "Undefinitized contractual actions: restrictions." We also determined whether UCAs were appropriately justified and definitized at reasonable prices. This is the fifth in a series of reports discussing DoD compliance with 10 U.S.C. § 2326 (2009). See Appendix A for the scope and methodology and prior coverage related to the objectives.

Legislation and Congressional Report Requirement

The DoD Inspector General (IG) is required by Public Law 99-591, "Continuing Appropriations for Fiscal Year 1987," section 908(b), to periodically conduct audits of UCAs. DoD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004, was our last audit before beginning this series of UCA audits. Section 908 (b) of Public Law 99-591, "Requirements Relating to Undefinitized Contractual Actions," states:

> (b) Oversight by Inspector General.—The Inspector General of the Department of Defense shall—
>
> (1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and
>
> (2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

Background on Undefinitized Contractual Actions

UCAs are agreements that allow a contractor to begin work and incur costs before the Government and the contractor have reached a final agreement on contract terms, specifications, or price. Contracting officers should use UCAs only when the negotiation of a definitive contractual action is not possible in sufficient time to meet the Government's requirement. The Government's requirement must also demand that the contractor be given a binding commitment so that contract performance can begin immediately.

UCA Restrictions

Section 2326, title 10, United States Code, requires that the request to issue a UCA be sent to the head of an agency, contain the anticipated impact on agency requirements if a UCA is not used, and establish limitations on the obligation of funds, on the definitization of terms, and on the allowable profit for UCAs. The Government limits the use of UCAs because these contracts place the Government at a distinct disadvantage in negotiating final prices.

UCAs for foreign military sales, purchases that do not exceed the simplified acquisition threshold, special access programs, and congressionally mandated long-lead procurement contracts are not subject to compliance with 10 U.S.C. § 2326, but must comply with Defense Federal Acquisition Regulation Supplement (DFARS) 217.74, "Undefinitized Contract Actions," to the maximum extent practicable. Both 10 U.S.C. § 2326 and the DFARS provide additional restrictions for the approval, definitization, obligation of funds, and determination of allowable contractor profit.

Specifically, we reviewed the following four areas to determine whether UCAs issued by ACC-RSA contracting personnel were in compliance.

- Authorization to use a UCA: We evaluated whether contracting personnel issued UCAs only after obtaining proper authorization. Additionally, we reviewed the requests to issue a UCA to verify that the requests adequately address potential adverse impacts on agency requirements if a UCA was not issued.

- Contract definitization: We evaluated whether ACC-RSA personnel definitized UCAs within the 180-day time limit.

- Allowable profit: We evaluated whether ACC-RSA contracting personnel's determination of contractor profit reflected the work performed during the undefinitized period.

- Compliance with obligation limitations: We evaluated whether ACC-RSA contracting personnel obligated funding within allowable amounts.

We also reviewed UCAs to determine whether ACC-RSA personnel appropriately justified the need to use a UCA and whether ACC-RSA personnel adequately documented that the UCAs were definitized at fair and reasonable prices. In addition, we reviewed UCAs issued after August 2008 to determine whether ACC-RSA personnel obligated funds according to the requirements stated in the Office of Defense Procurement and Acquisition Policy (DPAP) memorandum, "Management Oversight of Undefinitized Contract Actions," August 29, 2008, (August 2008 DPAP memorandum).

Enhanced Reporting Requirements

DPAP issued the August 2008 DPAP memorandum requiring semiannual reporting of DoD UCA usage for actions with an estimated value of more than $5 million. See Appendix B for a copy of the memorandum. DPAP introduced the enhanced reporting requirement in response to the Government Accountability Office (GAO) Report No. GAO-07-559, "Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met," June 19, 2007, and Public Law 110-181, "The National Defense Authorization Act for Fiscal Year 2008," section 809, "Implementation and Enforcement of Requirements Applicable to Undefinitized Contractual Actions."

DFARS Case Rulings

The 2007 GAO audit report resulted in DFARS Case 2007-D011, which clarified that, in accordance with 10 U.S.C. § 2326, DFARS 217.74 provides the criteria (not Federal Acquisition Regulation [FAR] 16.603-2, "Application") for planning the definitization schedule for a letter contract.[1] DFARS Case 2008-D034 expanded the definition of "contract action" in DFARS 217.74 to include change orders and other un-priced modifications. Previously, change orders and other un-priced modifications adhered to guidance to the maximum extent practicable.

ACC-RSA

In 2007, the Secretary of the Army formed an independent commission on Army Acquisition and Program Management in Expeditionary Operations, also known as the Gansler Commission, to review recent lessons learned and to recommend ways to improve future military operations. In compliance with these recommendations, on October 1, 2008, the Army recognized Army Contracting Command as a major subordinate command of Army Materiel Command. This new Army organization was created to perform the majority of contracting work for the U.S. Army. ACC-RSA is responsible for contracting for Army Aviation and Missile Command (AMCOM).

AMCOM's mission is to provide sustainment support to joint warfighters and allies ensuring aviation and missile system readiness with seamless transition to combat operations; support program executive officers and project managers to enable the development, acquisition, and fielding of aviation and missile systems; and to ensure the integration of aviation and missile technology for sustainment. AMCOM develops, acquires, fields, and sustains aviation, missile, and unmanned vehicle systems.

ACC-RSA UCA Usage (FY 2004—September 18, 2009)

We selected a nonstatistical sample[2] of 30 contracts that included 43 UCAs issued by ACC-RSA contracting personnel during FY 2004 through September 18, 2009, with a total not-to-exceed dollar value of about $3.1 billion. We initially identified letter contracts through queries of the Federal Procurement Data System-Next Generation (FPDS-NG). We excluded letter contracts related to foreign military sales, congressionally mandated long-lead procurements, or change orders after identifying UCAs in FPDS-NG. We requested, and ACC-RSA contracting personnel provided, a list of UCAs issued from FY 2004 through September 18, 2009, from which we selected additional UCAs. See Appendix C for a list of UCAs reviewed. Table 1 lists the type of contract, number of contracts, the number of UCAs, and the total not-to-exceed dollar value of the UCAs that we reviewed.

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[1] A letter contract is a written preliminary contractual instrument that allows a contractor to start work before the finalization of the contract terms.

[2] A nonstatistical sample does not generalize to universe; therefore, audit results should not be projected across all ACC-RSA UCAs.

Table 1. Nonstatistical Sample of ACC-RSA UCAs
FY 2004–September 18, 2009

Type of Contract	Number of Contracts	Number of UCAs	Not-to-Exceed Dollar Value
Letter Contracts	27	37	$3,006,137,657
Indefinite-Delivery, Indefinite-Quantity Contracts	2	4	18,733,961
Basic Ordering Agreement	1	2	64,000,000
Totals	**30**	**43**	**$3,088,871,618**

Review of Internal Controls at ACC-RSA

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 in ACC-RSA's management of UCAs. Specifically, ACC-RSA contracting personnel did not definitize UCAs within allowable time frames and did not adequately document how costs incurred during the undefinitized period impacted the contractor's profit. As a result, delays in definitizing contracts may have weakened ACC-RSA's position in price negotiations and increased the cost to the Government. Additionally, ACC-RSA contracting personnel did not adequately document allowable profit, which may have resulted in excess profit. We will provide a copy of the report to the senior officials responsible for internal controls at ACC-RSA.

Finding. Inconsistent Management of Undefinitized Contractual Actions at ACC-RSA

ACC-RSA personnel did not consistently comply with statutory and DoD requirements for managing 40 of 43 UCAs we reviewed. For the 40 UCAs, valued at about $2 billion, ACC-RSA contracting personnel did not:

- definitize 16 UCAs within the 180-day time frame because contractors submitted inadequate proposals, Government and contractor personnel conducted prolonged contract negotiations, and Government requirements changed;
- reflect the contractor's reduced risk in the Government's negotiation position on profit for 7 UCAs because they did not follow applicable guidance;
- adequately support whether the reduced risk during the undefinitized period was reflected in profit on 22 UCAs because they prepared DD Forms 1547, "Record of Weighted Guidelines Application," and price negotiation memoranda (PNM) that did not provide sufficient detail that would allow an independent party to determine the basis for profit determination;
- obligate funds within allowable limits for 2 UCAs because they miscalculated the allowable obligation amount, and they decreased the not-to-exceed value without adjusting the amount obligated;
- improperly obligated the maximum permissible funding before definitization for 7 of 9 UCAs issued after the August 2008 DPAP memorandum because they did not take steps to implement the requirements of the August 2008 DPAP memorandum; and
- properly justify using 3 UCAs because of poor acquisition planning.

ACC-RSA contracting personnel prepared adequate authorization requests and adequately documented their determination of price reasonableness for all 43 UCAs.

As a result, ACC-RSA contracting personnel's noncompliance with applicable guidance and lack of consideration for incurred cost may have resulted in the Government paying more profit than was necessary. Additionally, ACC-RSA price negotiation positions were about $800,000 higher for three UCAs because ACC-RSA contracting personnel did not consider incurred cost when developing profit positions.

UCA Deficiencies

Our review of 43 UCAs issued by ACC-RSA contracting personnel identified 57 total deficiencies. Some UCAs had more than one deficiency. UCA deficiencies consisted of six different types: untimely definitization, failure to reflect contractor's reduced cost risk in negotiated profit, insufficient support of negotiated profit rate, obligating funds in excess of the allowable amounts, funds not obligated in accordance with requirements outlined in the 2008 DPAP memorandum, and improper use of a UCA. See Appendix D for further details of the deficiencies. Table 2 identifies the reasons the UCAs were deficient.

Table 2. Reasons 40 UCAs Issued Were Deficient

Deficiency Reason	Number of Instances*
Untimely contract definitization	16
Did not reflect the contractor's reduced risk during the undefinitized period in negotiated profit	7
Did not support whether the reduced risk during the undefinitized period was reflected in profit	22
Obligation of funds in excess of allowable amounts	2
Obligation of funds in accordance with 2008 DPAP memorandum	7
Improper justification to issue a UCA	3
Total	**57**

*A UCA may have more than one deficiency.

ACC-RSA Contracting Personnel Properly Authorized UCA Requests

ACC-RSA contracting personnel obtained proper authorization before issuing UCAs for all 43 UCAs. ACC-RSA personnel prepared a request to issue a UCA that complied with statutory and DoD regulations to fully explain the adverse impact on agency requirements resulting from delays in beginning performance for all 43 UCAs. Both 10 U.S.C. § 2326 and the DFARS provide guidance on issuing UCAs. Section 2326(a), title 10, United States Code, states:

> The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

DFARS 217.7404-1, "Authorization," requires that the contracting officer obtain approval from the head of the contracting activity before entering into a UCA and also requires that the request for UCA approval include a full explanation of the need to begin contract performance before contract definitization. The head of the agency appoints a Principal Assistant Responsible for Contracting for the approval to issue a UCA. Authority to approve the issuance of a UCA can be designated in the event that the Principal Assistant Responsible for Contracting is absent. ACC-RSA contracting personnel properly prepared requests to the head of the agency for all 43 UCAs.

Untimely Definitizations

ACC-RSA contracting personnel did not definitize 16 UCAs within the 180-day time frame specified by 10 U.S.C § 2326 and the DFARS. ACC-RSA contracting personnel did not definitize the 16 late UCAs within the allowable time frame because contractors submitted inadequate proposals, ACC-RSA contracting personnel and contractors did not

complete negotiations in a timely manner, and Government personnel changed requirements after receipt of qualifying proposal. In addition, higher level reviews for Javelin Missile Launcher procurements contributed to late definitizations.

