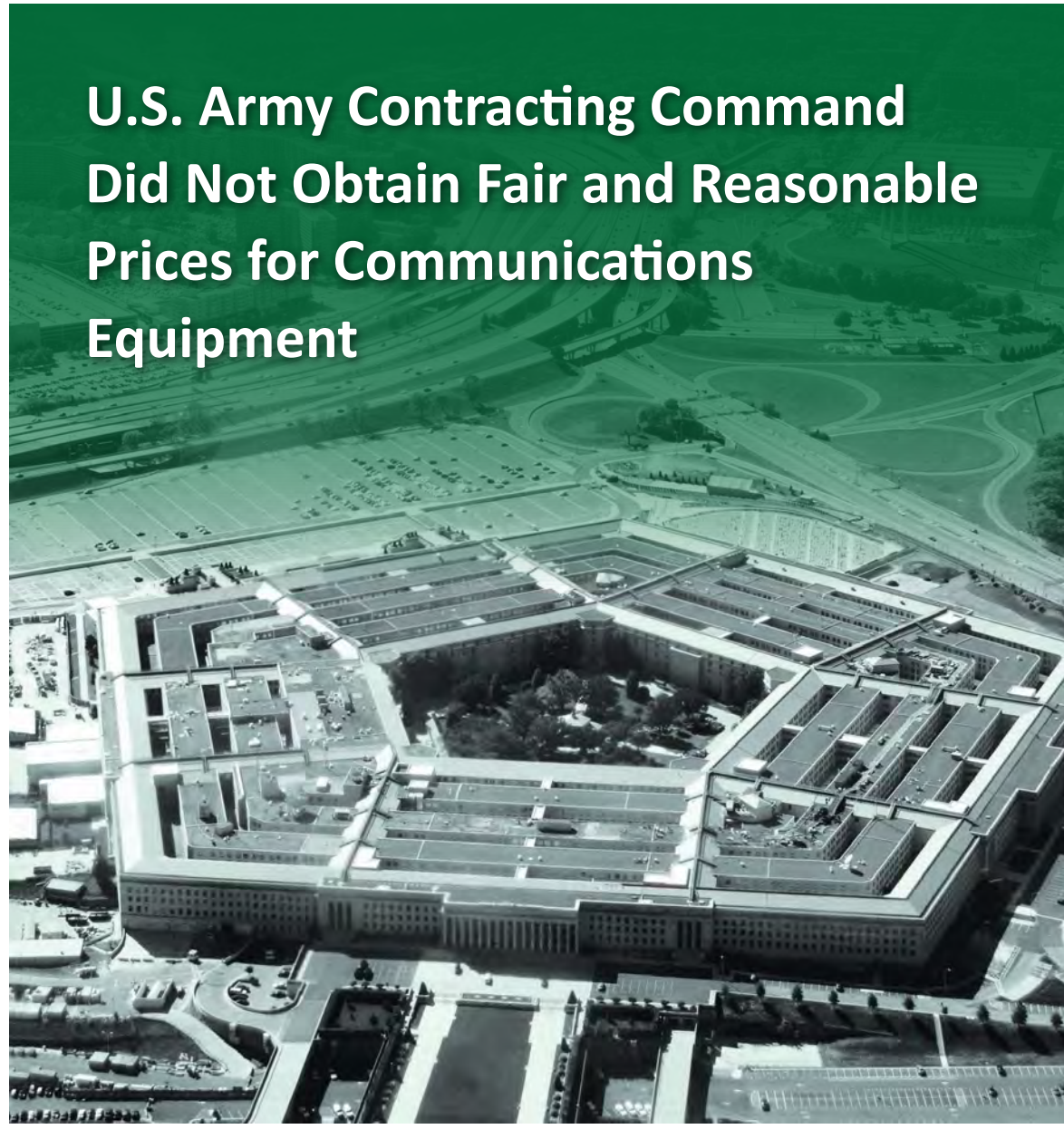


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INSPECTOR GENERAL

U.S. Department of Defense

DECEMBER 5, 2013



U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices for Communications Equipment

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Results in Brief

U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices for Communications Equipment

December 5, 2013

Objective

We determined whether the U.S. Army Contracting Command (ACC) obtained fair and reasonable prices for communications equipment procured from Datron World Communications, Inc. (Datron). Specifically, we reviewed 37 contract actions, valued at approximately \$328 million for 127 items, on contract W15P7T-09-D-D212 and identified 75 items with associated commercial sales, valued at approximately \$219 million.

Finding

Contracting officers did not obtain fair and reasonable prices for communications equipment procured from Datron to support the Afghan National Security Forces. Specifically, contracting officers did not conduct sufficient pre- or post-award price analysis. Additionally, contracting officers did not obtain the most favored customer price on 40 of 75 commercial sales items. This occurred because the contracting officers did not:

- verify that proposed prices were fair and reasonable in accordance with the Defense Federal Acquisition Regulation Supplement before awarding the contract;
- adequately review price changes as authorized by the contract; or

Finding Continued

- enforce the most favored customer clause and obtain sales data in accordance with contract requirements.

As a result, ACC potentially overpaid up to \$3.3 million for communications equipment purchased for the Afghan National Security Forces.

Recommendations

The Director of Contracting, ACC-Aberdeen Proving Ground should:

- establish quality control procedures to verify that contracting officers perform analysis to verify prices are fair and reasonable and obtain nongovernment sales information annually from the contractor to validate ACC received the lowest price,
- obtain reseller agreements to verify they were valid and initiate action to recover any overpayment, and
- review the actions of the contracting officers and, as appropriate, initiate corrective measures and actions to hold personnel accountable.

Management Comments and Our Response

Comments from the Director of Contracting, ACC-Aberdeen Proving Ground, addressed Recommendations 1, 2, 3, and 5 but did not address the specifics of Recommendation 4. Due to actions taken since draft report issuance, we revised Recommendation 4. Therefore, we request additional comments be provided on the revised recommendation as specified in the Recommendations Table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director of Contracting, U.S. Army Contracting Command-Aberdeen Proving Ground	4	1, 2, 3, and 5

*Please provide comments by January 6, 2014.



