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Report No. DODIG-2012-030R January 18, 2013

Inspector General

United States
Department of Defense



Contractor Compliance Varied With Classification of Lobbying Costs and Reporting of Lobbying Activities

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Acronyms and Abbreviations

| | |
|--------|----------------------------------|
| DCAA | Defense Contract Audit Agency |
| FAR | Federal Acquisition Regulation |
| GAO | Government Accountability Office |
| IG | Inspector General |
| U.S.C. | United States Code |



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

January 18, 2013

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Contractor Compliance Varied With Classification of Lobbying Costs and
Reporting of Lobbying Activities (Report No. DODIG-2012-030R)

We are reissuing the subject report, which we previously issued as DoD Inspector General Report No. DODIG-2012-030 on December 12, 2011. On April 5, 2012, we rescinded the report because it did not fully disclose the criteria and methodology used to reach some of the conclusions. As a result, some information presented in the report was incomplete and misleading.

We have revised the report and are re-issuing it under number DODIG-2012-030R. The revised report includes a more thorough summary of the audit criteria and our scope and methodology. The revised report also corrected errors and incorporated information that was provided to the audit team subsequent to the publication of the original report.

Of the 24 earmark recipients reviewed, 18 contractors properly accounted for \$5.2 million in lobbying costs. Six other contractors properly accounted for \$1.8 million in lobbying costs. However, the six contractors improperly classified a total of \$85,610 in lobbying costs as allowable and classified a total of \$12,695 in unsupported costs as allowable. We performed this audit pursuant to Public Law 111-84, "National Defense Authorization Act for Fiscal Year 2010," section 1062(b), "DoD Inspector General Audit of Congressional Earmarks," October 28, 2009. We considered management comments on a draft of the report when preparing the final report. The Director, Defense Procurement and Acquisition Policy, comments conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the staff. Please direct questions to me at 703-604-(b)(6) (DSN 664-(b)(6))

Jacqueline L. Wicecarver
Jacqueline L. Wicecarver
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Contractor Compliance Varied With Classification of Lobbying Costs and Reporting of Lobbying Activities

What We Did

We reviewed the financial records of 24 DoD contractors that were the recipients of 50 earmarks, valued at \$115.5 million, to determine whether DoD contractors that lobbied for and were the recipients of earmarks complied with the requirements of the United States Code and the Federal Acquisition Regulation and properly classified lobbying costs as unallowable expenses. We also determined whether earmark recipients submitted Office of Management and Budget Standard Form LLL, "Disclosure of Lobbying Activities," (Standard Form LLL) to contracting officers.

What We Found

Eighteen contractors properly accounted for \$5.2 million in lobbying costs. Six other contractors properly accounted for \$1.8 million in lobbying costs. However, the six contractors improperly classified a total of \$85,610 in lobbying costs as allowable and classified a total of \$12,695 in unsupported costs as allowable. Specifically:

- Five contractors improperly classified a total of \$85,610 in lobbying costs as allowable because they did not have or did not comply with their own written policies.
- One of those five contractors and another contractor classified \$12,695 in unsupported costs as allowable; however, the invoices lacked sufficient detail to determine whether the costs were properly categorized.

As a result, DoD may have reimbursed six contractors for unallowable lobbying costs. During the audit, the five contractors that improperly classified lobbying costs as allowable agreed to reclassify \$85,347 of the improperly classified lobbying costs. One of these contractors could not match the remaining \$263 to its accounts.

Ten contractors did not submit Standard Forms LLL because generally the contractors either stated that they were unaware of the requirement or we concluded that they misunderstood the requirement.

What We Recommend

The Director, Defense Procurement and Acquisition Policy, issue guidance to reinforce the Federal Acquisition Regulation requirements for disclosure of lobbying activities and explain how and where to report Lobbying Disclosure Act violations.

Management Comments and Our Response

The Director, Defense Procurement and Acquisition Policy, agreed with the recommendations, and his comments were responsive. Please see the recommendations table on the back of this page.

Recommendations Table

| Management | Recommendations Requiring Comment | No Additional Comments Required |
|---|--|--|
| Director, Defense Procurement and Acquisition Policy | | 1 and 2 |

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Introduction

Objectives

Our audit objective was to determine whether recipients of earmarks complied with requirements of Federal law on the use of appropriated funds. See Appendix A for a discussion of the scope and methodology and prior coverage related to the objective.

We reviewed contractor records to determine whether consultants hired to perform lobbying activities reported their lobbying activities in the Lobbying Disclosure Act Database, when required. See Appendix B for a discussion of the details.

Background

We performed this audit pursuant to Public Law 111-84, “National Defense Authorization Act for Fiscal Year 2010,” section 1062(b), “DoD Inspector General Audit of Congressional Earmarks,” October 28, 2009. Section 1062 (b) states:

DOD INSPECTOR GENERAL AUDIT OF CONGRESSIONAL EARMARKS.—
The Inspector General of the Department of Defense shall conduct an audit of contracts, grants, or other agreements pursuant to congressional earmarks of Department of Defense funds to determine whether or not the recipients of such earmarks are complying with requirements of Federal law on the use of appropriated funds to influence, whether directly or indirectly, congressional action on any legislation or appropriation matter pending before Congress.

Federal Law

Section 1352, title 31, United States Code (31 U.S.C. § 1352) prescribes policies and procedures on the use of appropriated funds to influence certain Federal contracting and financial transactions. The following limitations are included under 31 U.S.C. § 1352:

(a)(1) None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in paragraph (2) of this subsection.

(2) The prohibition in paragraph (1) of this subsection applies with respect to the following Federal actions:

- (A) The awarding of any Federal contract.
- (B) The making of any Federal grant.
- (C) The making of any Federal loan.
- (D) The entering into of any cooperative agreement.
- (E) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b)

(2) A declaration filed by a person pursuant to paragraph (1) (A) of this subsection in connection with a Federal contract, grant, loan, or cooperative agreement shall contain–

(A) the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person with respect to that Federal contract, grant, loan, or cooperative agreement; and

(B) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).

(3) A declaration filed by a person pursuant to paragraph (1) (A) of this subsection in connection with a commitment providing for the United States to insure or guarantee a loan shall contain the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person in connection with that loan insurance or guarantee.

Section 2324, title 10, United States Code (10 U.S.C. § 2324) prescribes policies and procedures on allowable costs under Defense contracts. Specifically, 10 U.S.C. § 2324 (e) (1) (B) states that costs incurred to influence legislative action pending before Congress are not allowable.

The Lobbying Disclosure Act is codified at chapter 26, title 2, United States Code. Section 1602 (10), title 2, United States Code (2 U.S.C. § 1602(10)) defines a lobbyist as:

... any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.