Section 2326(b), title 10, United States Code, states:

> A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—
>
> > (A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or
> >
> > (B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

Section 2326(g)(2) defines a "qualifying proposal" as:

> . . . a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

ACC-RSA personnel exceeded the statutory time limits for 16 of the 43 UCAs reviewed and, on average, definitized those actions 197 days after receiving a qualifying proposal and 314 days after UCA issuance. Additionally, for the 16 late actions, contractors did not provide a qualifying proposal until an average of 113 days after UCA issuance. One of the 16 late UCAs was late by a single day. See Appendix E for elapsed days between UCA issuance and definitization. Table 3 shows the primary reasons for ACC-RSA contracting personnel not definitizing the 16 late UCAs within the required time frames.

Table 3. Average Delays in Definitization

Primary Reason Definitization Was Late	Number of UCAs	Average Days to a Qualifying Proposal	Average Days From Proposal to Definitization	Average Days From Issuance to Definitization
Inadequate Proposals	5	51	219	270
Negotiation Delays	4	126[1]	140[1]	260
Change in Government Requirements	3	143	232	376
Javelin UCAs	3	N/A[2]	N/A[2]	383
Unexplained[3]	1	167	195	362
Total	**16**	**113**	**197**	**314**

[1]Qualifying proposal was received before issuance for one of the four UCAs.
[2]Qualifying proposal was received before issuance for all three UCAs.
[3]ACC-RSA personnel provided insufficient documentation to determine the cause for delay.

Inadequate Proposals

ACC-RSA contracting personnel were unable to definitize five UCAs within allowable time frames because contractors did not provide a qualifying proposal in a timely manner. The contractor proposals were inadequate because the contracting officers determined that they did not contain sufficient information to enable DoD personnel to conduct complete and meaningful audits or determined that the proposals contained questionable costs. During the period that UCAs remain undefinitized, contract cost risk transfers from the contractor to the Government. *ACC-Redstone Arsenal Standing Operating Procedure No. 715-1* provides internal guidance to prescribed policies, procedures, and standards, for the accomplishment of the AMCOM mission. ACC-RSA personnel should revise the *ACC-Redstone Arsenal Standing Operating Procedure No. 715-1* to include procedures for elevating problems with obtaining adequate contractor proposals according to contract requirements. The following two UCAs are examples of how problems with inadequate proposals caused delays in definitization. In addition to the two examples, ACC-RSA contracting personnel identified proposal issues as the cause of late definitization for three other UCAs.

Contract W31P4Q-07-C-0151, Modification P00003

ACC-RSA contracting personnel were unable to definitize contract W31P4Q-07-C-0151, modification P00003, with a not-to-exceed value of about $310 million, within the required time frames because of delays in obtaining a qualifying proposal. ACC-RSA personnel awarded the contract on December 12, 2007, for the acquisition of Patriot "Pure Fleet/Grow the Army" upgrade kits, installation, and testing for three U.S. tactical battalions. The contractor provided a qualifying proposal on February 12, 2008. However, on May 16, 2008, the contractor provided a revised proposal with additional costs because the contractor had placed a significant amount of material on purchase

orders after they had submitted the qualifying proposal. The updated proposal also included material and labor that the contractor omitted from the original bill of material. ACC-RSA personnel did not definitize the contract until September 24, 2008, 225 days after receipt of a qualifying proposal and 287 days after UCA issuance.

Contract W58RGZ-04-C-0025

ACC-RSA contracting personnel were unable to definitize contract W58RGZ-04-C-0025, with a not-to-exceed value of about $41.4 million, within the required time frames because of delays in obtaining a qualifying proposal. ACC-RSA personnel awarded the contract on January 2, 2004, for the procurement of Raven unmanned aerial vehicle systems. The prime contractor provided a qualifying proposal on February 26, 2004, however, one of the subcontractors submitted a proposal that included incomplete labor information. The subcontractor prepared several revised proposals that were also inadequate. On May 14, 2004, the contract specialist requested that the prime contractor provide an updated proposal. DCAA took exception to the subcontractor's proposed price and the contracting officer definitized the UCA using a not-to-exceed value provided by the prime contractor. ACC-RSA personnel did not definitize the contract until August 26, 2004, 182 days after receipt of the qualifying proposal and 237 days after UCA issuance.

Negotiation Delays

ACC-RSA contracting personnel were unable to definitize four UCAs within the 180-day requirement in part because of difficulties negotiating the definitive contract. On average, ACC-RSA contracting personnel took 43 days to negotiate definitive contracts for the 43 UCAs we reviewed. For the four UCAs that exceeded the 180-day definitization requirement because of negotiation delays, ACC-RSA contracting personnel took an average of 82 days to negotiate a definitive agreement. ACC-RSA contracting personnel should develop procedures for elevating prolonged negotiations through the chain of command, based on the duration of the negotiations. In addition to the following example, ACC-RSA personnel identified negotiation delays as the cause of untimely definitization for three additional UCAs.

Contract W58RGZ-08-C-0257

ACC-RSA contracting personnel were unable to definitize contract W58RGZ-08-C-0257, with a not-to-exceed value of about $19.2 million, within required time frames. ACC-RSA contracting personnel awarded the contract on September 3, 2008, for the procurement of three transportable Blackhawk operations simulators. Negotiations began on January 20, 2009, for the base devices and concluded on February 13, 2009, 24 days later. The negotiation was prolonged because the contractor did not provide actual costs incurred for the devices until February 6, 2009. After settling on the prices for the basic purchase, ACC-RSA contracting personnel began negotiating the option buys from February 17, 2009, through March 23, 2009. The prolonged negotiations accounted for 62 days. ACC-RSA contracting personnel did not definitize the contract until May 1, 2009, 240 days after UCA issuance.

Changes in Government Requirements

ACC-RSA contracting personnel were unable to definitize three UCAs within the 180-day time frame because Government requirements changed after ACC-RSA personnel issued the UCA. After issuing a UCA, contracting personnel have little control over changing customer requirements. Each significant change in requirements requires the contractor to prepare or revise a proposal that contracting personnel and possibly Defense Contract Audit Agency (DCAA) must then review. ACC-RSA contracting personnel should better coordinate with customers and management to identify changes in Government requirements as soon as practicable. ACC-RSA contracting personnel did not definitize the following UCA within the 180-day requirement because of changes in Government requirements. In addition to the example, ACC-RSA personnel identified changes in Government requirements as the cause of untimely definitization for two other UCAs.

Contract W58RGZ-05-G-0005, Delivery Order 0008

ACC-RSA contracting personnel were unable to definitize contract W58RGZ-05-G-0005, delivery order 0008, with a not-to-exceed value of about $25 million, within the required time frames because Government requirements changed after ACC-RSA personnel issued the UCA. On September 28, 2006, ACC-RSA contracting personnel issued a UCA for aircraft survivability equipment integration for the Apache helicopter. The contractor submitted a qualifying proposal on February 9, 2007. ACC-RSA contracting personnel learned of a new requirement for additional wiring for the upgrade after receiving the proposal. The contracting officer stated that the wiring change was unknown when they issued the UCA. Contracting personnel added the requirement to the delivery order because the change impacted production and was less costly than completing the effort by means of a retrofit. On October 10, 2007, the contractor provided an updated proposal that combined aircraft survivability equipment integration and updated wiring. ACC-RSA personnel did not definitize the contract until February 28, 2008, 384 days after receipt of a qualifying proposal and 518 days after UCA issuance.

Javelin Missile Launcher Requirements for FYs 2009–2011

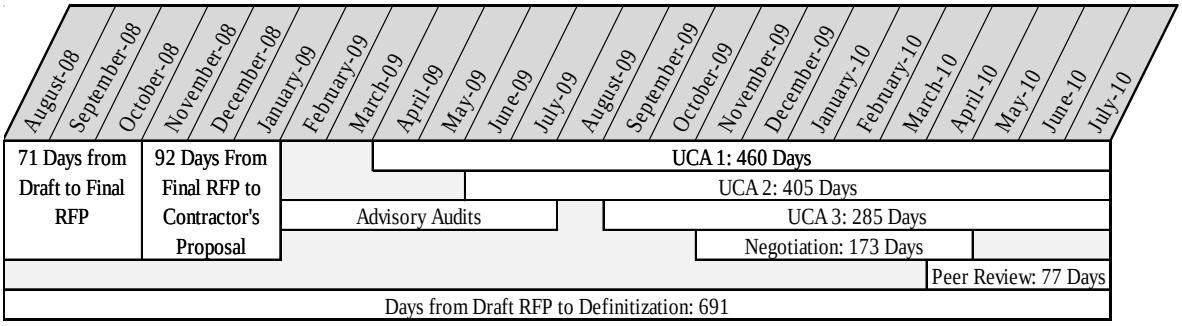
ACC-RSA contracting personnel were unable to definitize three UCAs issued on W31P4Q-09-C-0376 in a timely manner because of extensive DCAA audits, prolonged negotiations, and DPAP peer reviews before and after negotiations. Table 4 displays the timeline for the three Javelin UCAs.

Table 4. UCAs Issued on Contract W31P4Q-09-C-0376

Modification Number	Not-to-Exceed Amount	Issuance Date	Qualifying Proposal Date	Definitization Date
Basic	$ 7,239,085	4/8/2009	1/30/2009	7/12/2010
P00001	214,116,658	6/2/2009	1/30/2009	7/12/2010
P00002	130,353,004	9/30/2009	1/30/2009	7/12/2010
Total	$351,708,747			

ACC-RSA contracting personnel issued a draft request for proposal W31P4Q-09-R-0184 on August 20, 2008, for various range quantities of Javelin hardware requirements for FYs 2009 through 2011. The contractor submitted a proposal on January 30, 2009, for about $3.3 billion. ACC-RSA contracting personnel requested audit assistance from DCAA to review the proposal. The contracting officer stated that a proposal audit for the Javelin program would normally have taken 60 days, but because of new audit threshold requirements, DCAA had to audit entities that had never had their proposals directly audited. As shown in Figure 1, DCAA conducted the advisory audits from February through July 2009 and, on average, 132 days elapsed from the request for proposal to final advisory report issuance date.

Figure 1. Contract W3104Q-09-C-0376 Timeline



ACC-RSA contracting personnel issued the first UCA on the basic contract of W31P4Q-09-C-0376 on April 8, 2009, for long-lead items to begin performance and to avoid work stoppage. They issued the second UCA on modification P00001 on June 2, 2009, at the request of the Close Combat Weapon System Project Office, to maintain production after the delays associated with the DCAA audit results. ACC-RSA personnel issued the third UCA on September 30, 2009, for Javelin weapon system hardware and to prevent a break in production. The contracting officer stated the last audit occurred in July 2009, and the peer review process of the prenegotiation position took until late October 2009, to complete. The Javelin program was required to undergo a DPAP peer review before negotiations of a definitive contract began. Negotiations to definitize all three UCAs began on November 4, 2009, and were completed April 26, 2010, a total of 173 days.

ACC-RSA personnel were unable to definitize the three UCAs issued on W31P4Q-09-C-0376 within allowable time frames, taking an average of 383 days from issuance to

definitization. After negotiations, the contract was required to go through DPAP peer review again. The three UCAs exceeded the 180-day requirement because of extensive DCAA assist audits, lengthy negotiations, and DPAP peer reviews. ACC-RSA contracting personnel had little control over the definitization time frame of these UCAs.

ACC-RSA Contracting Personnel Did Not Comply With Requirements to Reflect the Impact of the Undefinitized Period on Allowable Profit

ACC-RSA contracting personnel issued seven UCAs that did not reflect the contractors' reduced cost risk in the Government's negotiation position and issued 22 UCAs that did not include sufficient support that would allow an independent party to determine the basis for their profit determination. ACC-RSA contracting personnel were required to use a structured approach by applying the weighted guidelines method to develop a profit objective for 41 UCAs.[3] ACC-RSA contracting personnel did not reflect reduced cost risk because they did not comply with applicable guidance for seven UCAs. In addition, ACC-RSA contracting personnel's support for profit determination was insufficient for 22 UCAs because supporting documentation did not present:

- the degree to which costs were incurred before definitization,
- the risk factors assigned to the incurred cost and projected cost when the weighted guidelines application was used, and
- the resulting impact on the contractor's profit or fee.

