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Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan Improved, but Additional Actions are Needed

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Acronyms and Abbreviations

ASBCA	Armed Services Board of Contract Appeals
CONUS	Continental United States
DCAA	Defense Contract Audit Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DFAS	Defense Finance and Accounting Services
DLA	Defense Logistics Agency
FAR	Federal Acquisition Regulation
QASP	Quality Assurance Surveillance Plan
OCONUS	Outside the Continental United States
STORES	Subsistence Total Order and Receipt Electronic System
USTRANSCOM	United States Transportation Command
UAE	United Arab Emirates



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DEPARTMENT OF DEFENSE
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JUL 2 2013

MEMORANDUM FOR COMMANDER, DEFENSE LOGISTICS AGENCY
TROOP SUPPORT

SUBJECT: Contract Administration of the Subsistence Prime Vendor Contract for
Afghanistan Improved, but Additional Actions are Needed
(Report No. DODIG-2013-100)

We are providing this report for your review and comment. We considered management comments on a draft of this report when preparing the final report. Defense Logistics Agency Troop Support implemented corrective actions to address some of the problems and risk areas identified in DoD IG Report No. D-2011-047, dated March 2, 2011. However, additional actions were still needed for fair and reasonable pricing determinations; recovery, and refunds of overpayments; and reviews for costs charged to the incorrect appropriation. As a result, Defense Logistics Agency Troop Support may have paid excessive costs for triwalls and airlift of fresh fruits and vegetables and may not collect up to \$282 million in potential premium transportation overpayments. Furthermore, there is increased risk for potential Antideficiency Act violations from costs charged to incorrect appropriations.

DoD Directive 7650.3 requires that recommendations be resolved promptly. We received comments from the Vice Director, Defense Logistics Agency on behalf of the Commander, Defense Logistics Agency Troop Support. The Vice Director's comments on report Recommendations 1.a, 2, and 3 were responsive, and no further comments are required. However, the Vice Director's comments on report Recommendation 1.b, 1.c, and 1.d were partially responsive. Based on the Vice Director's comments, we deleted draft report Recommendation 1.b from the report and revised draft report Recommendation 1.c, now 1.b. Draft Recommendations 1.c through 1.e have been renumbered as Recommendations 1.b through 1.d. Therefore, we request that the Commander, Defense Logistics Agency Troop Support provide additional comments on recommendations 1.b, 1.c, and 1.d by August 1, 2013.

If possible, send a portable document format (.pdf) file containing your comments to audros@dodig.mil. Portable document format (.pdf) copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8866 (DSN 664-8866).

A handwritten signature in blue ink, reading "Alice F. Carey".

Alice F. Carey
Assistant Inspector General
Readiness, Operations, and Support



Results in Brief: Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan Improved, but Additional Actions are Needed

What We Did

We determined whether Defense Logistics Agency Troop Support implemented the recommendations in Audit Report No. D-2011-047 and determined whether corrective actions addressed the problems. Due to ongoing litigation, we did not determine whether corrective actions regarding the previously recommended premium transportation pricing determination and recovery of overpayments effectively addressed those problems. We will review these actions after the results of litigation.

What We Found

Contracting and finance officials at Defense Logistics Agency Troop Support implemented corrective actions to address some of the problems and risk areas identified in the report. These actions included implementing a quality assurance surveillance plan, performing contract administration reviews, and correcting appropriation mischarges. However, the officials did not:

- adequately support the pricing determinations for triwalls and airlift of fresh fruits and vegetables,
- recover potential overpayments to the subsistence prime vendor contractor,
- establish controls for managing refunds of subsistence prime vendor overpayments, and
- review all subsistence prime vendor contracts to ensure costs were charged to the correct appropriation.

These problems occurred because contracting and finance officials did not maintain

appropriate documentation, used flawed methodologies, misinterpreted the Federal Acquisition Regulation for pricing determinations, overlooked adding refund guidance into their standard operating procedures, and believed performing a judgmental sample of subsistence contracts was sufficient. As a result, Defense Logistics Agency Troop Support may have paid excessive costs for triwalls and airlift of fresh fruits and vegetables and may not be able to collect up to \$282 million in potential premium transportation overpayments. Furthermore, there is increased risk for potential Antideficiency Act violations from costs charged to incorrect appropriations.

What We Recommend

We recommend the Commander, Defense Logistics Agency Troop Support implement corrective actions to address all open recommendations in Audit Report No. D-2011-047, develop a time-phased plan with measurable goals and metrics regarding implementing the open recommendations, and educate contracting officers to maintain all supporting documentation used in fair and reasonable determinations.

Management Comments and Our Response

Comments from the Defense Logistics Agency were generally responsive. Based on management comments, we deleted draft recommendation 1.b and revised 1.c, now 1.b. We request that the Vice Director provide additional comments to Recommendations 1.b, 1.c, and 1.d by August 1, 2013. Please see the Recommendations Table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, Defense Logistics Agency Troop Support	1.b, 1.c, and 1.d	1.a, 2, 3

Please provide comments by August 1, 2013.

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Introduction

Objective

Our objective was to determine whether Defense Logistics Agency (DLA) Troop Support implemented the recommendations in DoD Office of Inspector General Report No. D-2011-047, “Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan,” March 2, 2011, and to determine whether corrective actions addressed the problems.

To accomplish this objective, we reviewed the status of implementation of the 14 recommendations in the report that addressed internal control deficiencies identified in DLA Troop Support contract administration and charging of funds to the correct fiscal year appropriations. See Appendix A for a discussion of our scope and methodology.

Background on the Subsistence Prime Vendor Program

The Subsistence Prime Vendor Program began in 1993 to reduce DLA warehouses stocked with millions of dollars of material. Expansive inventories tie up valuable dollars and require expensive storage, handling, and second destination charges. Prime Vendor bypasses the clogged supply pipeline and lays a new streamlined pipeline providing fresher product for the customer. This concept uses commercial distributors to deliver a full range of food items and beverages directly to customers in a specific geographic area. These are negotiated acquisitions using best value source solicitation procedures, where the contracting officer bases the award on factors other than cost or price alone. The contracts, with multiple renewable years, emphasize quality, availability, and minimum delivery lead-time.

Subsistence Prime Vendor Contract

On June 3, 2005, the contracting officer issued the contract (SPM300-05-D-3130) to the subsistence prime vendor, to distribute a full line of food and nonfood products to authorized customers in Afghanistan. DLA Troop Support uses the Subsistence Prime Vendor Program to provide worldwide dining hall support to its authorized customers. The subsistence prime vendor is a concept of support whereby a single commercial distributor serves as the major provider of products to various Federal customers within a geographical region. The U.S. Transportation Command (USTRANSCOM) usually accomplishes transportation via separate contracts. The subsistence prime vendor retains ownership of the items throughout the pipeline until the ordering activity accepts the items.

Verbal Change Order

On August 26, 2005, the contracting officer issued a verbal change order for the subsistence prime vendor to provide food and distribution support to another 68 activities in Afghanistan in addition to the original 4 activities. Security concerns within the warzone and the austere environment, to include the lack of developed roadways in Afghanistan, prevented the subsistence prime vendor from always using

ground transportation to service the additional activities. Consequently, the contracting officer verbally authorized the subsistence prime vendor to support the activities using a combination of fixed-wing aircraft, helicopters, and ground transportation. Nearly a year later, on August 2, 2006, the contracting officer issued contract modification 10 to formalize the verbal change order.

Contract Modification 12 Establishes Reimbursement Rates

On October 10, 2006, the contracting officer issued contract modification 12. In the modification, the parties agreed that, from July 2006 forward, Troop Support personnel would reimburse the subsistence prime vendor at a 75 percent rate¹ listed in contract modification 10, before the results of a Defense Contract Audit Agency (DCAA) report, dated August 2011 were used to aid in definitizing the final contract rates.

Follow-up on DoD IG Report No. D-2011-047

On March 2, 2011, the Department of Defense Inspector General (DoD IG) issued Report No. D-2011-047 titled “Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan.” The report stated that subsistence contracting officials at DLA Troop Support did not provide sufficient oversight of contract costs and performance, did not adhere to the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS), and did not develop a quality assurance surveillance plan (QASP) and written procedures to monitor contractor costs and performance. As a result, DoD IG Report No. D-2011-047 reported that DLA Troop Support personnel:

- overpaid the subsistence prime vendor potentially \$98.4 million in transportation costs;
- overpaid the subsistence prime vendor approximately \$25.9 million for triwalls;²
- paid \$454.9 million to the prime vendor for airlifting fresh fruit and vegetables without incorporating the airlift requirement in the contract and without documenting whether the airlift price of \$3.74 per pound was fair and reasonable;
- did not validate whether \$103.6 million in triwall costs was accurate and chargeable to the contract;
- did not monitor the accountability of Government-furnished material; and
- billed the Army \$56.5 million in transportation, triwall, and storage costs to the incorrect fiscal year appropriation for FYs 2006 through 2009.

¹ DLA Troop Support used this rate for premium transportation prices before definitization. However, it was not used for triwall prices, which DLA Troop Support indicated were determined fair and reasonable back in 2006, although it wasn't documented then.

² Triwalls are three-layered corrugated boxes used for packaging and shipping chilled or frozen food products, such as fresh fruits and vegetables, ice cream, meat, and dairy products.

Table 1 provides a list of the recommendations from the report. Appendix B provides a summary of the status for each these recommendations.

