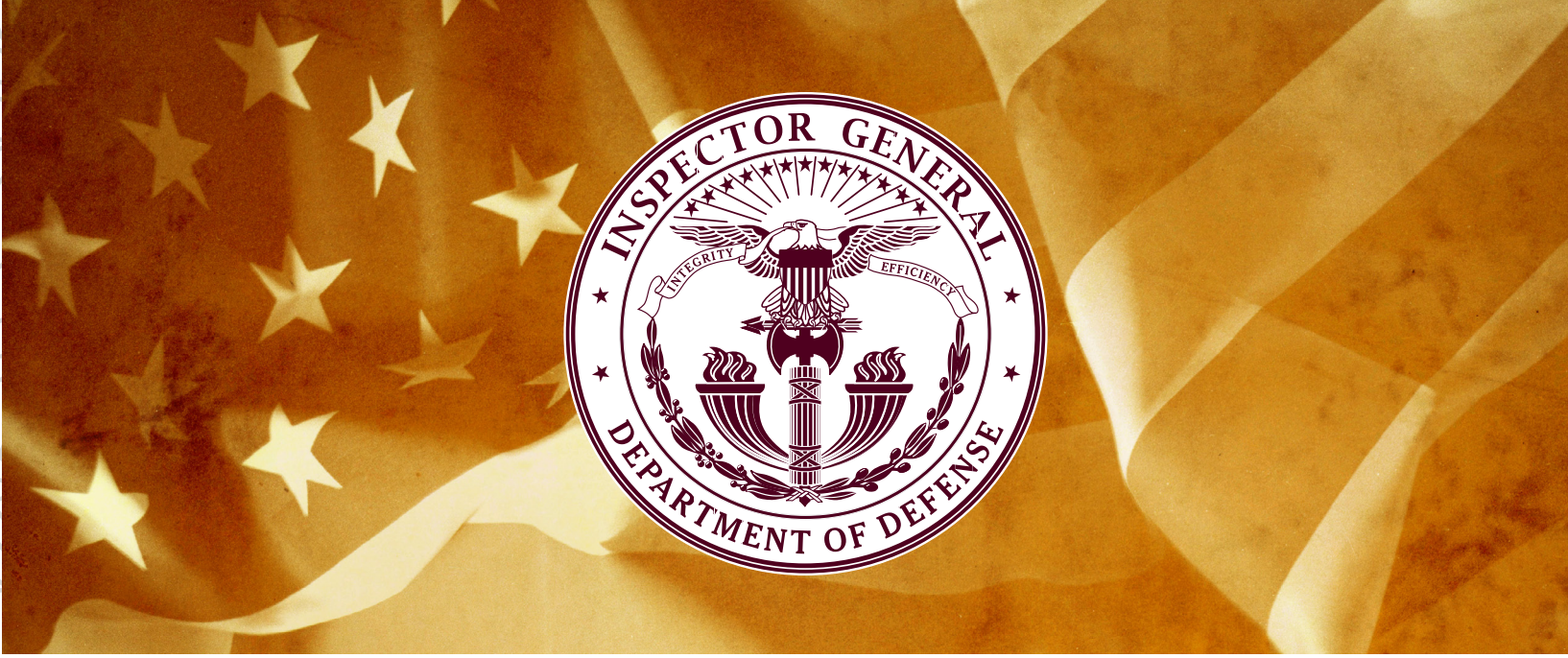


United States Department of Defense

Office of Inspector General

Contingency Contracting: A Framework for Reform 2012 Update

Report No. DODIG-2012-134

September 18, 2012

Additional Copies

To obtain additional copies of this report, visit the Web site of the Department of Defense Inspector General at http://www.dodig.mil/audit/reports or contact the Secondary Reports Distribution Unit auditnet@dodig.mil.

Suggestions for Audits

To suggest or request audits, contact the Office of the Deputy Inspector General for Auditing at auditnet@dodig.mil, or by mail:

Department of Defense Office of Inspector General
Office of the Deputy Inspector General for Auditing
ATTN: Audit Suggestions/13F25-04
4800 Mark Center Drive
Alexandria, VA 22350-1500

Acronyms and Abbreviations

CERP	Commander's Emergency Response Program
COR	Contracting Officer's Representative
CRC	Continental U.S. Replacement Center
DCIS	Defense Criminal Investigative Service
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FSR	Field Service Representative
INL	Bureau of International Narcotics and Law Enforcement Affairs
KBR	Kellogg, Brown, and Root Services, Inc.
LBG	Louis Berger Group, Inc.
LCC	Laguna Construction Company, Inc.
LOGCAP	Logistics Civil Augmentation Program
MRAP	Mine Resistant Ambush Protected
OCO	Overseas Contingency Operations
PM SEQ	Program Manager Soldier Equipment
QASP	Quality Assurance Surveillance Plan
TAFGA	Tamimi Global Company Ltd
U.S.C.	United States Code

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

September 18, 2012

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Contingency Contracting: A Framework for Reform – 2012 Update
(Report No. DODIG-2012-134)

We are providing this report for your information and use. We did not issue a draft report. This report is based on our consolidation of 38 reports prepared by DoD Office of Inspector General personnel and press releases related to 20 fraud investigations issued from April 2, 2010, through March 31, 2012, regarding DoD's contingency contracting. These reports and investigations identified a variety of problems relating to DoD officials not properly awarding, administering, or managing contingency contracts in accordance with Federal and DoD policies.

We are providing this report as an update to the previous DoD Office of Inspector General Report No. D-2010-059, "Contingency Contracting: A Framework for Reform," May 14, 2010, and are re-emphasizing the ongoing problems identified in the previous report. This report provides a framework and tool for contracting personnel to use when assessing their contracting operations to ensure DoD implements the best practices and identifies vulnerabilities to fraud, waste, and abuse. This report contains no recommendations; therefore, we do not require written comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077).

Jacqueline L. Wicecarver
Assistant Inspector General
Acquisition and Contract Management

DISTRIBUTION:
UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY
UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
UNDER SECRETARY OF DEFENSE FOR POLICY
UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER, DOD
COMMANDER, U.S. CENTRAL COMMAND
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND
COMMANDER, INTERNATIONAL SECURITY ASSISTANCE FORCE/U.S. FORCES-AFGHANISTAN
COMMANDER, NATO TRAINING MISSION-AFGHANISTAN/COMBINED SECURITY TRANSITION COMMAND-AFGHANISTAN
COMMANDER, JOINT THEATER SUPPORT CONTRACTING COMMAND
CHIEF, NATIONAL GUARD BUREAU
DOD CHIEF INFORMATION OFFICER
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, JOINT STAFF
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE SECURITY COOPERATION AGENCY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
AUDITOR GENERAL, DEPARTMENT OF THE AIR FORCE
SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION
SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

Results in Brief: Contingency Contracting: A Framework for Reform – 2012 Update

What We Did

Our overall objective was to provide DoD field commanders and contract managers with information on contracting problems related to contingency operations that the DoD Office of Inspector General (OIG) identified and reported from April 2, 2010, through March 31, 2012. In this report, we discuss current contingency contracting problems, as well as re-emphasize ongoing problems identified in the DoD OIG Report No. D-2010-059, "Contingency Contracting: A Framework for Reform," May 14, 2010. Since issuing that report, DoD OIG personnel issued 38 reports and were involved with 20 fraud investigations pertaining to Overseas Contingency Operations. These reports and investigations identified a variety of problems relating to DoD officials not properly awarding, administering, or managing contingency contracts in accordance with Federal and DoD policies.

What We Found

We reviewed the 38 reports and identified 9 systemic contracting problem areas relating to contingency operations. The five most prevalent problem areas reported were:

1. Oversight and Surveillance,
2. Financial Management,
3. Contract Pricing,
4. Requirements, and
5. Property Accountability.

Additionally, we reviewed the 20 fraud investigations uncovering criminal offenses that occurred during contract award and administration phases. The 20 fraud investigations affected 3 contracting areas: source selection, oversight and surveillance, and financial management.

What Has Been Done

The 38 DoD OIG reports contained 311 recommendations addressing 9 systemic contracting problem areas. As of August 21, 2012, 263 audit report recommendations have been closed while the remaining 48 recommendations are still open. For the five most prevalent problem areas, DoD OIG personnel recommended DoD to:

- develop quality assurance surveillance plans and properly designate contracting officer's representatives;
- review all invoices and reconcile the services and products received;
- properly determine fair and reasonable prices;
- properly define and compete all requirements; and
- establish records and maintain accountability for Government property.

In addition, the 20 fraud investigations resulted in prison sentences, fines, restitution, and criminal and civil settlement agreements.

Source: U.S. Defense Imagery Web site.

What Needs to Be Done

Although the United States completed its military drawdown from Iraq, the United States continues to train and equip the Iraq Security Forces. As of July 2012, DoD had 7,336 contractor personnel and no operational military presence in Iraq. In Afghanistan, DoD had 113,736 contractor personnel and approximately 95,400 military personnel. The effectiveness of contractor support of U.S. contingency operations could be compromised if DoD officials fail to apply lessons learned from Iraq and Afghanistan. DoD officials should review the identified problems and develop a framework to achieve better contracting performance for future contingency operations.

Resources

The "Key Aspects of the Contracting Process" flowchart on page iii and the "Fraud Indicators and Poor Practices in Relation to the Contracting Problem Areas" flowchart on page iv are useful resources to DoD field commanders and contract managers. These flowcharts provide:

- a visual tool for field commanders and contracting officers to assess the strengths and weaknesses in their contracting approaches,
- information to encourage real-time awareness of areas that might be susceptible to fraud and contributors to waste and abuse, and
- a useful snapshot of key contract problems and fraud indicators related to contingency operations.

Key Aspects of the Contracting Process

Pre-Award

Requirements Development

- Contracting activities and their customers should consider both technical needs and business strategies when defining and specifying requirements.

- The Government must define and describe agency requirements that explain the required results in clear, specific, and objective terms with measurable outcomes in a statement of work, statement of objectives, or performance work statement.

- Determine that all documentation processes are in place (contract files, documentation of market research, documentation of pre- and post-negotiation decisions, surveillance plans, and surveillance documentation).

Acquisition Planning

- The acquisition plan is a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

- Develop the cost/ price estimate for the total planned acquisition.

- Determine how the acquisition will be funded and the availability of funding.

- Determine contract type and duration of contract.

- Determine whether any waivers or deviations are required.

- Plan for requesting Defense Contract Audit Agency and Defense Contract Management Agency assistance.

Solicitation

- A solicitation is a document publicized for prospective contractors by a Government agency, requesting the submission of offers or information.

- Conduct an assessment of current and potential technical, cost, schedule, and performance risks, and the plan for mitigating those risks.

- Develop quality assurance surveillance plans and responsibilities for monitoring contract performance.

- Determine the number of administrative contracting officers and contracting officer's representatives needed to be appointed.

- Develop the plan for evaluating whether the metrics have been achieved, including thresholds for cost, schedule, and performance.

- Issue the solicitation.

Award

Source Selection

- The objective of source selection is to select the proposal that represents the best value to the Government.

- Price or cost must be evaluated in every source selection and the quality of the product or service must be addressed through consideration of one or more noncost evaluation factors, such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file; conflicts of interest, or the appearance thereof, must be avoided when conducting source selection.

- Conduct proposal evaluation by assessing the offeror's proposal and ability to perform the prospective contract successfully.

- No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility for the prospective contractor.

Award

- Contracting officers must provide for full and open competition when soliciting offers and awarding Government contracts unless exceptions apply.

- Sole-source contracts may be awarded if there is only one responsible source and no other supplies or services will satisfy agency requirements. In addition, a written justification and approval is required prior to commencing negotiations for a sole-source contract.

- The award decision is based on evaluation factors that are tailored to the acquisition and proposals must be evaluated solely on the evaluation factors specified in the solicitation.

Contract Administration*

Contract Monitoring

- Contracting officers perform oversight and surveillance to ensure that supplies or services conform to contract requirements.

- The contracting officer is responsible for ensuring that there is an effective process for measuring the contractor's performance that includes clearly defined levels of contractor surveillance.

- A fully developed and appropriately structured contract surveillance system is crucial to ensure that the contractor is:
  - performing on schedule;
  - current in its understanding of the requirements;
  - and applying adequate skills and resources to the contractual task.

- Continued update of contract files.

- Contractor system reviews should be performed by Defense Contract Management Agency and Defense Contract Audit Agency.

- DOD Components must track Government-furnished property. The contracting officer is responsible for Government property administration and also ensuring that contractor records and property control systems are effective.

Acceptance of Supplies/Services

- Acceptance of contractual supplies or services may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract.

- The Government should not accept supplies or services before completion of Government contract quality assurance actions, and the contracting officer should reject supplies or services not conforming to contract requirements.

- Acceptance constitutes acknowledgment that the supplies or services conform with contract quality and quantity requirements and must be evidenced by an acceptance certificate.

Payments

- Payments made by the Government should directly correlate to a contractual document, contractor invoice, and acceptance or receiving report.

- Invoice reviews by contracting officer's representative and Defense Contract Audit Agency.

- Financial management of funds for contract to include:
  - Ensuring appropriated funds are used to fund the contract.
  - Ensuring fund obligations are not in excess of appropriated funding.

* There are 70 contract administration functions in the Federal Acquisition Regulation.

Contract Closeout

Contract Closeout

- When the contractor has satisfactorily completed contract performance, and final payment has been made, the contract file should be closed as soon as possible.

- The contract file must contain all documents to facilitate full reconciliation of the contract actions through the life of the contract.

- Closeout actions include:
  - Physical actions, such as issuing a unilateral modification to deobligate excess funds after receipt of the final invoice and a receiving report.
  - Administrative actions, such as disposing of Government-furnished property and classified material, as well as releasing contractor claims.
  - Financial actions, such as ensuring that all interim or disallowed costs are settled. Financial actions should be completed when the total obligations and the contract amount are in agreement and all disbursements have been paid and recorded properly in the general accounting and finance system and the Mechanization of Contract Administration Services system.

Red Text = Top recurring contracting issue areas.

Source: DoD IG Report No. DODIG-2012-134, "Contingency Contracting: A Framework for Reform – 2012 Update," September 18, 2012

Fraud Indicators and Poor Practices in Relation to the Contracting Problem Areas

Pre-Award

Requirements

- The Government failing to state requirements functionally to the maximum extent possible. Specifications that are vague make it difficult to reasonably compare estimates.

- The Government defining statements of work and specifications to fit products or capabilities of a single contractor, which effectively excludes competition.

- The Government splitting requirements to use simplified acquisition procedures in order to avoid review and approval.

- The Government modifying the contract shortly after award in order to make material changes in the requirements or statement of work.

Contract Documentation*

- A pattern of missing documents or documentation with outdated information in the contract file.

- Contract documents that are altered, backdated, or modified to cover deficiencies.

- Contract awards made without adequate documentation of all pre-award and award actions.

- Invoices that do not have adequate supporting documentation or supporting documentation is incomplete.

Contract Type

- The high risk to the Government in cost-reimbursement contracts may provide an opportunity for fraud to occur.

- The contracting officer extending the duration of a cost-reimbursement or time-and-materials contract after experience provided a basis for firmer or fixed pricing.

- Award/use of an illegal cost-plus-percentage-of-cost contract.

* Contract documentation is required throughout the contracting process. For the purpose of this report, we placed the contract documentation problem area under the pre-award phase because contract documentation starts at the beginning of the contracting process.

Award

Source Selection

- Improper relationships between Government and contractor personnel.

- The Government's failure to perform market research to determine evaluation factors, contracting method, or whether commercial items or nondevelopmental items would meet the Government's needs.

- The Government restricting procurement to exclude or hamper any qualified contractor.

- The Government revealing information about procurements to one contractor that is not revealed to another.

- The Government accepting late or nonresponsive proposals, or accepting proposals from nonresponsible offerors.

- The Government improperly disqualifying offerors.

- The Government exercising favoritism towards a particular contractor during the evaluation process.

- The Government awarding contracts to contractors with poor records of performance.

- The Government awarding contracts that include items other than those contained in the bid specifications.

- The Government's approval of a justification for less than full and open competition based on improper reasons or inaccurate facts.

Contract Pricing

- The Government not preparing estimates or preparing estimates after solicitations are requested.

- The Government and contractor utilizing unqualified personnel to develop cost or pricing data used in estimates.

- Government estimates and contract award prices are consistently very close.

- The Government approves items that are of lesser value but the contract cost is not reduced.

- The contractor issuing an engineering change proposal soon after the award of a contract.

Contract Administration

Oversight and Surveillance

- Contractors awarding subcontracts to unsuccessful bidders.

- The Government providing materials or services to contractors even though contractors are being paid to provide the materials or services.

- The administrative contracting officer approving modifications.

- Contractors failing to meet terms but no compliance efforts are undertaken.

- The Government certifying receipt of goods without performing inspections.

- The user frequently complaining of poor quality of supplies or services provided under a contract. This may indicate that contractors are delivering something less than what you are paying for.

- The Government failing to appropriately close out the contracts in a timely manner.

Contractor Personnel

- Increased workloads and responsibilities that prohibit ongoing DoD monitoring of each contractor's work.

- Contractors certifying payments for vendor goods, services, or salaries (inherently governmental function).

-Contractors obtaining proprietary information from a Government official when information is not available to all competitors (conflict of interest).

Property Accountability

- Inadequate management oversight and physical inventory control.

- Unreliable property inventory data.

- Inventory records disclose unusual patterns when compared to physical inventory reviews that cannot be reasonably explained.