According to 2 U.S.C. § 1603, lobbyists are required to register in a congressional database, known as the Lobbying Disclosure Act Database, and state for whom they lobbied. Lobbyists are required to register for each client no later than 45 days after their employment or their first lobbying contact. Lobbyists are exempt from registering in the database if, in a quarterly period,

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed \$2,500;¹ or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed \$10,000.²

According to 2 U.S.C. § 1604, lobbyists who are registered in the database are required to file lobbying reports quarterly, which provide the registrants' and clients' name, a description of the general issues covered by the lobbying activities, good faith estimates of income and/or

¹ The Secretary of the Senate and the Clerk of the House of Representatives raised this threshold to \$3,000 effective January 1, 2009, in accordance with 2 U.S.C. § 1603 (a) (3) (B).

² The Secretary of the Senate and the Clerk of the House of Representatives raised this threshold to \$11,500 effective January 1, 2009, in accordance with 2 U.S.C. § 1603 (a) (3) (B).

expenses, and an identification of whether the client is a Government entity. Civil and criminal penalties may be incurred for knowingly violating chapter 26, title 2, of the U.S.C. (See 2 U.S.C. 1606.) The civil penalty is a fine not to exceed \$200,000, and the criminal penalty is imprisonment, not to exceed 5 years.

Rules and Regulations

Lobbying costs to influence a legislative action are to be reported as unallowable costs in accordance with Federal Acquisition Regulation (FAR) 31.205-22, “Lobbying and political activity costs.” Unallowable costs should not be claimed as reimbursable expenses and should be excluded from costs associated with Government contracts. Recipients of earmark funds who had lobbying costs associated with a contract cannot include their lobbying expenses when they are reimbursed for contract costs by the Government. In addition, FAR 31.201-2, “Determining allowability,” states

A contractor is responsible for accounting for costs appropriately and for maintaining records including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles . . . The contracting officer may disallow all or part of a claimed cost that is inadequately supported.”

According to FAR 3.804, “Policy,” and 3.808, “Solicitation provision and contract clause,” the contracting officer will insert FAR provision 52.203-11, “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions,” and clause 52.203-12, “Limitation on Payments to Influence Certain Federal Transactions,” into solicitations for contracts expected to exceed \$150,000. FAR clause 52.203-12 is also required to be included in the resultant contracts. FAR provision 52.203-11 and clause 52.203-12 require the contractor to submit Standard Form LLL to the contracting officer if the contractor was awarded the contract as a result of lobbying by any Lobbying Disclosure Act Database registrant. (On October 1, 2010, FAR 3.808 increased the threshold from \$100,000 to \$150,000.) Before 2007, the FAR required contractors to submit Standard Form LLL to the contracting officer and then eventually to Congress. However, FAR 3.803, “Exceptions,” and FAR 3.804, “Policy,” were amended in 2007, and the contractors must submit Standard Form LLL only to the contracting officer.

Defense Contract Audit Agency

The Defense Contract Audit Agency (DCAA) is under the authority, direction, and control of the Under Secretary of Defense (Comptroller)/Chief Financial Officer and performs contract audits of contractors for DoD. DCAA also provides accounting and financial advisory services regarding contracts and subcontracts to all DoD Components. DCAA performs incurred cost audits and other auditing procedures to determine whether costs charged to Government contracts are allowable, allocable, and reasonable in accordance with the contract and applicable Government acquisition regulations. According to DCAA memorandum, “Audit Alert – Lobbying Costs Related to Legislative Earmarks,” April 24, 2008, as part of incurred cost or other related audits, DCAA should review any earmark data for contractors it audits. This includes performing procedures to ensure that contractors have properly identified and accounted for contractor effort and related costs associated with supporting legislative earmarks. DCAA

performs incurred cost audits or desk reviews³ on the annual incurred cost proposals for contractors with auditable dollar values of \$15 million or less.

Review of Internal Controls

DoD's internal controls regarding contractors that received congressional earmarks were effective as they applied to the audit objectives.

³ DCAA performs reviews known as desk reviews for low-risk proposals when it does not perform an audit.

Finding. Contractors' Lobbying Costs and Lobbying Disclosures

Eighteen contractors properly accounted for \$5.2 million in lobbying costs and classified these costs as unallowable. Six other contractors properly accounted for \$1.8 million in lobbying costs. However, the six contractors improperly classified a total of \$85,610 in lobbying costs as allowable and classified a total of \$12,695 in unsupported costs as allowable. Specifically:

- Five contractors improperly classified a total of \$85,610 in lobbying costs as allowable because they did not have or did not comply with their own written policies.
- One of those five contractors and another contractor classified \$12,695 in unsupported costs as allowable; however, the invoices lacked sufficient detail to determine whether the costs were properly categorized.

As a result, DoD may have reimbursed six contractors for unallowable lobbying costs. During the audit, the five contractors that improperly classified lobbying costs as allowable agreed to reclassify \$85,347 of the improperly classified lobbying costs. One of these contractors could not match the remaining \$263 to its accounts.

Ten contractors that employed lobbying firms did not submit Standard Forms LLL because generally the contractors either stated that they were unaware of the requirement or we concluded that they misunderstood the requirement.

Proper Accounting and Reporting of Lobbying Costs

Of 24 DoD contractors that were the recipients of 50 earmarks, valued at \$115.5 million, 18 properly classified \$5.2 million in lobbying costs. These 18 contractors complied with policies to correctly account for lobbying costs by classifying them in an unallowable account and did not get reimbursed by the Government for their lobbying costs. Details of the contractors and contracting offices are in Appendices C and D.

Lobbying Costs Were Classified Either as Allowable or Unsupported

Six contractors either improperly classified \$85,610 in lobbying costs as allowable or did not support whether \$12,695 was for lobbying or consulting costs. By improperly classifying lobbying costs as allowable, the contractors violated FAR 31.205-22, which states that lobbying

costs must be classified as unallowable.⁴ By classifying other costs as allowable without adequate support, the contractors also violated FAR 31.201-2, which states that contractors must maintain documentation to demonstrate that claimed costs comply with applicable cost principles. These six contractors did properly classify \$1.8 million in lobbying costs as unallowable. The table identifies the total lobbying costs, improperly classified lobbying costs, and unsupported costs for these six contractors.

~~(FOUO)~~ Table. Contractors' Improperly Classified Lobbying Costs and Unsupported Costs

| (FOUO) | | | |
|-----------------------------|-----------------------|--------------------------------------|-------------------|
| Contractor | Total Lobbying Costs* | Improperly Classified Lobbying Costs | Unsupported Costs |
| CACI Technologies, Inc. | (b) (4) | (b) (4) | |
| Progeny Systems Corporation | | | (b) (4) |
| SpaceDev, Inc. | | | |
| Surface Optics Corporation | | | (b) (4) |
| Torrey Pines Logic | | | |
| Trex Enterprise Corporation | | | |
| Total | \$1,836,966 | \$85,610 | \$12,695 |
| (FOUO) | | | |

*Note: Total 2008, 2009, or 2010 lobbying costs for the contractors' fiscal years.