Table 1. DoD IG Report No. D-2011-047 Recommendations

Rec. No.	Recommendation	See Page No.
A1.a	Determine fair and reasonable prices for transportation and triwalls and use those prices to definitize the August 2005 verbal change order, which was formalized in Modification 10.	9 and 20
A1.b	Recover triwall overpayments (\$25.9 million as of May 28, 2010) that were not in accordance with contract modification 12, and use contract modification 12 reimbursement rates to pay future prime vendor triwall bills, until such time as fair and reasonable triwall rates are determined and the verbal change order of August 2005 is definitized.	11
A1.c	Compute and recover the overpayments of the difference between the reimbursement rates paid to the prime vendor and the finalized rates since December 2005, after the rates are established.	12 and 21
A1.d	Coordinate with Defense Logistics Agency Finance, Troop Support personnel to refund the Army for overpayments recovered from the prime vendor in response to recommendations A.1.c and A.2.c, and associated surcharges that were applied to the overpayments since December 2005.	13, 14 and 22
A2.a	Request assistance from the Defense Contract Audit Agency in determining a fair and reasonable price for airlift requirements from Sharjah, United Arab Emirates.	14
A2.b	Use the results of the Defense Contract Audit Agency assistance to determine and document a fair and reasonable price for airlift requirements from Sharjah into Afghanistan and formally modify the contract to incorporate the airlift requirement.	15
A2.c	Compute the difference between the \$3.74 per pound rate paid to the prime vendor and the finalized rate since December 2005, after the airlift rate is established. If applicable, recover any differences.	16
A3	Develop a quality assurance surveillance plan and written procedures for monitoring the prime vendor's costs and performance. The plan and procedures should address areas to include the: (1) validation of triwall invoices, to include verification of the quantity of triwall delivered and that the quantity delivered by road to non-forward operating bases are excluded from billings, (2) verification of fill rates, to include the requirement that reviews of the contract fill rate calculations are documented and retained, and (3) appointment of Property Administrator to monitor accountability of Government-furnished material, to ensure Government property is adequately safeguarded.	6
A4.a	Perform a review of the contract administration of the prime vendor subsistence contract in light of (1) excessive delay in definitizing the verbal change order of August 2005, (2) the payment of \$454.9 million in airlift costs without having a requirement for the service in the contract, (3) agreement to pay 100 percent of triwall provisional rates without documenting how the rates were determined to be fair and reasonable, and (4) the lack of a quality assurance surveillance plan and written procedures to monitor contractor costs and performance.	7
A4.b	Initiate as appropriate any administrative actions warranted by the review.	7
B1	Refund \$56.5 million to the Army in appropriated funds identified by the audit that were not charged to the appropriate FY appropriation.	8
B2	Bill \$56.5 million to the Army in appropriated funds identified by the audit to the appropriate FY appropriation.	8
B3	Establish controls to ensure that future costs on subsistence prime vendor contracts, to include refunds of prime vendor overpayments and costs on invoices that cross FY, are charged to the appropriate FY appropriation.	17
B4	Conduct reviews of all subsistence prime vendor contracts to determine whether costs were charged to the appropriate FY appropriation. If costs are identified that were incorrectly charged, initiate corrective actions.	18

Internal Control Weaknesses in the Subsistence Prime Vendor Program

DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” dated July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses associated with DLA Troop Support’s contracting officer and Finance staffs’ administration of this contract.

The contracting officer did not support fair and reasonable pricing determinations for triwalls or airlift of fresh fruits and vegetables because she used flawed methodologies, misinterpreted the FAR, and did not maintain supporting documentation for the triwall pricing determination. In addition, DLA Troop Support Finance personnel overlooked including guidance in standard operating procedures on how they would address refunds of subsistence prime vendor overpayments for costs on invoices that crossed fiscal years. See Appendix C for applicable criteria.

We will provide a copy of the report to the senior official responsible for internal controls in DLA.

Finding. Corrective Actions Implemented, but Additional Actions Needed to Fully Address Deficiencies

The contracting and finance officials at DLA Troop Support implemented corrective actions to address problems and risk areas identified in DoD IG Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011.³ These actions included implementing a QASP, reviewing contract administration, determining whether there was a need for administrative actions, and correcting \$56.5 million in funds refunded and billed to the wrong fiscal year.

However, DLA Troop Support did not implement effective corrective actions to resolve deficiencies associated with determining fair and reasonable pricing for triwalls and airlift of fresh fruits and vegetables, recovering overpayments, establishing controls for managing refunds of subsistence prime vendor overpayments, and reviewing all subsistence prime vendor contracts to ensure costs were charged to the appropriate fiscal year appropriation.

These problems occurred because the contracting officer did not maintain documentation on pricing, used flawed methodologies, and misinterpreted the FAR for pricing determinations. In addition, financial personnel overlooked adding guidance concerning refunds into their standard operating procedures and believed performing a judgmental sample of subsistence contracts was sufficient to ensure costs were charged to the correct fiscal year appropriation.

As a result, DLA Troop Support may have paid excessive costs for triwalls and airlift of fresh fruits and vegetables and may not collect up to \$282 million in potential premium transportation overpayments. Furthermore, there is increased risk for potential Antideficiency Act violations from invoiced costs charged to incorrect fiscal year appropriations.

³ Due to ongoing litigation, an audit follow-up review is required to determine whether DLA Troop Support effectively addressed determining fair and reasonable prices for premium transportation services, calculating and recovering overpayments for premium transportation, and refunding premium transportation overpayments to the Army. The litigation pertains to the subsistence prime vendor's dispute with the contracting officer's unilateral definitization of the prices for premium transportation rates (for example, - fixed-wing, rotary-wing, and ground transportation) that resulted in a calculated overpayment of about \$756 million. Both the triwall and airlift of fresh fruits and vegetables rates are not part of the litigation.

Corrective Actions Implemented for Some of the Recommendations

DLA Troop Support implemented corrective actions for some of the recommendations in DoD IG Report No. D-2011-047, which addressed problems and risks pertaining to:

- developing a QASP and written procedures for monitoring prime vendor costs and performance,
- contract administration reviews,
- administrative actions, and
- \$56.5 million in funds refunded and billed to the wrong fiscal year.

Quality Assurance Surveillance Plan for Monitoring the Subsistence Prime Vendor's Costs and Performance Implemented

The report recommended that the contracting officer develop a QASP and written procedures for monitoring the subsistence prime vendor's costs and performance and that the plan should address areas to include:

- validation of triwall invoices, to include verification of the quantity of triwalls delivered and that the quantity delivered by road to nonforward operating bases are excluded from billings;
- verification of fill rates, to include the requirement that reviews of the contract fill rate calculations are documented and retained; and
- appointment of a Property Administrator to monitor accountability of Government-furnished material, to ensure Government property is adequately safeguarded. (Table 1, Recommendation A3)⁴

DLA Troop Support has developed a QASP, dated 2012, that addressed verification of fill rates and appointment of a Property Administrator to monitor Government-furnished material.

The QASP did not include monitoring procedures to validate triwall invoices because those prices were subsequently negotiated into an all-inclusive price. The negotiated price included airlift and triwall rates based on net product weight only. DLA Troop Support personnel stated that they monitored and validated costs through purchase orders in the Subsistence Total Order and Receipt Electronic System (STORES).

The contracting officer representative and a contract specialist stated they verified the fill rates and documented them in a weekly report. DLA Troop Support assigned four

⁴ See Table 1 to reconcile the individual references to the specific recommendations from DoD IG Report No. D-2011-047.

contracting officer representatives to monitor accountability of Government-furnished material. We consider this recommendation closed. No further action is necessary.

Review of the Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan Performed

The report stated that DLA Troop Support contracting officials did not provide sufficient oversight of the subsistence prime vendor contract for Afghanistan and recommended that DLA review the contract's administration in light of DoD IG's findings. The report recommended that the Commander, DLA Troop Support, conduct an internal review of those findings specific to the following problems identified: (1) the excessive delay in definitizing the verbal change order of August 2005; (2) the payment of \$454.9 million in airlift costs without having a requirement for the service in the contract; (3) the agreement to pay 100 percent of triwall provisional rates without documenting how the rates were determined to be fair and reasonable, and (4) the lack of a QASP and written procedures to monitor contractor costs and performance.

(Table 1, Recommendation A4.a)

DLA Troop Support senior officials performed a review of the subsistence prime vendor contract administration in response to the recommendation. After review of the facts, they issued a memorandum for the record, dated May 7, 2012, that documented conclusions of the former Commander, the Deputy Commander, and the Executive Director, Contracting and Acquisition Management. We consider this recommendation closed. No further action is necessary.

DLA Troop Support Determined Administrative Actions Were Not Warranted

The report stated that DLA Troop Support contracting officials did not provide sufficient oversight of the subsistence prime vendor contract for Afghanistan and recommended DLA review the contract's administration in light of DoD IG's findings and initiate appropriate administrative action as warranted. (Table 1, Recommendation A4.b) DLA Troop Support senior officials, with the Commander, DLA's concurrence, determined administrative actions against any individuals related to the subsistence prime vendor contract's administration were unwarranted.

DLA Troop Support senior officials provided the following rationale for abstaining from administrative actions against personnel responsible for contract administration of the subsistence prime vendor contract for Afghanistan:

- This was a unique contractual situation, which had to be negotiated after award in an expedited fashion due to wartime exigencies.
- This was a unique requirement to contract for security and premium transportation that DLA Troop Support never contracted for in the past. In fact, this was a new requirement for the U.S. Government.