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

December 5, 2013

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices for Communications Equipment (Report No. DODIG-2014-020)

We are providing this report for review and comment. U.S. Army Contracting Command contracting officers did not obtain fair and reasonable prices for communications equipment procured from Datron World Communications, Inc. to support the Afghan National Security Forces, resulting in potential overpayments of up to \$3.3 million.

We considered management comments on a draft of this report when preparing the final report. DoD Directive 7650.3 requires that recommendations be resolved promptly. Comments from the Director of Contracting, U.S. Army Contracting Command-Aberdeen Proving Ground, addressed Recommendations 1, 2, 3, and 5 but did not address the specifics of Recommendation 4. However, since draft report issuance, we revised Recommendation 4 to further clarify the nature of the actions needed to identify and recover overpayments to Datron. Therefore, we request additional comments on revised Recommendation 4 by January 6, 2014.

Please provide comments that conform to the requirements of DoD Directive 7650.3. Comments provided to the final report must be marked and portion-marked, as appropriate, in accordance with DoD Manual 5200.01. Please send a PDF file containing your comments to audclev@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

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

Jacqueline L. Wicecarver

Jacqueline L. Wicecarver
Assistant Inspector General
Acquisition, Parts, and Inventory

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Introduction

Objectives

(U) The objective was to determine whether the U.S. Army Contracting Command (ACC) obtained fair and reasonable prices for communications equipment procured from Datron World Communications, Inc. (Datron) for the Afghan National Security Forces (ANSF). This was the second in a series of two reports on the ANSF Datron radio contracts. The first report, DODIG-2013-095, “Award and Administration of Radio Contracts for the Afghan National Security Forces Need Improvement,” June 27, 2013, addressed the award and administration of the contract, timeliness of deliveries, and quality assurance of Datron radios. See Appendix A for a discussion of the scope and methodology and Appendix B for prior coverage related to the objective.

Background

(U) Congress created the Afghanistan Security Forces Fund in FY 2005 as an emergency supplemental appropriation for items such as equipment and services purchased to support ANSF. From FY 2005 through FY 2013, Congress appropriated approximately \$56 billion to the Afghanistan Security Forces Fund.

U.S. Army Contracting Command

(U) ACC, headquartered at Redstone Arsenal, Alabama, has six major contracting centers that provide support for the U.S. Army’s life cycle management. These centers perform contracting services for several program executive offices and program managers supporting the U.S. Army’s major acquisition programs. ACC assists soldiers worldwide by acquiring equipment, supplies, and services vital to their mission and well being.

Contract W15P7T-09-D-D212

(U) ACC Communications–Electronics Command Contracting Center, Fort Monmouth, New Jersey, awarded contract W15P7T-09-D-D212 to Datron in March 2009 with an expiration date of March 2014. The contract was awarded under Federal Acquisition Regulation Part 12, “Acquisition of Commercial Items,” which identifies the policies and procedures for contracting officials to follow for commercial contracts.¹ This contract is an indefinite-delivery, indefinite-quantity, firm-fixed-price contract used to award

¹ Commercial contract refers to the procurement of commercial items and components.

contract actions for foreign military sales of Datron commercial radios and equipment to multiple countries, including Afghanistan.

(U) ACC Communications–Electronics Command Contracting Center transferred all of its contract files to ACC-Aberdeen Proving Ground (ACC-APG) as a result of the Base Realignment and Closure. From March 2009 through January 2013, there have been four contracting officers (COs) assigned to contract W15P7T-09-D-D212. These COs have awarded 37 contract actions² to Datron for ANSF under the contract with delivery orders (DOs) valued at over \$328 million.

Defense Contract Management Agency

(U) The Defense Contract Management Agency's (DCMA) mission is to provide contract administration to ensure delivery of quality products and services on time and within cost. DCMA's involvement, with regard to equipment and services provided to ANSF, is specific to each contract. DCMA was designated as the administrative contracting office for the Datron contract.

Datron World Communications, Inc.

(U) Datron is a privately owned company located in Vista, California. Datron sells a variety of high frequency and very high frequency military voice and data communications products. Through commercial contract W15P7T-09-D-D212, Datron provided communications equipment such as HH7700, PRC1077, RT7000, and PRC1099A radios to ANSF. See Figure 1.

(U) *Figure 1. RT7000-12 HF Transceiver*



Source: <http://www.dtwc.com/products>

² Contract actions include the base contract, contract modifications, and delivery orders.

Review of Internal Controls

(U) DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended. We identified internal control weaknesses associated with the ACC COs' implementation of the Defense Federal Acquisition Regulation Supplement, Procedures, Guidance, and Instructions (DFARS PGI) and contract requirements when making price reasonableness determinations under contract W15P7T-09-D-D212. We will provide a copy of the report to the senior official responsible for internal controls at ACC.

Finding

U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices from Datron

(U) The COs did not obtain fair and reasonable prices for communications equipment procured from Datron to support ANSF. Specifically, we determined that the COs did not conduct sufficient pre- or post-award price analysis. Additionally, the COs did not obtain the most favored customer (MFC) price on 40 of 75 commercial sales items. This occurred because they did not comply with the DFARS PGI or properly implement contract requirements. As a result, ACC potentially overpaid up to \$3.3 million for Datron communications equipment purchased for ANSF from the Afghanistan Security Forces Fund.

Additional Pre-Award Price Analysis Required

(U) The COs did not perform sufficient pre-award price analysis in accordance with DFARS PGI. They did not verify that the General Services Administration (GSA) prices used as a basis to negotiate quantity discounts for contract W15P7T-09-D-D212 were fair and reasonable. In addition, they did not obtain documentation to verify proposed prices were fair and reasonable, before awarding the contract.