~~(FOUO)~~ Personnel from CACI Technologies, Inc. informed us that they were unaware that an employee had lobbied on their behalf. After learning of this, CACI Technologies, Inc. recalculated all costs associated with the lobbying (b) (4) and agreed to reclassify those costs as unallowable.

~~(FOUO)~~ Progeny Systems Corporation's policies stated that all lobbying costs were "expressly unallowable costs and treated as all other unallowable costs." However, Progeny Systems Corporation classified (b) (4) in lobbying costs as an allowable amount. This occurred because Progeny Systems Corporation misclassified lobbying costs as business development and legal costs for (b) (4) and miscalculated lobbying costs associated with (b) (4).

⁴ According to FAR 31.205-22, "Lobbying and political activity costs," lobbying costs that are unallowable include any attempts to influence legislation such as legislation liaison activities, including gathering information regarding legislation and analyzing the effect of legislation when those activities are carried out in knowing preparation for an effort to engage in unallowable activities. Lobbying costs that are allowable are limited to costs associated with providing information in response to a documented request made by legislative personnel.

~~(FOUO)~~ Progeny Systems Corporation did not comply with its own policies or the FAR, which could have resulted in an improper reimbursement from the Government. Progeny Systems Corporation agreed with the majority of our audit findings and agreed to remove (b)(4) from its incurred cost submission to DCAA. However, Progeny Systems Corporation could not match the remaining \$263 to its accounts. We did not make a recommendation to recover the remaining costs because administration costs to recover the funds will be greater than \$263.

~~(FOUO)~~ Progeny Systems Corporation also employed a lobbying firm that submitted (b)(4) invoices totaling (b)(4). Progeny Systems Corporation classified these invoiced costs as business development. The invoices did not have a sufficient description of work performed to determine what services were provided, and Progeny Systems Corporation accounted for these costs as allowable expenses. Neither Progeny Systems Corporation nor the lobbying firm had documentation describing the work the lobbying firm performed.

~~(FOUO)~~ SpaceDev, Inc. did not have written policies to account for unallowable costs and lobbying. SpaceDev, Inc. employed two consulting firms that performed "Government relations." When we questioned SpaceDev, Inc. officials about the work performed by the consultants, they stated that the consultants helped produce a presentation for congressional officials for the earmark the company received. The (b)(4) associated with this lobbying work was misclassified as an allowable amount, violating FAR 31.205-22. SpaceDev, Inc. agreed with our audit findings and agreed to submit a corrected incurred cost submission, which classified the (b)(4) of lobbying costs as unallowable.

~~(FOUO)~~ Surface Optics Corporation classified (b)(4) in marketing costs for a consultant as allowable. However, the description of the work on the consultant's invoices indicated that some of the costs were for lobbying. For example, one invoice stated in part that (b)(4).
(b)(4)
The invoices did not specify how much time or money was spent on those activities.

~~(FOUO)~~ Torrey Pines Logic did not properly record (b)(4) in consulting costs as unallowable lobbying costs because Torrey Pines Logic did not have written policies to account for lobbying costs or other consulting costs. A Torrey Pines Logic accountant recorded all invoices for lobbying and consulting costs, and then another employee verified the accounts to make sure the transactions were properly recorded. Torrey Pines Logic had invoices from (b)(4) lobbyists and (b)(4) consultants. One of these (b)(4) consultants was hired to provide Torrey Pines Logic with "operational concepts, design, development, and marketing." However, this consultant (b)(4).
This consultant's invoiced costs were all recorded as allowable. Torrey Pines Logic personnel agreed with our audit findings and agreed to reclassify the entire invoice for (b)(4) as unallowable costs.

~~(FOUO)~~ Trex Enterprise Corporation incorrectly classified (b)(4) in invoices for lobbying work as allowable because Trex Enterprise Corporation insufficiently reviewed three invoices. Trex Enterprise Corporation hired a consultant to perform marketing services. However, he charged

~~(FOUO)~~ Trex Enterprise Corporation ^{(b) (4)} for supporting a “congressional effort.” Trex Enterprise Corporation classified all of this consultant’s work as allowable, when the amount should have been charged as unallowable lobbying costs. After we informed Trex Enterprise Corporation personnel of these misclassified costs, they agreed to revise their FY 2009 indirect cost submission to properly classify the ^{(b) (4)} of lobbying costs as unallowable.

The DoD Office of the Inspector General, Office of Audit Policy and Oversight, issued a Notice of Concern to DCAA on May 6, 2011, discussing the preliminary results that some costs were either improperly classified or unsupported (see Appendix E). Because the Notice of Concern addresses the issues relating to DCAA that we identified in this report, we are not making any recommendations to DCAA.

In addition, we are not making a recommendation that any contracting officer seek reimbursement for any of these unsupported costs because the Notice of Concern informed DCAA of these unsupported costs. On May 31, 2011, DCAA responded to the Notice of Concern, stating:

... the Fiscal Year (FY) 2008-2010 incurred cost audits for the contractors from the IG’s list will have tailored audit steps to include transaction testing of the general ledger accounts pertinent to the accumulation of lobbying costs . . .

[Paragraphs Omitted]

We have identified the cognizant DCAA office for each of the six contractors listed on Attachment 2 of the IG’s May 6, 2011 memorandum. This list plus the IG’s preliminary schedule of questioned and unsupported lobbying costs for these sampled contractors will be provided to each cognizant DCAA office and Regional Office.

See Appendix F for DCAA’s complete response to the Notice of Concern. Additionally, DCAA stated in an e-mail that they would review the unsupported costs identified in this report.

Contractors Did Not Comply With Lobbying Reporting Requirements

Contractors did not report lobbying activity as required by FAR provision 52.203-11, “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions,” and clause 52.203-12, “Limitation on Payments to Influence Certain Federal Transactions.” Of the 24 contractors reviewed, 10 did not submit Standard Form LLL because, generally, they either stated that they were unaware of the FAR requirements or we concluded that they misunderstood the FAR requirements. FAR 3.804 and 3.808 require the contracting officer to insert FAR provision 52.203-11 and clause 52.203-12 into solicitations for contracts expected to exceed \$150,000.⁵ FAR clause 52.203-12 is also required to be included in the resultant contracts. FAR provision 52.203-11 and clause 52.203-12 require the contractor to submit

⁵ We did not obtain the solicitations to determine whether they included FAR Provision 52.203-11. We reviewed the contracts and determined whether they included FAR Clause 52.203-12.

Standard Form LLL to the contracting officer if the contractor received the contract as a result of lobbying by a Lobbying Disclosure Act Database registrant.

The contracts for 9 of the 10 contractors included FAR clause 52.203-12. Of the 10 contractors, 5 submitted Standard Form LLL after we reminded them of the requirement.⁶ The Director, Defense Procurement and Acquisition Policy, should issue a policy memorandum reinforcing FAR requirements for Standard Form LLL and provide guidance on how and where to report Lobbying Disclosure Act violations.