As a result, ACC-RSA contracting personnel's reliance on guidance with a lower precedent resulted in negotiation positions that did not adequately consider potential reduced risk for four of seven UCAs. For the remaining three UCAs, ACC-RSA price negotiation positions were about $800,000 higher because ACC-RSA contracting personnel did not consider incurred cost when developing profit positions. In addition, ACC-RSA contracting personnel may have miscalculated positions entering into negotiations for the 22 UCAs for which they did not adequately document the determination of profit. During the undefinitized period, the Government bears increased risk, and the contractor generally bears reduced risk. If the contractor's reduced risk is not reflected in the negotiated profit rate, then the Government could pay too much profit.

Requirements to Reflect Reduced Cost Risk

Both 10 U.S.C. 2326 and the DFARS provide guidance on profit determination, and the FAR provides guidance on documentation of the price negotiation. Title 10 U.S.C. 2326(e), states:

> The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

[3] Two UCAs did not have a profit determination because the acquisitions were for commercial items.

> (1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and
>
> (2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

DFARS 215.404-4, "Profit," requires that contracting officers use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when the contractor provides cost or pricing data, except for cost-plus-award-fee contracts or contracts with Federally Funded Research and Development Centers. DFARS 215.404-4 further states that the weighted guidelines method is the structured approach that must be used, with certain limited exceptions. FAR 15.406-3, "Documenting the Negotiation," states that the PNM is the required document in which the contracting officer must document the basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

ACC-RSA Did Not Comply With Applicable Guidance

ACC-RSA contracting personnel did not comply with the requirement in 10 U.S.C. 2326(e) to reflect the impact of the undefinitized period in the contractor's profit or fee for four UCAs because they relied on guidance with a lower precedent when developing the Government's negotiation positions. Contracting personnel adhered to FAR 15.404-4(c)(6), "Profit" which permits contracting officers to use the basic contract's profit or fee rate as the prenegotiation objective for a change or modification to a contract if the change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value. ACC-RSA contracting personnel should comply with guidance applicable to UCAs and, where applicable, reflect the reduced risk of substantial incurred costs in their negotiation positions.

ACC-RSA Did Not Reflect Reduced Risk for Incurred Costs

ACC-RSA contracting personnel did not reflect the contractor's reduced cost risk in the Government's negotiation position for three UCAs because they did not follow DFARS guidance when using the weighted guidelines method. ACC-RSA contracting personnel used the weighted guidelines to develop recommended (low) and objective (high) pricing positions before beginning contract negotiation but did not factor the reduced risk of substantial incurred costs on either position. As a result, the negotiation positions were about $800,000 higher than if ACC-RSA contracting personnel had considered the impact of substantial incurred costs.

ACC-RSA contracting personnel did not factor incurred costs when establishing the recommended and objective pricing positions for three UCAs. For one UCA, ACC-RSA contracting personnel developed negotiation positions that included a recommended position that was about $88,000 higher, and an objective position that was about $532,000 higher, than if they had factored incurred costs. As a result, the ACC-RSA contracting personnel's negotiation position was about $310,000 higher than if they had considered the reduced risk of incurred costs.

ACC-RSA contracting personnel may not have been able to sustain the negotiation positions during negotiation. However, to obtain a lower price and comply with applicable guidance, they should have factored the reduced risk of substantial incurred costs into the Government's negotiation position. ACC-RSA contracting personnel could incentivize timely definitization by reducing profit for incurred cost because a shorter undefinitized period should result in lower incurred costs on which to reflect reduced risk. However, if contracting personnel reduce profit too aggressively, contractors may refuse future UCAs and insist on waiting for a definitive contract. ACC-RSA officials should revise the *ACC-Redstone Arsenal Standing Operating Procedure 715-1* and *AMCOM Acquisition Desk Guide* to include detailed procedures on how to use the weighted guidelines to factor substantial incurred costs into both the objective and recommended negotiation positions.

Inadequate Documentation of Profit Determination

ACC-RSA contracting personnel did not adequately document the profit determination in the PNM for 22 of the 41 UCAs that had a required determination of profit. ACC-RSA contracting personnel did not include the costs incurred before definitization for 19 of the 22 UCAs. For the remaining three UCAs, we were unable to determine the effect that the incurred costs had on the contractor's profit because the profit determination was supported only by the DD Form 1547, "Record of Weighted Guidelines."

DD Form 1547

The DD Form 1547 did not include incurred cost nor provide sufficient detail for us to determine the effect of the incurred costs on profit. It should not be used as the sole documentation for profit determination. Contracting personnel using the weighted guidelines application assign a value for item 24 for contract type risk, which focuses on the degree of cost risk accepted by the contractor. When used correctly, the weighted guidelines application takes into consideration the possible reduced risk of the undefinitized period by separating the incurred costs and the remaining costs to develop the profit position. The application then produces a composite contract type risk factor. However, the DD Form 1547 did not display all of the factors entered by the contracting officer. Figure 2 illustrates the contractor risk factors section of the DD Form 1547.

Figure 2. Screenshot of the Weighted Guidelines Profit Factors Section From DD Form 1547

		WEIGHTED GUIDELINES PROFIT FACTORS			
ITEM	CONTRACTOR RISK FACTORS	ASSIGNED WEIGHTING	ASSIGNED VALUE	BASE (Item 20)	PROFIT OBJECTIVE
21.	TECHNICAL	50%	4.00%		
22.	MANAGEMENT/COST CONTROL	50%	4.00%		
23.	PERFORMANCE RISK (COMPOSITE)		4.00%	$ 2,000	$ 80
24.	CONTRACT TYPE RISK		1.00%	$ 2,000	$ 20
25.	WORKING CAPITAL	COSTS FINANCED	LENGTH FACTOR	INTEREST RATE	
			0	4.75%	$ -
	CONTRACTOR FACILITIES CAPITAL EMPLOYED		ASSIGNED VALUE	AMOUNT EMPLOYED	
26.	LAND				
27.	BUILDINGS				
28.	EQUIPMENT		25%		
29.	COST EFFICIENCY FACTOR		ASSIGNED VALUE	BASE (Item 20)	
			0.00%		$ -
30.				**TOTAL PROFIT OBJECTIVE**	$ 100

Discussion of Impact on Profit Position

The contracting officers may have documented the cost incurred during the undefinitized period and used the weighted guidelines application to develop a profit objective, but they did not consistently document the resulting effect on the contractor's allowable profit. Without adequate discussion of the contracting officer's consideration of the cost incurred, we were unable to determine to what extent the undefinitized period was reflected in the contractor's profit. ACC-RSA contracting personnel identified and entered a profit factor but did not state the degree to which costs were incurred before definitization, the risk factors assigned to the incurred cost and projected cost, or the resulting impact on the contractor's profit or fee.

Contracting personnel should document the costs incurred before definitization and their impact on profit determination in the PNM. Both GAO and DoD IG recommended in previous reports that DoD revise the DFARS to include instructions on how to perform an assessment of any reduced cost risk on profit or fee during the undefinitized period.[4] ACC-RSA officials should revise the *ACC-Redstone Arsenal Standing Operating Procedure 715-1* and the *AMCOM Acquisition Desk Guide* with detailed procedures on how contracting personnel can reflect possible reduced risk when substantial costs have been incurred during the undefinitized period.

Adequate and Inadequate Documentation of Profit Determination

We reviewed the PNM for each of the 41 UCAs that were required to undergo a weighted guidelines analysis or use an alternate structured approach to determine whether the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit was adequately documented. The following two UCAs are examples of adequate and inadequate documentation of profit determination.

[4] GAO Report No. GAO-10-299, "DoD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvements," January 28, 2010, and DoD IG Report No. D-2004-112, "Undefinitized Contractual Actions," August 30, 2004.

Contract W31P4Q-04-C-0059

ACC-RSA contracting personnel prepared the PNM for contract W31P4Q-04-C-0059 that adequately documented the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit. We considered the documentation to be adequate because it stated the amount of costs incurred before definitization and that the costs were not substantial enough to reduce risk. The documentation also explained that because the risk was not reduced, the amount of costs incurred before definitization would not impact fee calculations. Although contractor profit was not reduced, the UCA was still in compliance with 10 U.S.C. 2326(e) because it requires that the possible reduced cost risk be reflected in the contractor's profit on UCAs for which the final price is negotiated after a substantial portion of the performance required is completed. The contracting officer did reflect the undefinitized period in the contractor's profit but determined the portion of the required performance that was completed before definitization was not substantial.

Contract W58RGZ-09-C-0158

ACC-RSA contracting personnel prepared the PNM for contract W58RGZ-09-C-0158 that did not adequately document the contracting officer's consideration of the undefinitized period and its effect on the contractor's profit. We considered the documentation to be inadequate for several reasons. First, the contracting personnel stated in the PNM that the weighted guidelines were used; however, they did not detail the amount of costs incurred before definitization or provide any indication whether costs were incurred. Second, the contracting personnel did not mention the effect of the incurred cost and the use of the weighted guidelines application on the contractor's profit in the PNM. Third, the contracting officer did not include a discussion of the assigned risk factors in the PNM. Because contracting personnel did not include sufficient detail in the PNM about the assigned risk factors, specifically contract type risk, we could not determine whether the undefinitized period was reflected in contractors' profit.

Revised Requirement

In June 2007, GAO issued Report No. GAO-07-559, "Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met," which criticized DoD for inadequately documenting the impact of costs incurred before definitization on profit and fee rates. In response to the report, the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, issued the August 2008 DPAP memorandum that provided guidance to contracting officers regarding the requirements contained in DFARS 215.404-71, "Weighted Guidelines Method," which advocates the lowering of contract type risk based on the amount of costs incurred before definitization. The memorandum required contracting officers to document the risk assessment in the contract file; however, ACC-RSA personnel did not update local procedures to include requirements from the August 2008 DPAP memorandum. See Appendix B for a copy of the memorandum. ACC-RSA contracting personnel definitized 9 of the 43 UCAs that we reviewed for profit determination after the August 2008 DPAP memorandum. Seven of nine UCAs were not in compliance with the August 2008 DPAP memorandum requirement to document the risk assessment in the

contract file, and two were in compliance. ACC-RSA officials should revise the *ACC-Redstone Arsenal Standing Operating Procedure 715-1* to include the 2008 DPAP memorandum requirements.

ACC-RSA Contracting Personnel Generally Complied With Obligation Restrictions

ACC-RSA contracting personnel properly obligated 41 of 43 UCAs but exceeded the limitations for obligating funds for 2 UCAs. Contracting officers are limited by 10 U.S.C. § 2326 in the amount of funds they may obligate on a UCA to 50 percent of the not-to-exceed value before receipt of a qualifying proposal and to 75 percent after receipt of a qualifying proposal. Exceeding the allowable obligation thresholds puts the Government in a poor position to negotiate a contract at definitization because contractors are less inclined to submit a qualifying proposal when there is adequate funding available to continue the work.

Section 2326(b)(2) and (3), title 10, United States Code, states:

> (2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.
>
> (3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

ACC-RSA contracting personnel obligated funds in excess of allowable amounts for two UCAs because they miscalculated the allowable obligation amount, and they reduced the not-to-exceed value without decreasing the amount obligated. ACC-RSA contracting personnel inappropriately obligated 50.38 percent of the not-to-exceed value before definitization for the UCA issued by modification P00021 for contract W31P4Q-04-C-0159.