Contracting Officers Did Not Document Actions to Verify General Services Administration Prices

(U) The COs did not verify that the GSA prices used as a basis for this contract were fair and reasonable. DFARS PGI Part 215.4, "Contract Pricing," requires the COs to obtain and document that thorough analysis was performed to determine that previously paid prices on Government contracts were fair and reasonable. At a minimum, a CO reviewing price history must discuss the basis of previous prices paid with the contracting organization that bought the item and document these discussions within the contract file. However, the contract files did not include documentation to show the CO discussed the basis for prices included on the price list with GSA or verified that GSA performed sufficient analysis, as required by DFARS PGI part 215.4. While the current CO agreed that ACC should only use GSA prices as a starting point in determining price reasonableness, we did not find support in the contract file to show that the previous CO had verified these prices during the pre-award process.

Contracting Officers Did Not Verify Proposed Prices

(U) The COs did not verify proposed prices were fair and reasonable before awarding the contract. DFARS PGI part 215.4 states that when purchasing sole-source commercial items, it is particularly critical that the CO request nongovernment (commercial) sales data to determine fair and reasonable prices. In addition, the CO is authorized to obtain information other than cost or pricing data to determine whether an offered price is fair and reasonable if there are no commercial sales for the items being purchased. While the CO performed pre-award price analysis, we concluded that this analysis was inadequate and incomplete in determining price reasonableness.

(FOUO) The CO assigned during the pre-award process requested commercial sales data from Datron for 298 items but accepted that Datron only provided data for 23 items. The CO did not obtain cost data for the remaining 275 items with no commercial sales data as authorized by DFARS PGI part 215.4. ACC officials stated that they could not explain why they had not obtained cost data as authorized. The CO analyzed the data received for 23 items and identified 3 items for which the commercial sales data showed

(FOUO)
The CO did not
obtain cost data
for...275 items with
no commercial
sales data.

lower prices than the prices Datron offered ACC. Datron attributed these differences to increases in material costs. However, the CO did not obtain documentation to verify any of Datron's explanations. In fact, we identified that the GSA price that ACC relied on³ for two of the three items remained the same while the commercial sales prices decreased. Specifically, the GSA price for the PRC-BC4 multiple battery charger remained constant at \$█████ while the price decreased from \$█████ to \$█████ for other Datron customers, a discount of \$735 or about █████ percent per unit. If prices changed because of increased costs, we would expect to see this reflected in all customer prices. Also, had the CO requested additional information from Datron, he could have identified this difference and potentially obtained a better price.

(U) In addition, during our review of the 23 items, we identified 3 additional⁴ items for which commercial sales prices were lower than the prices offered to GSA. Because the CO did not identify these differences, he did not obtain explanations as to why GSA was not receiving the lower price offered to commercial customers. ACC should establish controls to verify that COs perform and document pre-award price analysis and, if

³ (FOUO) The CO obtained an additional discount from the GSA price, based on the quantity purchased.

⁴ The CO identified three items with commercial sales data showing lower prices than those quoted for ACC and we identified three additional items, totaling six items.

necessary, cost analysis, to verify prices are fair and reasonable in accordance with the DFARS PGI part 215.4, instead of relying on GSA and contractor pricing.

Additional Post-Award Price Analysis Required

(U) The COs did not perform post-award price analysis as authorized by the contract. The base contract states that the contractor shall submit its updated catalog and price list to ACC by March 27 of each year for review and incorporation into the contract. Within 60 days, the COs shall provide their approval of the updated catalog by issuing a contract modification. However, the COs did not review Datron's proposed price lists to identify changes. Instead, the COs relied on Datron to identify and explain the price changes. We identified that Datron did not notify the COs of all of the price changes between these lists.

~~(FOUO)~~ Specifically, in July 2010,⁵ Datron provided a list of 37 price changes between the 2010 and 2009 price lists. Based on the ACC contract file, the CO relied on Datron's list instead of performing his own review to identify changes in the proposed price list. We compared the 2010 price list to the 2009 price list and identified 65 items with price changes. Had the CO performed this independent analysis, he would have determined that Datron's memorandum only disclosed 37 out of 65 (57 percent) of the actual price changes. For example, the price for a Datron PRC1060-PSK spare parts kit increased by [REDACTED] percent or \$859.92 per unit (from \$[REDACTED] to \$[REDACTED]), between the 2009 and 2010 price lists, but this was not included in Datron's list of price changes. The CO did not identify this increase and was unaware of the additional items with price changes because he solely relied upon Datron's list rather than performing his own independent review. If the CO had performed his own independent review and identified these discrepancies, it may have initiated further review of Datron's proposed price changes, such as pricing or cost analysis.

(U) After identifying discrepancies in the number of price changes disclosed by Datron, the CO should have reviewed the explanations Datron provided for the changes they did identify. For example, in their list of price changes, Datron officials attributed changes to increased costs and additional items. However, ACC did not request documentation to verify Datron's material costs had increased or additional items had been added. Based on the incompleteness of Datron's summary of the price changes, the CO should have requested support for at least some of the price changes proposed.

⁵ ~~(FOUO)~~ Datron also provided a list in May 2009, listing price changes between the 2009 and base price lists. However, the contract file did not include a copy of the base price list so we were unable to perform a comparison to determine the completeness of Datron's 2009 list of the changes.

(U) The CO could not provide documentation to show she performed any price analysis or comparison for the April 2012⁶ price update either. Specifically, she stated that she relied on DCMA to review Datron's prices to ensure reasonableness. According to a DCMA report, dated June 15, 2012, DCMA recommended that the CO perform market research to make sure ACC was receiving the best value. The CO stated that she did not perform market research or follow up on DCMA's recommendations because the items reviewed had never been purchased by ACC. Similarly, the CO stated that she did not perform price analysis when the new price list was submitted as permitted by the contract but instead relied on the analysis being performed as each DO was processed. Performing this analysis during DO processing does not afford the CO the opportunity to adjust proposed prices prior to implementing them into the contract. However, she could not provide documentation that this analysis had been performed during DO processing either. The branch chief stated that he could not explain why the COs did not perform these analyses and responded, "They just did not do it."

The branch chief stated that he could not explain why the COs did not perform these analyses and responded, "They just did not do it."