- The contracting officer for the contract changed during the duration of the contract.
- DLA Troop Support and DCAA made numerous attempts over a period of several years to obtain data from the subsistence prime vendor to definitize the change. However, the subsistence prime vendor did not cooperate or supplied inadequate data, which made definitization impossible.
- The subsistence prime vendor is a foreign-based contractor located in Dubai, which further complicates the difficulty in obtaining data.
- Senior officials were unable to resolve the definitization impasse with the subsistence prime vendor.
- Working with three different directors, and through required points of contact—most notably DLA Acquisition and Legal personnel—caused significant delays.

We consider this recommendation closed. No further action is necessary.

Implementation of Corrective Actions Related to Appropriations Charged to the Wrong Fiscal Year

The report stated that DLA Troop Support personnel billed the Army about \$56.5 million in transportation, triwall, and storage costs incurred for FYs 2006 through 2009 to the incorrect fiscal year appropriation on the subsistence prime vendor contract for Afghanistan. The report recommended that the Commander, DLA Troop Support refund \$56.5 million to the Army in appropriated funds that were charged to an incorrect fiscal year appropriation. (Table 1, Recommendation B1)

DLA Troop Support Finance personnel provided documentation, including billing reports, credit memos, debit memos, and order and receipt information reports, to support corrective actions taken to refund \$56.5 million in funds to the Army that were charged to an incorrect fiscal year appropriation. We obtained and reviewed proposed billing adjustments from the Defense Finance and Accounting Services (DFAS) and verified that the responsible parties corrected the transactions. We consider this recommendation closed. No further action is necessary.

We obtained and reviewed proposed billing adjustments from the Defense Finance and Accounting Services and verified that the responsible parties corrected the transactions.

In addition, the report recommended that the Commander, DLA Troop Support, bill \$56.5 million to the Army in appropriated funds to the correct fiscal year appropriation. (Table 1, Recommendation B2)

DLA Troop Support Finance personnel provided documentation that they took corrective actions to bill \$56.5 million in funds to the Army that they originally charged to an incorrect fiscal year appropriation. We obtained and reviewed proposed billing

adjustments from DFAS and verified that the responsible parties corrected the transactions properly. We consider this recommendation closed. No further action is necessary.

Corrective Actions Needed to Mitigate the Remaining Risks Associated with Contract Administration and Use of Appropriations⁵

DLA Troop Support did not effectively implement corrective actions to mitigate some problems and risks associated with:

- determining fair and reasonable prices⁶ for triwalls and fresh fruits and vegetables airlift,
- establishing controls for refunds of subsistence prime vendor overpayments, and
- reviewing costs charged to the correct fiscal year appropriation.

Problems with Fair and Reasonable Pricing Determination for Definitized Triwall Prices

The report stated that the contracting officer did not definitize or issue contract modifications in a timely manner, as required by the FAR and the DFARS. Specifically, the contracting officer did not document that higher reimbursement rates for triwalls were fair and reasonable. The report recommended that the contracting officer for subsistence support in Afghanistan determine fair and reasonable prices for triwalls and use those prices to definitize the August 2005 verbal change order. (Table 1, Recommendation A1.a – Triwall Only)

DLA Troop Support's current contracting officer still could not support the fair and reasonable price determination for triwalls as required by FAR 15.404-1(b)(2)(ii) and FAR Part 10.002(e). This occurred because the contracting officer did not maintain supporting documentation of historic price comparison records quoted in her pricing determination and used prices from FY 2009 to definitize prices from FY 2005.

DLA officials stated that the original contracting officer determined the \$241 per chilled and \$302 per frozen triwall prices to be fair and reasonable in 2006 and acknowledged the determination was not documented then. The current contracting officer finalized these prices in contract modification P00102, dated August 26, 2011. However, the current contracting officer did not provide adequate documentation supporting her own

⁵ Some of the individual recommendations from DoD IG Report No.D-2011-047 covered multiple subjects. For example, A1.a included recommended corrective actions for both triwall and premium transportation pricing. Progress in one subject area was not mutually exclusive to the other. Thus, the extent of DLA's corrective actions is represented in multiple sub-sections within our report for recommendations A1.a, A1.c, and A1.d.

⁶ DLA stated the original contracting officer determined the prices for airlift of fresh fruits and vegetables and triwalls were fair and reasonable back in 2005 and 2006 respectively, but acknowledged her determinations were not officially documented in the contract files.

fair and reasonable determination of those same prices, dated November 6, 2009, or for her re-documentation of her determination, dated May 24, 2011. Furthermore, the current contracting officer used a flawed pricing determination methodology by including prices from FY 2009 in her own analysis to definitize FY 2005 prices.

We consider the triwall portion of the recommendation closed because DLA Troop Support can take no further action, as the contracting officer indicated no other prices were available and cited the subsistence prime vendor's refusal to provide cost data as a contributing factor. In addition, the contract ends no later than December 2013, even with a 1-year bridge contract awarded, and may potentially end sooner if the new subsistence prime vendor is operationally ready to begin work before then.

Federal Acquisition Regulation Noncompliance

The current contracting officer cited FAR 15.404-1(b)(2)(ii) as the pricing analysis technique she used to make her fair and reasonable determination for triwall prices. FAR

The contracting officer did not establish the reasonableness of those triwall prices due to her inability to provide the supporting records for the comparison vendors' prices.

15.404-1(b)(2)(ii) states "comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items" to determine a fair and reasonable price. However, the contracting officer did not establish the reasonableness of those triwall prices due to her inability to provide some

of the supporting records for the comparison vendors' prices.

FAR Part 10.002(e) states "Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition." The original 60-month fixed-price, indefinite-quantity contract was valued at \$726.2 million. In addition, DLA Troop Support's former Commander stated in a memorandum, dated May 7, 2012, that it was a unique contractual situation because the contract had to be negotiated in an expedited fashion due to wartime exigencies and was for services they never contracted for in the past. These facts reinforce that the subsistence prime vendor contract is both a large and complex acquisition, which would advocate maintaining thorough documentation of the contracting officer's decisions.

Inadequate Support and Flawed Methodology for Triwall Fair and Reasonable Pricing Determination

The contracting officer did not provide adequate support for the two⁷ comparison vendors' prices used in her November 6, 2009, fair and reasonable triwall pricing determination (re-documented on May 24, 2011) and used the 2009 price from a bridge contract for one of them. For one comparison vendor, the contracting officer used a 2009 chilled triwall price of \$.60 per pound instead of that vendor's originally contracted \$.50 per pound price, which was the June 2, 2003, historical price preceding the 2005 contract

⁷ A third comparison vendor used in the contracting officer's November 6, 2009, fair and reasonable pricing determination was removed from her May 24, 2011, re-documentation, noting this vendor was to be excluded from her determination due to an indictment against the vendor.

award to the subsistence prime vendor. The contracting officer applied the per pound price against subsistence prime vendor records of cumulative pounds and numbers of chilled triwalls shipped available at that time to calculate a comparable price per chilled triwall for this vendor. However, the contracting officer did not have the specific subsistence prime vendor records used in those calculations to provide to us. Additionally, this vendor did not supply frozen triwalls, so the contracting officer subsequently used this vendor's price data only to support the subsistence prime vendor's chilled triwall price as fair and reasonable.

For the other comparison vendor, the contracting officer did not provide the specific documentation used to calculate the chilled and frozen triwall prices because she informed us that this "contract was not modified to incorporate the triwall rates" at the time of her determination. The contracting officer provided a determination and findings document and modification after the fact, both dated April 18, 2011, which documented the comparison vendor's triwall pricing as fair and reasonable. The contracting officer stated that she received this information after her May 24, 2011, re-documentation of the fair and reasonable pricing determination. However, this information was not relevant to our request for the original support for the contracting officer's determinations since it occurred after the fact and used the subsistence prime vendor's own triwall prices in making the determination. Although the determination and findings document noted that subsistence prime vendor's price was weighted less than other commercial carrier prices used in comparison, this weighting design was not documented or transparent.

Although the contracting officer finalized triwall rates in contract modification P00102, dated August 26, 2011, she did not meet FAR requirements to support the fair and reasonable pricing determination or to establish the reasonableness of the comparison prices. While DLA Troop Support was not assured it received fair and reasonable prices for triwalls, we consider the triwall portion of the recommendation closed because the contracting officer was unable to adequately support the status quo triwall prices in the fair and reasonable determination, 6 ½ years beyond the contract's December 3, 2005, award date, and indicated no other prices were available to those finalized in contract modification P00102. The Commander, DLA Troop Support needs to educate contracting officers on the requirement to maintain proper and timely documentation for all pricing determinations.

Triwall Overpayment of \$25.9 Million Asserted As Not Valid

The report stated that DLA Troop Support overpaid the subsistence prime vendor about \$25.9 million for triwalls based on calculating the 25 percent price difference between the total price of chilled and frozen triwalls and a 75 percent reimbursement rate identified in contract modification 12, applicable to those costs. The report recommended that the contracting officer recover triwall overpayments (\$25.9 million as of May 28, 2010) that were not in accordance with contract modification 12 and use contract modification 12 reimbursement rates to pay future prime vendor triwall bills until fair and reasonable triwall rates are determined and the verbal change order of August 2005 is definitized. (Table 1, Recommendation A1.b)

DLA Troop Support officials indicated the 75 percent contracted reimbursement rate used to calculate the triwall overpayment only pertained to premium transportation prices. A DLA Headquarters official stated in a response dated February 20, 2012, “because these (triwall) rates were found fair and reasonable in 2006, they were never considered undefinitized, so that the 75 percent provisional billing rate was not applicable.” Therefore, DLA Troop Support disputed the validity of the report’s finding and did not collect the \$25.9 million in overpayments identified.