Currently, two methods are used to report lobbying activities. One is the Standard Form LLL. In 2007, the requirement to submit the Standard Form LLL through the chain of command and to Congress was removed from the FAR as a result of the language contained in the Lobbying Disclosure Act.

The other method to report lobbying activities is through the Lobbying Disclosure Act Database, in which lobbyists are required to register and state for whom they are lobbying. Lobbyists are required to register each client no later than 45 days after their employment or first lobbying contact. Lobbyists file the lobbying reports quarterly, which provide the registrants' and clients' name, a description of the general issues covered by the lobbying activities, good faith estimates of income and/or expenses, and an identification of whether the client is a Government entity. These reports keep Congress informed of lobbyists and their activities.

Recommendations, Management Comments, and Our Response

We recommend that the Director, Defense Procurement and Acquisition Policy, issue a policy memorandum to:

1. Reinforce to the DoD contracting community the requirements for Federal Acquisition Regulation 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions," and Federal Acquisition Regulation 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions."

2. Provide guidance to explain to the contracting community how and where to report Lobbying Disclosure Act violations in accordance with the Lobbying Disclosure Act, implemented by section 1603, title 2, United States Code (2010).

Defense Procurement and Acquisition Policy Comments

The Director, Defense Procurement and Acquisition Policy, agreed and stated that DoD intends to issue a memorandum to the contracting community implementing the recommendations.

Our Response

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

⁶ Those five contractors included the one contractor which did not have FAR Clause 52.203-12 in its contract.

Appendix A. Scope and Methodology

We conducted this performance audit from February 2010 through June 2012 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.

Universe and Sample Information

We identified recipients of FY 2009 and FY 2010 DoD earmarks that lobbied Congress. We determined that recipients of earmarks lobbied for those earmarks in the previous fiscal year. Therefore, recipients of FY 2009 earmarks would have lobbied in FY 2008 and recipients of FY 2010 earmarks would have lobbied in FY 2009.

We reviewed the FY 2009 and FY 2010 Defense Authorization Acts and Defense Appropriations Acts to identify FY 2009 and FY 2010 earmarks and their intended recipients. The Defense Authorization Acts clearly indicated the intended recipient of the earmark, but the Defense Appropriations Acts did not.

We compiled a list of intended recipients of FY 2009 and FY 2010 Defense Authorization Act earmarks and eliminated earmarks when the funding was non-DoD or Military Construction and when the intended recipient was:

- a DoD entity,
- a college or university over which DoD does not have cognizance,
- a non-profit organization over which DoD does not have cognizance,
- a U.S. Government entity,
- an Indian tribe,
- not identified, or
- listed as “competitive.”

With the assistance of the Quantitative Methods Division, we compared the remaining list of intended recipients to FY 2008 and FY 2009 Lobbying Reports on the Senate’s website. We then compared the results to the earmarks funded in the FY 2009 and FY 2010 Defense Appropriations Acts.

We identified 209 unique recipients of 322 appropriations earmarks valued at \$823.6 million.⁷ We focused primarily on small businesses and grouped the recipients by geographic area. From 5 geographic areas, we judgmentally selected 24 contractors⁸ that received 35 earmarks totaling

⁷ There were nine earmarks, valued at \$27.3 million, for which Congress identified two different recipients of the same earmark.

⁸ Of the 24 contractors, 20 were small businesses and 4 were medium or large businesses.

\$84 million. The contractors we visited identified an additional 15 earmarks, totaling \$31.5 million. In total, the 24 contractors received 50 earmarks, totaling \$115.5 million.

Review of Documentation

We visited the 24 contractors at their offices in five geographic areas: (1) Los Angeles, California; (2) San Diego, California; (3) Philadelphia, Pennsylvania and Trenton, New Jersey; (4) local Maryland; and (5) local Virginia locations. During the site visits, when available, we reviewed contractor:

- accounting policies and procedures regarding unallowable costs;
- lobbying and other consultant agreements and invoices;
- chart of accounts, general ledger, and associated journal entries;
- incurred cost submissions;
- contracts, grants, or cooperative agreements awarded to the contractor for the earmarks; and
- Standard Forms LLL.

We obtained the contractor documentation for FY 2008 through FY 2010. We also obtained documentation that was in FY 2007 depending on the contractor's fiscal year. Some of the contractors we reviewed had fiscal years that were different from the Government's fiscal year.

We evaluated documentation maintained by the contractors against applicable criteria including:

- Statutes and Public Laws: Public Law 111-84, "National Defense Authorization Act for Fiscal Year 2010"; 2 U.S.C. § 1603, "Registration of lobbyists"; 10 U.S.C. § 2324, "Allowable costs under defense contracts"; 31 U.S.C. § 1352, "Appropriations";
- FAR Requirements: FAR Subpart 3.8, "Limitation on the Payment of Funds to Influence Federal Transactions"; FAR 31.205-6, "Accounting for unallowable costs"; FAR 31.205-22, "Lobbying and political activity costs"; FAR 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions"; and FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions".⁹

We interviewed contractor personnel at each of the 24 contractor locations. In addition, we met with DCAA personnel who conducted incurred cost audits to determine how they identified unallowable costs and to gain a better understanding of the methodology needed to conduct a complete audit of lobbying expenses. We reviewed documentation from September 1991 through March 2012.

We determined whether the 24 contractors:

⁹ We did not obtain the solicitations to determine if they included FAR Provision 52.203-11. We reviewed the contracts and determined if they included FAR Clause 52.203-12.

- had and complied with a policy for accounting for lobbying costs;
- properly accounted for unallowable lobbying costs;
- received a contract, grant, or cooperative agreement for each earmark and whether that agreement contained FAR provision 52.203-11 and clause 52.203-12; and
- filed Standard Form LLL with the contracting officer.

In addition, we determined whether DCAA performed an incurred cost audit of the 24 contractors and, if so, whether that audit identified problems with accounting for lobbying expenses.

Use of Computer-Processed Data

To identify our audit scope, we used computer-processed data from the Senate's Lobbying Disclosure Act Database with support from the DoD OIG's Quantitative Methods Division. The Quantitative Methods Division assisted in translating files of the Senate's Lobbying Disclosure Act Database records into a consolidated file. Also, the Quantitative Methods Division compared the lobbyists and consultants data in the Senate's Lobbying Disclosure Act Database with the recipients the audit team identified as intended recipients of earmarks. We did not perform a reliability assessment of the computer-processed data from the Senate's Lobbying Disclosure Act Database because we did not rely on this data to support our findings and conclusions. We used the data from the database to identify which intended recipients to review and which lobbyists registered in the database for each of the 24 contractors in FY 2008 and FY 2009.

In our referral to Congress, we relied on the Lobbying Disclosure Act Database to determine whether consultants that performed lobbying activities for the 24 contractors registered in the database. This is the only conclusion for which we relied on the Lobbying Disclosure Act Database.