- Inventory items marked with incorrect disposal condition codes, such as repairable or scrap when they should be labeled excellent.

- Failure to return Government-furnished equipment.

Financial Management**

- The contractor submitting false invoices or claims to the Government.

- Excess profits on either a specific contract, product line, or division may be a billing fraud indicator.

- Later contractor billings showing a downward adjustment in material costs as labor/ overhead costs increase.

- The Government paying contractors twice for the same items or services without an attempt to recoup the overpayments.

- The Government not regularly reconciling contract payments, daily transactions, and inventory.

- Contractors' failure to correct known system deficiencies.

- Contractors or suppliers complaining that they are not being paid in a timely manner. This may indicate fraudulent manipulations and diversion of Government resources through supply or finance operations.

- The Government's failure to deobligate funds.

** Financial management is also required throughout the contracting process. For the purpose of this report, we placed the financial management problem area under the contract administration phase because the majority of financial management functions occur during contract administration.

Source: DoD IG Report No. DODIG-2012-134, "Contingency Contracting: A Framework for Reform – 2012 Update," September 18, 2012

Table of Contents

Table of Contents (cont'd)

Appendices

Introduction

Objectives

Our overall objective was to provide DoD field commanders and contract managers with information on contracting problems related to contingency operations that the DoD Office of Inspector General (OIG) identified and reported from April 2, 2010, through March 31, 2012. This report provides a contract framework and tool for contracting personnel to use when assessing whether their contracting operations implement the best contracting practices and identifying vulnerabilities to fraud, waste, and abuse. In this report, we discuss current problems related to contingency contracting, as well as, re-emphasize ongoing problems identified in the DoD OIG Report No. D-2010-059, "Contingency Contracting: A Framework for Reform," May 14, 2010. Appendix A explains the scope and methodology we used in preparing this follow-up summary report.

Background on Contingency Contracting

Contingency contracting is used to procure supplies and services that directly support domestic and overseas armed conflict and noncombat contingency operations (such as stability operations and disaster relief efforts). A contingency contract is a legally binding agreement awarded by Government contracting officers in the operational area as well as contracts that have a prescribed area of performance within a designated operational area. For contingency operations, DoD routinely relies on contractors to provide front-line support and assist with the cradle-to-grave contracting process. These contractors perform vital tasks in support of U.S. defense and development objectives, including logistics support, equipment maintenance, fuel delivery, base operations support, and security. However, DoD faced challenges in contracting to support contingency operations because of poor requirements planning and lack of oversight over contractor performance.

The "Key Aspects of the Contracting Process" flowchart on page iii and the "Fraud Indicators and Poor Practices in Relation to the Contracting Problem Areas" flowchart on page iv are useful resources to DoD field commanders and contract managers. These flowcharts provide:

- a visual tool for field commanders and contracting officers to assess the strengths and weaknesses in their contracting approaches;
- information to encourage real-time awareness of areas that might be susceptible to fraud and contributors to waste and abuse; and
- a useful snapshot of key contract problems and fraud indicators related to contingency operations.

Drawdown of U.S. Military in Iraq and Afghanistan

Since 2011, DoD has conducted a complete drawdown of U.S. troops in Iraq and developed plans for a withdrawal of troops in Afghanistan. In December 2011, the last of the U.S. Forces-Iraq departed in accordance with an agreement between the United States

and the Republic of Iraq. As part of the agreement, the United States will continue to train and equip the Iraq Security Forces. For that reason, the United States continues to rely on contractors to provide security and life support services, such as facility operation, food services, and laundry. As of July 2012, there were 7,336 contractors in Iraq.

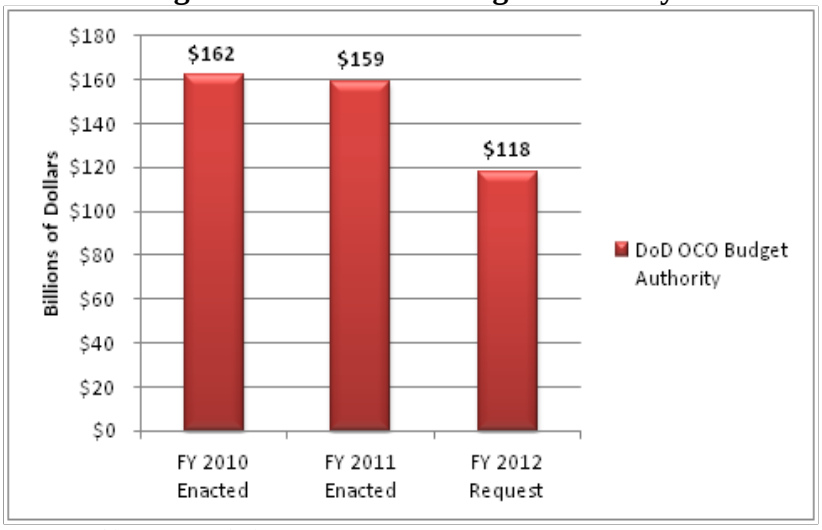
In Afghanistan, the drawdown started in 2011 and will continue until the United States hands over security to Afghan authorities in 2014. Although DoD is withdrawing troops, the United States still relies heavily on contractors to provide front-line support in Afghanistan. As of July 2012, DoD had 113,736 contractor personnel compared to approximately 95,400 military personnel in Afghanistan.

The increased reliance on contractors to support contingency operations requires effective contract management which helps avoid delays in providing support to the warfighter and prevents wasteful spending. Specifically, DoD field commanders and contracting personnel must validate that the DoD consistently receives quality goods and services in a timely manner, and at a reasonable price while operating in contingency environments.

DoD Contract Spending On Overseas Contingency Operations

Beginning with the 2010 budget request, the Office of Management and Budget made significant changes in the criteria for developing the DoD Overseas Contingency Operations (OCO) budget request to provide more budget transparency and to more accurately reflect the temporary and extraordinary requirements of OCO. The FY 2012 OCO budget requested $118 billion for the DoD, $107 billion for Operation Enduring Freedom supporting activities in Afghanistan, and $11 billion for Operation New Dawn supporting activities in Iraq. Figure 1 illustrates DoD OCO Budget Authority from FY 2010 through FY 2012.

Figure 1. DoD OCO Budget Authority



Source: White House Web site.

Problems Summarized in Previous DoD OIG Report, Contingency Contracting: A Framework for Reform

On May 14, 2010, DoD OIG issued the first summary report covering contingency contracting problems in 34 reports issued from October 1, 2007, through April 1, 2010. In that report, DoD OIG personnel identified 10 systemic contracting problem areas: requirements, contract documentation, contract type, source selection, contract pricing, oversight and surveillance, inherently governmental functions, property accountability, award fees, and financial management. Appendix C summarizes and compares the numbers of reports addressing each contracting problem identified in DoD OIG Report No. D-2010-059 and this summary report.

In addition, DoD OIG personnel reported that DoD had not completed corrective actions for 177 recommendations made from the 34 reports summarized in DoD OIG Report No. D-2010-059. Appendix D provides the current status of these recommendations.

Problems in Contingency Contracting Operations

DoD OIG personnel issued 38 reports from April 2, 2010, through March 31, 2012, that identified systemic contracting problems in supporting OCO. DoD OIG initiated audits and investigations based on DoD management requests, statutory requirements, and congressional requests.

These reports identified a variety of problems relating to DoD officials not properly awarding, administering, or managing contingency contracts in accordance with Federal and DoD policies. We grouped the deficiencies discussed in the reports into the following nine contracting areas: [1]

1. Requirements,
2. Contract Documentation,
3. Contract Type,
4. Source Selection,
5. Contract Pricing,
6. Oversight and Surveillance,
7. Contractor Personnel,
8. Property Accountability, and
9. Financial Management.

Of these problems, the five most prevalent problem areas reported were oversight and surveillance, financial management, contract pricing, requirements, and property accountability.

Appendix B contains a list of the contracting problem areas by report number. Many of the reports identified more than one contracting problem area. Appendix F contains a list of the 38 contingency contracting reports issued from April 2, 2010, through March 31, 2012.

In addition, Appendix E provides a description of various fraud indicators at different phases in the contracting process.

1. Requirements Were Unclear/Changing, Out-of-Scope, and Incomplete

Nine contingency contracting reports identified requirements problems. Specifically, DoD officials did not establish clear requirements, make sure changes were within the

[1] The previous summary report (DoD OIG Report No. D-2010-059) grouped deficiencies into 10 problem areas, including Award Fees as one of the problem areas. For this report, we did not identify Award Fees as a problem area.

scope of the contract, or include complete policy and training requirements. See Appendix B for the nine reports that addressed the requirements problem.

Acquisition contracting begins when agencies identify their needs and requirements. The program officials must define and describe agency requirements in clear, specific, and objective terms with measurable outcomes. If program officials do not establish specific, well-defined requirements, it will adversely affect the contracting process. Contracting activities and their customers (the program office and requesting activity) should consider both technical needs and business strategies when defining and specifying requirements.

The program officials must define and describe agency requirements in clear, specific, and objective terms with measurable outcomes.

In addition, contracting officers must make sure that specifications reflect only what is needed to meet the mission requirements and that the statement of work, statement of objectives, or performance work statement will not unnecessarily restrict competition or innovation. Further, if changing requirements necessitate contract modifications, the contracting officer must verify that the changes are within the scope of the original contract prior to executing the modifications.

Criteria for Establishing Clear Requirements

Federal Acquisition Regulation (FAR) 7.104, "General Procedures," states that acquisition planning should begin as soon as the agency identifies a need. The FAR prefers the agency to plan well in advance of the fiscal year in which contract award or order placement is necessary. The agency should also avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules since it generally restricts competition and increases prices. Early in the planning process, responsible officials should coordinate to establish the requirements and to determine type, quality, quantity, and delivery requirements.

Example of Unclear/Changing Requirements

> DoD may not have sufficient contracting personnel to process the increased number of containers as the drawdown from Iraq progresses. This occurred because the administrative contracting officer removed the performance workload requirement without proper authorization, written justification, or consideration in accordance with the FAR. As a result, the backlog of containers could increase from more than 520 containers in March 2010 to more than 2,290 containers in August 2010. The additional backlog could increase the likelihood that DoD may waste resources by purchasing the same materiel in the unprocessed containers for use in other OCO. (Report No. D-2010-091)

Criteria for Awarding Out-of-Scope Requirements

To ensure the safety of the warfighter and price reasonableness for procured goods and services, it is vital that the Government compete requirements that are outside the statement of work on which a contract is based. FAR Part 6, "Competition Requirements," requires contracting officers to promote and provide for full and open

competition when awarding out-of-scope modifications to existing Government contracts. The FAR requires the contracting officer to include a reference to the specific authority of contract award when awarding the contract without full and open competition. In addition, FAR 7.103, "Agency-head responsibilities," requires the agency head to ensure that the statement of work is closely aligned with performance outcomes. By ensuring that the statement of work is closely aligned with the expectations of the Government and by adequately promoting full and open competition, the Government reduces the risk of harm to the warfighter and overpaying for goods and services.

Example of Out-of-Scope Requirements

A primary mission described in contract DACA63-03-D-0005, task order 3 was fighting oil fires at Qarmat Ali facility in Iraq. Enemy combat operations and sabotage did not result in the level of destruction anticipated, and by mid-April 2003, the mission of Task Force Restore Iraqi Oil evolved into a focus on restoring, pumping, and refining capabilities to generate oil for export. On April 30, 2003, U.S. Army Corps of Engineers modified DACA63-03-D-0005, task order 3 to expand the scope of work beyond emergency repairs. This contract modification expanded the original scope and magnitude of DACA63-03-D-0005, task order 3 beyond the original emergency "minor repairs" to "restoring facilities to operating condition" and coordinating operations with the Iraqis. The contract modification also added pump stations, refineries, and oil fields to the list of facilities that would require "technical and managerial assistance" if not repair. This change of the scope and focus of the statement of work was significant, and occurred after Task Force Restore Iraqi Oil and contractor elements were deployed to Kuwait and had conducted initial site surveys in Iraq. The time was not available to plan and execute a deliberate response to the expanded scope of work. As a result of inadequate preparation, Service members and DoD civilian employees who served at Qarmat Ali were exposed to sodium dichromate and may suffer chronic health effects. (Report No. SPO-2011-009)

This contract modification expanded the original scope and magnitude of DACA63-03-D-0005, task order 3 beyond the original emergency "minor repairs" to "restoring facilities to operating condition" and coordinating operations with the Iraqis.

Criteria for Including Policy and Training Requirements

Contracting officials should use due diligence to ensure that contracts for contingency operations include all applicable policy and training requirements. One example is FAR clause 52.222-50, "Combating Trafficking in Persons." As stated in FAR 22.1703, "Policy," the United States adopted a zero tolerance policy regarding trafficking in persons. FAR 22.1705, "Contract Clause," requires the contracting officer to include FAR clause 52.222-50 in all solicitations and contracts. Contingency operations require special emphasis on policy and training requirements because of the unique situations and

locations personnel will encounter. Contracting officials' failure to include all applicable policy and training requirements for contractors working in contingency operations could put the contractors, DoD civilian, and military personnel at risk of harm.

Example of Incomplete Policy and Training Requirements

> In the DoD OIG's review of contracts for construction and services within the U.S. Central Command area of responsibility, DoD OIG personnel found 173 of 368 contracts either did not include or included an outdated or incorrect version of the FAR clause 52.222-50, "Combating Trafficking in Persons." U.S. Central Command Contracting Command issued acquisition instructions requiring the addition of a regional combat trafficking in persons clause, without explicitly reinforcing inclusion of the required FAR clause. As a result, contractors remained unaware of U.S. Government policy and contracting officers were potentially unable to apply remedies in the case of violations. (Report No. SPO-2011-002)

2. Contract File Not Maintained

Five contingency contracting reports identified contract documentation problems. Specifically, contracting officials did not prepare and maintain required contract documentation to support decisions made as required by the FAR and Defense Federal Acquisition Regulation Supplement (DFARS). See Appendix B for the five reports that addressed the contract documentation problem.

The head of the contracting office and contract administration office should maintain a contract file that contains records of all contractual actions taken during that contract.

> *The head of the contracting office and contract administration office should maintain a contract file that contains records of all contractual actions taken during that contract.*

The documentation in the contract file should support the rationale and actions taken for the entire procurement process and support all contractual actions taken. Specifically, the contract file should contain documentation that supports the basis of the acquisition and the award of the contract; assignment of contract administration; the performance of contract administration responsibilities and duties; and actions taken reflecting contract payment. Additionally, the contract file should provide a complete audit trail to support future reviews, investigations, and congressional inquiries.

Contracting officials should maintain, at a minimum, the following documentation in the contract file:

- a signed copy of the awarded contract, all contract modifications, and documents that support the contract modifications;
- justifications and approvals;
- determinations and findings;
- contract type justification;

- source selection documentation;
- cost or price analysis;
- quality assurance and property records; and
- bills, invoices, vouchers, and supporting documents.

By maintaining a complete contract file containing records of all contractual actions, contracting officials can support decision making, actions taken, and reviews and investigations, as well as furnish essential facts in case of litigation or congressional review.

Figure 2 shows a procuring contracting officer and a contract specialist discussing contract detail in support of the Afghanistan National Police.

Figure 2. Contracting Officer Discussing Contract Detail

Source: U.S. Defense Imagery Web site.

Criteria for Maintaining Contract File

FAR Subpart 4.8, "Government Contract Files," states that contract administration files should document actions reflecting the basis for and the performance of contract administration responsibilities to include official copies of supporting documentation.

DFARS Subpart 204.8, "Contract Files," requires that official contract files consist of original, authenticated, or conformed copies of contractual instruments, as well as signed or official copies of correspondence, memoranda, and other documents. Each contract file should provide a complete background for decision making, actions taken, and reviews and investigations, as well as furnish essential facts in case of litigation or congressional review.

Example of Contract File Not Maintained

Program Executive Office for Simulation, Training, and Instrumentation contracting personnel could not support that they negotiated a reasonable price for approximately $94.3 million in acquired supplies and services supporting three training efforts on Warfighter Field Operations Customer Support task orders 022

and 122. This occurred because contracting officials lacked required documentation, such as a prenegotiation objective memoranda and price negotiation memoranda, essential to providing accountability and transparency in the Warfighter Field Operations Customer Support contract files. Additionally, Program Executive Office for Simulation, Training, and Instrumentation contracting officials did not require the procuring contracting officer to maintain a complete history of the contract as a basis for making informed decisions during the acquisition process and centralized and integrated program and contract files. As a result, Army officials did not adhere to Federal and DoD policies for subcontracting related work in a contingency environment and may not have received fair and reasonable prices for the Warfighter Field Operations Customer Support contract. Furthermore, decentralized contract files could be an indication of questionable contract management and oversight of the Warfighter Field Operations Customer Support contract. (Report No. D-2011-066)

3. Use of Inappropriate Contract Type

Seven contingency contracting reports identified problems where contracting officials awarded contracts using inappropriate contract types. We classified the problems related to contract type into three categories: cost type, Time-and-Materials, and commercial acquisition. See Appendix B for the seven reports that addressed the contract type problem.

A wide selection of contract types are available to provide needed flexibility in the large variety and volume of supplies and services required by the DoD. Contract types vary according to the degree and timing of the responsibility assumed by the contractor for the costs of performance, and the incentive offered to the contractor for meeting or exceeding specified standards. The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to a Time-and-Materials contract, which is the riskiest type to the Government because the contractor has less responsibility for the performance costs.