However, a memorandum from the former Acting Commander, DLA Troop Support, dated March 10, 2011, contradicted the DLA officials’ statements that the 75 percent reimbursement rates were not applicable to triwalls. In the memorandum to the subsistence prime vendor, DLA Troop Support tried to obtain a detailed triwall cost breakdown for a planned DCAA audit of chilled and frozen triwall costs on the basis that the “tentative reimbursement rate of 75 percent to the subsistence prime vendor...which includes specific rates for triwalls...were subject to DCAA audit.” DLA Troop Support further noted that when the subsistence prime vendor signed the related contract modification, it had agreed to auditing of such rates.

A memorandum from the former Acting Commander, DLA Troop Support, dated March 10, 2011, contradicted the DLA officials’ statements that the 75 percent reimbursement rates were not applicable to triwalls.

The DCAA audit of triwall prices never occurred because the subsistence prime vendor refused to provide the cost data even after multiple requests from DLA Troop Support officials, including their Commander. The subsistence prime vendor did not agree that DLA was entitled to the information because the contract was under a firm, fixed-price contract that was priced competitively on a commercial basis.

On January 24, 2013, the DLA Deputy Director of Subsistence stated DLA Troop Support rechecked the historical record and concurred with the subsistence prime vendor that back in 2005 through 2006 timeframe, the prices for the triwalls were determined to be fair and reasonable by the contracting officer, although it was not documented then. Therefore, no further correspondence occurred between DLA Troop Support and the subsistence prime vendor regarding an audit for the triwalls and the status quo prices were finalized in contract modification P00102, dated August 26, 2011. We consider this recommendation closed because DLA headquarters officials notified us on April 18, 2013, and we agreed that they can take no further action due to the bilateral agreement between the government and the subsistence prime vendor that definitized triwall prices in contract modification P00102. In addition, the contracting officer indicated no other prices were available and cited the subsistence prime vendor’s refusal to provide cost data as a contributing factor.

No Recoverable Triwall Overpayments

The report recommended that DLA Troop Support compute and recover the overpayments of the difference between the triwall reimbursement rates paid to the subsistence prime vendor and the finalized rates since December 2005, after the rates

were established as a result of implementing the triwall portion of recommendation A1.a. This is a separate overpayment issue from the \$25.9 million overpayment discussed above. This involves recovering any difference between the previously audited \$241 per chilled and \$302 per frozen triwall status quo prices and the finalized rates resulting from the fair and reasonable pricing determination in recommendation A1.a. (Table 1, Recommendation A1.c – Triwall Only)

DLA officials stated that the original contracting officer determined the \$241 per chilled and \$302 per frozen triwall prices to be fair and reasonable in 2006, although it was not documented. Therefore, they responded that there were no recoverable overpayments for triwalls after finalizing the status quo prices. However, their response and conclusions were a direct result of the contracting officer's inadequately supported fair and reasonable pricing determination in 2006, and the next contracting officer's inadequately supported fair and reasonable determination of those same prices, dated November 6, 2009, (re-documented on May 24, 2011).

We consider the triwall portion of the recommendation closed because DLA Troop Support can take no further action, as the contracting officer indicated no other viable alternative prices for comparison were available to those finalized in contract modification P00102, dated August 26, 2011, and cited the subsistence prime vendor's refusal to provide cost data as a contributing factor. In addition, the contract ends no later than December 2013, even with a 1-year bridge contract awarded, and may potentially end sooner if the new subsistence prime vendor is operationally ready to begin work before then. The Commander, DLA Troop Support needs to educate contracting officers on the requirement to maintain proper and timely documentation for all pricing determinations.

Coordination with DLA Finance, Troop Support Personnel for Triwall Overpayments Not Done

The report recommended that the contracting officer coordinate with DLA Troop Support Finance personnel to refund the Army for any triwall overpayments and associated surcharges recovered from the subsistence prime vendor, given the previously reported triwall fair and reasonable pricing problems. (Table 1, Recommendation A1.d – Triwall Only)

DLA Troop Support coordination with DLA Troop Support Finance was contingent upon an overpayment calculation for the triwall prices once an updated fair and reasonable pricing determination was conducted. Since DLA Troop Support reported no recoverable overpayments from the subsistence prime vendor based on finalizing the rates questioned in the previous audit, no coordination was conducted. We consider the triwall portion of the recommendation closed because DLA Troop Support can take no further action, as the contracting officer indicated no other prices were available to those finalized in contract modification P00102 dated August 26, 2011.

No Coordination of Fresh Fruits and Vegetables Airlift Overpayments

The report recommended that the contracting officer coordinate with DLA Troop Support Finance personnel to refund the Army for any overpayments and associated surcharges for airlift of fresh fruits and vegetables recovered from the subsistence prime vendor. (Table 1, Recommendation A1.d – Fresh Fruits and Vegetables Only)

DLA Troop Support coordination with DLA Troop Support Finance was contingent upon an overpayment calculation for any difference in the finalized fresh fruits and vegetables airlift rate. Because DLA Troop Support reported no recoverable overpayments from the subsistence prime vendor based on definitizing the previously audited rate for airlift of fresh fruits and vegetables, there was nothing to coordinate with DLA Troop Support Finance (discussed in the three following sub-sections of this report).

We consider the recommendation closed because DLA headquarters officials notified us on April 18, 2013, and we agreed that they can take no further action, as it was contingent on the results of implementation of corrective actions in response to report recommendation A.2.c.

No Request to Have DCAA Determine Fair and Reasonable Prices for Fresh Fruits and Vegetables Airlift

The report stated that DLA Troop Support personnel paid the subsistence prime vendor over \$454.9 million for services to airlift fresh fruits and vegetables from Sharjah, United Arab Emirates (UAE), into Afghanistan from December 13, 2005, through May 28, 2010, without incorporating the airlift requirement in the contract or documenting that the airlift price of \$3.74 per pound was fair and reasonable. The report recommended the contracting officer request assistance from DCAA in determining a fair and reasonable price for airlift requirements from Sharjah, UAE, to Afghanistan. (Table 1, Recommendation A2.a)

DLA Troop Support did not request assistance from DCAA to determine a fair and reasonable price for fresh fruits and vegetables airlift requirements from Sharjah, UAE, to Afghanistan. This occurred because subsistence contract personnel thought they would be unable to get pricing data from the subsistence prime vendor. Specifically, the contracting officer, after undocumented consultation with DLA Troop Support's Legal Counsel, based her decision on the subsistence prime vendor's previous denial to provide data for chill and frozen triwalls and premium transportation pricing.

We consider the recommendation closed because DLA headquarters officials notified us on April 18, 2013, and we agreed that no adjustment to the airlift of fresh fruits and vegetable rate is legally allowable without the prime vendor's agreement due to the bilateral agreement between the government and the subsistence prime vendor that the contracting officer determined to be fair and reasonable via contract modification P00101, dated August 26, 2011. However, DLA Troop Support's lack of effort to request DCAA assistance in this case may have exacerbated problems with the

contracting officer’s pricing determination for the airlift of fresh fruits and vegetable rate, which we explain in the next sub-section.

Questionable Fair and Reasonable Pricing Determination Methodology for Airlift of Fresh Fruits and Vegetables

The report stated that DLA Troop Support personnel paid the subsistence prime vendor approximately \$454.9 million for services to airlift fresh fruits and vegetables from Sharjah, UAE, into Afghanistan from December 13, 2005, through May 28, 2010, without incorporating the airlift requirement in the contract or documenting that the airlift price of \$3.74 per pound was fair and reasonable. The report recommended that DLA use the results of the DCAA assistance to determine and document a fair and reasonable price for airlift requirements from Sharjah, UAE, into Afghanistan and formally modify the contract to incorporate the airlift requirement. (Table 1, Recommendation A2.b)

The current contracting officer incorporated the \$3.74 per pound price into the contract via modification P00101, dated August 26, 2011. However, DLA Troop Support did not support their fair and reasonable pricing determination for airlift of fresh fruits and vegetables because the contracting officer and DLA Troop Support Office of Counsel

<p><i>The contracting officer did not use available actual prices to determine fair and reasonable pricing for the airlift of fresh fruits and vegetables from Sharjah, UAE, into Afghanistan.</i></p>	<p>misinterpreted FAR 15.404-1(b)(2)(ii) to allow the use of not-to-exceed⁸ tender⁹ rates for comparison to the subsistence prime vendor’s price, rather than historical actual prices. Specifically, the contracting officer did not use available actual prices to determine fair and reasonable pricing for the airlift of fresh fruits and vegetables from Sharjah, UAE, into Afghanistan. As a result, DLA may have paid higher costs for fresh fruits and vegetables airlift services.</p>
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Federal Acquisition Regulation Misinterpreted

The contracting officer stated that she established price reasonableness for the fresh fruits and vegetables airlift rates in accordance with the FAR 15.404-1 (b)(2)(ii) using USTRANSCOM air tender rates. According to the FAR 15.404-1(b)(2)(ii), which provides guidance for price analysis for commercial and non-commercial items, the Government may use “comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items” to determine a fair and reasonable price. Believing that she complied with the FAR, the contracting officer used USTRANSCOM air tender rates rather than actual costs in her price comparison. However, in a teleconference on

<p><i>A USTRANSCOM official stated, “the tenders were not FAR contracts and did not contain any FAR clauses. This allowed the offeror to decide not to provide service if they deem the risk too high.”</i></p>

⁸ According to a USTRANSCOM official, the “not-to-exceed” tenders used in DLA Troop Support’s fair and reasonable pricing analysis were based on spot quotes that do not exceed a USTRANSCOM-approved rate. The official also stated that the vendor may have set the tenders unrealistically high.
⁹ Tenders are not contracts. They are a carrier’s offer to provide services at the quoted rate.