In addition, we obtained accounting records from 24 contractors specifically related to how they classified lobbying costs. We did not perform reliability assessments of the 24 contractors' accounting systems because our report findings and conclusions were materially based on the face value of the contractors' records, some of which were computer-processed data.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and the DoD Inspector General (DoD IG) have issued six reports discussing lobbying. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. GAO-11-452, "2010 Lobbying Disclosure Observations on Lobbyists' Compliance with Disclosure Requirements," April 1, 2011

GAO Report No. GAO-10-499, “2009 Lobbying Disclosure Observations on Lobbyists’ Compliance with Disclosure Requirements,” April 1, 2010

GAO Report No. GAO-09-508R, “Fisheries Management: Alleged Misconduct of Members and Staff of the Western Pacific Fishery Management Council,” May 20, 2009

GAO Report No. GAO-09-487, “2008 Lobbying Disclosure Observations on Lobbyists’ Compliance With Disclosure Requirements,” April 1, 2009

GAO Report No. GAO-08-209, “Congressional Directives: Selected Agencies’ Processes for Responding to Funding Instructions,” January 31, 2008

DoD IG

DoD IG Report No. D-2008-110, “The Cost, Oversight, and Impact of Congressional Earmarks Less Than \$15 Million,” August 8, 2008

Appendix B. Lobbying Disclosure Act Database

According to contractor records, seven consultants performed lobbying activities for six contractors; however, those seven consultants were not in the Lobbying Disclosure Act Database for FY 2008 or FY 2009. In December 2011, we notified the Secretary of the Senate and the Clerk of the House that those seven consultants did not report their lobbying activities in the Lobbying Disclosure Act Database and requested that they review the potential civil violations.¹⁰

Section 1602, title 2, United States Code defines lobbying activities as,

. . . any lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

Before visiting each of the 24 contractors, we queried the Lobbying Disclosure Act Database for filings in FY 2008 and FY 2009 to identify the lobbyists that reported lobbying activities for those contractors. During our site visits, we used the contractors' documentation to identify consultants that performed lobbying activities on the contractors' behalf. We compared the lobbyists that reported in the database to the consultants that performed lobbying activities and found seven consultants that were not in the Lobbying Disclosure Act Database, but performed lobbying activities on the contractors' behalf.

There are three thresholds for determining whether a consultant should register in the Lobbying Disclosure Act Database. The first two thresholds are part of the definition of a lobbyist and the final threshold is the monetary limitation specifically for reporting lobbying activities in the Lobbying Disclosure Act Database.

The two thresholds for determining whether a consultant should be defined as a lobbyist are outlined in 2 U.S.C. § 1602, which defines a lobbyist as,

. . . any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.

We did not verify whether the seven consultants met those two thresholds—20 percent of work performed for the client and more than one lobbying contact. We relied on contractor records, which were insufficient to support a determination regarding those two thresholds. To determine whether the consultants met those thresholds would have required us to contact each consultant and review their records. This was outside the scope of our audit.

¹⁰ We originally identified eight consultants in our referral to Congress. After providing the referral, we determined that we should not have referred one of the eight consultants.

If a consultant meets the definition of a lobbyist in 2 U.S.C. 1602 (10), the consultant is required to register as a lobbyist, unless the consultant is exempt under 2 U.S.C. 1603(a)(3). This exemption applies when, “total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed \$2,500 . . . in [a] quarterly period . . .” The Secretary of the Senate and the Clerk of the House of Representatives raised this threshold to \$3,000 effective January 1, 2009.

For all seven consultants, we had sufficient evidence to state that a portion of the work they performed was for lobbying activities. For five of the seven consultants, we had sufficient documentation to determine that the consultants’ lobbying activities exceeded the quarterly threshold. Specifically, four consultants exceeded the \$2,500 quarterly threshold in calendar year 2008 and one consultant exceeded the \$3,000 quarterly threshold in calendar year 2009. However, we did not have sufficient documentation to determine whether the other two consultants exceeded the quarterly thresholds.

Based solely on the contractors’ documentation showing that the seven consultants performed lobbying activities for the contractors and exceeded the \$2,500 quarterly threshold, we referred them to Congress. In March 2012, the Secretary of the Senate and Clerk of the House notified us that they had reviewed the referral and determined that only one of the seven consultants should have registered and did subsequently register in the Lobbying Disclosure Act Database. The Secretary of the Senate stated that five of the seven consultants:

. . . responded with information verifying that their consulting activities during the periods in question did not meet the threshold of reporting requirements under the LDA [Lobbying Disclosure Act]. Specifically, their activity did not meet the threshold of 20% of their total time for that client and in some cases, did not even meet the threshold of more than one lobbying contact.

The Secretary of the Senate and Clerk of the House were unable to locate one of the seven consultants.

Appendix C. Contractors Visited and Problems Identified

| Contractor | Command | Contract Number | Number of Ear-marks | Appropriated Earmark Amount ¹ | May Have Improperly Accounted for Lobbying Costs | Did Not Submit SF LLL |
|----------------------------|--|------------------------------|---------------------|--|--|-----------------------|
| Advanced Projects Research | Aviation Applied Technology Directorate | W911W6-08-D-0003 | 4 | \$7,600,000 | | |
| | Air Force Materiel Command | FA8650-05-D-2521/ TO 0002 | | | | |
| Advatech Pacific | Air Force Flight Test Center | FA9300-06-D-0002/ TO 0005 | 3 | 5,200,000 | | X |
| | Air Force Flight Test Center | FA9300-10-C-4002 | | | | |
| Aeplog | NA | NA | 1 | 1,200,000 | | |
| ARCCA | Army Research Development and Engineering Command (U.S. Army, Aberdeen Proving Ground, MD) | W911NF-09-2-0021 | 2 | 4,800,000 | | |
| BAE Land & Armaments | Naval Surface Warfare Center | N00024-07-G-5438/ TO L685 | 2 | 21,000,000 | | X |
| CACI Technologies | Air Force Materiel Command, Air Force Research Laboratory | FA8750-09-C-0156 | 1 | 2,000,000 | X ² | |
| Chang Industry | Tank-Automotive and Armaments Command – Warren, MI | W56HZV-04-C-0440 | 2 | 6,400,000 | | |
| Creative Technologies | NA | NA | 1 | 2,000,000 | | |
| Dynamic Animation Systems | Air Force Materiel Command, Air Force Research Laboratory | FA8650-09-C-6028 | 3 | \$8,400,000 | | X ³ |
| | U.S. Property & Fiscal Office, New Jersey | GS35F0568U/ W912KN-09-F-0074 | | | | |
| | U.S. Property & Fiscal Office for Virginia | GS35F0568U/ W912LQ-10-F-0016 | | | | |