Criteria for the Use of Cost-Type Contracts

Section 2306, title 10, United States Code (U.S.C.) and FAR 16.102 (c), "Policies," prohibits the use of a cost-plus-a-percentage-of-cost contract type. The underlying intent of Congress when prohibiting a cost-plus-a-percentage-of-cost contract was to protect the Government from exploitation when using such a system of contracting. The danger in using a cost-plus-a-percentage-of-cost contract is the incentive that the contractor will pay liberally for cost-reimbursable items because a higher cost means a higher fee for the contractor.

The danger in using a cost-plus-a-percentage-of-cost contract is the incentive that the contractor will pay liberally for cost-reimbursable items because a higher cost means a higher fee for the contractor.

Example of the Use of Prohibited Cost-Type Contracts

The Naval Sea Systems Command contracting officer allowed Fincantieri Marine Systems North America to collect a profit on task orders issued under indefinite-delivery, indefinite-quantity contract N00024-07-D-4002 using the prohibited cost-plus-a-percentage-of-cost contract type on cost-reimbursable contract line items for engine repair parts. The contracting officer also did not establish a set fee amount under individual task orders for the engine repair part contract line item, potentially allowing the contractor to maximize its profit by purchasing the most expensive parts. In addition, the contracting officer's failure to negotiate prices or definitize requirements in a timely manner for those task orders associated with cost reimbursable work led to using the prohibited cost-plus-a-percentage-of-cost contract type. To prevent the use of prohibited cost-plus-a-percentage-of-cost contract type, the Naval Sea Systems Command contracting officials should correctly issue task orders under indefinite-delivery, indefinite-quantity contract N00024-07-D-4002, establish a fixed-fee amount when issuing task orders for repair parts, and negotiate fair and reasonable prices for repair parts on all future orders. (Report No. D-2010-087)

Criteria for the Use of Time-and-Materials Contracts

FAR 16.601, "Time-and-Materials Contracts," states that a Time-and-Materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

To issue a Time-and-Materials contract, a contracting officer must prepare a Determination and Findings to support that no other contract type is suitable. FAR Subpart 1.7, "Determination and Findings," states that each Determination and Findings must set forth enough facts and circumstances to clearly and convincingly justify the specific determination made in the Determination and Findings.

Example of Time-and-Materials Contracts Used Without Adequate Support

The contracting officer at Army Contracting Command-Warren did not adequately support the need to use a Time-and-Materials contract for the follow-on Joint Logistics Integrator effort, valued at $285.5 million. Specifically, the Determination and Findings did not adequately support the use of a Time-and-Materials contract to procure services for the Joint Logistics Integrator follow-on effort when another contract option was available. This occurred because the contracting officer stated that she could not estimate the extent or duration of the work needed due to constant changes in mission need and work performed, even though 18 months of historical data from the initial Joint Logistics Integrator contract could have provided a basis for estimating the work. As a result, the contracting officer may have incurred unnecessary costs by using the riskiest contract type that provides no incentive to the contractor for cost control or labor efficiency. (Report No. D-2011-081)

Criteria for the Use of Commercial Acquisition Contracts

FAR Subpart 2.1, "Definitions," defines commercial items as goods used by the public or a nongovernmental entity that either has been offered for sale, offered for lease, or licensed, or have been sold, leased or licensed to the public or a nongovernmental entity. FAR Part 12, "Acquisition of Commercial Items," provides guidance for the acquisition of supplies or services that meet the FAR definition of commercial items.
The acquisition of commercial items does not require certified cost or pricing data to be obtained by the contracting officer.

Example of Commercial Acquisition Contracts Used for Military Unique Items

Army contracting and program officials inappropriately managed the Interrogation Arm as a commercial item when the Interrogation Arm was developed uniquely for military purposes. This occurred because program officials preferred to use a specific contractor, and contracting officials did not perform due diligence in their determination that the Interrogation Arm was a commercial item. As a result, the Army lost the benefits of competition and may not have received the best value in its contracts to meet the needs of the warfighter and protect the interest of the DoD. (Report No. D-2011-105)

This occurred because program officials preferred to use a specific contractor, and contracting officials did not perform due diligence in their determination that the Interrogation Arm was a commercial item.

4. Source Selection Without Full and Open Competition

Six contingency contracting reports identified source selection problems. Specifically, contracting officials did not provide full and open competition during source selection. See Appendix B for the six reports that addressed the source selection problem.

Contracting officers must provide for full and open competition when soliciting offers and awarding Government contracts, unless exceptions apply. The objective of source selection is to select the proposal that represents the best value to the Government. Proposal evaluation is an assessment of the offeror's proposal and ability to perform the prospective contract successfully. The contracting officer must award contracts based on evaluation factors that are tailored to the acquisition. The contracting officer must evaluate price or cost in every source selection, as well as, quality of the product or service. The evaluation must be addressed through consideration of non-cost evaluation factors, such as past performance, compliance with solicitation requirements, technical excellence, personnel qualifications, and prior experience. The contracting officer must document strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation in the contract file. Furthermore, the contracting officer must avoid conflicts of interest, or the appearance thereof, when conducting source selection.

Criteria for Source Selection

FAR Subpart 15.3, "Source Selection," states that the source selection authority must ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements.

FAR 15.403-1(c)1(i), "Prohibition on Obtaining Cost or Pricing Data," states that contract price is based on adequate price competition if two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement, and if:

- award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection; and
- there is no finding that the price of the otherwise successful offeror is unreasonable.

FAR Subpart 9.1, "Responsible Prospective Contractors," states the award of a contract to a supplier based on lowest evaluated price alone can be false economy[2] if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs.

Example of Inappropriate Source Selection

The Fleet and Industrial Supply Center, Sigonella Detachments Bahrain and Dubai contracting officers did not properly compete nine contracts, valued at $24.3 million. Specifically, the Bahrain and Dubai contracting officers incorrectly eliminated a contractor from competition in six contracts and did not provide for full and open competition when awarding three other contracts. This occurred because the contracting officers incorrectly used justification and approvals and improperly limited competition to Master Agreement for Repair and Alteration of Vessels holders. As a result, the contracting officer did not properly execute the competition for the nine contracts in accordance with FAR requirements and may have lost the benefits of competitive pricing. (Report No. D-2011-043)

Specifically, the Bahrain and Dubai contracting officers incorrectly eliminated a contractor from competition in six contracts and did not provide for full and open competition when awarding three other contracts.

[2] False economy is an apparent financial saving that in fact leads to greater expenditure.

5. Contract Price Reasonableness Was Not Adequately Determined

Ten contingency contracting reports identified contract pricing problems. Specifically, contracting officials did not perform adequate price reasonableness determinations. See Appendix B for the 10 reports that addressed the contract price reasonableness problem.

Contracting officers must purchase supplies and services at fair and reasonable prices and are responsible for evaluating the reasonableness of the offered prices. Contracting officers should determine the level of detailed analysis needed based on the complexity and circumstances of each acquisition, and may require the advice and assistance of other experts to ensure that they perform appropriate analysis. When the contract does not require cost or pricing data, the contracting officer must perform price analysis. The Government may use a variety of price analysis techniques to ensure fair and reasonable pricing, including:

- comparison of proposed price to prices found reasonable on previous purchases,
- comparison of proposed price to independent Government cost estimates, and
- analysis of pricing information provided by the offeror.

When the contract requires cost or pricing data, contracting officers should use cost analysis to evaluate the reasonableness of individual cost elements and should use price analysis to verify that the overall price is fair and reasonable.

Criteria for Obtaining Fair and Reasonable Prices

FAR Subpart 15.4, "Contract Pricing," states that the objective of proposal analysis is to ensure that the final agreed-upon price is fair and reasonable. The contracting officer may use various price and cost analysis procedures to ensure that the Government receives a fair and reasonable price.

Example of Contract Price Reasonableness Not Adequately Determined

Aviation and Missile Life Cycle Management Command officials did not effectively negotiate fair and reasonable prices for noncompetitive spare parts procured on the Corpus Christi Army Depot/Boeing contract. These pricing problems occurred because neither the Army nor Boeing officials performed adequate cost or price analyses to establish the reasonableness of the proposed subcontract prices that were used to support negotiated prices. Boeing officials routinely proposed, and Aviation and Missile Life Cycle Management Command officials accepted, egregiously deficient cost or pricing data based on unrealistically low quantities that had no relationship to the quantities required or the actual price Boeing negotiated with its subcontractors. As a result, we calculated that Boeing charged the Army about $13 million (131.5 percent) more than the fair and reasonable prices for the 18 parts. Costs for six parts valued at $11.3 million were in line with negotiated prices. During the audit, Boeing

provided the Army a credit of $324,616 for one of the incorrectly priced parts. (Report No. D-2011-061)

6. Inadequate Oversight and Surveillance

Twenty-four contingency contracting reports identified oversight and surveillance problems. Specifically, DoD officials did not provide adequate oversight and surveillance to make sure supplies and services conform with the contract requirements. We classified the problems in oversight and surveillance into seven categories: (1) contracting officer, (2) contracting officer's representative (COR), (3) Defense Contract Management Agency (DCMA), (4) written procedures, (5) insufficient staff, (6) training and certification, and (7) program office. See Appendix B for the 24 reports that addressed the oversight and surveillance problem.

Contract oversight and surveillance are covered under contract administration functions. Oversight and surveillance is an ongoing process to make sure that contractors are providing supplies or services on time and in conformance with quality requirements. Effective oversight and surveillance helps identify contractors that may have performance problems so that corrective actions can be taken before actual performance is affected.

Oversight and surveillance is an ongoing process to make sure that contractors are providing supplies or services on time and in conformance with quality requirements.

In general, contracting officers are responsible for performing or delegating oversight and surveillance, and ensuring that there is an effective process for measuring the contractor's performance that includes clearly defined levels of contractor surveillance. Contracting officers are also responsible for incorporating technical and product quality requirements (such as testing and inspection) from the responsible activity into the contracts. A fully developed and appropriately structured contract surveillance system is crucial to verify that the contractor is:

- performing on schedule,
- staying current in its understanding of the requirements, and
- applying adequate skills and resources to the contractual task.

Further, sufficient personnel should be in place and trained in order to have adequate contract oversight and surveillance. Contracting officers may delegate contract administration or obtain specialized support services from other defense agencies, such as DCMA. Additionally, contracting officers can delegate certain contract administration functions to administrative contracting officers and can appoint CORs. The CORs perform technical monitoring, inspections, and acceptance of contract deliverables and make sure that the contract and program offices are fully aware of the contractor's performance. The CORs have no authority to

The CORs have no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

In addition, the contracting officer should make sure that quality assurance surveillance plans (QASPs) are prepared in conjunction with the statement of work. The QASPs should specify all work requiring surveillance and the method of surveillance.

Criteria for Contracting Officer's Responsibilities

FAR 1.602-2, "Responsibilities," states that contracting officers are responsible for ensuring performance of all necessary actions for effective contracting and ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.

FAR 37.604, "Quality Assurance Surveillance Plans," states the Government may either prepare the QASP or require the offerors to submit a proposed QASP for the Government's consideration.

FAR 46.103, "Contracting Office Responsibilities," states that the contracting office is responsible for receiving specifications from the activity responsible for the technical requirements for inspecting, testing, and performing other contract quality requirements to ensure the integrity of supplies or services.

FAR Subpart 46.4, "Government Contract Quality Assurance," states QASPs should be prepared in conjunction with the preparation of the statement of work. The plans should specify all work requiring surveillance and the method of surveillance.

Example of When a Contracting Officer Did Not Develop a QASP

> The Naval Sea Systems Command contracting officer did not provide sufficient surveillance and acceptance for six task orders for engineering services performed in Bahrain. Specifically, the contracting officer failed to develop a QASP for the overall indefinite-delivery, indefinite-quantity contract or the task orders issued under it, designate an onsite COR to oversee contractor work, and establish lines of communication and expectations for surveillance and acceptance for Navy representatives on site. This occurred because the contracting officer was unaware of his responsibilities to provide surveillance for the task orders. In addition, the contracting officer relied on the COR, located in the United States, to make decisions for the overall indefinite-delivery, indefinite-quantity contract and task orders that should have been made by the contracting officer. As a result, there is no assurance that the Navy received what they paid for. (Report No. D-2010-087)

Criteria for Assigning Contracting Officer's Representatives

FAR 1.602, "Contracting Officer's Representative," states that a COR assists in the technical monitoring or administration of a contract. Additionally, according to DFARS Subpart 201.6, "Career Development, Contracting Authority, and Responsibilities," September 20, 2011, a COR must be a Government employee,

qualified by training and experience commensurate with the responsibilities delegated in accordance with DoD or agency guidelines.

Further, the Office of Management and Budget memorandum, "Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives," September 6, 2011, states that CORs should be appropriately trained and developed. In addition, they must maintain their contracting skills and knowledge through continuous learning. DFARS 201.602-2, "Responsibilities," also states that COR responsibilities must be in writing and that the responsibilities cannot be redelegated. For that reason, the contracting officer is expected to appoint a properly trained COR.

Example of Contracting Officer's Representatives Not Properly Appointed

> Implementation of Defense Federal Acquisition Regulation Class Deviation changes, allowing foreign nationals to act as CORs for Afghanistan Security Force Fund contracts/projects, was problematic. This is because the Joint Theater Support Command, U.S. Central Command, has not yet issued guidance to implement these changes, addressing areas such as training, language barriers, and liability. Without additional guidance to implement the Class Deviation, the ability to provide effective oversight by holding the responsible foreign nationals accountable for managing and documenting contractor performance will be problematic and difficult to enforce. This could increase the risk that the contractor will not meet the terms and conditions of the contract, and could result in fraud, waste, and abuse. (Report No. DODIG-2012-028)

Figure 3 shows a U.S. Army Sergeant overseeing a foreign national COR at Camp Phoenix in Kabul, Afghanistan.

Figure 3. COR Oversight

Source: U.S. Defense Imagery Web site.

Criteria for Using DCMA

DCMA's mission is to provide contract administration services to the DoD to make sure quality products and services are delivered to the warfighter; on time and at projected cost. According to FAR 42.201, "Contract Administration Responsibilities," DCMA may be delegated as a contract administration office. FAR 42.302, "Contract Administration Function," lists more than 70 functions for contract administration. These functions include oversight and surveillance of contractor performance to ensure that the Government receives supplies or service on time and meeting quality requirements.

FAR 46.104, "Contract Administration Office Responsibilities," requires DCMA to, but not limited to:

- develop and apply efficient procedures for performing Government contract quality assurance actions under the contract in accordance with the written direction of the contracting office;
- perform all actions necessary to verify whether the supplies or services conform to contract quality requirements; and
- maintain, as part of the performance records of the contract, suitable records reflecting (1) the nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and (2) decision regarding the acceptability of the products, the processes, and the requirements as well as action correcting defects.

DoD Directive 5105.64, "Defense Contract Management Agency," November 21, 2003, states that the DCMA mission is to provide contract administration services for the DoD, other authorized Federal Agencies, foreign governments, international organizations, and others as authorized.

Example of DCMA Performing Inadequate Quality Assurance Oversight

The DCMA Orlando sample selection process did not result in a proper statistically representative sample for the lot acceptance testing. In addition, quality assurance representatives did not always document or retain the records needed to substantiate that they had performed quality inspections of the vest components. This occurred because the quality assurance representatives incorrectly believed that pointing and grabbing components from different stacks was random and provided every component an equal chance for selection. In addition, DCMA Orlando officials incorrectly believed that the quality assurance representatives were not required to sign the DD Form 1222, "Request For and Results of Tests." Further, the records were either destroyed by Hurricane Wilma in 2005 or were maintained for only 2 years. The impact of using a sampling methodology that does not result in a statistically representative sample is that the lot acceptance test results cannot be relied upon to determine whether an entire lot meets the contract requirements. Additionally, the quality assurance representative's signature on the DD Form 1222 is needed to maintain

accountability and the integrity of the samples selected for the lot acceptance testing. Finally, quality assurance representatives need to retain inspection records to fully document that they completed the inspection process prior to accepting the items. (Report No. D-2011-030)

Criteria for Maintaining Written Procedures

FAR Subpart 46.4, "Government Contract Quality Assurance," states that QASPs should be prepared in conjunction with the preparation of the statement of work. The plans should specify all work requiring surveillance and the method of surveillance.

Example of Lacking Written Procedures

Marine Corps Systems Command contracting officials did not provide adequate Government oversight of field service representatives (FSRs) and instructors as required by the FAR and DoD regulations. This occurred because the contracting officer used the Mine Resistant Ambush Protected (MRAP) vehicle production contracts, which did not contain the necessary controls for providing Government oversight, such as QASPs or the designation of contracting officer's representatives, when acquiring these services. The contracting officials also relied on MRAP program officials to provide the oversight of the FSRs and Instructors without a written designation. As a result, MRAP program officials procured $815.4 million in FSR and instructor services without a written quality assurance process to ensure that the services provided were performed in accordance with contract requirements. Instead, the MRAP program officials relied on the contractors themselves or complaints from individual units to monitor the FSRs. (Report No. D-2010-068)

As a result, MRAP program officials procured $815.4 million in FSR and instructor services without a written quality assurance process to ensure that the services provided were performed in accordance with contract requirements.

Figure 4 on page 19 shows an FSR helping a U.S. soldier install a thermal imaging screen on an MRAP vehicle during training at Joint Base Balad, Iraq.

Figure 4. FSR With MRAP Vehicle

Source: U.S. Defense Imagery Web site.