May 23, 2012, a USTRANSCOM official stated, “the tenders were not FAR contracts and did not contain any FAR clauses. This allowed the offeror to decide not to provide service if they deem the risk too high.”

Furthermore, the USTRANSCOM official’s reply stated the tender rate is a “not-to-exceed rate,” and the business strategy of the air tender offeror involves spot quotes. For a spot quote, the customer would call the transportation service provider and provide the exact shipping weight and any special processes, after which the service provider would forward an actual shipping cost. The not-to-exceed air tender rate is not an actual shipping cost or a historical price paid. Therefore, the contracting officer’s price reasonableness determination did not comply with FAR15.404-1(b)(2)(ii).

Tender Rates Used for Fresh Fruit and Vegetable Airlift Fair and Reasonable Pricing Determination

The contracting officer stated that at the time she performed the fair and reasonable analysis using USTRANSCOM tender rates, she was not aware that the rates provided were “not-to-exceed rates.” However, she received an e-mail from USTRANSCOM, dated December 21, 2010, before her analysis, which made this fact clear and further

The contracting officer stated...she was not aware that the rates provided were “not-to-exceed rates.” However, she received an e-mail from USTRANSCOM...before her analysis, which made this fact clear.

noted the tenders may be “unrealistically high.” DoD Instruction 4500.57 section 4.2, “Transportation and Traffic Management,” states, “Non-FAR procurement instruments such as tenders of service and bills of lading will not compete with FAR procurements and shall only be used in limited situations

when FAR procurements cannot meet customer requirements.” If the contracting officer had used the actual shipping orders placed against USTRANSCOM air tenders to calculate a price, which were less than the tender prices and still available in DLA’s Distribution Standard System, she may have been able to negotiate a lower fresh fruits and vegetables airlift rate.

We consider the recommendation closed because DLA headquarters officials notified us on April 18, 2013, and we agreed that they can take no further action due to the bilateral agreement between the government and the subsistence prime vendor after the contracting officer determined the \$3.74 per pound rate was fair and reasonable and definitized that price via contract modification P00101. However, DLA should use actual historical pricing data, when available, before not-to-exceed tender rates for determining fair and reasonable prices on future procurements.

Modification of the Pre-Audit Fresh Fruits and Vegetable Airlift Price Resulted In a No Recovery Determination

The report stated that DLA Troop Support personnel paid the subsistence prime vendor approximately \$454.9 million for services to airlift fresh fruits and vegetables from Sharjah, UAE, into Afghanistan from December 13, 2005, through May 28, 2010, without incorporating the airlift requirement in the contract or documenting that the airlift price of \$3.74 per pound was fair and reasonable. The report recommended that the

contracting officer compute the difference between the \$3.74 per pound rate paid to the subsistence prime vendor and the finalized airlift rate since December 2005, after the airlift rate is established. It recommended that if applicable, DLA Troop Support recover any differences. (Table 1, Recommendation A2.c)

DLA Troop Support responded that there were no recoverable overpayments from the subsistence prime vendor because the contracting officer formally modified the contract through modification P00101, dated August 26, 2011, with the previous price of \$3.74 per pound.

We consider the recommendation closed because DLA headquarters officials notified us on April 18, 2013, and we agreed that they can take no further action. No adjustment to the airlift of fresh fruits and vegetable rate is legally allowable without the prime vendor's agreement due to the bilateral agreement between the government and the subsistence prime vendor that the contracting officer determined to be fair and reasonable via contract modification P00101. However, the contracting officer did not properly support the fair and reasonable pricing determination in this case because she used a flawed methodology and misinterpreted the FAR, which brought into question whether those prices that were definitized served the government's and taxpayers' best interest. Consequently, DLA should use actual historical pricing data, when available, before not-to-exceed tender rates for determining fair and reasonable prices on future procurements.

Controls Not Developed to Address Refunds of Subsistence Prime Vendor Overpayments

The report stated that DLA Troop Support personnel billed the Army about \$56.5 million in transportation, triwall, and storage costs incurred for FYs 2006 through 2009 to the incorrect fiscal year appropriation on the subsistence prime vendor contract for Afghanistan. The report recommended that the Commander, DLA Troop Support, direct subsistence officials to establish controls to ensure that future costs on subsistence prime vendor contracts, to include refunds of prime vendor overpayments and costs on invoices that cross fiscal years, are charged to the correct fiscal year appropriation. (Table 1, Recommendation B3)

DLA Troop Support Finance personnel developed standard operating procedures to establish controls to prevent future costs on subsistence prime vendor contracts, to include costs on invoices that cross fiscal years, from incorrect charges to fiscal year appropriations. However, Finance personnel overlooked including guidance to account for how they would process refunds of subsistence prime vendor overpayments to avoid processing the refunds against the incorrect fiscal year appropriation. Thus, DLA Troop Support remained at risk of incorrectly processing the refunds.

Controls Implemented to Ensure Costs Charged to Correct Fiscal Year Appropriation

The report identified that systemic problems prevented the STORES from recognizing that the costs should be charged to the fiscal year in which the services occurred. DLA Troop Support Finance officials stated they took corrective action at the beginning of FY

2009 by entering invoices for costs incurred directly into DLA's Electronic Business System, bypassing STORES.

For this process to be effective, DLA Troop Support personnel stated they obligated the funds in STORES after the order was created to ensure that they were available in the fiscal year in which the service occurred. They did this on a monthly basis for what they classified as high-risk premium items, such as private security, premium transportation, and emergency airlifts. Invoices received after the fiscal year in which the vendor provided the service did not process through STORES. Once DLA received the invoices from the subsistence prime vendor, if less than the obligated funds, they stated that they de-obligated the excess funds and manually entered the invoice into the Electronic Business System.

Corrective Action Needed to Mitigate Risks Regarding Refunds

The process corrected the previously identified problem of billing the incorrect fiscal year appropriation, and DLA Troop Support has established effective controls by documenting the majority of the process in their standard operating procedures. However, the standard operating procedures did not include the process for contract refunds of subsistence prime vendor overpayments (credits) to ensure that the credits were processed to the correct fiscal year appropriations. DLA Troop Support Finance personnel overlooked including procedures for refunds of subsistence prime vendor overpayments. We consider the recommendation still open. DLA Troop Support Finance needs to include guidance for refunds in the standard operating procedures.

Incomplete Review of All Subsistence Prime Vendor Contracts for Charges to the Correct Fiscal Year Appropriations

The report stated that DLA Troop Support personnel billed the Army about \$56.5 million in transportation, triwall, and storage costs incurred for FYs 2006 through 2009 to the incorrect fiscal year appropriation fund on the subsistence prime vendor contract for Afghanistan. The report recommended that the Commander, DLA Troop Support direct subsistence officials to conduct reviews of all subsistence prime vendor contracts to determine whether costs were charged to the appropriate fiscal year appropriation and, if costs are identified that were charged incorrectly, to initiate corrective action. (Table 1, Recommendation B4)

DLA Troop Support Finance personnel did not review all subsistence prime vendor contracts to ensure costs were charged to the correct fiscal year appropriation. They conducted a judgmental sample of billings from subsistence prime vendor contracts and performed a limited review of local stock numbers. This occurred because DLA Troop Support Finance personnel misunderstood the breadth of the report recommendation, although they previously agreed to review all subsistence prime vendor contracts in their management comments to the audit report. Without effectively reviewing all contracts,

DLA Troop Support Finance personnel did not review all subsistence prime vendor contracts to ensure costs were charged to the correct fiscal year appropriation.

DLA is at risk of incorrect charges remaining against past fiscal year appropriations, resulting in possible Antideficiency Act violations.

Judgmental Sample of High-Risk Subsistence Prime Vendor Contracts for Correct Fiscal Year Appropriation Billings

DLA Troop Support Finance officials conducted a judgmental sample of subsistence prime vendor contract billings to determine if they charged the correct fiscal year appropriation because they believed it would suffice to answer the recommendation. However, this did not address all subsistence prime vendor contracts to identify potential costs charged to incorrect fiscal years. Their first review focused on billings for high-risk premium support Local Stock Numbers. According to DLA Troop Support Finance officials, high-risk billings were those for contracts Outside the Continental United States (OCONUS) and subject to a process of manual offline payments.

DLA Troop Support Finance officials created 43 OCONUS high-risk premium support Local Stock Numbers to identify the premium support services that required manual

Their sample did not include all subsistence prime vendor contracts as recommended, even though their limited review identified seven incorrect billings valued over \$1.07 million.

billings to the customer. These numbers cover the billing for storage and handling of operational rations, airlifts, private convoy security, and Defense Base Act Insurance. These types of support are not required under the Continental United States (CONUS) contracts. DLA Troop Support Finance personnel conducted this review

to identify which contracts contained billings for high-risk premium support Local Stock Numbers. The review identified 3,279 OCONUS billings from FYs 2005 through 2012 valued over \$1.26 billion. According to a DLA Troop Support Finance official, appropriation data from FY 2009 and back in most cases were not readily available. Of the 3,279 OCONUS billings identified for that period, they sampled 80 (2 percent) of the billings valued over \$13.2 (1 percent) million to determine if they were billed to the correct fiscal year. Their sample did not include all subsistence prime vendor contracts as recommended, even though their limited review identified seven incorrect billings valued over \$1.07 million. According to DLA Troop Support Finance officials, they corrected the errors they identified.