Appendix C. Contractors Visited and Problems Identified (cont'd)

| Contractor | Command | Contract Number | Number of Ear-marks | Appropriated Earmark Amount ¹ | May Have Improperly Accounted for Lobbying Costs | Did Not Submit SF LLL |
|----------------------------------|--|----------------------------|---------------------|--|--|-----------------------|
| Information Systems Laboratories | Space & Naval Warfare Systems Center (U.S. Navy) | N66001-04-C-6008 | 1 | \$1,600,000 | | X |
| McGee Industries | Naval Air Warfare Center | N68335-09-C-0189 | 1 | 2,000,000 | | |
| Ocean Power Technologies | Naval Undersea Warfare Center | N00253-09-D-0005 | 3 | 7,800,000 | | |
| | Naval Facilities Engineering Service Center | N62473-06-D-3005 | | | | |
| Progeny Systems Corporation | Naval Air Warfare Center | N68335-08-C-0471 | 9 | 18,500,000 | X | |
| | U.S. Army Communications-Electronics Command | W15P7T-05-C-P626 | | | | |
| | Naval Surface Warfare Center | N00178-04-D-4033 | | | | |
| | Naval Sea Systems Command | N00024-09-C-6305 | | | | |
| | Naval Air Warfare Center Aircraft Division | N68335-07-D-0025 | | | | |
| | Naval Sea Systems Command | N00024-08-C-6288 | | | | |
| Proxy Aviation Systems | U.S. Army Communications-Electronics Command | DAAB07-03-D-B010/TO 168 | 2 | 6,000,000 | | X |
| Saft America | Naval Air Warfare Center, Pax River | N00421-05-D-0068 | 1 | 1,200,000 | | X |
| SeQual Technologies | U.S. Army Medical Research Acquisition Activity | DAMD17-03-2-0002 | 1 | 800,000 | | X ³ |
| SMH International, LLC | U.S. Army Communications-Electronics Command | DAAB07-03-D-B012/PO 09-487 | 3 | \$4,000,000 | | X ³ |

Appendix C. Contractors Visited and Problems Identified (cont'd)

| Contractor | Command | Contract Number | Number of Ear-marks | Appropriated Earmark Amount ¹ | May Have Improperly Accounted for Lobbying Costs | Did Not Submit SF LLL |
|--------------------------------------|---|------------------|---------------------|--|--|-----------------------|
| SpaceDev | Air Force Flight Test Center | FA9300-10-C-4001 | 1 | \$800,000 | X ² | |
| Stanley Associates | Northern Region Contracting Center Army Contracting Agency | DABJ01-03-D-0017 | 1 | 2,000,000 | | |
| Surface Optics Corporation | Office of Naval Research | N00014-09-C-0565 | 1 | 2,400,000 | X | |
| Tanner Research | U.S. Army Contracting Command Joint Munitions and Lethality Contracting Center | W15QKN-10-C-0001 | 1 | 1,600,000 | | |
| Torrey Pines Logic | Space & Naval Warfare Systems Center (U.S. Navy) | N65236-07-D-6882 | 1 | 400,000 | X ² | |
| Trex Enterprise Corporation | U.S. Army Communications-Electronics Command | W15P7T-05-C-P623 | 4 | 6,160,000 | X ² | X ³ |
| | U.S. Army Test and Evaluation Command Mission Support Contracting Activity | W9115U-06-C-0003 | | | | |
| Vision Robotics Federal Systems, LLC | Space & Naval Warfare Systems Center (U.S. Navy) | N66001-08-D-0071 | 1 | 1,600,000 | | X ³ |
| Totals | | | 50 | \$115,460,000 | 6 | 10 |

Note: NA (not applicable) indicates that the contractor was awarded an earmark; however, a contract was not awarded during the fieldwork phase of this audit.

¹ The appropriated amount may differ from the contract amount.

²After being informed of the requirement, the contractor recalculated accounting for lobbying costs. We are not recommending that the Army or Air Force seek recoveries from the contractor. The Notice of Concern to DCAA addresses the lobbying costs that were not properly accounted for.

³After being informed of the requirement, the contractor submitted the form.

~~(FOUO)~~ **Appendix D. Contractor Lobbying Costs and Invoices**

| (FOUO) | | | | | |
|----------------------------|---|------------------------------|-----------------------------------|---------------------------------------|-------------------------------------|
| Contractor | Command | Contract Number | Total Lobbying Costs ¹ | Lobbying Amount Improperly Classified | Invoices Unclear Regarding Lobbying |
| Advanced Projects Research | Aviation Applied Technology Directorate | W911W6-08-D-0003 | (b) (4) | | |
| | Air Force Materiel Command | FA8650-05-D-2521/ TO 0002 | | | |
| Advatech Pacific | Air Force Flight Test Center | FA9300-06-D-0002/ TO 0005 | (b) (4) | | |
| | Air Force Flight Test Center | FA9300-10-C-4002 | | | |
| Aeplog | NA | NA | (b) (4) | | |
| ARCCA | Army Research Development and Engineering Command (Aberdeen Proving Ground, MD) | W911NF-09-2-0021 | (b) (4) | | |
| BAE Land & Armaments | Naval Surface Warfare Center | N00024-07-G-5438/ TO L685 | (b) (4) | | |
| CACI Technologies | Air Force Materiel Command, Air Force Research Laboratory | FA8750-09-C-0156 | (b) (4) | (b) (4) | |
| Chang Industry | Tank-Automotive and Armaments Command – Warren, MI | W56HZV-04-C-0440 | (b) (4) | | |
| Creative Technologies | NA | NA | (b) (4) | | |
| Dynamic Animation Systems | Air Force Materiel Command, Air Force Research Laboratory | FA8650-09-C-6028 | (b) (4) | | |
| | U.S. Property & Fiscal Office, New Jersey | GS35F0568U/ W912KN-09-F-0074 | | | |
| | U.S. Property & Fiscal Office, Virginia | GS35F0568U/ W912LQ-10-F-0016 | | | |
| (FOUO) | | | | | |

~~(FOUO)~~ **Appendix D. Contractor Lobbying Costs and Invoices (cont'd)**

| (FOUO) | | | | | |
|----------------------------------|--|-----------------------------|-----------------------------------|---------------------------------------|-------------------------------------|
| Contractor | Command | Contract Number | Total Lobbying Costs ¹ | Lobbying Amount Improperly Classified | Invoices Unclear Regarding Lobbying |
| Information Systems Laboratories | Space & Naval Warfare Systems Center (U.S. Navy) | N66001-04-C-6008 | (b) (4) | | |
| McGee Industries | Naval Air Warfare Center | N68335-09-C-0189 | (b) (4) | | |
| Ocean Power Technologies | Naval Undersea Warfare Center | N00253-09-D-0005 | (b) (4) | | |
| | Naval Facilities Engineering Service Center | N62473-06-D-3005 | | | |
| Progeny Systems Corporation | Naval Air Warfare Center | N68335-08-C-0471 | (b) (4) | (b) (4) | (b) (4) |
| | U.S. Army Communications-Electronics Command | W15P7T-05-C-P626 | | | |
| | Naval Surface Warfare Center | N00178-04-D-4033 | | | |
| | Naval Sea Systems Command | N00024-09-C-6305 | | | |
| | Naval Air Warfare Center Aircraft Division | N68335-07-D-0025 | | | |
| | Naval Sea Systems Command | N00024-08-C-6288 | | | |
| Proxy Aviation Systems | U.S. Army Communications-Electronics Command | DAAB07-03-D-B010/ TO 168 | (b) (4) | | |
| Saft America | Naval Air Warfare Center, Pax River | N00421-05-D-0068 | (b) (4) | | |
| SeQual Technologies | U.S. Army Medical Research Acquisition Activity | DAMD17-03-2-0002 | (b) (4) | | |
| SMH International, LLC | U.S. Army Communications-Electronics Command | DAAB07-03-D-B012/ PO 09-487 | (b) (4) | | |
| (FOUO) | | | | | |