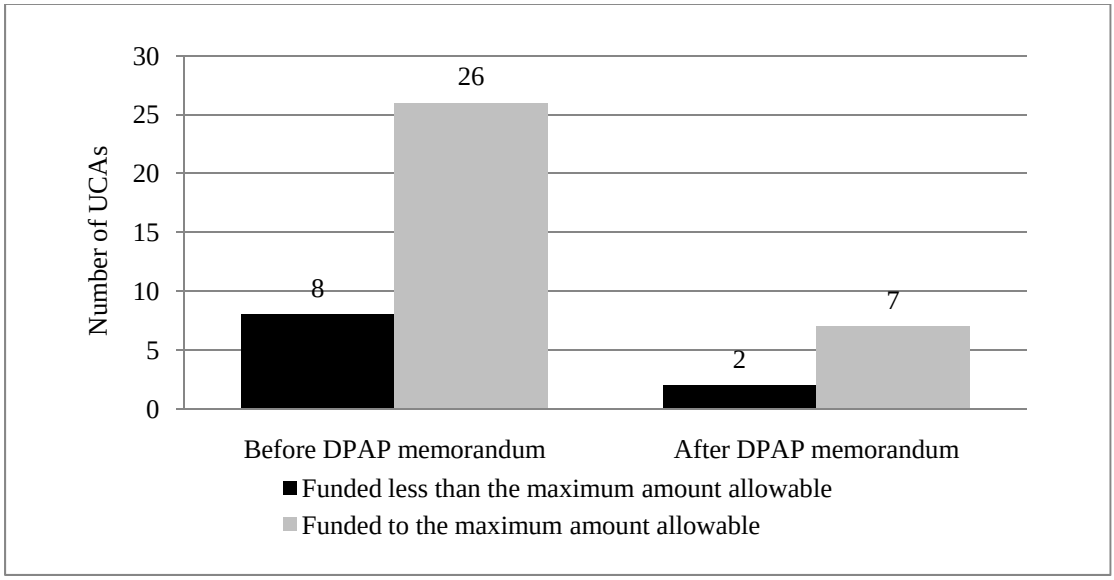
ACC-RSA contracting personnel inappropriately obligated more than 50 percent of the not-to-exceed value before definitizing the UCA for contract W58RGZ-05-G-0005, delivery order 0022. ACC-RSA contracting personnel decreased the not-to-exceed value without a corresponding decrease in the obligation amount, which raised the obligated value to 64.24 percent of the not-to-exceed value. Neither of these instances was indicative of a ACC-RSA-wide problem with the obligation of funding for UCAs; therefore, we are not making a recommendation on this issue.

ACC-RSA Contracting Personnel Did Not Obligate Funds According to Need

ACC-RSA contracting personnel obligated the maximum permissible funding before definitization for 33 of 43 UCAs. Both before and after DPAP issued the August 2008 memorandum, ACC-RSA contracting personnel commonly funded UCAs to the maximum amount allowable. ACC-RSA contracting personnel obligated funds for the maximum amount allowable for 26 of the 34 UCAs from our nonstatistical sample that were issued before the August 2008 DPAP memorandum and for 7 of the 9 UCAs that were issued after the August 2008 DPAP memorandum.

ACC-RSA contracting personnel had not taken steps to comply with the August 2008 DPAP memorandum requirement to avoid obligating the maximum permissible funding at contract award. The August 2008 DPAP memorandum instructed contracting officers to assess the contractor's spend plan for the undefinitized period and obligate funding in an amount consistent with the contractor's requirements for the undefinitized period. ACC-RSA contracting personnel should take steps to comply with the August 2008 DPAP memorandum requirement by obligating funding according to the contractor's requirements rather than to the maximum amount permissible. Figure 3 shows the number of UCAs obligated at the maximum amounts at issuance before and after the August 2008 DPAP memorandum.

Figure 3. UCAs Obligated at Maximum Allowable Amounts Before Definitization Before and After the August 2008 DPAP Memorandum



Improper Justifications for Issuing UCAs

ACC-RSA personnel placed the Government at unnecessary risk when they issued three UCAs on two contracts that were improperly justified because they were for known acquisition requirements. DFARS 217.7403, "Policy," limits the use of a UCA to situations when negotiating a definitive contract is not possible and the Government's interest demands contract performance begin immediately. ACC-RSA contracting personnel improperly issued three UCAs for known requirements which resulted in increased cost risk to the Government. ACC-RSA contracting personnel should avoid using UCAs for known requirements because the need should be part of a comprehensive acquisition plans. Issuing UCAs for known requirements places the Government at unnecessary and avoidable cost risk.

Contract W58RGZ-05-C-0239, Modification P00009

ACC-RSA contracting personnel placed the Government at unnecessary risk when they issued a UCA that was improperly justified because it was for funding uncertainties for a known requirement to meet project milestones. Specifically, ACC-RSA contracting personnel issued a UCA on contract W58RGZ-05-C-0239, modification P00009, with a not-to-exceed value of $82.4 million, for an upgrade that was critical to acquisition milestones for the Apache helicopter program. The upgrade requirements were known in August 2003. However, ACC-RSA had not determined how to fund the upgrade. ACC-RSA contracting personnel issued the UCA for known requirements on January 20, 2006, citing the need to meet project milestones and the funding uncertainties. Therefore, ACC-RSA contracting personnel's use of a UCA for known requirements placed the Government at unnecessary and avoidable risk.

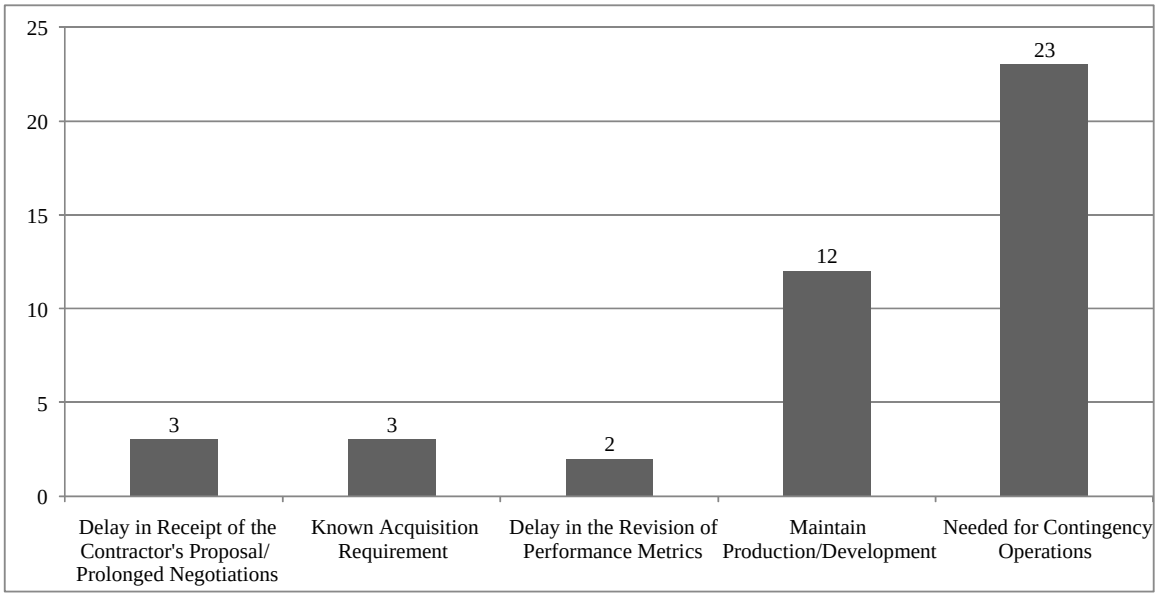
Contract W31P4Q-04-C-0125

ACC-RSA contracting personnel issued two UCAs on contract W31P4Q-04-C-0125 that were not properly justified because they were for requirements that should have been part of a comprehensive acquisition plan. ACC-RSA personnel issued the first UCA, with a not-to-exceed value of $22 million on June 30, 2004, for 7 months of field surveillance and maintenance for the PAC-3 missile. They issued a second UCA on January 31, 2005, for an additional year of field surveillance. ACC-RSA personnel should have anticipated the need for a field service team to ensure that the PAC-3 missiles remained certified rounds and included the requirement in the acquisition plan. ACC-RSA contracting personnel issuing the UCAs for known and recurring requirements was indicative of poor planning and placed the Government at unnecessary and avoidable risk.

Reasons ACC-RSA Issued UCAs

ACC-RSA contracting personnel adequately justified issuing a UCA for 40 of the 43 UCAs and generally limited the usage to circumstances in which the negotiation of a definitive contract was not possible within the time available to meet Army requirements. Figure 4 illustrates five primary reasons that ACC-RSA issued UCAs.

Figure 4. Reasons ACC-RSA Personnel Issued UCAs



Adequate Documentation of Fair and Reasonable Prices

ACC-RSA contracting personnel adequately documented their determination of price reasonableness for all 43 UCAs but did not adequately document the determination of profit as discussed in this report. FAR 15.403-3, "Requiring information other than cost or pricing data," requires that the contracting officer obtain information that is adequate for evaluating price reasonableness. Further, FAR 15.406-3, "Documenting the negotiation," states that the contracting officer must document fair and reasonable price in the contract file. We reviewed the contract files for the 43 definitized UCAs and determined that the files contained adequate documentation, such as PNMs, certificates of current cost or pricing data, technical evaluations, forward pricing rate agreements, and related audit reports to document contracting officers' determination of price reasonableness.

In addition, FAR 15.404-4, "Profit," states that the contracting officer's signature on the PNM documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded. Contracting officers signed the PNM for each of the 43 UCAs. According to the PNMs, contracting officers evaluated contractor proposals to determine that negotiated amounts were fair and reasonable. Table 5 shows the types of support contracting officers relied on when determining price reasonableness.

Table 5. Documentation to Support Determination of Price Reasonableness

Contractor Proposal Evaluated Against	Number of Actions That Identified Evaluation in Contract Documentation
DCAA, Defense Contract Management Agency, and/or other audit agency audits	40
Technical evaluations	42
Forward pricing rate agreements or forward pricing rate recommendations	34

ACC-RSA contracting personnel complied with FAR 15.403-4, which outlines requirements for obtaining current cost or pricing data in the PNMs for 43 UCAs, and the PNMs for 40 UCAs stated that the contractor provided a certificate of current cost or pricing data. The final three UCAs did not require certificates of current cost or pricing data because one was below the $650,000 pricing threshold and the two others were for the acquisition of commercial items.

Recommendations, Management Comments, and Our Response

1. We recommend that the Commanding General, Army Aviation and Missile Command, require that Army Aviation and Missile Command Center program management and Army Contracting Command-Redstone Arsenal contracting personnel better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that guidance will be added to appropriate Army Contracting Command-Redstone Arsenal publications to reinforce the requirements in the recommendation. He further stated that guidance will be issued to ensure these actions are clearly communicated to the appropriate personnel. In addition, the Chief of Staff, Army Aviation and Missile Command, questioned whether the recommendation was intended solely for the Commanding General, Army Aviation and Missile Command, or for both the Commanding General, Army Aviation and Missile Command, and the Principal Assistant Responsible for Contracting, Army Contracting Command-Redstone Arsenal. He also stated that the recommendation will be implemented no later than October 1, 2011.

Our Response

The Chief of Staff, Army Aviation and Missile Command, comments are responsive. Recommendation 1 is directed to the Commanding General, Army Aviation and Missile Command, to require that Army Aviation and Missile Command Center program

management personnel better coordinate with Army Contracting Command-Redstone Arsenal contracting personnel and customers to identify changes in Government requirements as soon as is practicable. Recommendation 2.b is directed to the Principal Assistant Responsible for Contracting, Army Contracting Command-Redstone Arsenal. No additional comments are required.