Limited Review of Specific Local Stock Numbers for Fiscal Year Misappropriation

DLA Troop Support reviewed another judgmental sample of 10,847 subsistence prime vendor CONUS and OCONUS contract billings for orders placed on specific Local Stock Numbers in the months of September and October between FYs 2009 and 2010, 2010 and 2011, and 2011 and 2012. The 10,847 billings included in the sample were valued at about \$16.8 million. DLA Troop Support Finance officials categorized the risk of these billings being charged to the wrong fiscal year appropriation as low since they were not subject to the manual offline payments identified in the DoD IG Report No. D-2011-047. In conducting this review, they identified 38 billings valued at \$41,627.94 that were charged to incorrect fiscal year appropriations.

These errors were unrelated to the invoice fiscal year crossover problem identified in the report. According to DLA Troop Support Finance personnel, these errors occurred because responsible personnel did not update the customer's profile in the system. The military services provided the billing data, which finance personnel used to populate the customer's profile in the Electronic Business System. If the military services provided incorrect data or did not provide it in a timely manner, there was a risk of billing to the wrong appropriation. A DLA Troop Support Finance official stated they worked with the military services and DFAS to correct these errors when they identified them.

We consider the recommendation still open. DLA Troop Support Finance needs to review all subsistence prime vendor contracts for incorrect fiscal year appropriation billings, make corrections as necessary, and update customer profiles accurately and timely.

Follow-on Reviews Required to Determine Whether Corrective Actions Addressed Problems

DLA Troop Support implemented corrective actions on three other report recommendations. However, due to the on-going litigation, we did not validate the analysis supporting the contracting officer's unilateral definitization of premium transportation prices or the accuracy of supporting data for the subsequent overpayment calculated of about \$756 million. Once litigation is resolved an audit follow-up review will determine which, if any, of the following recommendations might require further corrective action:

- determining fair and reasonable prices for premium transportation services,
- calculating and recovering overpayments for premium transportation, and
- refunding premium transportation overpayments to the Army.

Fair and Reasonable Prices for Premium Transportation Services Determined and Change Order Definitized

The report stated that the contracting officer did not definitize or issue contract modifications in a timely manner, as required by the FAR and the DFARS. Specifically, the contracting officer did not establish permanent transportation rates in a timely manner, which resulted in potentially overpaying the subsistence prime vendor \$98.4 million for transportation within Afghanistan and overbilling the Army approximately \$108.5 million as a result of the overpayments. The report recommended that the contracting officer for subsistence support in Afghanistan determine fair and reasonable prices for transportation and use those prices to definitize the August 2005 verbal change order. (Table 1, Recommendation A1.a – Premium Transportation Only)

The DLA Troop Support subsistence contracting officer determined prices for premium transportation and used those prices to unilaterally definitize the August 2005 verbal change order through a contract modification. The contracting officer reached this pricing determination using results of a DCAA audit report on the previously

undefinitized contract action, dated August 29, 2011, and an internal technical analysis report, dated June 23, 2011.

The contracting officer stated she unilaterally definitized the prices for fixed-wing,

The subsistence prime vendor appealed the contracting officer's decision to the Armed Services Board of Contract Appeals, where it was in litigation at the time of our audit.

rotary-wing, and ground premium transportation rates through contract modification P00108 and sent a letter of the contracting officer's final decision to the subsistence prime vendor, dated December 9, 2011, after negotiations with the subsistence

prime vendor were unsuccessful. The subsistence prime vendor appealed the contracting officer's decision to the Armed Services Board of Contract Appeals (ASBCA) where it was in litigation at the time of our audit. We did not validate the supporting data used to make this fair and reasonable pricing determination since the issue was in litigation. Therefore, we consider this recommendation still open.

Recovery of Overpayments for Premium Transportation Fees Ongoing

The report stated that the contracting officer did not establish permanent transportation rates in a timely manner and recommended that DLA Troop Support compute and recover the overpayments of the difference between the reimbursement rates paid to the subsistence prime vendor and the finalized rates since December 2005, after the rates were established. (Table 1, Recommendation A1.c – Premium Transportation Only)

DLA Troop Support computed and began recovering overpayments totaling about \$756 million for transportation fees through administrative offset based on the definitized prices. Specifically, on February 28, 2012, DLA Troop Support began recovering about \$21.7 million per month through 36 planned

DLA Troop Support began recovering about \$21.7 million per month through 36 planned installments by withholding parts of payments due the subsistence prime vendor.

installments by withholding parts of payments due to the subsistence prime vendor. The portion of funds being administratively offset from payments to the subsistence prime vendor will be held in a DFAS suspense account and will be disbursed consistent with the outcome of the pending litigation to be decided by the ASBCA. DLA Troop Support's 36-month strategy to recover the total calculated premium transportation overpayments ran the risk of leaving \$282 million unrecovered (13 administrative offsets valued at \$21.7 million each). This is because the contract ends no later than December 2013, even with a 1-year bridge contract awarded to the subsistence prime vendor, effective June 22, 2012. The contract may potentially end sooner if the new subsistence prime vendor is operationally ready to begin work before then. DLA Troop Support was considering their options provided the ASBCA upholds DLA Troop Support's position. We did not validate the accuracy of the supporting data for their calculations because of ongoing litigation over the unilaterally definitized premium transportation prices. We consider this recommendation still open pending the completion of the litigation. DLA Troop Support needs to develop a plan of action, to include milestones, for recovering the

potential remaining premium transportation overpayments consistent with the ASBCA resolution of this matter.

Refunds to the Army for Premium Transportation Overpayments Ongoing

The report recommended the contracting officer coordinate with DLA Troop Support Finance personnel to refund the Army for any premium transportation overpayments and associated surcharges recovered from the subsistence prime vendor, given the previously reported premium transportation fair and reasonable pricing problems. (Table 1, Recommendation A1.d – Premium Transportation Only)

As discussed earlier, DLA Troop Support took corrective actions to calculate and recover premium transportation overpayments totaling about \$756 million. A DLA Troop Support Finance official stated that they meet with the Office of the U.S. Army Deputy Chief of Staff quarterly and plan to finalize repayment options for the premium transportation overpayments recovered post-litigation. We consider this recommendation still open based on the ongoing litigation.

Conclusion

DLA Troop Support implemented corrective actions to address recommendations pertaining to developing a QASP, reviewing contract administration, determining the need for administrative actions, and correcting funds refunded and billed to the wrong fiscal year. However, DLA Troop Support must do more to mitigate the remaining problems and risk areas associated with fair and reasonable pricing determinations, recovery of potential overpayments and controls over the proper use of appropriations.

To ensure these changes and improvements, the Commander, Defense Logistics Agency Troop Support should initiate corrective action, including a time-phased plan with measurable goals and metrics, to address the open recommendations as long as such action is consistent with the ASBCA resolution of this matter.

Recommendations, Management Comments, and Our Response

Revised, Renumbered, and Deleted Recommendations

The Vice Director, DLA provided comments on the finding for the Commander, DLA Troop Support. Based on comments from the Vice Director, DLA, we updated the finding conclusions in the following sections: Triwall Overpayment of \$25.9 Million Asserted As Not Valid (page 11); No Coordination of Fresh Fruits and Vegetables Airlift Overpayments (page 14); No Request to Have DCAA Determine Fair and Reasonable Prices for Fresh Fruits and Vegetables Airlift (page 14); Questionable Fair and Reasonable Pricing Determination Methodology for Airlift of Fresh Fruits and Vegetables (page 15); and Modification of the Pre-Audit Fresh Fruits and Vegetable Airlift Price Resulted In a No Recovery Determination (page 16).

Specifically, we agree with DLA that no adjustment to the airlift of fresh fruits and vegetable or triwall rates is legally allowable without the prime vendor's agreement due to the bilateral agreements between the Government and the subsistence prime vendor that the contracting officer determined to be fair and reasonable via contract modifications P00101 and P00102 respectively. However, the contracting officer did not properly support the fair and reasonable pricing determinations in either instance because she used flawed methodologies, misinterpreted the FAR, and did not maintain supporting documentation for the triwall pricing determination, which brought into question whether those prices that were definitized served the Government's and taxpayers' best interest. As a result of management comments, we deleted draft Recommendation 1.b and revised Recommendation 1.c, now 1.b. Draft Recommendations 1.c through 1.e have been renumbered as Recommendations 1.b through 1.d. See Appendix D for DLA management comments to the draft report.

We recommend that the Commander, Defense Logistics Agency Troop Support:

1. Implement corrective actions to address all recommendations, with the exception of Recommendations A1.b, A2.a, A2.b, A2.c, A3, A4.a, A4.b, B1, and B2, in DoD Office of Inspector General Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011, specifically:

- a. Initiate corrective actions to recover premium transportation fees and refund the Army after litigation is completed.**

Management Comments

The Vice Director, DLA, agreed and stated that DLA would continue to recover premium transportation overpayments and take action to refund the Army, as appropriate, based upon completion and consequent resolution of the litigation, ASBCA case 57884, scheduled for April through May 2014. As of April 1, 2013, DLA, through DFAS, has withheld \$304 million from the subsistence prime vendor via administrative offset against contract payments and plans to continue to collect any remaining overpayments through other Government contracts with the subsistence prime vendor after the current subsistence prime vendor contract expires.