~~(FOUO)~~ The contract file did not include any information from Datron identifying or explaining price changes between the 2010 and 2012 price lists. The CO should have performed an analysis before modifying the contract with the new prices. However, she did not perform an analysis. We compared the 2010 price list to the 2012 price list and identified 50 items with price changes. For example, the price for a Datron PRC1060-MK module kit increased [REDACTED] percent or \$1,831.71 per unit (from \$ [REDACTED] to \$ [REDACTED]), from 2010 to 2012. When asked, the current CO stated that she did not have any analysis or support to explain these 50 price changes. ACC officials were unfamiliar with the differences we identified and requested the list of 50 items from the Office of Inspector General.

(U) During a February 2013 meeting, the CO said that she was working with DCMA to determine price reasonableness for the 2012 price list. However, DCMA officials stated that there had been no contact between the DCMA administrative contracting office and the CO since DCMA issued the June 15, 2012 report. Without price or cost analysis, ACC was not guaranteed that it was receiving a fair and reasonable price. ACC should establish controls to verify that COs perform and document post-award price analysis and, if necessary, cost analysis, to verify contractor price changes are fair and reasonable in accordance with contract requirements.

⁶ The CO did not incorporate a new price list into the contract for 2011 because Datron did not provide one.

Most Favored Customer Prices Not Obtained

(U) The COs did not obtain the MFC price on 40 of 75 commercial sales items, in accordance with contract requirements. The base contract MFC clause states that ACC is entitled to purchase items at prices lower than that sold to any nongovernment customer. In addition, the CO may request Datron's nongovernment purchase orders for the preceding period in which the price list was in effect. In the event a lower price was given to a nongovernment customer, ACC may receive the lower price for all DOs issued during the preceding period, as well as future orders. However, the COs did not verify ACC received the MFC price.

(U) The COs did not obtain purchase order documentation for the items purchased from Datron as allowed by the MFC clause. A Datron official stated that Datron did not have procedures in place to review prices offered to nongovernment customers to ensure that ACC received the lowest price. In addition, the current CO stated that she did not know if she could change the prices that have already been agreed upon.

~~(FOUO)~~ We identified 127 items ACC purchased from Datron. We obtained purchase order documentation for 75 of 127 items which had commercial sales. Based on the commercial sales data Datron provided, we determined that the remaining 52 items did not have corresponding commercial sales. We compared the lowest commercial prices offered to other nongovernment customers with those paid by ACC and found that ACC did not receive the MFC price on 40 of 75 items. For example, Datron offered PRC1077 VHF manpack transceivers to ACC for [REDACTED] while other nongovernment customers paid \$ [REDACTED], a discount of \$ [REDACTED] or about [REDACTED] percent per unit. From September 2009 through July 2012, the COs purchased 16,829 of these transceivers, resulting in an overpayment of \$614,258.50. See Figure 2.

(U) *Figure 2. PRC1077 VHF Manpack Transceiver*



Source: <http://www.dtwc.com/products>

(U) Datron officials attributed all but one of these instances where ACC did not receive the MFC price to reseller relationships. Datron officials stated that we should not include the prices offered to resellers in our MFC analysis because they have agreements with these resellers to purchase items at a lower price. According to Datron officials, this allows resellers, who are not the end users, to integrate Datron items in their own products and resell them at higher prices to make a profit. However, the MFC clause does not contain an exclusion for resellers. Therefore, based on the terms of the contract's MFC clause, we disagree that these resellers should be excluded from our analysis.

(U) Because the COs did not implement the government's rights under the MFC clause, ACC potentially overpaid up to \$3.3 million from the Afghanistan Security Forces Fund for Datron communications equipment. See Appendix C for further detail on the items where ACC did not receive the MFC price and associated overpayments. The money could have been used to procure other equipment and services for ANSF. In addition, ACC will continue to overpay on future Datron procurements if the COs do not perform sufficient analysis to verify prices are fair and reasonable, and consistent with prices authorized under the MFC clause. The COs should obtain nongovernment sales information annually to verify that ACC received the lowest price for the items purchased, as authorized by the contract. In addition, ACC should recover the overpayment of up to \$3.3 million from Datron by implementing the terms of the MFC clause, and return the money to the Afghanistan Security Forces Fund. Finally, the Director of Contracting, ACC-APG, should review the actions of the COs who performed, or failed to perform, adequate pre-award, post-award, and MFC price analysis from September 2009 through July 2012, on contract W15P7T-09-D-D212 and initiate administrative action as appropriate.

Conclusion

(U) The COs relied on pricing information provided by others and did not perform sufficient analysis on contract W15P7T-09-D-D212 to ensure ACC obtained fair and reasonable prices for communications equipment procured from Datron. Specifically, the COs performed limited reviews, did not obtain support for Datron's price changes, and did not identify all of the price changes Datron submitted. Therefore, ACC had no assurance that Datron's price changes were warranted. Additionally, the COs did not perform MFC analysis to determine if ACC was receiving the lowest price. As a result, ACC potentially overpaid up to \$3.3 million for Datron communications equipment, which could have been used to procure other equipment and services for the ANSF. Furthermore, ACC will continue to overpay on future Datron procurements if the COs do not perform sufficient analysis to verify prices are fair and reasonable.

Recommendations, Management Comments, and Our Response

Revised Recommendation

As a result of ACC-APG officials' actions that occurred after the issuance of the draft report, we revised Recommendation 4 to further clarify the steps needed to identify and recover overpayments to Datron.

(U) We recommend that the Director of Contracting, U.S. Army Contracting Command-Aberdeen Proving Ground:

- 1. Establish controls to verify that contracting officers perform and document price analysis and, if necessary, cost analysis to verify prices are fair and reasonable before contract award in accordance with the Defense Federal Acquisition Regulation Supplement, Procedures, Guidance, and Instructions.**

ACC Comments

The Director of Contracting, ACC-APG, agreed with the recommendation. The director stated that, since the merger of its contracting centers in 2011, ACC has established and implemented procedures to ensure prices are fair and reasonable and that analysis is adequately documented, prior to award, for all contracts. These include a peer review process, in-house cost and price analysts, and mandated use of Paperless Contract File. In addition, he stated that COs will be reminded, by December 20, 2013, to follow DoD and Army procedures when performing and documenting price and cost analysis.