Criteria for Assigning Sufficient Staff

DoD Instruction 3020.41, "Operational Contract Support," December 20, 2011, requires DCMA to plan for and perform contingency contract administration services in support of the Chairman of the Joint Chiefs of Staff Combatant Commanders in the planning and execution of military operations, consistent with DCMA's established responsibilities and functions. To fulfill DCMA's mission, the Director of DCMA must ensure sufficient staff with appropriate skills is assigned to provide pertinent contract administration functions, including contract oversight and surveillance.

Deputy Secretary of Defense Memorandum, "Monitoring Contract Performance in Contracts for Services," August 22, 2008, requires the contracting officer to nominate and train CORs prior to contract award. Further, the Memorandum states that, when appropriate, the contracting officer should nominate CORs as part of the purchase request. Doing so allows the COR to provide subject matter expertise. It also ensures that he or she is familiar with requirements, specific terms, and conditions of the resultant contract, as well as, the functions delegated.

The Director of Defense Procurement and Acquisition Policy states, "the COR serves as the eyes and ears of the contracting officer to make sure the Government receives high-quality supplies and services on time, within the agreed-upon price, and that the supplies and services meet all contract requirements."

Example of Insufficient Staff

DoD did not have all personnel in place to effectively manage or oversee a DoD contract for training and mentoring Afghan Border Police. This occurred because DoD did not establish the Training Program Security Office until December 1, 2010, 19 days before the contract was awarded. In addition,

North Atlantic Treaty Organization Training Mission-Afghanistan/Combined Security Transition Command-Afghanistan and International Security Assistance Force Joint Command officials lacked a formalized agreement establishing a cooperative relationship and communication process between the commands for managing the CORs and providing consistent oversight of contractor personnel. Without adequate staffing and command agreements, DoD will be unable to adequately monitor whether the contractor is performing its contractual obligations and achieving the goals of the Ministry of Interior/Afghan National Police training program. (Report No. D-2011-095)

Criteria for Contractor Training and Certification

DoD Instruction 3020.41, "Operational Contract Support," December 20, 2011, requires that a deployment center be designated in the contract for contractors to complete required training. Further, the Instruction requires contracting officers or their representative to verify whether contractors complete required training before deployment.

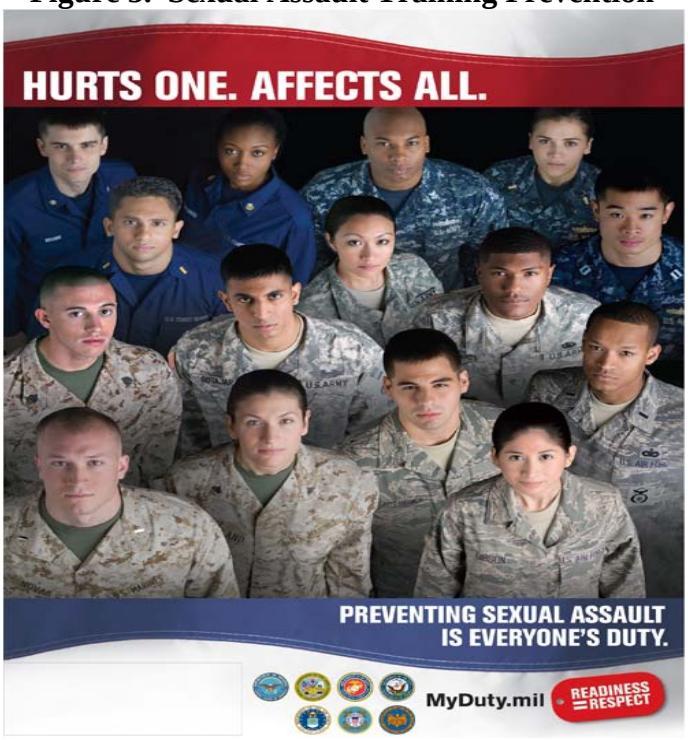
Example of Contractor Training and Certification Not Completed

The Army Deputy Chief of Staff, G-3/5/7, and Air Force contracting officials did not provide adequate oversight of the contractor deployment training for sexual assault prevention and response in support of Operation Enduring Freedom and Operation Iraqi Freedom areas of operation. The contractor deployment training for sexual assault prevention and response lacked adequate oversight because the Army Deputy Chief of Staff, G-3/5/7, inappropriately approved the Kellogg, Brown, and Root Services, Inc.[3] (KBR) Continental U.S. Replacement Center (CRC) and Fluor Corporation (Fluor) CRC operations. Specifically, the Deputy Chief of Staff determined that the KBR and Fluor pre-deployment training met Government standards, despite the contractors' sexual assault awareness and reporting training not meeting the minimum U.S. Central Command theater-specific individual requirement training offered to DoD personnel at the Army CRC, as required by DoD Instruction 3020.41. Additionally, the Air Force contracting officers allowed contractor employees to process through Tyndall Air Force Base or other sites determined by the contractor without ensuring that personnel completed sexual assault prevention and response training. As a result, U.S. contractor employees deployed in-theater will continue to be at risk of becoming either victims of or witnesses to sexual assault without effective training on sexual assault prevention techniques and reporting procedures. (Report No. D-2010-052)

Figure 5 on page 21 shows the DoD sexual assault training poster.

[3] Kellogg, Brown, and Root Services, Inc. is known as KBR, Inc.

Figure 5. Sexual Assault Training Prevention



Source: U.S. Defense Imagery Web site.

Criteria for Program Office

FAR 9.307, "Government Administration Procedures," requires the activity (for example, program office) responsible for first article testing or evaluation, to inform the contracting officer whether it approves, conditionally approves, or disapproves the first article.

FAR 46.103, "Contracting Office Responsibilities," requires the activity (for example, program office) to provide technical requirements, product quality requirements, and testing and inspection to the contracting office for incorporation in the contracts.

Example of Program Office Not Consistently Enforcing Testing Requirements

The Army Program Manager Soldier Equipment (PM SEQ) did not consistently enforce the requirements for testing the body armor ballistic inserts. PM SEQ approved two designs that did not have valid V50 tests. (V50 tests determine the velocity at which a complete or partial penetration of the armor is equally likely to occur.) PM SEQ did not always use the correct size ballistic insert for the First Article Tests. PM SEQ did not require a consistent methodology for measuring and recording velocity for all seven contracts. PM SEQ did not require weathered and altitude tests of the First Article Test on six of seven contracts. PM SEQ did not require adherence to humidity and temperature requirements on 655 First Article Tests and Lot Acceptance Tests for the seven contracts. PM SEQ did not prepare or maintain documentation on two

of the seven contracts to support acceptance of one First Article Test and one Lot Acceptance Test. In addition, PM SEQ did not document changes to test procedures. This occurred because PM SEQ did not provide adequate oversight of Interceptor Body Armor contracts. As a result, the Army lacks assurance that 5.1 million ballistic inserts acquired through the seven contracts provide appropriate protection. (Report No. D-2011-088)

Figure 5 shows a U.S. Army Specialist instructing a civilian how to wear body armor.

Figure 5. Body Armor

Source: U.S. Defense Imagery Web site.

7. Contractor Personnel Performed Prohibited Functions

Seven contingency contracting reports identified contractor personnel performing prohibited functions. Specifically, DoD officials did not implement appropriate measures to prevent contractors performing functions that were inherently governmental functions, may pose organizational conflicts of interest, and might be personal services. See Appendix B for the seven reports that addressed contractor personnel performing prohibited functions.

As previously stated, DoD relies on contractors to deliver a large range of products and services to support operations in Iraq and Afghanistan. This created problems with respect to the roles and relationships between Government employees and contractor employees. Federal law prohibits the Government from contracting for functions that are inherently governmental. Furthermore, the Government requires the contracting officer to be aware of potential conflicts of interest problems during the procurement process and

Federal law prohibits the Government from contracting for functions that are inherently governmental.

prohibit the award of personal service contracts unless specifically authorized by statute.

Criteria for Performing Inherently Governmental Functions

FAR Subpart 2.1, "Definitions," defines an inherently governmental function as a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include activities that require either discretion in applying Government authority or judgment in making decisions for the Government.

FAR 7.503, "Inherently Governmental Functions Policy," provides examples of inherently governmental functions including:

- determining what supplies or services are required by the Government;
- approving any contractual documents to include documents defining requirements, incentive plans, and evaluation criteria;
- administering contracts, which includes ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or service;
- determining whether contract costs are allowable, allocable, and reasonable; and
- directing and controlling Federal employees.

FAR 37.114, "Special Acquisition Requirements," states that contractors working in situations where their contractor status is not obvious to third parties are required to identify themselves as contractors. This avoids creating an impression that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves as contractors. Agencies must ensure that all contractor personnel identify themselves while attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious.

Example of Contractors Performing Inherently Governmental Functions

Defense Logistics Agency Energy contracting officers inappropriately used KBR, the Logistics Civil Augmentation Program (LOGCAP) contractor, to accept about $859.8 million of fuel at Defense Fuel Support Points at Al Asad, Al Taqaddum, and Victory Base Complex in Iraq. This occurred because the Defense Logistics Agency Energy contracting officer did not assign "responsibility for acceptance" to either a COR, a cognizant contract administration office, or to another agency; adhere to contract terms that require the use of a DD Form 250, "Material Inspection Receiving Report," to accept fuel by Government representatives; and negotiate a memorandum of agreement with the Army Sustainment Command for the Government acceptance of the fuel that International Oil Trading Company delivered to the Defense Logistics Agency Energy fuel support points being operated by KBR under the LOGCAP contract where the Army thought the fuel supplied by International Oil Trading Company was Government property.

As a result, KBR was allowed to accept fuel under the LOGCAP contract, an inherently governmental function. (Report No. D-2011-049)

Figure 6 shows Iraqi fuel trucks arriving at an oil refinery in Beiji, Iraq.

Figure 6. Iraqi Fuel Trucks

Source: U.S. Defense Imagery Website

Criteria for Organizational Conflicts of Interest

FAR Subpart 2.1, "Definitions," considers a person to have an organizational conflict of interest when:

- he or she is unable or potentially unable to render impartial assistance or advice to the Government,
- his or her objectivity in performing the contract work is or might be otherwise impaired, or
- he or she has an unfair competitive advantage.

FAR 9.505, "General Rules," states that the contracting officer should examine each individual contracting situation on the basis of its particular facts and the nature of the proposed contract. The contracting officer should exercise common sense, good judgment, and sound discretion in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. According to the FAR, the two underlying principles are preventing:

- the existence of conflicting roles that might bias a contractor's judgment; and
- unfair competitive advantage. An unfair competitive advantage exists when a contractor competing for award of any Federal contract possesses proprietary information that was obtained from a Government official without proper authorization or source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

Example of Organizational Conflicts of Interest

> The procuring contracting officer did not address the potential conflicts of interest or the LOGCAP support contractor's inappropriate access to other contractors' proprietary information while supporting the non-LOGCAP contracts. This occurred because the procuring contracting officer did not comply with section 2383, title 10, U.S.C. (2010) requirements to preclude organizational conflicts of interest. The LOGCAP Deputy Program Director in Kuwait did not inform the procuring contracting officer of an organizational conflict of interest that the non-LOGCAP work created between the support contractor and a subcontractor. As a result, Rock Island Contracting Center officials gave the support contractor a potential competitive advantage on the work for which it was developing requirements, violated the FAR and potentially violated the Trade Secrets Act, section 1905, title 18, U.S.C (2010) by providing the support contractor with other contractors' proprietary information, and created the potential for additional problems after the Army informed non-LOGCAP contractors that their proprietary data was provided to the support contractor without their permission or contractual protections. (Report No. D-2011-032)

Criteria for Personal Services

FAR 37.104, "Personal Services Contracts," identifies a personal services contract by the employer-employee relationship between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

In addition, when assessing whether a proposed contract is personal in nature, the FAR provides the following descriptive elements as potential indicators of personal services contracts:

- performance onsite;
- principal tools and equipment furnished by the Government;
- services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission;
- comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel;
- the need for the type of service provided can reasonably be expected to last beyond 1 year; and
- inherent nature of the service, or manner in which provided, reasonably requires direct or indirect Government supervision of contractor employees.

Example of Contractors Performing Personal Services

> Both Air Force and Communications and Electronics Command contracting officials permitted contractors to perform personal services. Specifically, officials permitted contractors to perform personal services by allowing contracted

services to exceed a period of 1 year; all contractor performance to be completed on site; principal tools, space, and equipment to be provided by the Government; and contractor employees to perform services under working conditions that were indistinguishable from Government personnel. These conditions occurred because Air Force and Communications and Electronics Command contracting offices did not comply with the FAR and lacked policies and procedures to make sure that contracting officers correctly administer task orders and provided adequate contract oversight to ensure that contractors were not providing personal services. As a result, Aeronautical Systems Center and Communications and Electronics Command contracting officers did not protect the best interest of the Government on $32.7 million in advisory and assistance services task orders supporting the combat search and rescue mission and did not determine whether Government employees could have performed these functions more cost effectively. (Report No. D-2010-054)

8. Property Accountability Not Properly Maintained

Eight contingency contracting reports identified property accountability problems. Specifically, DoD officials did not provide appropriate visibility over Government property. See Appendix B for the eight reports that addressed the property accountability problems.

The Government relies on and requires contractors to provide effective and efficient stewardship of Government property in their custody. The contracting officer is responsible for oversight of stewardship, but, normally delegates the responsibility to a contract administration office. When responsibility is delegated to DCMA, DCMA assigns a property administrator to review the contract to determine whether property administration is required and to ensure contracts contain appropriate clauses pertaining to furnished or acquired property. For contingency contracts, the property administrator should advise buying commands to coordinate their requests for property administration with U.S. Central Command Contracting Command. The property administrator should be alert to unique in-theater contractual and technical requirements, period of performance dates, contracts with special terms and conditions, and inappropriate instances of furnished or acquired property.

Criteria for Maintaining Property Accountability

DoD Instruction 5000.64, "Accountability and Management of DoD Equipment and Other Accountable Property," May 19, 2011, requires DoD Components to maintain accountability for property, including Government property furnished to contractors. Accountable property records must include the current status, location, and condition of the property until the authorized disposition of the property. An accountable property system of record should include:

- name, part number, and description;
- accountable and custodial organization;
- quantity and status of the property;
- unique item identifier;

- location of property; and
- current condition.

In addition, DoD Instruction 5000.64 requires DoD Components to maintain accountable property records to provide a complete trail of all transactions suitable for audit. Those records will be the authoritative source for validating the existence and completeness of an asset. Furthermore, DoD Components should establish and maintain records and accountability for property of any value furnished to contractors as Government furnished property.

Example of Property Accountability Not Properly Maintained

International Security Assistance Force does not have a reliable system to ensure oversight of U.S. supplied equipment and supplies, including weapons. This occurred primarily because the Ministry of Interior does not have a viable property accountability system established across the Afghan National Police. International Security Assistance Force oversight of this system has been insufficient to know whether it is achieving its purpose or not. Additionally, the mentoring/training of Afghan National Police counterparts at all levels of the logistical system on effective accountability and control measures has been insufficient. Moreover, North Atlantic Treaty Organization Training Mission-Afghanistan/Combined Security Transition Command-Afghanistan and International Security Assistance Force only have mentors/trainers embedded/partnered with 97 of the 365 Afghan National Police districts who can assist/teach/enforce property accountability. This has resulted in a loss of visibility over a significant number of U.S. supplied weapons, vehicles, and other supplies and equipment. (Report No. SPO-2011-003)

International Security Assistance Force does not have a reliable system to ensure oversight of U.S. supplied equipment and supplies, including weapons.

9. Financial Management Not Adequate

Fourteen contingency contracting reports identified financial management problems. Specifically, DoD officials did not verify whether contractor invoices contained appropriate charges, manage funds in accordance with laws and regulations, and prevent potential violations of the Antideficiency Act. The Antideficiency Act is legislation enacted to prevent incurring obligations or making expenditures in excess of the amounts available in appropriations or funds. We classified the problems related to financial management into three categories: billing and payments, potential Antideficiency Act violations, and funds/obligations. See Appendix B for the 14 reports that addressed financial management problems.

DoD officials are responsible for ensuring that DoD organizations maintain control of payments made to contractors. Further, FAR 31.201-1 states that expenses billed to the

Government are limited to costs that are allowable, allocable, and reasonable. Moreover, the Government should only make payments that directly correlate to a contractual document, contractor invoice, and acceptance or receiving report.

In addition, the maintenance of complete, consistent, and accurate contract files and accounting records is necessary to minimize the number of problem disbursements, and reduce the potential for Antideficiency Act violations.

Criteria for Billings and Payments

FAR 32.905, "Payment Documentation and Process," states that a payment will be based on receipt of a proper invoice and satisfactory contract performance. In addition, DoD Financial Management Regulation, volume 10, chapter 1, "Financial Control of Vendor and Contract Payments," January 2010, states that payment cannot be made without determining the entitlement to the payment. Further, a receipt of a "proper" invoice, proof of receipt, and acceptance, as well as the contract terms and conditions determine entitlement.

Further, the Department of State Foreign Affairs Handbook, volume 14, handbook 2, "Contracting Officer's Representative," states that the COR must maintain a copy of all invoices and vouchers and a payment register, indicating a balance of funds remaining. Without these necessary documents, it is impossible to determine whether invoices approved for payment were allowable, allocable, or reasonable within the contract scope.