Our Response

Comments from the Vice Director, DLA, were responsive. No additional comments are required.

- b. Use actual historical pricing data, when available, before not-to-exceed tender rates in determining fair and reasonable prices for future procurements.**

Management Comments

The Vice Director, DLA, disagreed and stated that DLA used the price analysis techniques in FAR Part 15.404-1(b) to determine the airlift of fresh fruits and vegetable rate fair and reasonable and that a legal opinion from its Office of Counsel supported that use of non-FAR commercial tender rates in the price analysis was allowable. The Vice Director also stated that the uncertain nature and fluid threat conditions in Afghanistan further justified the use of the USTRANSCOM “not-to-exceed” tender rates as a basis for comparison and noted other factors such as gross weight, types of aircraft, and delivery conditions were also factored into their comparison to the subsistence prime vendor’s proposed rate. Finally, the Vice Director stated that they obtained documentation from USTRANSCOM regarding the rates actually paid under the tender agreements, which after adjusting for some of the differences between USTRANSCOM orders and the subsistence prime vendor contract, supported to their conclusion that the originally contracted \$3.74 per pound rate was reasonable.

Considering DLA’s position that its pricing determination was based on reasonable conclusions, the \$3.74 per pound rate was bilaterally agreed to by DLA Troop Support and the subsistence prime vendor as a fair and reasonable rate and finalized in contract modification P00101. No adjustment to the airlift of fresh fruits and vegetable rate was legally allowable without the prime vendor’s agreement.

Our Response

Comments from the Vice Director, DLA, were partially responsive. We agree with DLA that no adjustment to the airlift of fresh fruits and vegetable rate is legally allowable due to the bilateral agreement between the Government and the subsistence prime vendor that resulted in the contracting officer issuing contract modification P00101. However, we concluded that DLA was non-compliant with the FAR 15.404-1(b)(2)(ii). The tenders are not actual rates and therefore were neither historical contract prices “paid” nor “proposed” contract prices. The contracting officer had access to the actual rates in DLA’s Distribution Standard System and should have used them in her fair and reasonable pricing analysis. The conditions in Afghanistan and other adjustment factors used in their pricing determination does not explain why the use of the “not-to-exceed” tender rates were chosen as a basis for comparison over rates paid under the USTRANSCOM tender agreements. Contrary to DLA’s response, our review of the May 24, 2011 pricing determination for the airlift of fresh fruits and vegetables that led to modification P00101, did not include any details regarding actual rates paid under the USTRANSCOM tender agreements. Furthermore, we have documentation of DLA Troop Support contracting officials making inquiries for rates paid under the tender agreements only after modification P00101, was issued and our follow-up audit was underway. We request that the Commander, Defense Logistics Agency Troop Support, provide comments on the revised recommendation in the final report.

- c. Issue guidance on how to process refunds of overpayments on subsistence prime vendor contracts that cross fiscal years to the correct fiscal year appropriations and update customer profiles accurately and timely.**

Management Comments

The Vice Director, DLA, agreed and stated that DLA created a standard operating procedure for Afghanistan offline payments for distribution fees. In addition, the Vice Director stated that DLA would work with DFAS areas supporting the Military Services to correct any discrepancies and make any necessary adjustments to billing and STORES profiles. Any adjustments or corrections are made in accordance with Volume 4, Chapter 3 of the DoD Financial Management Regulation, which contains information on how to process customer credits.

Our Response

While the Vice Director, DLA, agreed with our recommendation, comments were partially responsive. We agree Volume 4, Chapter 3 of the DoD Financial Management Regulation contains information on how to process customer credits. However, it does not define specific roles and responsibilities or provide detailed processes and procedures for administering requirements at the local level. We request that the Commander, Defense Logistics Agency Troop Support, provide additional comments on the recommendation in the final report.

- d. Conduct reviews of all subsistence prime vendor contracts in effect during FYs 2006 through 2012 to determine whether costs are charged to the appropriate fiscal year appropriation. Initiate corrective actions if incorrect charges are identified.**

Management Comments

The Vice Director, DLA, partially agreed and stated that time and cost constraints prevent DLA from pulling data prior to 2009. In addition, the Vice Director stated that DLA reviewed CONUS and OCONUS contracts identified as high-risk and provided details of the respective reviews; which were already discussed in detail on pages 18 through 20 in this report.

The Vice Director stated that DLA implemented effective corrective actions. In addition, the Vice Director stated that, to ensure effectiveness of actions taken, DLA will pull all available orders for high-risk items from October 2011 through December 2012 to confirm that each order was billed to the correct appropriation by April 30, 2013.

Our Response

Comments from the Vice Director, DLA, were partially responsive. While we agree a review of all subsistence prime vendor contracts could be resource-intensive, we require additional details specific to the time and cost constraints to which DLA is referring. We request that the Commander, Defense Logistics Agency Troop Support, provide additional comments on the recommendation in the final report.

- 2. Develop a time-phased plan with measurable goals and metrics regarding implementing recommendations in DoD Office of Inspector General Report No.**

D-2011-047, “Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan,” March 2, 2011.

Management Comments

The Vice Director, DLA, agreed and stated that DLA is developing a time-phased plan with measurable goals and metrics for tracking and implementing recommendations in the prior report by May 31, 2013.

Our Response

Comments from the Vice Director, DLA, were responsive. No additional comments are required.

3. Educate contracting officers on the requirement to maintain documentation of the basis for decisions made and data used for fair and reasonable price determinations.

Management Comments

The Vice Director, DLA, agreed and stated that DLA will issue guidance to the contracting community on the requirements to maintain documentation of the basis for the decisions made and data used for fair and reasonable price determinations by May 31, 2013.

Our Response

Comments from the Vice Director, DLA, were responsive. No additional comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from February 2012 through July 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.

This is a follow-up on the status of agreed upon actions based on recommendations made in DoD IG Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011. We assessed DLA Troop Support's efforts to implement the recommendations in DoD IG Report No. D-2011-047 and determined whether corrective actions addressed the problems. The report stated that subsistence contracting officials did not provide sufficient oversight of contract costs and performance. Specifically, the contracting officer did not adhere to certain provisions of the FAR and the DFARS or develop a QASP and written procedures to monitor contractor costs and performance. We obtained and reviewed documentation of corrective actions taken as a result of the audit, in particular, the recoupment of overpayments identified in the audit report, and evaluated whether DLA Troop Support implemented sufficient internal controls to ensure effective contract administration of the subsistence prime vendor contract for Afghanistan. We discussed DLA Troop Support's efforts to improve contract administration of the subsistence prime vendor contract for Afghanistan with DLA Troop Support personnel from the Command, Garrison Feeding Division OCONUS Subsistence, and finance offices.

We reviewed applicable Federal and DoD criteria related to the Subsistence Prime Vendor Program, contract quality assurance and surveillance requirements, contract pricing and documentation, undefinitized contract actions, and distribution of budgetary resources. The specific criteria reviewed included United States Code, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, Office of Management and Budget guidance, DoD Directives, DoD Instructions, and DoD Regulations. We reviewed and discussed existing internal control procedures and reviewed the results of corrective actions. Because of timeframes required to test the respective controls, we limited our review to determining whether DLA Troop Support developed a QASP, not whether they effectively implemented the QASP.

Computer-Processed Data Were Sufficiently Reliable

We obtained Enterprise Business System data from DLA Troop Support Finance for transactions dated from FYs 2006 through 2009. These transactions were based on \$56.5 million in billings identified in the report as assigned to the incorrect fiscal year appropriation. We reviewed this data to determine whether DLA Troop Support refunded and billed these misappropriated funds to the correct fiscal years. We conducted tests of the data through the course of our audit work, including comparing the transactions against supporting records such as: billing reports, credit/debit memos, and order/receipt information reports obtained from DLA Troop Support. From the tests and audit work we performed, we determined that the data were sufficiently reliable for our purpose.

Use of Technical Assistance

We obtained legal input from the DoD Inspector General's Office of General Counsel regarding DLA Troop Support's decision to use non-FAR-based tenders in their fair and reasonable pricing determination for fresh fruits and vegetables airlift rates from Sharjah, UAE, into Afghanistan.

Prior Coverage

During the last 5 years, the Department of Defense Inspector General (DoD IG) has issued one report discussing management of DLA's Subsistence Prime Vendor Program. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

DoD IG

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

Appendix B. Status of Corrective Actions for DoD IG Report No. D-2011-047 Recommendations

Rec. No.	DLA Corrective Action Addresses Problem? (Y/N/Not Tested)	Remarks	See Page No.
A1.a	N (triwall); Not Tested (premium transportation)	(closed: triwall); (open: premium transportation)	9 and 20
A1.b	N	(closed)	11
A1.c	N (triwall); Not Tested (premium transportation)	(closed: triwall); (open: premium transportation)	12 and 21
A1.d	N (triwall & airlift of fresh fruits and vegetables); Not Tested (premium transportation)	(closed: triwall & airlift of fresh fruits and vegetables); (open: premium transportation)	13, 14, and 22
A2.a	N	(closed)	14
A2.b	N	(closed)	15
A2.c	N	(closed)	16
A3	Y	(closed)	6
A4.a	Y	(closed)	7
A4.b	Y	(closed)	7
B1	Y	(closed)	8
B2	Y	(closed)	8
B3	N	(open)	17
B4	N	(open)	18

Source: DoD IG Analysis.

Appendix C. Regulatory Guidance

Federal Acquisition Regulation Part 10, “Market Research”

This guidance prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. Part 10.002(e) states, “Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.”