Our Response

Comments from the Director of Contracting, ACC-APG, addressed the recommendation. No further comments are required.

- 2. Establish controls to verify that contracting officers, immediately and throughout the life of the contract, perform and document price analysis and, if necessary, cost analysis to verify Datron's price changes are fair and reasonable in accordance with contract requirements.**

ACC Comments

The Director of Contracting, ACC-APG, agreed with the recommendation. The director stated that ACC is developing and establishing internal controls to ensure adequate

Price Reasonableness Memorandums are prepared for commercial contracts with a value above the Simplified Acquisition Threshold and plan to issue this policy by December 20, 2013. ACC, according to the director, will not seek further price list updates because the contract expires March 27, 2014; however, in the event of a follow-on contract, ACC will ensure compliance with the terms and conditions of that instrument.

Our Response

Comments from the Director of Contracting, ACC-APG, addressed the recommendation. No further comments are required.

3. **Require contracting officers to obtain nongovernment sales information from Datron annually to verify that the U.S. Army Contracting Command received the lowest price, as authorized by the contract's most favored customer clause.**

ACC Comments

The Director of Contracting, ACC-APG, agreed with the recommendation. The director explained that ACC used the sales data obtained for the audit to verify that ACC received the lowest price on orders through August 2012 and agreed to obtain sales data from Datron for the period from August 2012 through March 2014 to ensure MFC prices were obtained during that period. According to him, in the event of a follow-on contract, ACC will ensure compliance with the terms and conditions of that instrument.

Our Response

Comments from the Director of Contracting, ACC-APG, addressed the recommendation. No further comments are required.

4. **Direct contracting officials to:**
 - (a) **Verify that ACC-APG legal advisors determined that the terms of the contract's MFC clause do not apply to Datron's resellers.**
 - (b) **Obtain reseller agreements from Datron for customers that received lower prices than ACC-APG to verify that those customers were valid resellers at the time they received the lower price, and**
 - (c) **Finalize their analysis then recover and return to the Afghanistan Security Forces Fund any overpayments made to Datron.**

ACC Comments

The Director of Contracting, ACC-APG, disagreed with the draft recommendation. He stated that ACC-APG officials conducted research to determine if Datron overcharged \$3.3 million. [REDACTED]

[REDACTED] The director added that ACC-APG officials reviewed the audit analysis [REDACTED] and they do not view Datron's resellers as customers with respect to the contract's MFC clause.

Our Response

Comments from the Director of Contracting, ACC-APG, did not address the recommendation to recover \$3.3 million because ACC-APG officials agreed with Datron that its resellers are not subject to the contract's MFC clause and, therefore, ACC-APG did not overpay \$3.3 million. However, ACC-APG officials did not indicate whether their interpretation of the MFC clause was supported by ACC-APG legal advisors. [REDACTED]

ACC-APG officials should have implemented the MFC clause exactly as it is stated in the contract. The clause does not state that resellers are excluded from the terms of the MFC clause. When we requested commercial sales data and supporting purchase order documentation from Datron officials, they included reseller data and purchase orders. However, they only mentioned that resellers were not commercial customers after we informed them of the \$3.3 million overpayment. Datron officials also provided documentation showing one nongovernment customer that was not a reseller at the time of sale. We identified that the nongovernment purchase order showed a significantly lower price than the price ACC-APG paid. Datron officials stated that they misquoted the price to the customer. They also provided a written conversation documenting that a Datron employee made the customer a reseller after the sale was in process stating, "If we set him up as a dealer, then we cover our bases with GSA." This documentation raised concerns that Datron's resellers may not have always been official resellers. In this case, Datron officials may have designated a customer as a reseller to avoid violating the MFC clause.

The MFC clause appears to be a unique clause drafted by ACC-APG for this acquisition. Our research does not reveal common use of similar clauses in defense contracting.

Based on the unique terms of this clause and ACC-APG's authority as the contracting office, and to interpret the clause as it deems legally appropriate, we revised our recommendation to direct ACC-APG contracting officials to confirm their interpretation of the clause with ACC-APG legal advisors and then take all reasonable steps to verify the validity of Datron's resellers. These steps should include, at a minimum, obtaining and reviewing the reseller agreements for each Datron customer that received a lower price than ACC-APG to verify that those customers were official resellers at the time they received the lower price. If this analysis identifies that ACC-APG should have received a lower price, ACC-APG contracting officials should recover the overpayment and return it to the Afghanistan Security Forces Fund. We request that the Director of Contracting, ACC-APG, provide additional comments on this revised recommendation in response to the final report.

5. **Review the actions of the contracting officers who performed, or failed to perform, adequate pre-award, post-award, and most favored customer price analysis from September 2009 through July 2012, on contract W15P7T-09-D-D212 and, as appropriate, initiate corrective measures and actions to hold personnel accountable.**

ACC Comments

The Director of Contracting, ACC-APG, agreed with the recommendation. He stated that the Principal Assistant Responsible for Contracting reviewed the audit results and determined that he would not take administrative actions against the COs.

Our Response

Comments from the Director of Contracting, ACC-APG, addressed the recommendation. No further comments are required.

Appendix A

Scope and Methodology

(U) We conducted this performance audit from January 2013 through September 2013 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

(U) We reviewed contract W15P7T-09-D-D212 awarded to Datron in March 2009 for communications equipment. The audit team used the U.S. Army Paperless Contract File system to identify 37 contract actions awarded between September 2009 and July 2012, valued at approximately \$328 million, for the procurement of Datron communications equipment to support Afghanistan. The 37 contract actions included 26 delivery orders and 11 modifications to those delivery orders.

(U) We identified 127 items procured on the 37 contract actions. Datron provided commercial sales data for 75 of the 127 items, accounting for approximately \$219 million of the \$328 million spent on this contract. Based on the commercial sales data provided, we determined that the remaining 52 items did not have corresponding commercial sales.