Example of Billings and Payments Not Properly Verified

From February 2007 through February 2011, the Bureau of International Narcotics and Law Enforcement Affairs (INL) COR approved DynCorp invoices for the Afghan National Police training program, even though the invoices included:

- travel costs for $334,400 to attend weekly meetings that were not authorized in the contract;
- labor costs for $352,297 related to schedules not allowed per the statement of work, not included in the original cost proposal, and not approved by the contracting officer;
- labor costs for $449,406 for services that supporting records showed the contractor personnel did not provide and exceeded FAR limitations; and
- materials and supplies for $938,454 that the contractor purchased without the proper Government purchase approval, proof of Government acceptance, or both, as required by the contract, Prompt Payment Act, FAR, and applicable Department of State guidance.

This occurred because the COR and INL invoice review team did not always perform a detailed review of invoices before payment and relied on the INL reconciliation team to identify overpayments made to the contractor during their review of paid invoices years later. Additionally, Department of State officials did not consider the FAR requirement for prorating labor costs to be applicable to

the Civilian Police contract (task orders 4305 and 5375), and officials were unaware of, or misinterpreted, some contract and FAR requirements for proof of Government acceptance.

As a result, Department of State officials paid the contractor approximately $2.07 million for costs that were either not authorized or for services not provided.

As a result, Department of State officials paid the contractor approximately $2.07 million for costs that were either not authorized or for services not provided. If INL officials identify and Office of Acquisitions Management officials recover those funds, they could be used for valid Afghan National Police training program requirements or other DoD requirements. Further, unless the COR and INL invoice review team improve the invoice review process prior to payment, Department of State will likely continue to approve these types of costs. (Report No. D-2011-080)

Criteria for Antideficiency Act

The Antideficiency Act is codified in section 1301, title 31, U.S.C. and other sections. The purpose of the Antideficiency Act is to enforce the constitutional budgetary powers of Congress with respect to purpose, time, and amount of expenditures made by the Federal Government. According to section 1502(a), title 31, U.S.C. appropriations are available only for the bona fide needs of an appropriation's period of availability. The bona fide needs rule states that the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability and obligated consistent with section 1501, title 31, U.S.C. However, the appropriation or fund is not available for expenditure for a period beyond the period unless otherwise authorized by law.

Example of Potential Antideficiency Act Violations

TACOM Contracting Center officials obligated $23 million for Instructor Services that were not a bona fide need for FY 2009. TACOM Contracting Center officials did not meet the Bona Fide Needs Rule because they obligated FY 2009 Operations and Maintenance funds for a 6-month option period award that did not begin until January 2010. Obligating the FY 2009 funds for the option work to be performed in FY 2010 resulted in a potential Antideficiency Act violation. (Report No. D-2011-036)

Criteria for the Deobligation of Funds

FAR 4.804-5 "Procedures for Closing Out Contract Files," requires the contract administration office to initiate administrative closeout of the contract after receiving evidence of its physical completion. The contract administration office must review the contract funds and deobligate the excess funds as appropriate.

Example of Funds Not Deobligated

U.S. Forces-Afghanistan personnel did not deobligate funds for closed, terminated, or inactive Commander's Emergency Response Program (CERP) projects initiated from FY 2007 through FY 2009. This occurred because U.S. Forces-Afghanistan officials did not implement adequate procedures for confirming that projects were properly closed out or provide Resource Management personnel with the data necessary to reconcile the project status information in CERP Checkbook with the status information in Combined Information Data Network Exchange. As a result, U.S. Forces-Afghanistan had at least $16.7 million and potentially up to $38.4 million in outstanding unliquidated obligations that could be deobligated and put to better use. In addition, when the CERP project managers and Resource Management personnel do not keep Combined Information Data Network Exchange and CERP Checkbook up-to-date, it places an additional burden on incoming personnel, who must research and follow up on open CERP projects to determine their status. (Report No. DODIG-2012-023)

U.S. Forces-Afghanistan personnel did not deobligate funds for closed, terminated, or inactive Commander's Emergency Response Program (CERP) projects initiated from FY 2007 through FY 2009.

What Has Been Done Based on Our Audits

DoD OIG personnel made 311 recommendations in 38 reports to address the 9 contracting problem areas related to contingency operations. As of August 21, 2012, 263 recommendations are closed and 48 remain open. The chart "Number of Closed and Open Recommendations by Report for Each Contracting Problem Area" on page 31 provides a breakdown of the 311 recommendations by report number.

Number of Closed and Open Recommendations by Report for Each Contracting Problem Area

	Requirement		Contract Documentation		Contract Type		Source Selection		Contract Pricing		Oversight and Surveillance		Contractor Personnel		Property Accountability		Financial Management	
Report #s	Closed	Open	Closed	Open	Closed	Open	Closed	Open	Closed	Open	Closed	Open	Closed	Open	Closed	Open	Closed	Open
D-2010-051											7	1						
D-2010-052	6	0									3	0						
D-2010-054							2	0	3	0	1	0	5	0				
D-2010-055																	2	0
D-2010-064							4	0	3	0							5	0
D-2010-066	2	0	1	0							3	0						
D-2010-068											2	0						
D-2010-073			1	0													13	0
D-2010-078			1	0							1	1	1	0				
D-2010-081					1	0	1	0	0	1	4	0					1	1
D-2010-085											10	0						
D-2010-087					6	0			2	0	3	0					4	0
D-2010-088											2	0			3	1		
D-2010-091	2	1									9	0			9	0		
D-2011-030											5	0						
D-2011-032	3	0									3	1	6	0				
D-2011-036					1	0	2	0									1	3
D-2011-043							2	1	2	0	4	2					6	0
D-2011-047									2	0	3	0					8	0
D-2011-049					1	0			1	0			2	0				
D-2011-061									12	0	9	0					2	0
D-2011-066			3	0							1	0						
D-2011-078	2	0							2	0	2	0			1	0		
D-2011-080																	4	9
D-2011-081					1	0			1				7	0				
D-2011-088											4	0						
D-2011-095											0	13						
D-2011-102																	1	6
D-2011-105					2	0	1	0										
D-2011-113									1	0	6	0					1	0
DODIG-2012-023																	9	2
DODIG-2012-028	2	0									0	1			0	1		
SPO-2011-001											5	0			1	0		
SPO-2011-003											3	0			2	3		
SPO-2011-002	1	0																
SPO-2011-007	1	0															1	0
Total	**19**	**1**	**6**	**0**	**12**	**0**	**12**	**1**	**29**	**1**	**90**	**19**	**21**	**0**	**16**	**5**	**58**	**21**
Grand Total		**20**		**6**		**12**		**13**		**30**		**109**		**21**		**21**		**79**

Note: Reports SPO-2010-002 and SPO-2011-009 included contingency contracting issues, but did not have recommendations. These two reports are included in the 38 reports we reviewed, but not included in this chart.

The following encompasses a brief discussion of the recommendations in the 38 reports. This discussion includes the number of open and closed recommendations for each of the 9 contracting problem areas as well as an example of corrective actions taken to address the contracting problem areas.

Requirements

Our reports included 20 recommendations addressing inadequate requirements. Nineteen recommendations are closed, and one remains open. For example, DoD OIG Report No. D-2011-078 recommended that the Executive Director, Army Contracting Command-Rock Island, direct the procuring contracting officers assigned to the Kuwait Base Operations and Security Support Services, Ammunition Supply Point, and Supply Support Activity contracts to develop a central repository for the performance requirements and any updates, and to verify that the requirements are inclusive and readily available to Government surveillance officials to validate that their reviews encompass all contract performance requirements. In response, the Army stated that a contractor developed a SharePoint system that serves as the central repository for contracts to include performance requirements and all deliverables.

Contract Documentation

Our reports included six recommendations to correct contract documentation. All recommendations are closed. For example, DoD OIG Report No. D-2011-066 recommended that the Principal Assistant Responsible for Contracting at the Program Executive Office for Simulation, Training, and Instrumentation, develop and execute written processes and procedures that require contracting personnel to maintain centralized and complete contracting files that include detailed program and contract documentation essential to all phases of the acquisition process. To correct this problem, the Principal Assistant Responsible for Contracting reviewed policies and operations procedures to ensure compliance with current regulatory and statutory guidance. The Program Executive Office for Simulation, Training, and Instrumentation implemented the automated COR Tracking tool to serve as a single repository for all applicable COR documentation and also started to incorporate the Army's Virtual Contracting Enterprise tool suite to improve the acquisition process.

Contract Type

Our reports included 12 recommendations to address the selection of contract type. All recommendations are closed. For example, DoD OIG Report No. D-2011-105 recommended that the Executive Director, Army Contracting Command-Aberdeen Proving Ground, perform a review of the contracting officer's actions relating to the determination that the Interrogation Arm was a commercial item. The Army Contracting Command agreed and commented that they conducted two reviews and determined that the contracting officers made reasonable determinations that the Interrogation Arm was a commercial item. However, the documentation supporting the determination was inadequate and the Army Contracting Command planned to issue supplemental guidance on commercial item determination policies and procedures.

Source Selection

Our reports included 13 recommendations addressing contract source selection. Twelve recommendations are closed and one recommendation is open. For example, DoD OIG Report No. D-2010-064 recommended that the Director, Mission and Installation Contracting Command-Fort Eustis, require contracting officers to provide for full and open competition for all ship maintenance contracts as required by Federal law and DoD regulations. In response, Mission and Installation Contracting Command-Fort Eustis publicized a combined synopsis/solicitation on FedBizOpps for a period of 15 days for all Kuwaiti vessels requirements. The notification informed all potential offerors that any proposal received will be considered for award.

Contract Pricing

Our reports included 30 recommendations addressing contract pricing. Twenty-seven recommendations are closed, and three recommendations are open. For example, DoD OIG Report No. D-2011-061 recommended that the Director, DCMA, instruct the Contractor Purchasing System Division Director to identify the purchasing system at Boeing-Philadelphia as high-risk and schedule a purchasing system review to determine whether Boeing conducts subcontractor price and cost analyses before prime contract negotiations and whether quantity discounts are being adequately passed on to the Government. In response, DCMA identified Boeing Philadelphia's Purchasing System as high-risk and scheduled a Contractor Purchasing System Review to address the timing of subcontractor analysis and whether discounts are passed on to the Government.

Oversight and Surveillance

Our reports included 109 recommendations to improve oversight and surveillance. Ninety recommendations are closed, and 19 recommendations remain open. For example, DoD OIG Report No. D-2010-078 recommended that the Director, Air Force Center for Engineering and the Environment, assign CORs or other Government Officials to develop QASPs and conduct document appropriate surveillance over the title II contractors to ensure that work performed on a Time-and-Materials basis is being performed in accordance with the task order requirements and is invoiced correctly. As a result, the Air Force Center for Engineering and Environment in-country Officer-in-Charge was appointed as the in-country COR on all current title II contracts. Although a QASP is not required per FAR part 37.103, the Air Force Center for Engineering and Environment has implemented use of a Quality Assurance Oversight monitoring form. This form is to be completed upon each site visit by an in-country Project Manager or COR.

Contractor Personnel

Our reports included 21 recommendations addressing the duties and performance of contractor personnel. All recommendations are closed. For example, DoD OIG Report No. D-2010-054 recommended that the Commander, U.S. Army Communications and Electronics Command, develop policies and procedures detailing specific contract oversight requirements to discourage and prevent Government personnel from tasking contractors to perform inherently governmental functions and personal services.

U.S. Army Communications and Electronics Command recognized the need for further clarification in the guidance for the COR to ensure that contractors are performing within the statement of work on contract and no inherently governmental functions and personal services are performed. U.S. Army Communications and Electronics Command amended the COR handbook to reemphasize the need for oversight that will prevent the rendering of services considered to be inherently governmental functions or personal services in nature.

Property Accountability

Our reports included 21 recommendations to improve property accountability. Sixteen recommendations are closed, and five remain open. For example, DoD OIG Report No. D-2010-088 recommended that the Commander, Defense Contract Management Agency – International, conduct a 100-percent inventory of Logistics Civil Augmentation Program inventory at South Victory, Warehouse, Liberty, and Alpha West, as well as, direct the Logistics Civil Augmentation Program contractor at the Baghdad International Airport Area to establish and implement effective procedures to account for air conditioner units and ensure those procedures are included in the contractor's property control procedures. As a result, a 100% inventory was completed.

Financial Management

Our reports included 79 recommendations addressing financial management. Fifty-eight recommendations are closed, and 21 recommendations remain open. For example, DoD OIG Report No. D-2010-081 recommended that the Executive Director, Army Contracting Command establish a written plan to review invoices for 18 contracts and task orders; request Defense Contract Audit Agency (DCAA) assistance in reviewing invoices for allowable, allocable, and reasonable costs; and obtain reimbursements for incorrect charges. In response, the responsible contracting offices are developing a plan to review the invoices and solicit assistance from DCAA to review the invoices.

What Needs to Be Done to Improve Contingency Contracting

Based on the problems that DoD OIG personnel identified in the 38 reports, DoD officials need to take the following steps to improve the contracting process in current and future contingency operations. These steps are not all-inclusive in a contingency contracting environment and should be considered in unison with Federal and DoD guidance.

Requirements

In contingency operations, requirements can change quickly and officials should react to fluid operations by re-evaluating requirements as necessary. Program personnel must ensure that clear, complete, well-defined requirements exist for the entire contract. When conditions do not allow for clearly defined requirements for the entire contract, the contracting officer should use a contract structure that allows development of well-defined requirements for segments of work, such as task orders or basic ordering agreements.

Program personnel must ensure that clear, complete, well-defined requirements exist for the entire contract.

Contract Documentation

Complete and detailed documentation is essential to all phases of the contracting process. The contracting officer should make sure that a complete and well-documented contracting file, to include the basis of the acquisition and award of the contract, assignment of contract administration, the performance of contract administration responsibilities and duties, the basic contract, and all the modifications or task orders, exists for the life of the contract.

Contract Type

When determining whether the contract should be fixed price or a cost-type, the contracting officer should consider the procurement history and, if applicable, evaluate prior work to support the contract type decision. The contracting officer should structure the contract to allow for fixed price and cost-type line items when appropriate. Contract type is important to future surveillance considerations. If a contracting officer includes more cost-type work, then more surveillance assets are required.

Source Selection

The contracting officer must have well-defined and measurable source selection criteria and well-documented selection decisions that appropriately discuss price and technical tradeoffs for competitive procurements. For negotiated procurements, the contracting officer must properly support and document prices.

Contract Pricing

The contracting officer should have robust pre-award pricing support. As a general rule, DCAA provides pricing support for pre-award proposals for contract cost support and DCMA provides technical support for labor hours, labor mix, and procurement quantities. To the extent available, DCAA and DCMA should be brought into the process early and used throughout the life of the contract. In addition, for cost-type contracts, DCAA should review the accounting system of the proposed contractors. Contractors must be able to account for and properly record costs. If DCAA and DCMA are not used, suitable pricing and technical expertise, or both should be used. Furthermore, the contracting officer should, in detail, document pricing and technical support decisions.

The contracting officer should document all aspects of the negotiation, specifically the price negotiation memorandum, in detail, to allow an independent party to understand the negotiated conclusions. The contracting officer must have certified cost or pricing data for sole-source procurements unless an exception applies. If negotiations include certified cost or pricing data, the contracting officer should document that he or she relied on the data. If an exception applies, the contracting officer should obtain other cost or pricing data to the extent necessary. Unless competitive proposed prices or previous contract prices are not available, the contracting officer should not use comparison of independent government cost estimates to proposed price as the primary or only basis for establishing price reasonableness. Independent Government cost estimates, when used, should be detailed and well-documented as to the basis for the supporting documentation. The contracting officer should scrutinize use of prior price history for other contracts and not rely on prior prices without knowing how those prices were established or the scope of the other awards relative to the anticipated procurements. As an example, prior prices on a contract action for $200,000 likely could not be relied on to establish price reasonableness for a newly proposed contract for $3 million.

Oversight and Surveillance

Program and contracting officials must ensure a well-documented surveillance approach is in place. They should make sure that QASPs and surveillance logs are measurable and documented to show the quality and quantity of actual surveillance performed. Because of the magnitude of surveillance problems found in our audit work, a robust surveillance system is essential. Program and contracting officials must ensure that sufficient contract oversight occurs and that oversight personnel are adequately trained.

When evaluating the amount of oversight needed for a contract, the following should be considered:

- contract type,
- products versus services,
- criticality of product and service, and
- the contractor's history of contract performance.

Program and contracting officials must ensure that sufficient contract oversight occurs and that oversight personnel are adequately trained.

For example, a cost-type service contract puts minimal responsibility on the contractor for performance costs and negotiated profit, requiring a much more robust oversight staff. Contracts that allow for award fee should be well documented with measurable criteria, and award fee decisions must be well documented. Contract oversight personnel should perform realistic and measurable reviews and ratings of contractor performance. It is crucial that contractors do not perform inherently governmental functions such as oversight and surveillance, especially for cost-type contracts.

Contractor Personnel

The contracting officer should not award personal services contracts. A personal services contract is a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees. In addition, contracting

officers should ensure service contracts are not being used for the performance of inherently governmental functions. Specifically, contracting officers should avoid awarding contracts that allow contractors to perform functions that are intimately related to the public interest thereby requiring performance by Government employees. In addition, contract awards should be avoided if contractors are required to exercise discretion in applying Government authority or making value judgments for Government decisions. Furthermore, contracting officers should avoid awarding contracts which put contractors in situations allowing the performance of organizational conflicts of interest. Specifically, contractors should not be put in situations that would give them an unfair competitive advantage or impair their objectivity in performing the contract work.