2. We recommend that the Principal Assistant Responsible for Contracting, Army Contracting Command-Redstone Arsenal:

a. Revise the *Army Contracting Command-Redstone Arsenal Standing Operating Procedure No. 715-1* to:

(1) Add guidance to sections 17.74D.2 and 17.74D.3 that provides incentives and punitive procedures for delays in obtaining an adequate proposal in accordance with contract requirements.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will revise the *Army Contracting Command-Redstone Arsenal Standing Operating Procedure 715-1* to further emphasize procedures for delays in obtaining adequate proposals. He also requested that the Department of Defense Office of Inspector General clarify specific incentives and punitive actions that the Army Contracting Command-Redstone Arsenal should use. The Chief of Staff, Army Aviation and Missile Command, stated that the recommendation will be implemented no later than October 1, 2011.

Our Response

The Chief of Staff, Army Aviation and Missile Command, comments are responsive. Specific incentives and punitive procedures for delays in obtaining an adequate proposal are at the discretion of Army Contracting Command-Redstone Arsenal officials. No additional comments are required.

(2) Include instructions in section 17.74D.3 that state when contracting personnel should engage the Army Aviation and Missile Command chain of command when prolonged negotiations occur.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will revise the *Army Contracting Command-Redstone Arsenal Standing Operating Procedure 715-1* to emphasize proper procedures for prolonged negotiation issues. He stated it would be more accurate to reference Army Contracting Command-Redstone Arsenal's chain of command and to state specific recommended actions. He further stated that guidance will be issued to appropriate personnel. The Chief of Staff, Army Aviation and Missile Command, stated that the recommendation will be implemented no later than October 1, 2011.

Our Response

The Chief of Staff, Army Aviation and Missile Command, comments are responsive. While Army Contracting Command-Redstone Arsenal's suggested referencing the Army Contracting Command-Redstone Arsenal chain of command and including language requiring discussion with Army Aviation and Missile Command, we believe our recommendation offers the appropriate solution and Army Contracting Command-Redstone Arsenal's planned actions meet the intent of the recommendation. No additional comments are required.

b. Better coordinate with customers and management to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that the effectiveness of the recommendation would be improved if it was directed to Army Contracting Command-Redstone Arsenal customers as well because it is the customer who develops the requirement.

Our Response

The Chief of Staff, Army Aviation and Missile Command, comments are responsive. The intent of this recommendation is for Army Contracting Command-Redstone Arsenal management to have contracting personnel better coordinate with Army Aviation and Missile Command Center program management personnel and customers. The intent of Recommendation 1 is for the Commanding General, Army Aviation and Missile Command, to have Army Aviation and Missile Command Center program management personnel better coordinate with Army Contracting Command-Redstone Arsenal contracting personnel and customers. If program management and contracting personnel better coordinate to identify customer changes as soon as practicable, it should reduce the time necessary to definitize undefinitized contractual actions. No additional comments are required.

c. Comply with the requirements in section 2326(e), title 10, United States Code for determining the profit for undefinitized contractual actions with substantial incurred cost.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will revise appropriate publications to emphasize that contracting personnel must adhere to the United States Code. He also stated that guidance will be issued to the appropriate personnel and that the recommendation will be implemented no later than October 1, 2011.

d. Revise the *Army Contracting Command-Redstone Arsenal Standing Operating Procedure No. 715-1* and the Army Aviation and Missile Command *Acquisition Desk Guide* to:

(1) Include guidance for contracting personnel to document their consideration of reduced risk in the pre-objective negotiation memorandum for the contractor's profit or fee when definitizing undefinitized contract actions. Additionally, the guidance should include instructions on how contracting personnel should develop and document the Government's objective for profit or fee when definitizing an undefinitized contractual action.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will revise appropriate publications. He further stated that guidance will be issued to the appropriate personnel. The Chief of Staff, Army Aviation and Missile Command, stated that recommendations will be implemented no later than October 1, 2011.

(2) Require contracting personnel to document in the price negotiation memorandum support for both the objective and recommended positions: incurred cost, contract type risk used for both the undefinitized period and the remainder of the contract, and the impact that the use of the undefinitized contractual action had on the Government's position entering into negotiation. In addition, include instructions for contracting personnel to discuss inputs made to the contract type risk section of the DD Form 1547, "Record of Weighted Guidelines Application."

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will revise the appropriate publications. He further stated that guidance will be issued to the appropriate personnel and that the recommendation will be implemented no later than October 1, 2011.

e. Require contracting personnel to comply with the August 2008 Office of Defense Procurement and Acquisition Policy Memorandum, "Management Oversight of Undefinitized Contract Actions," requirement to avoid obligating the maximum permissible funding at the time of undefinitized contractual action award so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs, and funding.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will distribute the August 2008 Defense

Procurement and Acquisition Policy memorandum and issue guidance to emphasize the content of the memorandum. He further stated that the recommendation will be implemented no later than October 1, 2011.

f. Avoid using undefinitized contractual actions when funding is uncertain and for known requirements that should have been part of a comprehensive acquisition plan because it places the Government at unnecessary risk.

Army Contracting Command-Redstone Arsenal Comments

Army Contracting Command-Redstone Arsenal, responding through the Chief of Staff, Army Aviation and Missile Command, agreed and stated that Army Contracting Command-Redstone Arsenal officials will revise appropriate publications. He further stated that guidance will be issued to appropriate personnel. The Chief of Staff, Army Aviation and Missile Command, also stated that Army Contracting Command-Redstone Arsenal's action will reflect the need to avoid the use of undefinitized contractual actions unless it is in the Government's best interest. The Chief of Staff, Army Aviation and Missile Command, stated that the recommendation will be implemented no later than October 1, 2011.

Our Response

The Chief of Staff, Army Aviation and Missile Command, comments are responsive, and no additional comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from September 2010 through June 2011 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. We initially planned to review ACC-RSA's use of UCAs as part of a tri-Service audit beginning in July 2009. In September 2009, we decided to conduct a separate audit for each of the six contracting activities that we had initially identified to be included in the tri-Service audit. In March 2011, DoD IG management decided not to conduct the review of U.S. Army Communications-Electronics Command (CECOM) UCA use because of staffing considerations and higher priority work. As a result, the summary report will summarize five audit reports in the audit series.

GAO was conducting a review on the use of UCAs when our audit began. We limited our site selection to contracting offices that were not included in the GAO engagement.

Universe and Sample Information

We used the FPDS-NG database to identify a universe of UCAs to review. We identified action obligations coded as letter contracts that the Army issued during FYs 2004 through 2010.[5] We classified the action obligations by contract number and contracting office code to identify the contracting offices responsible for the 15 largest aggregate UCA dollar values. We excluded one Army contracting organization from consideration because GAO had an ongoing engagement with similar objectives at the site. We identified ACC-RSA for review based on the dollar value of UCAs awarded during the period. We then conducted another search in FPDS-NG to identify additional UCAs that ACC-RSA contracting personnel issued from the beginning of FY 2004 to FY2010. The FPDS-NG universe consisted of 123 ACC-RSA actions, valued at about $2.8 billion. From the UCAs issued by ACC-RSA, we selected a nonstatistical judgment sample of 32 letter contracts to review.

Our audit universe was limited to the contracts identified in FPDS-NG as letter contracts. Within FPDS-NG, we did not distinctively identify three types of UCAs: "provisioned item orders," "indefinite-delivery, indefinite-quantity," and "basic ordering agreements." These types of UCAs are identified in a field the user or input staff modifies and are subject to individual manipulations of the field that makes searching across the database unreliable. We supplemented our judgment selection of UCAs with a listing of UCAs obtained from ACC-RSA. Our final nonstatistical sample consisted of 43 UCAs: 37 UCAs issued on 27 letter contracts; 4 UCAs issued on 2 indefinite-delivery, indefinite-quantity contracts; and 2 UCAs issued on a basic ordering agreement. See Appendix C for a list of UCAs that we reviewed.

[5] We performed the query on September 14, 2010.

Review of Documentation and Interviews

We reviewed documentation maintained by ACC-RSA contracting personnel to support UCAs awarded or definitized from FY 2004 through September 14, 2009. We reviewed:

- UCA request and approval documentation,
- justification and approvals,
- statements of work,
- contract modifications,
- PNM,
- business clearance memoranda, and
- DCAA audit reports.

We evaluated documentation maintained by ACC-RSA against applicable criteria including:

- Statutes and Public Laws: Public Law 99-591, "Continuing Appropriations for Fiscal Year 1987"; Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008"; 10 U.S.C. § 2304, "Contracts: Competition Requirements"; 10 U.S.C. § 2326, "Undefinitized contractual actions: restrictions";

- Federal Acquisition Regulation Requirements: FAR Subpart 6.3, "Other than Full and Open Competition"; FAR Subpart 15.4, "Contract Pricing"; FAR Subpart 16.6, "Time-and-Materials, Labor-Hour, and Letter Contracts"; FAR Subpart 52.2, "Text of Provisions and Clauses";

- Defense Federal Acquisition Regulation Supplement: DFARS 215.404, "Proposal Analysis"; DFARS 216.6, "Time-and-Materials, Labor-Hour, and Letter Contracts"; DFARS 217.74, "Undefinitized Contract Actions"; DFARS case 2008-D034, "Management of Unpriced Change Orders"; DFARS case 2007-D011, "Letter Contract Definitization Schedule";

- Memoranda: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, "Management Oversight of Undefinitized Contract Actions," August 29, 2008; and

- Local Guidance: *Army Contracting Command-Redstone Arsenal Standing Operating Procedure No. 715-1*, revised June 10, 2009; and *U.S. Army Aviation & Missile Command AMCOM Acquisition Desk Guide*, revised December 2010.

Use of Computer-Processed Data

We relied on computer-processed data from FPDS-NG to determine the contracting organizations to visit and to select the nonstatistical sample. We also used Electronic Document Access to obtain contract documentation. The data were not a basis for our conclusions or finding. To assess the accuracy of computer-processed data, we verified the FPDS-NG and Electronic Document Access data against official records at visited

contracting activities. We determined that data obtained through FPDS-NG and Electronic Document Access were sufficiently reliable to accomplish our audit objectives when compared with contract records.

Use of Technical Assistance

We met with personnel from the DoD IG Quantitative Methods and Analysis Division and determined that we would use FPDS-NG data to select a nonstatistical sample of contracting activities and then we would use FPDS-NG data in combination with contract data provided by the contracting activity to select a nonstatistical sample of UCAs to review. Our sample was limited to specific contracts, and our results should not be projected across other ACC-RSA-issued any Army-issued contracts.

Prior Coverage

During the last 5 years, GAO has issued two reports discussing DoD use of UCAs and the DoD IG has issued four reports. 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.

GAO

GAO Report No. GAO-10-299, "Defense Contracting: DoD Has Enhanced Insight into Undefinitized Contract Action Use, but Management at Local Commands Needs Improvements," January 28, 2010

GAO Report No. GAO-07-559, "Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met," June 19, 2007

DoD IG

DoD IG Report No. D-2011-068, "Additional Actions Can Improve Naval Air systems Command's Use of Undefinitized Contractual Actions," June 8, 2011

DoD IG Report No. D-2011-024, "Air Force Space and Missile Systems Center's Use of Undefinitized Contractual Actions," December 16, 2010

DoD IG Report No. D-2011-001, "Marine Corps Systems Command's Use of Undefinitized Contractual Actions," October 27, 2010

DoD IG Report No. D-2010-080, "Air Force Electronic Systems Center's Use of Undefinitized Contractual Actions," August 18, 2010

Appendix B. August 29, 2008, Office of Defense Procurement and Acquisition Policy Memorandum*

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION, TECHNOLOGY AND LOGISTICS

AUG 29 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND LOGISTICS MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Management Oversight of Undefinitized Contract Actions

An undefinitized contract action (UCA) is one for which the contract terms, specifications, or price are not agreed upon before performance is begun. Examples include letter contracts or undefinitized orders issued against basic ordering agreements or task/delivery order contracts. A UCA is a valuable tool for meeting urgent requirements. However, without appropriate management and controls, these instruments can lead to increased cost risks for the Department.