(U) To accomplish the audit objectives, we:

- interviewed personnel from ACC-APG, DCMA, and Datron to identify the roles and responsibilities of each for determining price reasonableness of Datron communications equipment;
- reviewed applicable policy to include the DFARS, DFARS PGI, and the contract to identify requirements for determining price reasonableness of Datron communications equipment for ANSF;
- reviewed contract files to identify whether the COs performed sufficient price analysis to determine Datron's prices were fair and reasonable;
- reviewed purchase order documentation from June 2007 through January 2013 for 75 items to verify commercial sales data and to identify the lowest price offered;

- compared ACC's prices from each DO to the lowest nongovernment price for the same time period to determine whether ACC received the lowest price as authorized by the MFC clause; and
- calculated the amount overpaid by ACC for items on which they did not receive the lowest price.

Use of Computer-Processed Data

(U) We used computer-processed data from the U.S. Army Paperless Contract File and Syteline. The U.S. Army Paperless Contract File system is certified to store Army contracting records. We used the U.S. Army Paperless Contract File system to determine the universe of contract actions and to obtain electronic copies of the DOs, modifications, and other contract documentation for communications equipment procured from Datron for ANSF. We verified, through interviews with the appropriate ACC personnel and contract file reviews, that the electronic files obtained through this system matched with the information contained in the hardcopy contract files.

(U) Syteline is an Enterprise Resource Planning system used by Datron for inventory management, demand planning, and procurement management. Datron provided commercial sales data from Syteline. We compared the Syteline data to the purchase order documentation to ensure the accuracy of the data. We determined that the computer-processed data were sufficiently reliable for the purpose of our review.

Appendix B

Prior Coverage

(U) During the last 5 years, the DoD Office of Inspector General issued 10 reports discussing either the negotiation of fair and reasonable prices or Datron. Unrestricted DoD Office of Inspector General reports can be accessed at: <http://www.dodig.mil/pubs>.

(U) Report No. DODIG-2013-095, "Award and Administration of Radio Contracts for the Afghan National Security Forces Need Improvement," June 27, 2013

(U) Report No. DODIG-2013-090, "Improved Guidance Needed to Obtain Fair and Reasonable Prices for Sole-Source Spare Parts Procured By the Defense Logistics Agency From The Boeing Company," June 7, 2013

(U) Report No. DODIG-2012-033, "Award and Administration of Multiple Award Contracts for Services at U.S. Army Medical Research Acquisition Activity Need Improvement," December 21, 2011

(U) Report No. DODIG-2012-004, "Changes Are Needed to the Army Contract With Sikorsky to Use Existing DoD Inventory and Control Costs at the Corpus Christi Army Depot," November 3, 2011

(U) Report No. D-2011-104, "Pricing and Escalation Issues Weaken the Effectiveness of the Army Contract with Sikorsky to Support the Corpus Christi Army Depot," September 8, 2011

(U) 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

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

(U) Report No. D-2010-064, "Army Vessels Maintenance Contracts in Southwest Asia," May 21, 2010

(U) Report No. D-2009-102, "Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command," September 18, 2009

(U) Report No. D-2009-032, "The America Supports You Program," December 12, 2008

Appendix C

Items Procured for More Than Most Favored Customer Price

Part Number	Quantity Purchased	Amount Overpaid
4257	6,976	\$33,903.36
4277	13,531	5,953.64
701450	300	2,262.00
701579	900	8,541.00
7000ALE	3,290	52,047.80
7000ENCR	3,447	464,379.84
ABB1000AN	100	83,820.00
ABB100AN	644	21,458.08
ACLP240-15SP	2,082	7,745.04
AM-1077	13,121	341,670.84
AM1077ADPT	1,371	2,851.68
AMX	644	50,264.20
AT-271A/U	7,912	345,200.56
AT-892/U	5,208	520.80
BB-LA6	34,990	98,552.64
C991511-6	634	399.42
C991575	11,931	2,147.58
C991580	12,771	40,988.07
C991614	1,152	3,970.56
C991949	13,605	34,012.50
C992142	1,797	17,035.56
C992369	200	1,752.00
CW-503	7,572	605.76
DSP9000	15	7,155.90
DWC4242-2	4,571	165,561.62
HH-PRG1	407	10,113.95
MAR-16T	67	1,232.13
MHS	22,792	44,207.47
MT-1077-24	667	12,266.13

Part Number	Quantity Purchased	Amount Overpaid
OE-254/GRC	638	63,755.34
PRC1077	16,829	614,258.50
RAT7000B	2,310	134,257.20
RAT7000B-SM	2,310	41,432.41
RT7000-12	2,601	200,385.14
RT7000-28	689	191,328.41
RT7000FAN-1	3,242	20,810.17
RT7000-MS	100	535.00
ST-138	7,573	9,844.90
UNIV-SM	2,310	125,757.84
UPF7000A-12-220	2,176	29,985.28
Total	213,475	\$3,292,970.32

Management Comments

U.S. Army Contracting Command-Aberdeen Proving Ground Comments

REPLY TO
ATTENTION OF:

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

AMCIR

OCT 29 2013

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN:
Acquisition, Parts, and Inventory ([REDACTED], Program Director),
4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Comments on DoDIG Draft Report, US Army Contracting
Command Did Not Obtain Fair and Reasonable Prices for Communications Equipment,
Project D2013AT-0083

1. The US Army Materiel Command (AMC) has reviewed the subject draft report and
the response from the US Army Contracting Command (ACC). AMC endorses the
enclosed ACC response.