~~(FOUO)~~ **Appendix D. Contractor Lobbying Costs and Invoices (cont'd)**

| (FOUO) | | | | | |
|--------------------------------------|--|------------------|-----------------------------------|---------------------------------------|-------------------------------------|
| Contractor | Command | Contract Number | Total Lobbying Costs ¹ | Lobbying Amount Improperly Classified | Invoices Unclear Regarding Lobbying |
| SpaceDev | Air Force Flight Test Center | FA9300-10-C-4001 | (b) (4) | (b) (4) | |
| Stanley Associates | Northern Region Contracting Center Army Contracting Agency | DABJ01-03-D-0017 | (b) (4) | | |
| Surface Optics Corporation | Office of Naval Research | N00014-09-C-0565 | (b) (4) | | (b) (4) |
| Tanner Research | U.S. Army Contracting Command Joint Munitions and Lethality Contracting Center | W15QKN-10-C-0001 | (b) (4) | | |
| Torrey Pines Logic | Space & Naval Warfare Systems Command (U.S. Navy) | N65236-07-D-6882 | (b) (4) | (b) (4) ² | |
| Trex Enterprise Corporation | U.S. Army Communications Electronics-Command | W15P7T-05-C-P623 | (b) (4) | (b) (4) | |
| | U.S. Army Test and Evaluation Command Mission Support Contracting Activity | W9115U-06-C-0003 | | | |
| Vision Robotics Federal Systems, LLC | Space & Naval Warfare Systems Command (U.S. Navy) | N66001-08-D-0071 | (b) (4) | | |
| Totals | | | \$7,027,968 | \$85,610 | \$12,695 |
| (FOUO) | | | | | |

¹ The lobbying costs cannot be directly tied to the contracts. The amount is based on the contractors' records.

² Contractors improperly classified lobbying costs as consulting costs.

~~(FOUO)~~ **Appendix E. Notice of Concern to DCAA**



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

MAY - 6 2011

MEMORANDUM FOR DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY

SUBJECT: Notice of Concern - Unallowable Lobbying Expenses
(APO Memo No. 2011-CAPO-002)

On February 19, 2010, the Assistant Inspector General for Acquisition and Contract Management, Department of Defense Office of the Inspector General (DOD IG) announced Project No. D2010-000CF-0145.000, "Compliance with Restrictions on the Use of Appropriated Funds from Congressional Earmarks for Lobbying." Preliminary results from the DOD IG's audit disclosed that certain contractors included expressly unallowable lobbying costs in FY 2008 through FY 2010 incurred cost submissions to the Government. DCAA has not issued an audit alert or other headquarters guidance on lobbying costs since issuing Memorandum for Regional Directors (MRD) 08-PAS-015(R), dated April 24, 2008, "Audit Alert - Lobbying Costs Related to Legislative Earmarks." Congressional legislation generally contains some earmarks each year. The most efficient means for the field audit offices to obtain the needed information regarding what programs or contractors have legislative earmarks is through DCAA headquarters.

The DOD IG audit team determined that contractors improperly recorded or charged unallowable lobbying costs to allowable accounts. Attachment 1 contains a schedule of the costs questioned or unsupported by contractor. Attachment 2 provides each contractor's name, address, phone number, and point of contact. Based on the preliminary findings, we recommend that each audit office cognizant of one of the listed contractors do the following:

- During the course of the incurred cost audits, test transactions in certain general ledger accounts such as professional services, consulting, public relations, and lobbying costs to verify that expressly unallowable lobbying costs have not been charged to the Government.
- If DCAA determines that deficiencies exist in either the internal control policies or the implementation of the corresponding procedures for the segregation of expressly unallowable or unallowable expenses, then the audit office should issue a flash report detailing the deficiencies.

Note: Due to personally identifiable information, Attachment 2 was removed from this appendix.

- For contractors below the \$15 million incurred cost audit threshold listed on Attachment 1, the cognizant audit office should perform a full scope audit instead of a desk review.

We also recommend that DCAA headquarters reiterate to the field audit offices the requirements of Federal Acquisition Regulation 31.205-22, Lobbying and Political Activity Costs, and update its April 24, 2008, audit alert by listing lobbying and Congressional earmarks for FYs 2009, 2010, and 2011. Finally, DCAA headquarters should issue an annual audit alert on lobbying costs and legislative earmarks to provide the field audit offices the most current information for audit planning purposes. On April 18, 2011, we apprised [REDACTED], Acting Chief, Policy, Accounting and Cost Principles Directorate, Headquarters, DCAA, of the DOD IG preliminary findings.

Members of my staff are available to further brief DCAA management on the above recommendations. Please provide a response to our recommendations by May 24, 2011. A copy of this memorandum and the DCAA response may be included in an appendix of the DOD IG audit report issued on the above referenced project. If you have any questions regarding this memorandum, please contact [REDACTED] at [REDACTED] or [REDACTED] at [REDACTED].

Carolyn R. Davis

Carolyn R. Davis
Assistant Inspector General
for Audit Policy and Oversight

Attachments:
As stated

cc:
[REDACTED], Assistant Director, Policy and Plans, Headquarters, DCAA
[REDACTED], Acting Chief, Policy Accounting and Cost Principles Directorate,
Headquarters, DCAA
[REDACTED], Executive Officer, Headquarters, DCAA

Department of Defense, Office of Inspector General
Assistant Inspector General for Audit Policy and Oversight
Preliminary Schedule of Questioned and Unsupported Lobbying Costs

| Contractor | Contract No. | Total lobbying costs | | | | Questioned Lobbying Costs | | | | Unsupported Costs | | | | Notes | GIL account numbers where allowable lobbying costs were posted to |
|--------------------|---------------------|----------------------|---------|---------|-----------|---------------------------|---------|---------|---------|-------------------|---------|---------|---------|-------|---|
| | | FY 08 | FY 09 | FY 10 | Total | FY 08 | FY 09 | FY 10 | Total | FY 08 | FY 09 | FY 10 | Total | | |
| CACI Technologies | FA8750-06-C-0156 | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | 1 | (b) (4) |
| Progeny Systems | H46205-05-C-0471 | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | 2 & 4 | (b) (4) |
| Spacelity | FA5200-10-C-4001 | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | 3 | (b) (4) |
| Time Enterprise | No specific Earmark | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | 4 | (b) (4) |
| Torrey Pines Logic | No specific Earmark | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | 2 & 4 | (b) (4) |
| Surface Opica | No specific Earmark | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | (b) (4) | 3 | (b) (4) |
| Totals | | 144,621 | 553,641 | 294,739 | 1,773,009 | \$3,777 | 10,018 | 6 | \$3,596 | 12,095 | 4 | 6 | 256,016 | | |