A recent Government Accountability Office (GAO) review of DoD UCAs (GAO-07-559) identified a need for enhanced oversight. In addition, section 809 of the FY 2008 National Defense Authorization Act requires issuance of detailed instructions to ensure oversight of UCAs. Specific issues include appropriate use of UCAs; timely definitization; obligation amounts prior to definitization; and appropriate recognition in profit or fee of the contractor's reduced risk during the undefinitized period.

DFARS 217.74, Undefinitized Contract Actions, provides DoD policies and procedures for the appropriate use of UCAs and related approval requirements. When possible, to discourage extended periods of performance prior to definitization, contracting officers should avoid obligating the maximum permissible funding at the time of UCA award. Contracting officers should assess the contractor's spend plan for the undefinitized period, and obligate funds only in an amount consistent with the

* Attachments to the memorandum have been removed from the final report.

contractor's requirements for the undefinitized period. In general, when negotiating profit or fee, it is appropriate to apply the contract risk factor for cost reimbursement contracts to the actual cost of performance prior to definitization (DD Form 1547, Record of Weighted Guidelines Application, Block 24, Contract Type Risk). Contracting officers should note the guidance at DFARS 215.404-71-3(d)(2) which indicates that, when costs have been incurred prior to definitization, generally the contract type risk should be regarded to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, contracting officers may assign a value as low as 0 percent, regardless of contract type. Contracting officers must document the risk assessment in the contract file.

To provide enhanced management insight and oversight of UCAs, we have established the attached templates for UCA Management Plans and semi-annual Consolidated UCA Reports for UCAs with an estimated value of more than $5 million. Together, the plans and reports provide information on key aspects of UCA use and management, including actions taken to ensure timely and effective definitization. Initial UCA Management Plans are due no later than 30 days after the date of this policy memorandum. The initial Consolidated UCA Reports are due on 31 October 2008. Plan Updates and Consolidated UCA Reports are due semi-annually thereafter.

Please provide your UCA management point of contact as soon as possible to [redacted] who can be reached at [redacted]

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

Attachments:
As stated

Appendix C. Undefinitized Contractual Actions Reviewed

ACC-RSA's Use of Undefinitized Contractual Actions for FY 2004-September 18, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number[1]	Description of Supplies or Services Procured	Contract[2] Type	Effective Date	NTE[3] Amount (millions)
	W58RGZ-04-C-0012					
1		P00010	2 additional New Build CH-47F model aircraft	FFP/CPFF	8/25/2005	$53.4
2	W31P4Q-07-C-0151		Manufacturing of kits, installation of kits, and manufacturing of spares for the PATRIOT "Pure Fleet" upgrade of tactical assets and associated spares	FFP/CPFF	1/31/2007	38.7
3		P00002	4-Lot Pure Fleet Tactical Assets	FFP	9/18/2007	150.0
4		P00003	12-Lot Pure Fleet Tactical Assets	FFP/CPFF	12/12/2007	310.0
5	W31P4Q-04-C-0059		System Development and Demonstration, Non-Line-of-Sight Launcher System (Precision Attack Missile and Loiter Attack Missile)	CPIF	3/19/2004	1,105.2
	W58RGZ-05-C-0274					
6		P00004	Blue Force Tracking Integrated Design for Production Installation and the Internal Auxiliary Fuel System Integrated Design for Production Installation on the 11 AH-64D War Replacement Aircraft (WRA)	FFP	10/30/2006	8.4
7		P00008	18 AH-64D Apache WRA and specified support including Reliability and Safety improvements, Modernized Target Acquisition and Designation Sight/Pilot Night Vision to include provisions for installation of Fire Control Radar/Radar Frequency Interferometer, and configuration enhancements	FFP	1/31/2007	273.8
8	W58RGZ-09-C-0129		Main Rotor Blade Fold Kits	FFP	3/24/2009	3.9
9	W31P4Q-04-C-0061		Tube-launched Optically-tracked Wire-guided (TOW) 2B Aero GEN 2 missiles	FFP	2/5/2004	63.8
10		P00016	TOW Bunker Buster Missiles	FFP	6/23/2005	33.2

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

ACC-RSA's Use of Undefinitized Contractual Actions for FY 2004–September 18, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract Type	Effective Date	NTE Amount (millions)
11	W58RGZ-04-C-0025		Raven Small Unmanned Aerial Vehicle (UAV) Systems	FFP	1/2/2004	41.4
12		P00011	Raven Small UAV Systems	FFP	2/25/2005	48.4
13	W58RGZ-06-C-0208		Extended Range Multipurpose Block 0 configuration UAV	CPFF	8/22/2006	22.9
14	W31P4Q-05-C-0014		Contractor Logistics Support for Shadow 200 Tactical UAV Systems	CPIF/CPFF	11/1/2004	43.9
15		P00013	Extend the period of performance of the Shadow 200 UAV Systems Performance-Based Logistics	CPIF	10/31/2005	19.3
16		P00020	90-day extension to continue support of the Shadow 200 Tactical UAV System	CPIF	1/31/2006	16.0
	W31P4Q-05-G-0004					
17		DO-0001	Integration of the Tactical Common Data Link (TCDL) into the FY 06 Full Rate Production Buy Ground Control Station	CPFF	9/28/2005	3.3
18		DO-0003	Integration of the Blue Force Tracker into the Shadow Ground Control Station	FFP/CPFF	5/31/2006	.6
19		DO-0005	Development and integration of a Laser Designator Payload into the Shadow 200 System	FFP/CPFF	8/31/2006	6.4
20	W58RGZ-09-C-0065		Conversion of 27 Control Display System Version 2 (CDS2) OH-58D Kiowa Warrior Aircraft to the CDS Version 4 (CDS4) OH-58D Kiowa Warrior Aircraft Safety Enhancement Program configuration	FFP/CPFF	2/27/2009	37.0
	W58RGZ-08-C-0224					
21		P00005	Kiowa Warrior CDS4 upgrade and enhancement	CPFF	9/1/2009	31.9
22	W58RGZ-09-C-0049		40 Gas Turbine Engines for the OH-58D Aircraft	FFP	12/23/2008	19.5

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

ACC-RSA's Use of Undefinitized Contractual Actions for FY 2004-September 18, 2009

UCA Number	Contract Number	Delivery Order/ Modification Number	Description of Supplies or Services Procured	Contract[1] Type	Effective Date	NTE Amount (millions)
23	W58RGZ-08-C-0257		3 Transportable Blackhawk Operation Simulators	FFP	9/3/2008	19.2
24	W58RGZ-09-C-0158		44 Upturned Exhaust Systems ship sets	FFP	6/22/2009	10.5
	W58RGZ-05-D-0073					
25		DO-0001	Honeywell Auxiliary Power Unit (APU) Inlet Barrier Filter (IBF) Kits, Sundstrand APU IBF Kits, and APU IBF Spare Filters	FFP	3/11/2005	8.5
26	W58RGZ-07-C-0142		Integrated Vehicle Health Management System Kits for UH-60 A/L Aircraft	FFP	6/26/2007	6.9
27	W58RGZ-05-C-0104		Blue Force Tracking	FFP	1/31/2005	3.7
28	W31P4Q-04-C-0154		PATRIOT Advanced Capability Ground Support Equipment	FFP	6/24/2004	2.4
29	W31P4Q-05-C-0015		Authorized Stockage List and Prescribed Load List and Modifiable Replacement Parts for the PATRIOT System	FFP	12/13/2004	22.4
30	W31P4Q-04-C-0125		PATRIOT Advanced Capability-3 (PAC-3) Missile Support Center	CPFF	6/29/2004	22.0
31		P00004	PAC-3 Missile Support Center	CPFF	1/31/2005	17.8
32	W31P4Q-05-C-0033		PATRIOT services, hardware, facilities, and equipment for support to PATRIOT missile rounds	CPFF	1/31/2005	14.2
33	W31P4Q-05-C-0094		Development, fabrication, testing, and production of a portable Flight Mission Simulator through an upgrade to the Fixed Flight Mission Simulator at White Sands Missile Range	CPIF	6/30/2005	9.4
	W31P4Q-04-C-0159					
34		P00021	Modularization of 1st Cavalry	FPI	4/21/2005	23.6

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix C. Undefinitized Contractual Actions Reviewed (cont'd)

ACC-RSA's Use of Undefinitized Contractual Actions for FY 2004–September 18, 2009

UCA Number	Contract Number	Modification Number	Description of Supplies or Services Procured	Contract[1] Type	Effective Date	NTE[2] Amount (millions)
35	W31P4Q-05-C-0036		Hellfire Missiles	FFP	12/22/2004	90.8
36	W31P4Q-04-C-0144		Improved Weapons Interface Unit retrofit program for the Multiple Launch Rocket System M270A1 Launcher	FFP	7/12/2004	5.6
	W58RGZ-05-C-0239					
37		P00009	Block III Radar Electronics Unit and TCDL	CPIF	1/20/2006	82.4
38	W31P4Q-08-C-0145		Bradley A-3 TOW Missile Launchers	FFP	3/20/2008	9.4
	W58RGZ-05-G-0005					
39		DO-0008	Integration of Aircraft Survivability Equipment and Common Missile Warning System into the Extended Block II Remanufacture Program for the Apache Longbow Advanced Attack Helicopter	FFP	9/28/2006	25.0
40		DO-0022	142 Improved Helmet Display Sight System	FFP	3/19/2007	39.0
41	W31P4Q-09-C-0376		Javelin Long-Lead Items	FFP	4/8/2009	7.2
42		P00001	Javelin FY09 Full Rate Production	FFP	6/2/2009	214.1
43		P00002	Javelin FY09 Hardware	FFP	9/30/2009	130.4

[1]DO: delivery order
[2]FFP: firm-fixed-price; CPFF: cost-plus-fixed-fee; CPIF: cost-plus-incentive-fee; and FPI: fixed-price incentive.
[3]NTE: not-to-exceed amount.