Property Accountability

The contracting officer should administer or delegate the administration of the terms of contract provisions that specify the contractor's obligations to acquire, control, use, care for, report, and dispose of Government property. The property administrator plans property management system audits and chooses the appropriate audit type for the contractor. The Government's policy is to rely upon contractors to be accountable for and maintain official records of Government property in their possession. However, Government officials should periodically review contractor records and contractor property control systems.

Financial Management

The contracting officer should make sure that appropriate financial management occurs for the life of the contract to include the type and amount of funds being obligated to the contract. Maintenance of complete, consistent, and accurate contract files and accounting records is necessary to reduce the potential for violations of the Antideficiency Act and minimize the number of problem disbursements. Additionally, the contracting officer should ensure the COR maintains a copy of all invoices and vouchers and a payment register, indicating a balance of funds remaining. Without these necessary documents, it is impossible to determine whether invoices approved for payment by the COR are allowable, allocable, or reasonably within the contract scope. The contracting officials should provide certifying officers needed information to verify that vouchers are factually accurate, including computed costs and allowable charges.

Summary

DoD OIG personnel reported 9 systemic contracting problem areas in 38 reports issued from April 2, 2010, through March 31, 2012. These reports identified a variety of problems relating to DoD officials not properly awarding, administering, or managing contingency contracts in accordance with Federal and DoD policies. In these reports, DoD OIG personnel issued 311 recommendations to address the 9 systemic problems. DoD completed corrective actions on 263 recommendations, and the remaining 48 recommendations are open. See Table 1 on page 38 for the number of reports for each problem area and the associated recommendations and status.

Table 1. Number of Reports and Recommendations by Contracting Problem Area

Contracting Problem Area	Number of Reports	Number of Closed Recommendations	Number of Open Recommendations
Requirements	9	19	1
Contract Documentation	5	6	0
Contract Type	7	12	0
Source Selection	6	12	1
Contracting Pricing	10	29	1
Oversight and Surveillance	24	90	19
Contractor Personnel*	7	21	0
Property Accountability	8	16	5
Financial Management	14	58	21

* This problem area includes contractor personnel performing prohibited functions.
Note: The numbers of reports will not add up to 38 because a report can have more than one contracting problem.

The chart "Contingency Contracting Problems Identified by DoD OIG Reports" on page 39 describes specific contingency contracting problems identified in previous DoD OIG Reports.

Contingency Contracting Problems Identified by DoD OIG Reports

Pre-Award

Requirements

- The administrative contracting officer improperly removed workload requirements from the contract. (D-2010-091)

- Mission requirements fluctuate often because of the continuously changing environment of the contingency operations. However, the contracting officials did not reevaluate requirements before awarding contracts. (D-2011-078)

- DoD did not establish appropriate policies and training requirements for contractor employees for incorporation in the contract.(D-2010-052, SPO-2011-002, SPO-2011-007, SPO-2011-009)

- The DoD instructed contractors to perform work outside the scope of a contract. (D-2011-032)

-The Procuring Contracting Officer awarded a task order outside the scope of the base contract. (D-2011-032)

-The contracting officials failed to obtain competition for the additional requirements and did not provide adequate justifications. (D-2010-066)

- DoD did not have a plan to make sure contract requirements were linked to operational goals and objectives. (DODIG-2012-028)

Contract Documentation*

- The contracting officials did not prepare or maintain required contract documentation to support decisions made. (D-2010-078)

-The award fee determining official failed to adequately document the rationale for a final award fee determination. (D-2010-066)

- The fund holders did not adequately maintain sufficient documentation to validate unliquidated obligations. (D-2010-073)

- The contracting officials did not maintain required documentation to support price reasonableness determination and provide a basis for making informed decisions. (D-2011-066)

- DoD and DoS officials obligated funds without adequate supporting documentation. (D-2011-080)

Contract Type

- The contracting officer used incorrect cost type contract. Also, the contracting officer did not have appropriate justification for the use of cost type contract. (D-2010-078, D-2010-081)

-The contracting officials incorrectly determined military uniquely items as commercial. (D-2011-049, D-2011-105)

- The contracting officer awarded a high risk time and material contract without adequate planning or support. (D-2011-036, D-2011-081)

- The contracting officer failed to establish a set fee amount for items ordered from individual task orders when using a cost-reimbursable contract. (D-2010-087)

* Contract documentation is required throughout the contracting process. For the purpose of this report, we placed the contract documentation problem area under the pre-award phase because contract documentation starts at the beginning of the contracting process.

Award

Source Selection

- The contracting officials inappropriately circumvented or restricted competition requirements to use a sole source. (D-2011-036, D-2011-043, D-2011-105)

- The contracting officials did not provide adequate justification for source selection. (D-2010-081)

- The contracting officials did not obtain competition for four advisory and assistance services task orders. (D-2010-054)

- The contracting officer did not conduct a thorough review of supporting documentation that was used to justify a sole source award. (D-2010-064)

- The contracting officer incorrectly used Justification and Approvals. (D-2011-043)

Contract Pricing

- The contracting officer did not request assistance from senior officials when the contractor failed to provide certified cost or pricing data to negotiate contract costs. (D-2010-087)

- The contracting officer based price reasonableness determinations on unsupported estimates or incorrect calculation and did not document the price reasonableness determinations. (D-2011-043)

-The contracting officials inadequately determined price reasonableness, did not negotiate for a reasonable price, did not request additional data to support price reasonable, or perform adequate cost and pricing analyses. (D-2010-054, D-2010-064, D-2010-081, D-2011-049, D-2011-061, D-2011-078, D-2011-113)

Contract Administration

Oversight and Surveillance

- The contracting officer's representatives were not trained or nominated. They did not perform the required duties. (D-2010-081, D-2010-087, D-2011-088, DODIG-2012-028)

- The contracting officials did not provide adequate oversight over contractor performance as required by the FAR and DoD regulations. (D-2010-052, D-2010-054, D-2010-068, D-2010-078, D-2010-091, D-2010-081)

- The contractor officials failed to establish a quality assurance surveillance plan, designate a contracting officer's representative to oversee contractor work, or required adequate contract file maintenance. (D-2010-087, D-2011-032, D-2011-043, D-2011-047, D-2011-066)

- The contracting officials did not establish a formal agreement that defined roles, responsibilities, and accountability and develop written procedures for contract administration. (D-2010-066, D-2011-113)

- DoD did not hold contractors accountable for complying with the staffing and performance requirements in the contract. (D-2010-091)

-The contracting officials did not perform periodic review of the contractor invoices or verified that DCMA officials performed all delegated billing responsibilities. (D-2011-078)

-DCMA officials did not verify whether contractors performed acquired services, conducted improperly sampling for acceptance testing, did not complete surveillance documentation. (D-2010-088, D-2011-030, D-2011-088)

-DCMA could not provide sufficient personnel and personnel did not have proper training for contractor oversight and administration in Southwest Asia. (D-2010-051)

- DCMA did not provide oversight of the contractor's security program in accordance with the contract or the Theater Quality Plan and the contracting officials did not verify that contractor employees had valid security clearance. (D-2010-085)

- Army program officials did not consistently enforce ballistic testing requirements. (D-2011-030, D-2011-088)

- DoD had inadequate policies and procedures that required the use of on-hand inventory before entering into a contract. (D-2011-061)

- DoD and DoS officials did not have a comprehensive plan to transfer the contract administration responsibilities. Insufficient staff to complete the planned transition and drawdown. (D-2011-095, SPO-2011-001)

- DoD did not provide adequate training for Ministry of Defense contracting officials. (SPO-2011-001)

- Afghan Security Force Fund lacked adequate specialized personnel to initiate, manage, and oversee a rapidly expanding contracting environment and lacked adequate training program. (SPO-2011-003)

Contractor Personnel

- The contracting officials inappropriately allowed contractors to exert controls over functions that should have been remained under the authority of DoD. (D-2011-081)

-The contracting officials allowed contractor performance to exceed 1 year; required contractor completed services on site; provided principle tools, space, and equipment; and allowed working conditions that were indistinguishable from Government personnel. (D-2010-054)

- The contracting officials allowed a contractor to develop requirements for contracts and allowed that contractor access to other's contractors' proprietary information. (D-2011-032, D-2011-081)

- The contracting officials allowed contractors to perform the quality assurance portion of contract surveillance of the construction contractors. (D-2010-078)

-The contracting officials allowed contractor employees to review and approve ballistics testing results for lot acceptance. (D-2011-030, D-2011-088)

-The contracting officials allowed contractor personnel to accept million dollars of fuel on behave of the Government. (D-2011-049)

Property Accountability

- The contracting officials did not monitor the accountability of Government Furnished Material. (D-2011-047)

- The contracting officials had little visibility and accountability of DoD inventory in Iraq. (SPO-2011-003)

- DoD had inefficient, confusing, and time-consuming process for monitoring vehicles destroyed in combat accidents. (DODIG-2012-028)

- DoD maintained incomplete inventory lists. (D-2010-088, D-2011-078, SPO-2011-001)

- DoD's inventory items were marked with incorrect National Stock Numbers. (D-2010-091)

- DoD had no plan for disposition of material and accountability of materiel and shipping containers. (SPO-2010-002)

- International Security Assistance Force did not have a reliable system to ensure oversight of U.S. supplied equipment and supplies, including weapons. (SPO-2011-003)

Financial Management**

- The contracting officials incorrectly funded a contract with prior year funds. (D-2010-064, D-2011-043)

- The contracting officials obligated funds before specific requirements were identified. (D-2010-087)

- The contracting officials approved invoices that included unauthorized charges or did not verify the accuracy of invoices. (D-2010-081, D-2011-080)

- The contracting officials approved unauthorized advance payments, improper payments, did not verify proper exchange rate, and did not deobligate funds as appropriate. (DoDID-2012-023)

- The contracting officials obligated funds that might have violated the Bona Fide Needs Rule or the Antideficiency Act. (D-2011-036, D-2011-102)

- DoD overpaid the contractors and did not validate whether costs were accurate and chargeable. (D-2011-047, D-2011-061, D-2011-113,)

-The contracting officials failed to obtain overcharge credits. (D-2010-055, D-2011-061)

- Army officials erroneously reported and certified unliquidated obligations, had no assurance that unliquidated obligations presented valid needs, and erroneously deobligated unliquidated obligations. (D-2010-073)

- DoD and DoS officials did not management funds in accordance with appropriation laws, which could result in potential Antideficiency Act violations. (D-2011-080)

- No single credible data source for contracts and acquisition records/transactions. (SPO-2011-007)

** Financial management is also required throughout the contracting process. For the purpose of this report, we placed the financial management problem area under the contract administration phase because the majority of financial management functions occur during contract administration.

Source: DoD IG Report No. DODIG-2012-134, "Contingency Contracting: A Framework for Reform – 2012 Update," September 18, 2012

Fraudulent Activities in Overseas Contingency Contracting

As of March 2012, the Defense Criminal Investigative Service (DCIS) had 249 open investigations pertaining to Overseas Contingency Operations. In addition, from April 2, 2010, through March 31, 2012, DCIS reported that 20 of those cases resulted in pleas, sentencings, fines, and forfeitures.

DCIS conducts the majority of its investigations with other Federal law enforcement agencies, such as the Federal Bureau of Investigation, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the U.S. Air Force Office of Special Investigations, the Special Inspector General for Iraq Reconstruction, and the Special Inspector General for Afghanistan Reconstruction.

Ongoing Investigations

DCIS classified the 249 ongoing investigations into three predominant investigative categories pertaining to Overseas Contingency Contracting: Public Corruption, Procurement Fraud, and Theft and Technology Protection.

- Public Corruption is defined as the breach of public trust by elected or appointed U.S. Government officials who ask, demand, solicit, seek, accept, receive or agree to receive anything of value in return for preferred treatment. Public Corruption includes bribery, gratuities, conflicts of interest and kickbacks.

- Procurement Fraud includes, but is not limited to, false claims and statements, undelivered products, defective products, and cost/labor mischarging. According to the generally accepted government auditing standards, fraud is a type of illegal act involving obtaining something of value through willful misrepresentation. Whether an act is in fact fraud, is a determination to be made through the judicial or other adjudicative systems. Fraud may occur at any point during the procurement process.

- Theft and Technology Protection includes illegal theft, diversion or movement of strategic technologies and U.S. Munitions List items to proscribed nations, criminal enterprises or terrorist organizations and illegal theft or transfer of technologies, weapons systems, components and programs, and all forms of high technology, information, and capabilities involving Weapons of Mass Destruction. In short, Theft and Technology Protection includes theft of funds, property, equipment, and supplies, and exports violations (U.S. technology and vehicles).

Table 2 summarizes the 249 ongoing investigations by investigative category as related to Overseas Contingency Contracting.

Table 2. DCIS Open Investigations as of March 2012

Predominant Investigative Category for Overseas Contingency Contracting	Number of Ongoing Investigations	Subject Types
Public Corruption -Bribery -Gratuities -Conflicts of Interest -Kickbacks	109	DoD Contractor; Foreign National; U.S. Government Civilian; U.S. Military Personnel; Military or Civilian Dependent; DoD Subcontractor
Procurement Fraud -False claims and statements -Undelivered products -Defective products -Cost/labor mischarging	110	DoD Contractor; Foreign National; Military Personnel; U.S. Government Civilian Employee; DoD Subcontractor
Theft and Technology Protection -Theft of funds, property, equipment, and supplies -Export violations: U.S. Technology and vehicles	27	DoD Contractor; U.S. Government Civilian Employee; State Government Employee; Military Personnel; Foreign National
Miscellaneous -Terrorism-Related Acts	3	U.S. Government Civilian Employee; Civilian Dependent; DoD Subcontractor; Foreign National Contractor to DoD

In addition, Appendix E provides a description of various fraud indicators at different phases in the contracting process

Results of Investigations

DCIS provided 20 investigations pertaining to OCO from April 2, 2010, through March 31, 2012. The 20 investigations resulted in prison sentences, fines, restitution, and criminal and civil settlement agreements.

To assist theater commanders and contract managers to better identify the warning signs of fraudulent activities, we organized the investigations according to where the fraud occurred within the contracting process. As discussed earlier in the report, fraud can occur at any point in the contracting process, so it is important to know how to recognize the indicators. Based on the results of the 20 investigations, we identified 3 contracting process areas where most fraudulent activities occurred.

Table 3 is a summary of the selected investigations by contracting process areas affected by fraudulent activity.

Table 3. Investigations by Contracting Process Areas

Contracting Process Areas Impacted by the Fraudulent Activities	Numbers of Investigations	Subject Types
Source Selection	14	DoD Contractor; U.S. Government Employees (Military and Civilian); and Foreign National
Oversight and Surveillance	5	DoD Contractor; U.S. Government Employees (Military and Civilian); and Foreign National
Financial Management	8	DoD Contractor; U.S. Government Employees (Military and Civilian); and Foreign National

Note: The number of investigations will not add up to 20 because an investigation can affect more than one contracting area.

Examples of Investigations by Contracting Areas

Source Selection

Former Officers of New Mexico-Based Defense Contractor Charged In Fraud and Money Laundering Schemes Related to Rebuilding Efforts in Iraq (3/2/2012) The U.S. Attorney's Office, DCIS, the Federal Bureau of Investigation, the Internal Revenue Service-Criminal Investigations Division, the Special Inspector General for Iraq Reconstruction, and the DCAA jointly investigated and are currently prosecuting this case. Specifically, the United States charged seven defendants [three defense contractor employees (Kasper, B. Christiansen, White) and four Foreign Nationals (Snobar, Snobar, Ahmad, Aridhi)] for their alleged roles in a fraud and money laundering scheme involving defense contracts for wartime rebuilding projects. In addition, the United States charged Christiansen's wife with conspiracy to launder money and substantive money laundering offenses.

Laguna Construction Company, Inc. (LCC), a minority disadvantaged business wholly owned by the Pueblo of Laguna, a Native American Indian Tribe located in New Mexico. The United States awarded LCC multiple contracts for wartime reconstruction and rebuilding projects in Iraq and Jordan. For LCC to award subcontracts to foreign companies, the

United States required LCC to generate requests for proposal and solicit independent subcontract bids from qualified foreign companies. The United States also required foreign companies to independently prepare bids and LCC to objectively evaluate and award the subcontracts to the lowest qualified bidders. The United States prohibited LCC and its personnel from accepting anything of value, whether gifts, bribes or kickbacks from the bidders.

From January 2004 through February 2009, Kasper, Christiansen, and White allegedly colluded with the Foreign Nationals to defraud the United States of more than $5 million. Specifically, the Foreign Nationals allegedly offered kickbacks to Kasper and Christiansen for the award of LCC subcontracts in Iraq. Kasper and Christiansen allegedly fraudulently eliminated bids submitted by foreign companies that were unwilling to pay kickbacks for the award of LCC subcontracts, and awarded the subcontracts to companies controlled by Foreign Nationals. When preparing invoices, the Foreign Nationals allegedly overstated the actual costs incurred on LCC subcontracts in order to obtain excess funds to pay kickbacks. Kasper and Christiansen allegedly approved payment on invoices submitted by the Foreign Nationals that falsely overcharged the United States for costs not incurred. The Foreign Nationals allegedly paid kickbacks in the form of wire transfers of funds and the delivery of property to Kasper, Christiansen and White in return for the award of LCC subcontracts in Iraq. Further, the indictment alleged that Kasper, White, and Christiansen attempted to conceal the nature of the illegal kickbacks by having funds wire-transferred into the bank accounts of relatives and companies controlled by the defendants; by accepting kickbacks in the form of personal property, including automobiles and cash; and by using the kickbacks to acquire goods and remodel residential real property.