2. The AMC point of contact is [REDACTED]

Encl

JOHN B. NERGER
Executive Deputy to the
Commanding General

U.S. Army Contracting Command-Aberdeen Proving Ground Comments (cont'd)

REPLY TO
ATTENTION OF:

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

AMSCC-IR

OCT 18 2013

MEMORANDUM FOR [REDACTED], Director, Internal Review and Audit
Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road,
Redstone Arsenal, AL 35898-5340

SUBJECT: Inspector General, Department of Defense Draft Report: U.S. Army
Contracting Command Did Not Obtain Fair and Reasonable Prices for Communication
Equipment, (D1366) (1155)

1. Memorandum and Draft Report, Inspector General, Department of Defense,
6 September 2013, subject: U.S. Army Contracting Command Did Not Obtain Fair and
Reasonable Prices for Communication Equipment (Project No. D2013-D000AT-
0083.000).
2. The Army Contracting Command (ACC) response to the referenced report is
enclosed.
3. The ACC point of contact is [REDACTED], Evaluator, Internal
Review and Audit Compliance Office, [REDACTED]

Encl


THEODORE C. HARRISON III
Brigadier General, USA
Commanding

U.S. Army Contracting Command-Aberdeen Proving Ground Comments (cont'd)

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND - ABERDEEN PROVING GROUND
4401 BOOTHBY HILL AVENUE
ABERDEEN PROVING GROUND, MD 21005-3013

CCAP

27 Sep 2013

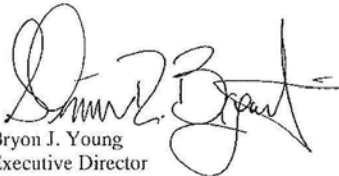
MEMORANDUM THRU [REDACTED], Army Contract Command Internal Review and
Audit Compliance Office

FOR [REDACTED], Program Director, Acquisition, Parts, and Inventory,
Department of the Army Inspector General Agency

SUBJECT: U.S. Army Contracting Command Did Not Obtain Fair and Reasonable Prices for
Communication Equipment (Project No. D2013-D000AT-0083.000)

1. Army Contracting Command – Aberdeen Proving Ground (ACC-APG) comments on
recommendations within subject report are enclosed.
2. Point of contact is [REDACTED], CCAP-OPC, [REDACTED]
[REDACTED]

Encl


Bryon J. Young
Executive Director

ENCL

U.S. Army Contracting Command-Aberdeen Proving Ground Comments (cont'd)

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG) RESPONSE TO DODIG PROJECT NUMBER D2013-D000AT-0083.000

Background

(U) The DoD Office of the Inspector General (DoDIG) evaluated 37 ACC-APG contract actions (26 delivery orders and 11 modifications) totaling approximately \$328 million under a sole source Indefinite Delivery Indefinite Quantity Firm Fixed Price contract with Datron Worldwide Communications. The subsequent report asserts that ACC-APG did not obtain fair and reasonable prices.

(U) The report provided five (5) recommendations. ACC-APG's response to each is provided below.

DRAFT REPORT RECOMMENDATION 1 FOR THE EXECUTIVE DIRECTOR, ACC-APG

(U) Establish controls to verify that contracting officers perform and document price analysis and, if necessary, cost analysis, to verify prices are fair and reasonable before contract award in accordance with the Defense Federal Acquisition Regulation Supplement, Procedures, Guidance, and Instructions.

ACC-APG RESPONSE TO RECOMMENDATION 1

(U) ACC-APG concurs with this recommendation. ACC-APG uses continuous improvement, implementing and enhancing many processes since the merger of the C4ISR and SCRT Contracting Centers in 2011. ACC-APG has established robust processes and employed the appropriate infrastructure to ensure that prices for all contracts are fair and reasonable prior to award and to ensure any analysis is adequately documented. These include the peer review process, in-house cost/price analysts, and the mandated use of Paperless Contract Files (PCF). As an example, a contract of this dollar value would require review and approval by the Principal Assistant Responsible for Contracting. The contracting officers of ACC-APG will be reminded to follow DoD and Army procedures when performing and documenting price and cost analysis by 20 December 2013.

DRAFT REPORT RECOMMENDATION 2 FOR THE EXECUTIVE DIRECTOR, ACC-APG

(U) Establish controls to verify that contracting officers, immediately and throughout the life of the contract, perform and document price analysis and, if necessary, cost analysis to verify Datron's price changes are fair and reasonable in accordance with contract requirements.

ACC-APG RESPONSE TO RECOMMENDATION 2

(U) ACC-APG concurs with this recommendation. We are developing and establishing internal controls to ensure adequate Price Reasonableness Memorandums for commercial contracts which have a value above the Simplified Acquisition Threshold (SAP). An Acquisition Instruction will be issued to the workforce by 20 December 2013. ACC-APG concurs that it did

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U.S. Army Contracting Command-Aberdeen Proving Ground Comments (cont'd)

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG) RESPONSE TO DODIG PROJECT NUMBER D2013-D000AT-0083.000

not obtain an updated price list in 2011 as discussed by the Most Favored Customer clause, although we obtained information from Datron for all other years during the period of performance of the contract. As this contract expires on 27 March 2014, ACC-APG will not seek any further updates to the price list. In the event of a follow-on contract, ACC-APG will ensure compliance with the terms & conditions of that instrument.

DRAFT REPORT RECOMMENDATION 3 FOR THE EXECUTIVE DIRECTOR, ACC-APG

(U) Require contracting officers to obtain non-government sales information from Datron annually to verify that the U.S. Army Contracting Command received the lowest price, as authorized by the contract's most favored customer clause.

ACC-APG RESPONSE TO RECOMMENDATION 3

(U) ACC-APG concurs with this recommendation. We used the sales data obtained for this report to verify that the Army received the lowest price on orders through August 2012. ACC-APG will obtain sales data for the period from August 2012 through March 2014 to ensure most favored customer prices were obtained on orders placed during that period. The Most Favored Customer clause affords the Government the opportunity to obtain commercial sales data from Datron on an annual basis. In the event of a follow-on contract, ACC-APG will ensure compliance with the terms & conditions of that instrument.

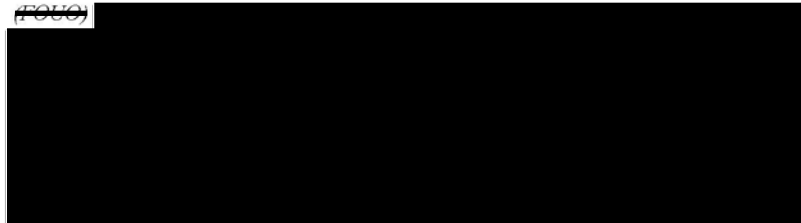
DRAFT REPORT RECOMMENDATION 4 FOR THE EXECUTIVE DIRECTOR, ACC-APG

(U) Direct the contracting officers to recover the overpayment of approximately \$3.3 million from Datron by implementing the terms of the contract's most favored customer clause and return the funds to the Afghanistan Security Forces Fund.