Appendix D. Deficiencies Identified From ACC-RSA UCAs Reviewed

Detailed Results of Undefinitized Contractual Actions Reviewed

			Deficiencies in ACC-RSA Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Effective Date**	**Definitization Untimely**	**Profit**	**Obligation Limits Exceeded or Maximum Amount Obligated at Issuance**	**Inadequate Justification to Issue**
	W58RGZ-04-C-0012						
1		P00010	8/25/2005		√[2]		
2	W31P4Q-07-C-0151		1/31/2007				
3		P00002	9/18/2007		√[1]		
4		P00003	12/12/2007	√[P]			
5	W31P4Q-04-C-0059		3/19/2004				
	W58RGZ-05-C-0274						
6		P00004	10/30/2006		√[2]		
7		P00008	1/31/2007	√[P]	√[2]		
8	W58RGZ-09-C-0129		3/24/2009		√[2]	√[3]	
9	W31P4Q-04-C-0061		2/5/2004		√[2]		
10		P00016	6/23/2005		√[1]		
11	W58RGZ-04-C-0025		1/2/2004	√[P]	√[1]		
12		P00011	2/25/2005		√[2]		
13	W58RGZ-06-C-0208		8/22/2006		√[1]		
14	W31P4Q-05-C-0014		11/1/2004		√[2]		
15		P00013	10/31/2005	√[N]	√[1]		
16		P00020	1/31/2006		√[1]		

Appendix D. Deficiencies Identified From ACC-RSA UCAs Reviewed (cont'd)

Detailed Results of Undefinitized Contractual Actions Reviewed

			Deficiencies in ACC-RSA Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Effective Date**	**Definitization Untimely**	**Profit**	**Obligation Limits Exceeded or Maximum Amount Obligated at Issuance**	**Inadequate Justification to Issue**
	W31P4Q-05-G-0004						
17		DO-0001	9/28/2005	√ U	√ 2		
18		DO-0003	5/31/2006		√ 2		
19		DO-0005	8/31/2006		√ 2		
20	W58RGZ-09-C-0065		2/27/2009	√ N		√ 3	
	W58RGZ-08-C-0224						
21		P00005	9/1/2009	√ P	√ 2		
22	W58RGZ-09-C-0049		12/23/2008			√ 3	
23	W58RGZ-08-C-0257		9/3/2008	√ N	√ 2		
24	W58RGZ-09-C-0158		6/22/2009	√ N	√ 2	√ 3	
	W58RGZ-05-D-0073						
25		DO-0001	3/11/2005		√ 2		
26	W58RGZ-07-C-0142		6/26/2007				
27	W58RGZ-05-C-0104		1/31/2005		√ 2		
28	W31P4Q-04-C-0154		6/24/2004	√ P	√ 1		
29	W31P4Q-05-C-0015		12/13/2004		√ 2		
30	W31P4Q-04-C-0125		6/29/2004		√ 2		√
31		P00004	1/31/2005		√ 2		√

Appendix D. Deficiencies Identified From ACC-RSA UCAs Reviewed (cont'd)

Detailed Results of Undefinitized Contractual Actions Reviewed

			Deficiencies in ACC-RSA Use of Undefinitized Contractual Actions				
UCA Number	**Contract Number**	**Delivery Order/ Modification Number**	**Effective Date**	**Definitization Untimely**	**Profit**	**Obligation Limits Exceeded or Maximum Amount Obligated at Issuance**	**Inadequate Justification to Issue**
32	W31P4Q-05-C-0033		1/31/2005		√[2]		
33	W31P4Q-05-C-0094		6/30/2005				
	W31P4Q-04-C-0159						
34		P00021	4/21/2005			√[4]	
35	W31P4Q-05-C-0036		12/22/2004	√[C]			
36	W31P4Q-04-C-0144		7/12/2004		√[2]		
	W58RGZ-05-C-0239						
37		P00009	1/20/2006		√[2]		√
38	W31P4Q-08-C-0145		3/20/2008				
	W58RGZ-05-G-0005						
39		DO-0008	9/28/2006	√[C]			
40		DO-0022	3/19/2007	√[C]	√[2]	√[4]	
41	W31P4Q-09-C-0376		4/8/2009	√[J]		√[3]	
42		P00001	6/2/2009	√[J]		√[3]	
43		P00002	9/30/2009	√[J]		√[3]	
Total				**16**	**29**	**9**	**3**

√ Discrepancy noted.
[1]No reflection of reduced cost risk in negotiated profit.
[2]Inadequate profit determination documentation.
[3]Not in compliance with August 2008 DPAP memorandum.
[4]Exceeded 10 U.S.C. 2326(b) limits
[C] Changes in Government requirements
[J] Related to the Javelin program
[N] Prolonged negotiations
[P] Inadequate contractor proposal
[U] Unknown reason for late definitization

Appendix E. Definitization Elapsed Days for ACC-RSA UCAs

ACC-RSA's Definitization Details for FY 2004-September 18, 2009

Contract Number	Effective Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
W58RGZ-04-C-0012						
P00010	8/25/2005	7/29/2005	12/22/2005	Received before UCA award date	N/A	119
W31P4Q-07-C-0151	1/31/2007	2/20/2007	7/31/2007	20	161	181
P00002	9/18/2007	11/27/2007	4/30/2008	70	155	225
P00003	12/12/2007	2/12/2008	9/24/2008	62	225	287
W31P4Q-04-C-0059	3/19/2004	4/29/2004	8/20/2004	41	113	154
W58RGZ-05-C-0274						
P00004	10/30/2006	1/18/2007	4/4/2007	80	76	156
P00008	1/31/2007	1/15/2007	11/15/2007	Received before UCA award date	N/A	288
W58RGZ-09-C-0129	3/24/2009	5/4/2009	6/18/2009	41	45	86
W31P4Q-04-C-0061	2/5/2004	10/30/2003	6/4/2004	Received before UCA award date	N/A	120
P00016	6/23/2005	7/25/2005	12/22/2005	32	150	182
W58RGZ-04-C-0025	1/2/2004	2/26/2004	8/26/2004	55	182	237
P00011	2/25/2005	7/25/2005	9/8/2005	150	45	195
W58RGZ-06-C-0208	8/22/2006	11/27/2006	2/9/2007	97	74	171
W31P4Q-05-C-0014	11/1/2004	10/18/2004	4/7/2005	Received before UCA award date	N/A	160
P00013	10/31/2005	5/12/2006	6/1/2006	193	20	213
P00020	1/31/2006	N/A	3/31/2006	N/A	N/A	59

Appendix E. Definitization Elapsed Days for ACC-RSA UCAs (cont'd)

ACC-RSA's Definitization Details for FY 2004-September 18, 2009

Contract Number	Effective Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualifying Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
W31P4Q-05-G-0004						
DO-0001	9/28/2005	3/14/2006	9/25/2006	167	195	362
DO-0003	5/31/2006	7/17/2006	11/14/2006	47	120	167
DO-0005	8/31/2006	10/10/2006	3/2/2007	40	143	183
W58RGZ-09-C-0065	2/27/2009	5/11/2009	12/17/2009	73	220	293
W58RGZ-08-C-0224						
P00005	9/1/2009	10/8/2009	6/16/2010	37	251	288
W58RGZ-09-C-0049	12/23/2008	2/6/2009	6/19/2009	45	133	178
W58RGZ-08-C-0257	9/3/2008	7/12/2008	5/1/2009	Received before UCA award date	N/A	240
W58RGZ-09-C-0158	6/22/2009	10/13/2009	4/12/2010	113	181	294
W58RGZ-05-D-0073						
DO-0001	3/11/2005	5/4/2005	9/21/2005	54	140	194
W58RGZ-07-C-0142	6/26/2007	6/21/2007	8/9/2007	Received before UCA award date	N/A	44
W58RGZ-05-C-0104	1/31/2005	4/6/2005	5/23/2005	65	47	112
W31P4Q-04-C-0154	6/24/2004	11/10/2003	2/28/2005	Received before UCA award date	N/A	249
W31P4Q-05-C-0015	12/13/2004	4/1/2005	8/19/2005	109	140	249
W31P4Q-04-C-0125	6/29/2004	9/27/2004	1/27/2005	90	122	212
P00004	1/31/2005	3/31/2005	9/27/2005	59	180	239
W31P4Q-05-C-0033	1/31/2005	12/10/2004	5/26/2005	Received before UCA award date	N/A	115
W31P4Q-05-C-0094	6/30/2005	5/9/2005	12/22/2005	Received before UCA award date	N/A	175

Appendix E. Definitization Elapsed Days for ACC-RSA UCAs (cont'd)

ACC-RSA's Definitization Details for FY 2004–September 18, 2009

Contract Number	Effective Date	Qualifying Proposal Date	Definitization Date	Days From Award to Receipt of Qualify ng Proposal	Days From Receipt of Qualifying Proposal to Definitization	Days From Award to Definitization
W31P4Q-04-C-0159						
P00021	4/21/2005	5/27/2005	8/22/2005	36	87	123
W31P4Q-05-C-0036	12/22/2004	3/2/2005	9/26/2005	70	208	278
W31P4Q-04-C-0144	7/12/2004	11/3/2004	4/6/2005	114	154	268
W58RGZ-05-C-0239						
P00009	1/20/2006	4/12/2006	9/29/2006	82	170	252
W31P4Q-08-C-0145	3/20/2008	4/30/2008	10/7/2008	41	160	201
W58RGZ-05-G-0005						
DO-0008	9/28/2006	2/9/2007	2/28/2008	134	384	518
DO-0022	3/19/2007	10/31/2007	2/13/2008	226	105	331
W31P4Q-09-C-0376	4/8/2009	1/30/2009	7/12/2010	Received before UCA award date	N/A	460
P00001	6/2/2009	1/30/2009	7/12/2010	Received before UCA award date	N/A	405
P00002	9/30/2009	1/30/2009	7/12/2010	Received before UCA award date	N/A	285

Department of the Army Comments

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4400 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

REPLY TO ATTENTION OF:

AMCIR

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN: [redacted] 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Command Reply to Draft Report: Army Contracting Command-Redstone's Management of Undefinitized Contractual Actions Could Be Improved (Project Number: D2009-D000CG-0248.004) (D0949)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject report and the responses provided by the U.S. Army Contracting Command (ACC) and the U.S. Army Aviation and Missile Command (AMCOM). AMC endorses the enclosed responses from ACC and AMCOM.

2. The AMC point of contact is [redacted]

Encl

JOHN B. NERGER
Executive Deputy to the
Commanding General

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DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
3334A WELLS ROAD
REDSTONE ARSENAL, AL 35898-5000

REPLY TO
ATTENTION OF:

JUL 06 2011

AMSCC-IR

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

SUBJECT: Army Contracting Command-Redstone's Management of Undefinitized Contractual Action Could Be Improved (Project No. D2009-D000CG-0248.004) (D7053)

1. Reference memorandum and draft report, Department of Defense Inspector General, 8 June 2011, subject: same as above.

2. After reviewing the referenced documents, the U.S. Army Contracting Command (ACC) concurs with the enclosed comments from the Army Aviation and Missile Command.

3. The ACC point of contact is [redacted]

Encl

JEFFREY P. PARSONS
Executive Director

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DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA 35898-5000

REPLY TO
ATTENTION OF

JUN 30 2011

AMSAM-IR

MEMORANDUM THRU [redacted] Director, Internal Review and Audit Compliance Office, Headquarters, US Army Contracting Command, 3334 Wells Rd, Redstone Arsenal, AL 35898

FOR Ms. [redacted] Director, Internal Review and Audit Compliance Office, Headquarters, US Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA 22060

SUBJECT: DODIG Draft Report – Audit of Army Contracting Command-Redstone's Management of Undefinitized Contractual Actions Could Be Improved (Project No. D2009-D000CG-0248.004) (D0949) (AMCOM 2010D066)

1. Reference Department of Defense Office of Inspector General, e-mail, 8 Jun 11, subject: DODIG Draft Audit Report D2009-D000CG-0248.004.

2. The enclosed comments to the subject draft report were provided by the Army Contracting Command-RSA (ACC-RSA) and reviewed by AMCOM Legal Office. The ACC-RSA concurs with the two DODIG recommendations.

3. Recommendation one in the subject report needs some clarification by the auditor in order to better explain its intent. It is unclear whether it is being recommended that there should be two separate events requiring action initiated by both the Commanding General and the ACC-RSA or this recommendation is only directed to the Commanding General.

4. The point of contact is [redacted] Internal Review and Audit Compliance Office, [redacted]

Encl

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AN EQUAL OPPORTUNITY EMPLOYER

US Army Aviation and Missile Life Cycle Management Command
Comments to DODIG Draft Report
Audit of Army Contracting Command-Redstone's Management
Of Undefinitized Contractual Actions Could Be Improved
(Project No. D2009-D000CG-0248.004) (AMC No. D0949)
(AMCOM 2010D0066)

FINDING: Inconsistent Management of Undefinitized Contractual Actions at ACC-Redstone

"ACC-Redstone personnel did not consistently comply with statutory and DoD requirements for managing 40 of 43 UCAs we reviewed. For the 40 UCAs, valued at about $2 billion, ACC-Redstone contracting personnel did not:

- definitize 16 UCAs within the 180-day time frame because contractors submitted inadequate proposals, Government and contractor personnel conducted prolonged contract negotiations and Government requirements changed;
- reflect the contractor's reduced risk in the Government's negotiation position on profit for 7 UCAs because they did not follow applicable guidance;
- adequately support whether the reduced risk during the undefinitized period was reflected in profit on 22 UCAs because they prepared DD Forms 1547, "Record of Weighted Guidelines Application and price negotiation memoranda (PNM) that did not provide sufficient detail that would allow an independent party to determine the basis for profit determination;
- obligate funds within allowable limits for 2 UCAs because they miscalculated the allowable obligation amount and they decreased the not-to-exceed value without adjusting the amount obligated;
- improperly obligated the maximum permissible funding before definitization for 7 of 9 UCAs issued after the August 2008 DPAP memorandum because they did not take steps to implement the requirements of the August 2008 DPAP memorandum; and
- properly justify using 3 UCAs because of poor acquisition planning.