From January 2004 through February 2009, Kasper, Christiansen, and White allegedly colluded with the Foreign Nationals to defraud the United States of more than $5 million.

Retired Army Major Sentenced to 24 Months in Prison for Engaging in Money Laundering Related to Contracting in Support of Iraq War (12/13/2011) The Criminal Division Trial Attorneys of the Public Integrity and Fraud Sections and the Assistant U.S. Attorney for the Western District of Texas, San Antonio Division prosecuted this case. The Army Criminal Investigation Command, the DCIS, the Federal Bureau of Investigation, the Internal Revenue Service, the Special Inspector General for Iraq Reconstruction, and the U.S. Immigration and Customs Enforcement's Homeland Security Investigations jointly investigated this case.

Charles Joseph Bowie was sentenced to 24 months in prison and 3 years of supervised release for engaging in monetary transactions in property derived from specified unlawful activity. Mr. Bowie was ordered to pay $400,000 in restitution. Mr. Bowie, a retired U.S. Army Major, directed a Government contractor to pay him money in exchange for the award of a bottled water contract in support of Operation Iraqi Freedom. Mr. Bowie admitted that he entered into a sham consulting agreement with the contractor in an effort to conceal the four $100,000 payments he received from the contractor.

Saudi Arabia-Based Tamini Global Company to Pay United States $13 Million to Resolve Criminal and Civil Allegations of Kickbacks and Illegal Gratuities (9/16/2011) The U.S. Attorney's Office and the Justice Department prosecuted this case. The Internal Revenue Service Criminal Investigation Division, the DCIS, the U.S. Army Criminal Investigation Command, and the Federal Bureau of Investigation investigated this case.

Saudi Arabia-based Tamimi Global Company Ltd (TAFGA) agreed to pay the United States $13 million to resolve criminal and civil allegations that the company paid kickbacks to a KBR employee and illegal gratuities to a former U.S. Army Sergeant, in connection with contracts in support of the Army's operations in Iraq and Kuwait. Under a deferred prosecution agreement between TAFGA and the U.S. Attorney's Office, TAFGA will pay the United States $5.6 million and institute a strict compliance program to ensure that the company and its employees will abide by the legal and ethical standards required for Government contracts. If TAFGA meets its obligations under the agreement without violation for 18 months, the United States will dismiss the criminal charges. As part of the criminal agreement, TAFGA admitted conspiring to pay kickbacks to a former KBR subcontract manager in return for favorable treatment in the award and performance of a subcontract to provide dining services at Camp Arifjan in Kuwait. In a separate civil settlement agreement, TAFGA agreed to pay the United States an additional $7.4 million to resolve civil allegations that TAFGA paid kickbacks in return for favorable treatment in the award and performance of the Camp Arifjan subcontract, a subcontract for dining facilities at the Baghdad Palace in Iraq, and five smaller subcontracts for dining services and other logistical support in Iraq, including temporary personal services

Saudi Arabia-based Tamimi Global Company Ltd (TAFGA) agreed to pay the United States $13 million to resolve criminal and civil allegations that the company paid kickbacks to a KBR employee and illegal gratuities to a former U.S. Army Sergeant, in connection with contracts in support of the Army's operations in Iraq and Kuwait.

and installation of tent pads and a shower/laundry unit. The United States alleged that TAFGA's conduct violated the False Claims Act and the Anti-Kickback Act.

Figure 8 is an example of dining facilities in Kuwait.

Figure 8. A Dining Facility in Kuwait

Source: U.S. Defense Imagery Web site.

Oversight and Surveillance

Army Sergeant Pleads Guilty to Accepting $1.4 Million in Illegal Gratuities Related to Military Dining Contracts in Kuwait (4/21/2010) The U.S. Attorney's Office, the DCIS, the Internal Revenue Service-Criminal Investigation, the U.S. Army Criminal Investigation Command, and the National Procurement Fraud Task Force, jointly prosecuted and investigated this case.

Ray Scott Chase, a U.S. Army Sergeant, pleaded guilty to accepting $1.4 million in illegal gratuity from a private contractor during his deployment to Kuwait in 2002 and 2003. During his deployment, he served as a COR and a non-commissioned officer in charge of the military dining facility at U.S. Central Command at Camp Doha, Kuwait. As a part of his official duties, he supervised the food procurement, preparation and service operations at Camp Doha and Camp Arifjan. He also coordinated orders for certain blanket purchase agreements the U.S. Army had with various private contractors to provide supplies and services to both of those dining facilities. He admitted that he received about $1.4 million from private contractors for official acts he performed and was going to perform in 2002 through the end of 2003. After he returned to the United States, he structured various financial transactions to avoid currency transaction reporting requirements and made false statements when interviewed by federal authorities in February 2007.

Marine Major Sentenced For Receiving Illegal Gratuities (4/25/2011) The U.S. Attorney's Office, the DCIS, the Naval Criminal Investigative Service, and

the Special Inspector General for Iraq Reconstruction jointly prosecuted and investigated this case.

The United States sentenced Richard Joseph Harrington, a Major in the Marine Corps, to 12 months and one day in prison and one year of supervised release. Major Harrington, as a contracting officer's representative, acted as the liaison between contractors and the contracting office to inspect and accept products and monitor contractors' performance to ensure compliance with the contracts. In that capacity, Major Harrington wrongfully solicited and accepted gratuities from a contractor on a $2.2 million gym equipment contract with Al Jazaer Group. In total, he received three Rolex watches—two from Al Jazaer Group and one from another corporation interested in future contracts involving non tactical vehicles that Major Harrington flew to Dubai to conduct market research on. Although most of Major Harrington's trip to Dubai was paid for by AVA International Corporation, Major Harrington filed a travel reimbursement request claiming more than $10,000 from the U.S. Government. For the gym equipment contract, Major Harrington approved Al Jazaer Group's last invoice and received a total of $35,000 from the contractor.

Figure 9 is an example of the gym equipment used by U.S. military in Iraq.

Figure 9. Gym Equipment

Source: U.S. Defense Imagery Web site.

Financial Management

U.S. Army Reserves Sergeant Pleads Guilty to Conspiracy to Defraud the United States Related to Contracting in Support of Iraq War (2/14/2012) The Trial Attorney of the Criminal Division's Fraud Section, the U.S. Army Criminal Investigation Command, the DCIS, the Federal Bureau of Investigation, the Internal Revenue Service, the Special Inspector General for Iraq Reconstruction, and the U.S. Immigration and Customs Enforcement's Homeland Security Investigations jointly prosecuted and investigated this case.

Sergeant Amasha M. King pleaded guilty to one count of conspiracy to defraud the DoD. Sergeant King served at Camp Arifjan, Kuwait, from November 2004 to February 2006, in support of Operation Iraqi Freedom as part of the 374th Finance Battalion. While in Kuwait, King was responsible for receiving and processing pay vouchers and invoices from military contractors for various contracts and blanket purchase agreements, including blanket purchase agreements for bottled potable water. In that capacity, King agreed to receive money from a military contractor in return for defrauding the United States by preferentially processing the contractor's invoices outside of the proper procedures and protocols for payment. This allowed the contractor to be paid much faster than usual and ultimately to bid for more contracts than it otherwise could have financed. Sergeant King admitted that she received four wire transfers totaling approximately $20,500. King also admitted that she instructed the contractor to wire the money to designees in the United States and to keep the amounts under $10,000 to avoid bank reporting requirements. King faces up to five years in prison and a fine of $250,000 or twice the amount of the criminally derived property she received. In addition, King has agreed to pay $20,500 in restitution to the United States. A sentencing date has not yet been scheduled by the court.

Scheme to Defraud Government on Reconstruction Contracts Leads to Criminal Charges and Civil Penalties for Louis Berger Group, Inc. (11/5/2010) The U.S. Attorney's Office, the Justice Department, the Office of Inspector General for U.S. Agency for International Development, the DCIS, the Federal Bureau of Investigation, the Office of the Special Inspector General for Iraq Reconstruction, and the DCAA jointly prosecuted and investigated this case.

The Louis Berger Group, Inc. (LBG), a New Jersey-based engineering consulting company awarded millions in reconstruction contracts in Iraq and Afghanistan, resolved criminal and civil fraud charges related to its international work on behalf of the U.S. Agency for International Development and the DoD. In addition, two former senior LBG employees pleaded guilty to their roles in the scheme. Pepe, LBG's former chief financial officer, and Pellettieri, former Controller, admitted

in court to conspiring to defraud U.S. Agency for International Development by obtaining contract payments billed at a falsely inflated overhead rate. Pepe directly supervised Pellettieri, who supervised LBG's general accounting division. Both were responsible for ensuring the integrity of LBG's cost data with respect to the calculation of overhead rates that LBG charged to U.S. Agency for International Development and other agencies. LBG charged the Federal Government these rates on "cost plus" contracts, which enabled contractors to pass on their overhead costs to the agency in general proportion to how much labor LBG devoted to the Government contracts.

Summary

As of March 2012, DCIS had 249 ongoing investigations that were classified into three predominant investigative categories pertaining to OCO: Public Corruption, Procurement Fraud, and Theft and Technology Protection. In addition, DCIS reported that between April 2, 2010, through March 31, 2012, 20 of those investigations resulted in pleas, sentencings, and fines. These 20 investigations revealed fraudulent activities that affected 3 contracting areas: Source Selection, Oversight and Surveillance, and Financial Management. Table 4 on page 49 is a summary of the 20 highlighted investigations.

Table 4. Reported Results of DCIS OCO Investigations From April 2, 2010, Through March 31, 2012

Date	Press Release Title	Case Names	Fraud Types			Contracting Areas Impacted by the Fraud		
			Public Corruption	Procurement Fraud	Theft and Technology Protection	Source Selection	Financial Management	Oversight and Surveillance
3/28/2012	Defendant Worked in Afghanistan Supporting U.S. Military Effort	Wade	X			X		
3/7/2012	U.S. Army Captain Pleads Guilty to Accepting Illegal Gratuities Related to Contracting in Support of Iraq War	Rutecki	X				X	
3/2/2012	Former Officers of New Mexico-Based Defense Contractor Charged In Fraud and Money Laundering Schemes Related to Rebuilding Efforts in Iraq	*Kasper, *B. Christiansen, *S. Christiansen, *White, R. Snobar, *Y. Snobar, *Ahmad, and *Aridhi	X	X		X	X	
2/14/2012	U.S. Army Reserves Sergeant Pleads Guilty to Conspiracy to Defraud the United States Related to Contracting in Support of Iraq War	King	X				X	
2/13/2012	Former U.S. Army Corps of Engineers Manager Pleads Guilty in Alleged $20 Million Bribery and Kickback Scheme	Alexander, McKinney, Khan, Lee Khan, Cho, Hallas, and Babb	X	X		X	X	X
12/13/2011	Retired Army Major Sentenced to 24 Months in Prison for Engaging in Money Laundering Related to Contracting in Support of Iraq War	Bowie	X			X		
12/9/2011	Former Army Corps of Engineers Employee Sentenced to 20 Months in Prison for Accepting Bribes from Iraqi Contractors	Manok	X			X		
10/20/2011	Former Louis Berger Group, Inc. CEO Surrenders to Face Indictment Charging Fraudulent Billing Scheme For Iraq, Afghanistan Reconstruction Contracts	Wolff		X			X	
9/22/2011	Former Army Contracting Officials and Defense Contractor Indicted For Bribery and Theft of Government Funds	Borcuta, Taylor, Close	X		X	X	X	
9/16/2011	Saudi Arabia-Based Tamimi Global Company to Pay U.S. $13 Million to Resolve Criminal and Civial Allegations of Kickbacks and Illegal Gratuities	Tamimi Global Company Ltd	X			X		
8/16/2011	Retired Army Colonel Sentenced to 12 Months in Prison for Bribery Scheme Involving Department of Defense Contracts in Iraq	Selph	X			X		
7/15/2011	Jewett City Man Pleads Guilty to Accepting Kickbacks from Military Suppliers in Kuwait	Szafran	X			X		
7/14/2011	Former U.S. Army Corps of Engineers Employees and Others Indicted in Multimillion-Dollar Bribery, Kickback Scheme Involving Iraq Construction Contracts	Markus, Gomez, Al-Jobory, Nouri, Al-Fahal	X			X		X
6/21/2011	U.S. Army Sergeant and Associate Indicted for Alleged Bribe Scheme Involving Contracts at Camp Arifjan in Kuwait	Evick, Martin,	X			X		
6/13/2011	Former U.S. Army Major Pleads Guilty to Bribery Related to Contracting in Support of Iraq War	Shoemake	X			X		X
5/31/2011	Business Owner Sentenced in Bribery Scheme	Adams, Hand	X			X		
4/25/2011	Marine Major Sentenced for Receiving Illegal Gratuities	Harrington	X				X	X
11/5/2010	Scheme to Defraud Government on Reconstruction Contracts Leads to Criminal Charges and Civil Penalties for Louis Berger Group, Inc.	Louis Berger Group, Inc., Pete, Pellettieri		X			X	
4/21/2010	Army Sergeant Pleads Guilty to Accepting $1.4 Million in Illegal Gratuities Related to Military Dining Contracts in Kuwait	Chase	X					X
4/15/2010	Former U.S. Army Reserve Officer Pleads Guilty to Accepting Illegal Gratuities Related to Contracting When Serving at Camp Arifjan, Kuwait	McLain	X			X		
Total			**18**	**4**	**1**	**14**	**8**	**5**

*This individual/company has been indicted for the indicated misconduct but has not been convicted. Until such time as they are convicted they are presumed innocent. They are included in this chart solely for analytical purposes.

Appendix A. Scope and Methodology

We are providing this summary report to help DoD field commanders and contract managers understand systemic contracting problems related to contingency operations. To prepare this report, we reviewed the DoD OIG Web site for reports issued from April 2, 2010, through March 31, 2012. We followed generally accepted auditing standards in conducting this audit, except for planning and evidence requirements of the field work standards, because this audit only summarized previously released DoD OIG reports and investigations. Furthermore, this report included the review of DoD OIG assessment reports and investigations relating to contingency contracting that were not required to be conducted in accordance with generally accepted auditing standards. We did not validate the information or results stated in the reports and investigations summarized.

We conducted this summary report from March 2012 through August 2012. This report summarized 38 DoD OIG reports and 20 DCIS investigations. We identified 31 audit and 7 Special Plans and Operations reports pertaining to contingency contracting. We then compared the 38 reports to our semiannual reports to Congress to make sure that we captured all reports containing contingency contracting problems. Further, we coordinated with applicable DoD OIG offices to confirm the 38 reports.

We reviewed the findings, conclusions, observations, and recommendations contained in these reports. Based on these reports, we identified nine systemic problem areas in the contingency contracting process.

1. Requirements
2. Contract Documentation
3. Contract Type
4. Source Selection
5. Contract Pricing
6. Oversight and Surveillance
7. Contractor Personnel
8. Property Accountability
9. Financial Management

In addition, we reviewed press releases provided by DCIS for 20 investigations issued from April 2, 2010, through March 31, 2012, to summarize fraudulent activities and specific contracting problems. DCIS also identified 249 open investigations pertaining to overseas contingency contracting. DCIS classified its work into three investigative categories: Public Corruption, Procurement Fraud, and Theft and Technology Protection.

We followed up on open recommendations identified in DoD OIG Report No. D-2010-059, "Contingency Contracting: A Framework for Reform," May 14, 2010.

Use of Computer-Processed Data

We did not use or rely on computer-processed data.

Prior Coverage

During the past 5 years, the DoD OIG issued three reports on the summary of audit reports pertaining to contingency contracting. Unrestricted audit reports can be accesses at http://www.dodig.mil/audit/reports/.