Notes:

- 1) Contractor unaware that employee performed lobbying function. Contractor recalculated allowable costs
- 2) Lobbying costs that were coded as Consulting costs
- 3) Company prepared a PowerPoint presentation to Congressional officials for the earmark the company received. The costs were charged as allowable Consulting costs
- 4) Information provided by the contractor is insufficient to determine whether costs are allocable or unallowable

Note: Some of the Notice of Concern costs do not match costs identified in the report because corrections were made after the Notice of Concern was issued. For Progeny Systems, auditors corrected a \$15 accounting error. For Torrey Pines Logic, information was provided to the auditors to support the costs that had been unsupported.

~~(FOUO)~~ **Appendix F. DCAA Response to Notice of Concern**



OFFICE OF THE DIRECTOR

DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

May 31, 2011

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL, AUDIT POLICY AND
OVERSIGHT, OFFICE OF THE INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE

SUBJECT: Response to Department of Defense Office of Inspector General, Memorandum of a
Notice of Concern – Unallowable Lobbying Expenses

Thank you for the opportunity to respond to the subject memorandum, Notice of Concern – Unallowable Lobbying Expenses, dated May 6, 2011. In your memorandum, you identified six contractors with unallowable lobbying expenses related to earmarks. Our responses relating to your recommendations are presented below.

DoDIG Recommendation 1: During the course of the incurred cost audits, test transactions in certain general ledger accounts such as professional services, consulting, public relations, and lobbying costs to verify that expressly unallowable lobbying costs have not been charged to the Government [for the six contractors identified on the DoDIG Notice of Concern].

DCAA Response: Concur. As communicated in our FY 2008 audit alert, auditors are required to develop the appropriate procedures to test for unallowable lobbying costs when it's identified that the contractor has received significant earmarks. Therefore, based on existing guidance the Fiscal Year (FY) 2008-2010 incurred cost audits for the contractors from the IG's list will have tailored audit steps to include transaction testing of the general ledger accounts pertinent to the accumulation of lobbying costs, (e.g., professional services, public relations and consulting) if a full audit vs. a desk review is performed. See Recommendation No. 3 below.

DoDIG Recommendation 2: If DCAA determines that deficiencies exist in either the internal control policies or the implementation of the corresponding procedures for the segregation of expressly unallowable or unallowable expenses, then the audit office should issue a flash report detailing the deficiencies.

DCAA Response: Concur. We will issue a flash report to Government contracting authorities when the contractor's internal control structure and disclosed or established practices are deficient or non-compliant with FAR Part 31 cost principles and the Cost Accounting Standards (CAS). We will issue an update to the April 24, 2008 Audit Alert (08-PAS-015(R)) on lobbying costs related to legislative earmarks. We will reemphasize this guidance in the MRD.

DoDIG Recommendation 3: For contractors below the \$15 million incurred cost audit threshold listed on Attachment 1, the cognizant audit office should perform a full scope audit instead of a desk review.

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SUBJECT: Response to Department of Defense Office of Inspector General, Memorandum of a Notice of Concern – Unallowable Lobbying Expenses

DCAA Response: Partially Concur. We have identified the cognizant DCAA office for each of the six contractors listed on Attachment 2 of the IG's May 6, 2011 memorandum. This list plus the IG's preliminary schedule of questioned and unsupported lobbying costs for these sampled contractors will be provided to each cognizant DCAA office and Regional office. For any of these contractors determined to be low-risk contractors, the offices will be required to perform full-scope incurred cost audits for FY 2008 and FY 2009. If expressly unallowable costs are found in those years, a full scope audit will be performed in FY 2010, rather than a desk review.


DoDIG Recommendation 4: We also recommend that DCAA headquarters reiterate to the field audit offices the requirements of FAR 31.205-22, Lobbying and Political Activity Costs, and update its April 24, 2008, audit alert by listing lobbying and Congressional earmarks for FYs 2009, 2010, and 2011.

DCAA Response: Concur in Principle. By August 2011, we will issue an update to the April 24, 2008 Audit Alert (08-PAS-015(R)) on lobbying costs related to legislative earmarks. Our MRD will include a discussion of the requirements of FAR 31.205-22, Lobbying and Political Activity Costs and DFARS 231.205-22, Legislative Lobbying Costs. This guidance will define legislative earmarks and will identify pertinent websites that provide details of earmark activities.

DoDIG Recommendation 5: DCAA headquarters should issue an annual audit alert on lobbying costs and legislative earmarks to provide the field audit offices the most current information for audit planning purposes.

DCAA Response: Non-Concur. In the audit alert mentioned above, we will provide the Taxpayers for Common Sense website, <http://taxpayer.net>, which provides earmark databases by fiscal year for audit planning purposes. We will institutionalize this guidance in the DCAA Contract Audit Manual (CAM); therefore, this will eliminate the need for an annual audit alert. Also, we will maintain an electronic file of the earmarks on our DCAA Intranet for historical research purposes and use by the audit offices.

Questions regarding this memorandum should be directed to [REDACTED]
Assistant Director, Policy and Plans at [REDACTED] or [REDACTED]


Patrick J. Fitzgerald
Director

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~~FOR OFFICIAL USE ONLY~~

Defense Procurement and Acquisition Policy Comments



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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

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MEMORANDUM FOR DIRECTOR, REPORT FOLLOWUP & GAO LIAISON,
OFFICE OF THE INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

DoD OIG
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SUBJECT: Response to DoDIG Draft Report, "Contractor Compliance Varied With Classification of Lobbying Costs and Reporting of Lobbying Activities (Project No. D2010-DOOOCF-0145.000)", dated October 6, 2011

This is in response to your email of October 6, 2011, requesting the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to review and comment on the draft report. The following is provided in response:


Recommendation:

DoDIG recommends that the Director, Defense Procurement and Acquisition Policy issue a policy memorandum to reinforce to the DoD contracting community the requirements for Federal Acquisition Regulation 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions"; and Federal Acquisition Regulation 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions"; and provide guidance to explain to the contracting community on how and where to report Lobbying Disclosure Act violations in accordance with the Lobbying Disclosure Act, implemented by section 1603, title 2, United States Code (2010).

Response:

Concur. The Department intends on issuing a policy memorandum to the contracting community as recommended. A draft memorandum is in coordination and will be released along with the DoDIG final report when made available.

Please contact [REDACTED], or email [REDACTED] if additional information is required.


Richard Ginman
Director, Defense Procurement
and Acquisition Policy

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Inspector General
Department of Defense



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