ACC-Redstone contracting personnel prepared adequate authorization requests and adequately documented their determination of price reasonableness for all 43 UCAs. As a result, ACC-Redstone contracting personnel's noncompliance with applicable guidance and lack of consideration for incurred cost may have resulted in the Government paying more profit than was necessary. Additionally, ACC-Redstone price negotiation positions were about $800,000 higher for three UCAs because ACC Redstone

contracting personnel did not consider incurred cost when developing profit positions."

RECOMMENDATIONS AND COMMAND COMMENTS:

Recommendation 1.

"We recommend that the Commanding General, Army Aviation and Missile Command require that Army Aviation and Missile Command Center program management and Army Contracting Command-Redstone contracting personnel better coordinate with customers to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative."

General Comment: Clarification of recommendation one is needed in order to better explain its intent. It is unclear whether it is being recommended that there should be two separate events requiring action initiated by both the Commanding General (or other appropriate authority) AND the Army Contracting Command-Redstone (ACC-RSA) Principal Assistant Responsible for Contracting (PARC) OR this recommendation is only directed to the Commanding General. Assure proper tasking of this recommendation.

Command Comments: Concur. Upon clarification of the PARC's need for action on this recommendation, guidance will be added to appropriate ACC-RSA publications to reinforce the need for contracting personnel to follow the recommendation's intent. A Policy and Compliance Guidance (P&CG) will be issued to ensure these actions are clearly communicated to impacted personnel. Target completion date for corrective action will be NLT 01 October 2011.

Recommendation 2.

"We recommend that the Principal Assistant Responsible for Contracting, Army Contracting Command-Redstone:

a. Revise the Army Aviation and Missile Command Contracting Center Standard Operating Procedure No. 715-1 to:

(1) Add guidance to sections 17.74D.2 and 17.74D.3 that provides incentives and punitive procedures for delays in obtaining an adequate proposal in accordance with contract requirements."

Command Comments: Concur. ACC-RSA will revise the appropriate text within the ACC-RSA SOP 715-1 to further emphasize incentives and punitive procedures for delays in obtaining adequate proposals in accordance with contract requirements. However, further clarification of specific incentives and punitive actions DODIG suggests ACC-RSA should use is requested. A P&CG will be issued to ensure that agreed upon actions are clearly communicated to impacted personnel. Target completion date for corrective action will be NLT 01 October 2011.

(2) "Include instructions in section 17.74D.3 that state when contracting personnel should engage the Army Aviation and Missile Command chain of command when prolonged negotiations occur."

Command Comments: Concur. ACC-RSA will revise the appropriate text within the ACC-RSA SOP 715-1 to further emphasize proper procedures for elevating UCA prolonged negotiation issues. However, suggest it would be more accurate to reference the ACC-RSA chain of command in the recommendation and state that appropriate actions may include discussion with Army Aviation and Missile Command and/or requiring element personnel as needed. A P&CG will be issued to ensure these actions are clearly communicated to impacted personnel. Target completion date for corrective action will be NLT 01 October 2011.

General Comment: Proper title for referenced procedure is Army Contracting Command-Redstone Standing Operating Procedure 715-1.

b. "Better coordinate with customers and management to identify changes in Government requirements as soon as practicable and document changes in the acquisition narrative."

Command Comments: Concur. However, strongly suggest that this recommendation can only be effective if directed at ACC-RSA customers as well. It is the customers who initiate/develop the requirement and who are responsible for inadequate planning that result in changes to the requirement. This recommendation appears to duplicate the intent of Recommendation 1.

c. "Comply with the requirements in section 2326(e), title 10, United States Code for determining the profit for undefinitized contractual actions with substantial incurred cost."

Command Comments: Concur. ACC-RSA will revise the appropriate publications(s) to further emphasize the need for contracting personnel to adhere to paragraph (e) of the referenced United States Code section. A P&CG will be issued to ensure that the guidance is clearly communicated to impacted personnel. Target completion date for corrective action will be NLT 01 October 2011.

d. "Revise the Army Aviation and Missile Command Contracting Center Standard Operating Procedure No. 715-1 and the Army Aviation and Missile Command Acquisition Desk Guide to:

(1) Include guidance for contracting personnel to document their consideration of reduced risk in the pre-objective negotiation memorandum for the contractor's profit or fee when definitizing undefinitized contract actions. Additionally, the guidance should include instructions on how contracting personnel should develop and document the Government's objective for profit or fee when definitizing an undefinitized contractual action."

Command Comments: Concur. ACC-RSA will revise the appropriate publications(s) to further emphasize the need for contracting personnel to adhere to the paragraph 2.d (1) recommendation. A P&CG will be issued to ensure these actions are clearly communicated to impacted personnel. Target completion date for corrective action will be NLT 01 October 2011.

(2) "Require contracting personnel to document in the price negotiation memorandum support for both the objective and recommended positions, incurred cost, contract type risk used for both the undefinitized period and the remainder of the contract, and the impact that the use of the undefinitized contractual action had on the Government's position entering into negotiation. In addition, include instructions for contracting personnel to discuss inputs made to the contract type risk section of the DD Form 1547, "Record of Weighted Guidelines Application."

Command Comments: Concur. ACC-RSA will revise the appropriate publications(s) to further emphasize the need for contracting personnel to adhere to paragraph 2.d (2) recommendation. A P&CG will be issued to ensure these actions are clearly communicated to impacted personnel. Target completion date for corrective action will be NLT 01 October 2011.

General Comment: Proper title for SOP is Army Contracting Command-Redstone Standing Operating Procedure 715-1 (ACC-RSA SOP 715-1).

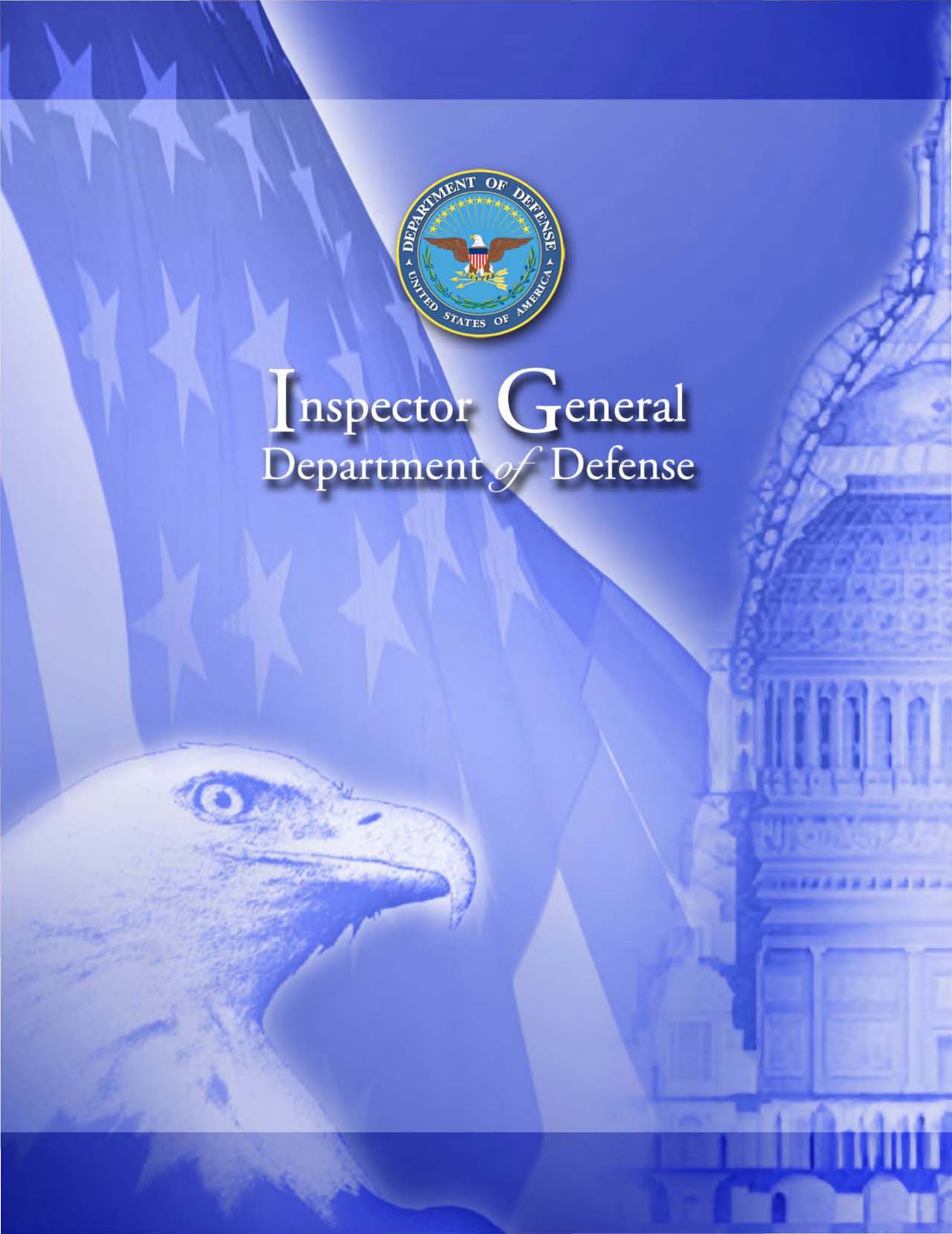
e. "Require contracting personnel to comply with the August 2008 Office of Defense Procurement and Acquisition Policy Memorandum, "Management Oversight of Undefinitized Contract Actions," requirement to avoid obligating the maximum permissible funding at the time of undefinitized contractual action award so that both users and contractors have incentive to coordinate early and often about proposals, contractual needs and funding."

Command Comments: Concur. ACC-RSA will distribute the August 2008 memorandum to contracting personnel and, if necessary, a P&CG will be issued to further emphasize the content of the memorandum. Target completion date for corrective action will be NLT 01 October 2011.

f. "Avoid using undefinitized contractual actions when funding is uncertain and for known requirements that should have been part of a comprehensive acquisition plan because it places the Government at unnecessary risk."

Command Comments: Concur. ACC-RSA will revise the appropriate publications(s) to further emphasize the need for contracting personnel to follow the intent of the paragraph 2.f recommendation. A P&CG will be issued to ensure this guidance is clearly communicated to impacted personnel. ACC-RSA agrees with regulatory guidance limiting the use of undefinitized contractual actions to situations when negotiating a definitive contract is not possible and the Government's interest demands that contract performance begins immediately. Situations that demand that performance begins immediately vary and ACC-RSA is often

constrained by the inadequate planning of the customer who initiates the requirement. Then there are also circumstances that make the use of an undefinitized contractual action appropriate. An example would be where critical requirements have been identified but funding is not currently available and by the time money is allocated an undefinitized contractual action is the only avenue to fulfill the need. ACC-RSA's action will reflect the need to avoid the use of undefinitized contractual actions unless it is in the Government's best interest. Target completion date is 01 October 2011.


Inspector General
Department of Defense