DoD IG Report No. D-2010-059, "Contingency Contracting: A Framework for Reform," May 14, 2010

DoD IG Report No. D-2009-071, "Summary of DoD Office of Inspector General Audits of Acquisition and Contract Administration," April 22, 2009

DoD IG Report No. D-2008-086 "Challenges Impacting Operations Iraqi Freedom and Enduring Freedom Reported by Major Oversight Organizations Beginning FY 2003 through FY 2007," July 18, 2008

Appendix B. Contracting Problem Areas by Audit Report Matrix

	Requirements			Contract Documentation	Contract Type			Source Selection	Contract Pricing	Oversight and Surveillance							Contractor Personnel			Property Accountability	Financial Management		
Report #s	Unclear/ Changing	Out of Scope	Policy and Training Requirements		Cost type	Time-and-Material	Commercial Acquisition			Program Office	Contracting Officer	CORs	DCMA	Written Procedures	Insufficient Staff	Training and Certification	Inherently Governmental Functions	Organizational Conflicts of Interest	Personal Services		Billing and Payments	Potential ADA	Funds/ Obligations
D-2010-051													x										
D-2010-052			x								x					x							
D-2010-054								x	x		x						x		x				
D-2010-055																					x	x	
D-2010-064								x	x													x	
D-2010-066	x			x										x									
D-2010-068											x			x									
D-2010-073				x																		x	x
D-2010-078				x		x					x	x					x						
D-2010-081						x			x		x										x		
D-2010-085											x		x										
D-2010-087					x				x		x											x	
D-2010-088											x		x							x			
D-2010-091	x						x				x		x							x			
D-2011-030										x			x				x						
D-2011-032		x									x							x					
D-2011-036						x		x														x	
D-2011-043								x	x		x											x	
D-2011-047									x		x			x						x	x	x	
D-2011-049							x		x								x						
D-2011-061									x				x	x							x		
D-2011-066				x										x									
D-2011-078	x								x		x									x			
D-2011-080				x																	x	x	x
D-2011-081						x											x	x					
D-2011-088										x		x	x				x						
D-2011-095														x	x								
D-2011-102																						x	
D-2011-105							x	x															
D-2011-113									x		x			x							x		
DODIG-2012-023																					x		x
DODIG-2012-028	x											x								x			
SPO-2010-002																				x			
SPO-2011-001															x	x				x			
SPO-2011-003															x	x				x			
SPO-2011-002			x																				
SPO-2011-007			x																		x		
SPO-2011-009	x	x	x																				
Total	**5**	**2**	**4**	**5**	**1**	**4**	**2**	**6**	**10**	**2**	**14**	**3**	**7**	**7**	**3**	**3**	**6**	**2**	**1**	**8**	**8**	**8**	**3**

Appendix C. Comparing Contingency Contracting Problems Between Current and Prior DoD OIG Summary Reports

We compared the contingency contracting problems noted in the prior Contingency Contracting report (DoD OIG Report D-2010-059) with this summary report. These two summaries covered 72 DoD OIG reports issued during a period of 4 ½ years, from October 1, 2007, through March 31, 2012. DoD OIG Report D-2010-059 covered 34 reports and this summary report covered 38 reports. The DoD OIG identified problems in many of the same contracting areas in both reports. For instance, we continue to observe inadequate oversight of contractor performance.

The following table shows the number of reports discussing each contracting problem area. Each report may discuss more than one contracting problem area; therefore, the total number of reports for the third, fourth, and fifth columns do not equal to 34, 38, or 72 reports, respectively.

Table. Number of Reports by Contracting Problem Area

Count	Systemic Contracting Problem Area	Number of Reports discussed in DoD OIG Report No. D-2010-059	Number of Reports discussed in this summary report DoD OIG Report No. DODIG-2012-134	Total Reports
1	Requirements	12	9	21
2	Contract Documentation	19	5	24
3	Contract Type	5	7	12
4	Source Selection	4	6	10
5	Contract Pricing	10	10	20
6	Oversight and Surveillance	24	24	48
7	Contractor Personnel[1]	3[2]	7	10
8	Property Accountability	17	8	25
9	Award Fee	4	0	4
10	Financial Management	10	14	24

[1]The Contract Personnel problem area includes three subcategories: inherently governmental functions, organizational conflicts of interest, and personal services.
[2]All three reports identified inherently governmental functions subcategory.

The DoD OIG reported oversight and surveillance problems in more than half of the reports issued and made recommendations to remedy the conditions. In addition, we continue to observe problems with contract pricing, source selection, and financial

management. Nevertheless, we observed fewer problems with contract documentation and property accountability in this report as compared to the previous summary report.

We hope that field commanders and contract managers will use this summary report to assist in recognizing and addressing problems in various contingency contracting areas. Although we observed fewer issues in some areas in this summary report, we caution that this change may be the result of outlying factors, rather than an overall improvement within that area. Field commanders and contract managers should continue to be observant and vigilant during all phases of the contracting process.

Appendix D. Status of Open Recommendations in Prior Contingency Contracting Summary Report

In the prior DoD OIG summary report on contingency contracting problems, DoD OIG personnel identified 10 systemic contracting problems with 177 open recommendations* in 34 reports. We reviewed the status of the open recommendations, as of August 21, 2012, and determined that 167 of 177 had been closed.

The table below summarizes the current status of the open recommendations identified in the prior summary report.

Table. Number of Open Recommendations for Each Contracting Problem

Contracting Problems	Number of Open Recommendations in the First DoD OIG Summary Report	Number of Recommendations That Are Still Open
Requirements	7	0
Contract Documentation	13	0
Contract Type	10	0
Source Selection	4	0
Contract Pricing	14	2
Oversight and Surveillance	60	3
Inherently Governmental Functions	8	0
Property Accountability	24	2
Award Fee	6	2
Financial Management	31	1
Total:	**177**	**10**

As of August 21, 2012, 10 recommendations from the prior DoD OIG summary report on contingency contracting problems remain open because of pending actions, such as contractor appeals on questioned costs, ongoing DCAA audits on contract costs, continued review of potential duplicate payments, and delays in hiring a qualified contracting officer to properly close-out a contract.

* An open recommendation is a recommendation that we are still tracking to ensure that agreed-upon actions are implemented.

Appendix E. Fraud Indicators in the Contracting Process

The need to maintain high ethical standards and procurement integrity is always important for DOD contracting officers; however, this requirement can be challenging in a deployed environment where the expectations and business habits of suppliers may be affected by varying cultural, political, and economic conditions. Additionally, the pressures to meet mission requirements can be even more intense in a contingency contracting environment.

Fraud is the misrepresentation of a material fact with the intent to deceive. Fraud may occur at any stage in the Federal Government procurement process. Although poor management decisions or negligence may lead to indications of fraud, the difference between fraud and negligence is intent.

Common fraud offenses include:

- bribery, kickbacks, and gratuities;
- making or using a false statement;
- falsely making or altering a document;
- making or presenting a false claim;
- companies conducting business under several names;
- collusive bidding (bid rigging);
- conflict of interest;
- conspiracy to defraud;
- disclosure of proprietary source selection sensitive information;
- insufficient delivery of contracting items; and
- failure to meet specifications.

Requirements Fraud Indicators

The potential for fraud is created when the need assessment is not adequately or accurately developed. Sloppy or carelessly written specifications make it easy for a contractor to overcharge or deliver less than expected. Fraud indicators regarding requirements definition include, but are not limited to the Government:

- failing to state requirements functionally to the maximum extent possible (specifications that are vague make it difficult to reasonably compare estimates);
- defining statements of work and specifications to fit products or capabilities of a single contractor, which effectively excludes competition;
- splitting requirements to use simplified acquisition procedures in order to avoid review and approval; and
- modifying the contract shortly after award in order to make material changes in the requirements or statement of work.

Contract Documentation Fraud Indicators

Dishonest individuals may attempt to hide evidence of fraudulent activity by omitting certain documents from a contract file or including outdated information. Fraud indicators relating to contract documentation include, but are not limited to:

- a pattern of missing documents or documentation with outdated information in the contract file;
- contract documents that are altered, backdated, or modified to cover deficiencies;
- contract awards made without adequate documentation of all pre-award and award actions; and
- invoices that do not have adequate supporting documentation or supporting documentation is incomplete.

Contract Type Fraud Indicators

In a fixed-price contract, the risk of performance falls on the contractor. Cost-reimbursement contracts shift the risk of performance to the Government and the contractor agrees to provide its best effort to complete the contract requirements. The high risk to the Government in cost-reimbursement contracts may provide an opportunity for fraud to occur. Specifically, the use of a cost-reimbursement type contract provides less incentive to the contractor to manage costs. This increases the risk that the contractor will fraudulently overcharge the government.

Source Selection Fraud Indicators

The contracting officer is required to select the proposal that represents the best value to the Government. While the contract award process has been designed to efficiently ensure the delivery of goods and services, the complex procedures involved in source selection may provide an opportunity for fraud to exist. The fraud indicators relating to source selection include, but are not limited to:

- improper relationships between Government and contractor personnel;
- the Government's failure to perform market research to determine evaluation factors, contracting method, or whether commercial items or nondevelopmental items would meet the Government's needs;
- the Government restricting procurement to exclude or hamper any qualified contractor;
- the Government revealing information about procurements to one contractor that is not revealed to another;
- the Government accepting late or nonresponsive proposals, or accepting proposals from nonresponsible offerors;
- the Government improperly disqualifying offerors;
- the Government exercising favoritism towards a particular contractor during the evaluation process;
- the Government awarding contracts to contractors with poor records of performance;

- the Government awarding contracts that include items other than those contained in the bid specifications; and
- the Government's approval of a justification for less than full and open competition based on improper reasons or inaccurate facts.

Contract Pricing Fraud Indicators

Contracting officers must purchase supplies and services at fair and reasonable prices. Failure to implement procedures to obtain fair and reasonable prices may create opportunities for fraudulent activities, including kickbacks, bribes, and gratuities, that may be unknowingly included in the contract price. Fraud indicators relating to contract pricing include, but are not limited to:

- the Government not preparing estimates or preparing estimates after solicitations are requested;
- the Government and contractor utilizing unqualified personnel to develop cost or pricing data used in estimates;
- Government estimates and contract award prices are consistently very close;
- the Government approves items that are of lesser value but the contract cost is not reduced; and
- the contractor issuing an engineering change proposal soon after the award of a contract.

Collusive bidding, price fixing, or bid rigging are commonly used as interchangeable terms that describe illegal anti-competitive activity. These are activities that involve agreements or informal arrangements among competitors to limit competition. Indicators of these anti-competitive activities include: the existence of fewer than five bidders, constant winners, constant losers, and close groupings of final bid prices.

Oversight and Surveillance Fraud Indicators

Shortages in quality assurance and surveillance staffing is a major challenge to DOD. The increasing level of contract support along with urgencies of the war efforts has spread the availability of quality assurance and surveillance staff thin. Failure to properly monitor contract performance enables fraud. Fraud indicators related to contract oversight and surveillance include, but are not limited to:

- contractors awarding subcontracts to unsuccessful bidders;
- the Government providing materials or services to contractors even though contractors are being paid to provide the materials or services;
- the administrative contracting officer approving modifications;
- contractors failing to meet terms but no compliance efforts are undertaken;
- the Government certifying receipt of goods without performing inspections;
- the user frequently complaining of poor quality of supplies or services provided under a contract - this may indicate that contractors are delivering something less than what you are paying for; and
- Untimely and inappropriate closeout of contracts.

Contractor Personnel Fraud Indicators

DoD relies on contractors for a wide range of products and services; however, the Government's exposure to fraud increases as the roles and relationships between Government and contractor employees are increasingly entwined. Fraud indicators include, but are not limited to:

- Increased workloads and responsibilities that prohibit ongoing DOD monitoring of each contractor's work;
- Contractors certifying payments for vendor goods, services, or salaries; and
- Contractors obtaining proprietary information from a Government official when information is not available to all competitors.

Property Accountability Fraud Indicators

DoD continues to face ongoing challenges with its ability to accurately account for, monitor, and report inventory amounts. Fraud indicators relating to property accountability include, but are not limited, to:

- inadequate management oversight and physical inventory control;
- unreliable property inventory data;
- inventory records disclose unusual patterns when compared to physical inventory reviews that cannot be reasonably explained;
- inventory items marked with incorrect disposal condition codes, such as repairable or scrap, when they should be labeled excellent; and
- failure to return Government-furnished equipment.

Financial Management Fraud Indicators

Fraud indicators relating to financial management include, but are not limited to:

- the contractor submitting invoices or claims without detail or supporting documentation to the Government;
- excess profits on either a specific contract, product line, or division;
- later contractor billings showing a downward adjustment in material costs as labor/overhead costs increase;
- the Government paying contractors twice for the same items or services without an attempt to recoup the overpayments;
- the Government not regularly reconciling contract payments, daily transactions, and inventory;
- the contractors' failure to correct known system deficiencies;
- contractors or suppliers complaining that they are not being paid in a timely manner - this may indicate fraudulent manipulations and diversion of Government resources through supply or finance operations; and
- the Government's failure to deobligate funds.

Appendix F. DoD OIG Reports

DoD OIG personnel issued 31 audit reports and 7 SPO reports related to contracting in contingency operations. All reports can be found online at http://www.dodig.mil/Audit/reports/index.html.

Audit Reports

DoD IG Report No. DODIG-2012-023, "Management Improvements Needed in Commander's Emergency Response Program in Afghanistan," November 21, 2011

DoD IG Report No. D-2011-113, "Improved Pricing and Oversight Needed for the Afghan Air Force Pilot and English Language Training Task Order," September 30, 2011

DoD IG Report No. D-2011-105, "Competition for Interrogation Arm Contracts Needs Improvement," September 19, 2011

DoD IG Report No. D-2011-102, "Afghan National Police Training Program Would Benefit From Better Compliance With the Economy Act and Reimbursable Agreements," August 25, 2011

DoD IG Report No. D-2011-095, "Afghan National Police Training Program: Lessons Learned During the Transition of Contract Administration," August 15, 2011

DoD IG Report No. D-2011-088, "Ballistic Testing for Interceptor Body Armor Inserts Needs Improvement," August 1, 2011

DoD IG Report No. D-2011-081, "Contract Management of Joint Logistics Integrator Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement," July 11, 2011

DoD IG Report No. D-2011-080, "DoD and DOS Need Better Procedures to Monitor and Expend DoD Funds for the Afghan National Police Training Program," July 7, 2011

DoD IG Report No. D-2011-078, "Contracts Supporting Base Operations in Kuwait Need Stronger Management and Administration," June 30, 2011

DoD IG Report No. D-2011-066, "Incomplete Contract Files for Southwest Asia Task Orders on the Warfighter Field Operations Customer Support Contract," June 1, 2011

DoD IG Report No. D-2011-061, "Excess Inventory and Contract Pricing Problems Jeopardize the Army Contract With Boeing to Support the Corpus Christi Army Depot," May 3, 2011

DoD IG Report No. D-2011-049, "Competition Issues and Inherently Governmental Functions Performed by Contractor Employees on Contracts to Supply Fuel to U.S. Troops in Iraq," March 15, 2011

DoD IG Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011

DoD IG Report No. D-2011-043, "Improvements Needed on the Fleet and Industrial Supply Center, Sigonella, Ship Maintenance Contracts in Southwest Asia," February 22, 2011

DoD IG Report No. D-2011-036, "Competition Should Be Used for Instructor Services for the Mine Resistant Ambush Protected Vehicles," February 3, 2011

DoD IG Report No. D-2011-032, "Logistics Civil Augmentation Program Support Contract Needs to Comply With Acquisition Rules," January 7, 2011

DoD IG Report No. D-2011-030, "Ballistic Testing and Product Quality Surveillance for the Interceptor Body Armor-Vest Components Need Improvement," January 3, 2011

DoD IG Report No. D-2010-091, "DoD Needs to Improve Management and Oversight of Operations at the Theater Retrograde-Camp Arifjan, Kuwait," September 30, 2010

DoD IG Report No. D-2010-088, "Accountability and Disposition of Government Furnished Property in Conjunction with the Iraq Drawdown-Logistics Civil Augmentation Program," September 30, 2010

DoD IG Report No. D-2010-087, "Weaknesses in Oversight of Naval Sea Systems Command Ship Maintenance Contract in Southwest Asia," September 27, 2010

DoD IG Report No. D-2010-085, "Kuwait Contractors Working in Sensitive Positions Without Security Clearances or Common Access Cards," September 22, 2010

DoD IG Report No. D-2010-081, "Army Use of Time-and-Materials Contracts in Southwest Asia," August 27, 2010

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

DoD IG Report No. D-2010-073, "Controls Over Unliquidated Obligations for Department of the Army Contracts," June 19, 2010

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

DoD IG Report No. D-2010-066, "Oversight of the U.S. Air Forces Central War Reserve Materiel Contract," May 28, 2010

DoD IG Report No. D-2010-064, "Army Vessels Maintenance Contracts in Southwest Asia," May 21, 2010

DoD IG Report No. D-2010-054, "Advisory and Assistance Services Contracts in Support of the Air Force Combat Search and Rescue Helicopter," May 4, 2010

DoD IG Report No. D-2010-055, "Medical/Surgical Prime Vendor Contract Supporting Coalition Forces in Iraq and Afghanistan," April 29, 2010

DoD IG Report No. D-2010-052, "Efforts to Prevent Sexual Assault/Harassment Involving DoD Contractors During Contingency Operations," April 16, 2010

DoD IG Report No. D-2010-051, "Defense Contract Management Agency Acquisition Workforce for Southwest Asia," April 8, 2010

Special Plans and Operations Reports

DoD IG Report No. DODIG-2012-028, "Assessment of U.S. Government and Coalition Efforts to Develop the Logistics Sustainment Capability of the Afghan National Army," December 9, 2011

DoD IG Report No. SPO-2011-009, "Exposure to Sodium Dichromate at Qarmat Ali Iraq in 2003: Part II -Evaluation of Army and Contractor Actions Related to Hazardous Industrial Exposure," September 28, 2011

DoD IG Report No. SPO-2011-007, "Assessment of the U.S. Department of Defense Efforts to Develop an Effective Medical Logistics System Within the Afghan National Security Forces," June 14, 2011

DoD IG Report No. SPO-2011-003, "Assessment of U.S. Government Efforts to Train, Equip, and Mentor the Expanded Afghan National Police," March 3, 2011

DoD IG Report No. SPO-2011-002, "Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command," January 18, 2011

DoD IG Report No. SPO-2011-001, "Assessment of U.S. Government Efforts to Develop the Logistics Sustainment Capability of the Iraq Security Forces," November 17, 2010

DoD IG Report No. SPO-2010-002, "Review of Intra-Theater Transportation Planning, Capabilities, and Execution for the Drawdown from Iraq," April 20, 2010

Department of Defense
Office of Inspector General
4800 Mark Center Drive
Alexandria, VA 22350-1500 -
This report is available online at:
www.dodig.mil

DEPARTMENT OF DEFENSE

Hotline

1-800-424-9098 • DSN: 312-664-1151 -