ACC-APG RESPONSE TO RECOMMENDATION 4

(U) ACC-APG non-concurs with this recommendation at this time. ACC-APG conducted research in order to determine if in fact ACC-APG was overcharged \$3.3 million. Our research process was as follows:

1. (FOUO)



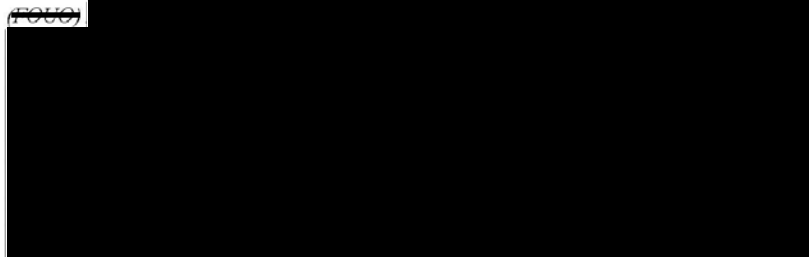
U.S. Army Contracting Command-Aberdeen Proving Ground Comments (cont'd)

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG) RESPONSE TO DODIG PROJECT NUMBER D2013-D000AT-0083.000

2. (U) Obtain proof from Datron to support its explanation. Upon receipt of this official explanation and information, which revealed that the lower priced items were sold to Representatives, ACC-APG requested supporting documentation from Datron to substantiate its position (Attachment 3). On August 08, 2013, we supplied a spreadsheet that indentified the items that the DoDIG found to be sold at a lower price. We requested that Datron fill in the discounted price given to Representatives plus the true selling price. Datron responded on August 16, 2013 (Attachment 4).

3.

(FOUO)

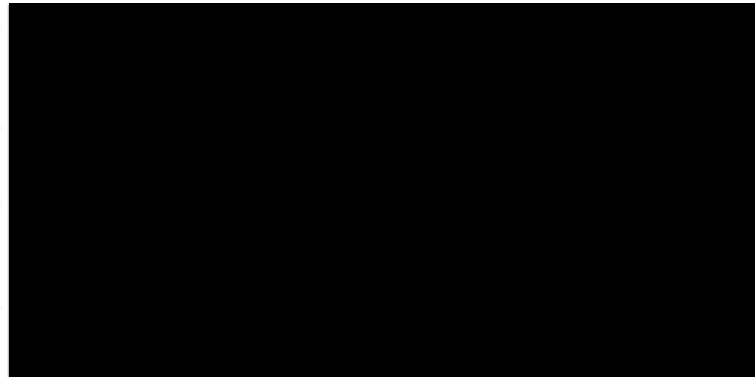


a.

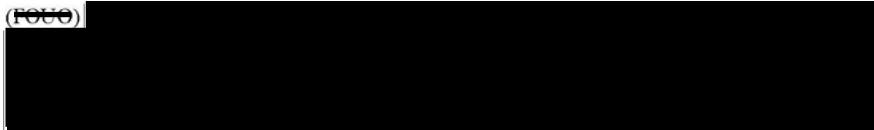
b.

c.

d.



(FOUO)



(U) ACC-APG conducted research to attempt to find Government policy on use of Most Favored Customer clauses. We were unable to locate Army policy with regards to a Most Favored Customer clause. We did find guidance on Most Favored Customer pricing in the General Services Administration's (GSA) GSAM 538.270 (Attachment 6). GSAM 538.270(a) states that "The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of

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U.S. Army Contracting Command-Aberdeen Proving Ground Comments (cont'd)

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG) RESPONSE TO DODIG PROJECT NUMBER D2013-D000AT-0083.000

commercial sales vary and there may be legitimate reasons why the best price is not achieved.” GSAM 538.270(c)(7) also states “...an offeror may incur more expense selling to the Government than to the customer who receives the offeror’s best price, or the customer (e.g., dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform...”

(U) ACC-APG also consulted with [REDACTED], Associate Director for Small Business for CECOM, regarding the use of sales representatives as a standard practice. [REDACTED] confirmed that sales representatives are often used by contractors as a standard practice, with the sales representatives being paid by commission.

(U) Based on the information provided by Datron and our research, we have determined that the Army did not pay more than Datron’s lowest commercial customer. We are further analyzing sales data to determine whether the discounts the Army received were in accordance with the Most Favored Customer Clause. At the conclusion of that analysis, we will be able to determine whether the Army was appropriately charged.

DRAFT REPORT RECOMMENDATION 5 FOR THE EXECUTIVE DIRECTOR, ACC-APG

(U) Review the actions of the contracting officers who performed, or failed to perform, adequate pre-award, post-award, and most favored customer price analysis from September 2009 through July 2012, on contract W15P7T-09-D-D212 and, as appropriate, initiate corrective measures and actions to hold personnel accountable.

ACC-APG RESPONSE TO RECOMMENDATION 5

(U) ACC-APG concurs with this recommendation. The Principal Assistant Responsible for Contracting (PARC) has reviewed this audit and the actions of the Contracting Officers. No administrative actions will be levied on the Contracting Officers. The current Contracting Officer is analyzing the data associated with this audit, and will be analyzing Datron sales data for the period of August 2012 – March 2104 to ensure the Army continued and continues to receive most favored customer pricing. We have initiated other corrective actions as required, and as outlined herein.

ATTACHMENTS

1. ACC-APG Request to Datron, 1 July
2. Datron Response, 30 July
3. Request for Datron Analysis
4. Datron Analysis
5. Representative Agreement
6. GSAM 538.270

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Acronyms and Abbreviations

ACC	U.S. Army Contracting Command
ANSF	Afghan National Security Forces
APG	Aberdeen Proving Ground
CO	Contracting Officer
DCMA	Defense Contract Management Agency
DFARS PGI	Defense Federal Acquisition Regulation Supplement Procedures, Guidance, and Instructions
DO	Delivery Order
GSA	General Services Administration
MFC	Most Favored Customer

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U.S. DEPARTMENT OF DEFENSE

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For more information about DoD IG reports or activities, please contact us:

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