Collection Installments, 31 CFR sec. 901.8 (2011)

This guidance states, “The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor’s ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.”

Federal Acquisition Regulation Subpart 15.4, “Contract Pricing”

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding. Part 15.404-1(b)(2)(ii) states that:

“comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items” is an example of a technique to ensure a fair and reasonable price.

DoD Instruction 4500.57 section 4.2, “Transportation and Traffic Management”

This guidance states:

[n]on-FAR procurement instruments such as tenders of service and bills of lading will not compete with FAR procurements and shall only be used in limited situations when FAR procurements cannot meet customer requirements. To the maximum extent practicable, FAR and non-FAR procurements will be performance-based, mode-neutral, and time-definite; use best value acquisition processes and full and open competition; and comply with source preference laws.

Defense Transportation Regulation 4500.9-R, Part II, Chapter 201, “Rate Quotes – Tenders”

This guidance states that tenders are not contracts. They are:

a carrier’s offer to provide services at the quoted rate. The contract is created after the Transportation Officer offers the movement and the carrier accepts the movement under a Bill of Lading. These are generally best suited for simple procurements where best value is deemed the low cost responsive carrier. It is not suitable when a shipper needs a cost/price technical tradeoff analysis to determine the best value carrier.

Section 1502(a), Title 31, United States Code (31 U.S.C. § 1502(a))

This is commonly referred to as the “Bona Fide Needs Rule,” which states an appropriation is available to pay expenses incurred during the time that the appropriation is available for obligation.

DoD Regulation 7000.14-R, “DoD Financial Management Regulation” Volume 14, Chapter 3. Paragraph 030101

The regulation provides that within two weeks of discovering a potential violation of the Antideficiency act, the activity concerned will:

report the potential violation, with the related information in paragraphs 030101.A-J, through command channels to the applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or the Senior Financial Manager for other Department of Defense (DoD) Components (referred herein as DoD Component).

- A. Accounting classification of funds involved,
- B. Name and location of the activity where the alleged violation occurred,
- C. Name and location of the activity issuing the fund authorization, if different than subparagraph 030101.B,
- D. Amount of the alleged violation,
- E. Nature of the alleged violation,
- F. Date the alleged violation occurred and date discovered,
- G. Means of discovery,
- H. Description of the facts and circumstances of the case,
- I. Anticipated dates of completion of the preliminary review and submission of the report, and
- J. The name(s) and work phone number(s) of the preliminary investigator or the members of the preliminary review team.

DoD Regulation 7000.14-R, “DoD Financial Management Regulation” Volume 14, Chapter 3. Paragraph 030202

This guidance states:

When the DoD Component has evidence of a potential violation, as a result of the evaluation in section 0301, the DoD Component shall assign a preliminary review investigator and/or a review team to research the applicable business transactions and accounting records to determine the amount and cause of the potential statutory violation. The preliminary review should be completed within 14 weeks from the date of initial discovery.

Defense Federal Acquisition Regulation Supplement Subpart 242.71, “Voluntary Refunds”

This subpart states:

A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor that is not required by any contractual or other legal obligation. Follow the procedures at PGI 242.7100 for voluntary refunds.

Defense Federal Acquisition Regulation Supplement, Procedures, Guidance, and Information 242.71, “Voluntary Refunds”

This guidance states, “A voluntary refund may be solicited (requested by the Government) or unsolicited.”

Defense Logistics Agency Comments



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

APR 26 2013

MEMORANDUM FOR DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR
GENERAL, READINESS, OPERATIONS AND SUPPORT

SUBJECT: Response to DoDIG Draft Report, "Contract Administration of the Subsistence
Prime Vendor Contract for Afghanistan Improved, but Additional Actions are
Needed" (D2012-D000LD-0086.000)

Attached is the Defense Logistics Agency's (DLA) response to the subject draft report.
We appreciate the opportunity to review and comment on the finding and recommendations.

The point of contact for this engagement is [REDACTED]

A handwritten signature in cursive script, reading "Edward J. Case", is positioned above the typed name.

EDWARD J. CASE
Vice Director

Attachment:
As stated

SUBJECT: DLA RESPONSE TO DRAFT "CONTRACT ADMINISTRATION OF THE
SUBSISTENCE PRIME VENDOR CONTRACT FOR AFGHANISTAN
IMPROVED, BUT ADDITIONAL ACTIONS ARE NEEDED"

1. Implement corrective actions to address all recommendations, with the exception of Recommendations A3, A4.a, A4.b, B1, and B2, in DOD Office of Inspector General Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011, specifically:

a. **Recommendation:** Initiate corrective actions to recover premium transportation fees and refund the Army after litigation is completed.

DLA Response: **Concur**, as action has already been initiated and recovery is taking place. On March 1, 2012, DLA began withholding \$21.767 million per month from Supreme via an administrative offset against contract payments. As of April 1, 2013, DLA has withheld \$304 million. DLA will continue to use the monthly administrative offset through the Defense Finance and Accounting Services (DFAS). Although the current Supreme Subsistence Prime Vendor contract is due to expire December 12, 2013, DLA intends to continue to collect \$21.7 million per month through other Government contracts with Supreme. Upon completion of the Supreme litigation, ASBCA case 57884, currently scheduled to be heard on April 28 – May 9, 2014, and consequent resolution of the premium outbound transportation issue, DLA will take action to refund the Army, as appropriate based on the outcome of the litigation. DLA is setting aside the amounts collected using administrative offset in order to maintain an accountable fund to be used in refunding the Army.

b. **Recommendation:** Initiate a review of the \$25.9 million triwall overpayment previously identified, based on the Former Acting Commander, Defense Logistics Agency Troop Support request, dated March 10, 2011, made to the subsistence prime vendor for triwall cost information on the basis that those costs were subject to the 75 percent reimbursement rates. Based on the results of the review, recover any applicable overpayment.

DLA Response: **Concur**. DLA has reviewed the potential \$25.9 million triwall overpayment and determined that no overpayment was made to the contractor. Modification P00102, based on the contracting officer's fair and reasonable determination, definitized the triwall rates at the contractor's original proposed rate, therefore no overpayments occurred.

On March 10, 2011, the DLA Troop Support Acting Commander issued Supreme a letter notifying Supreme that DLA Troop Support was not satisfied with the lack of timeliness and completeness of Supreme's submissions and that DLA Troop Support expected Supreme to cooperate fully with the Defense Contract Audit Agency (DCAA). In addition, Supreme was instructed to submit a cost breakdown for the chill and frozen triwalls. On March 17, 2011, Supreme responded to the letter, stating that fuel sales history would be provided to

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DCAA. With regard to triwalls, Supreme stated that “the contract at issue is a commercial item contract, there is no basis on which the Government has any right to audit any actual costs associated with the contract, although Supreme has agreed to make commercial accounting records available for the POT rates. There is no basis to reopen the pricing of triwalls, an issue that was resolved in 2006.” After receiving Supreme’s reply, DLA reviewed its historical records and concurred with Supreme that during the 2005/2006 timeframe, the prices for triwalls were determined to be fair and reasonable by the Contracting Officer. Because the Contracting Officer determined the triwall prices to be fair and reasonable, no further correspondence took place between Supreme and DLA regarding an audit for the triwalls. On March 30, 2011, the Contracting Officer prepared a Memorandum for Record (MFR) documenting and confirming that the triwall prices are fair and reasonable. DLA previously provided supporting documentation to the audit team as follows: “MFR – Triwalls,” dated May 24, 2011; and “Addendum to May 24, 2011 MFR,” dated August 7, 2012. DLA Acquisition pricing personnel reviewed the determination and concurred with the Contracting Officer’s fair and reasonable determination. As a result, bilateral modification P00102 was executed on August 26, 2011, to document the previous pricing agreement for triwall; a copy of this modification was provided to the audit team. Since the original triwall rates were determined to be fair and reasonable by the Contracting Officer in 2005/2006 (with subsequent documentation in 2011), the 75% reimbursement rate established in Modification P00012 did not apply to the triwall rates, and there was therefore no overpayment.

c. **Recommendation:** Determine a fair and reasonable price for fresh fruits and vegetables airlift requirements from Sharjah, United Arab Emirates into Afghanistan in accordance with Government regulations, to include at a minimum:

- i. a request for Defense Contract Audit Agency assistance;
- ii. use of techniques that do not include tender rates;
- iii. modification of the contract to incorporate any revised airlift price;
- iv. coordination between the contracting officer and finance personnel to identify and recover overpayments, if applicable; and
- v. compute the difference between the \$3.74 per pound rate to the subsistence prime vendor and the finalized airlift rate since December 2005, after the airlift rate is established. If applicable, recover any differences.

DLA Response: Non-Concur. DLA used the price analysis techniques in FAR Part 15.404-1(b) to determine the airlift rates for FF&V fair and reasonable. DLA previously provided supporting documentation: “MFR and SSS – Audit Was Not Requested,” dated

Revised and
renumbered as
Recommendation 1.b.

August 7, 2012. DLA also provided a legal opinion from its Counsel confirming that use of non-FAR commercial tender rates in the price analysis was allowable in accordance with applicable regulations. DLA compared the FF&V rates to United States Transportation Command (TRANSCOM) not to exceed (NTE) tender rates, which are determined fair and reasonable by the TRANSCOM Contracting Officer based on competition. The NTE rates are rates determined to be fair and reasonable by TRANSCOM over a one year period, and cover commercial air carrier market conditions for similar items. The NTE tender rates represent the potential maximum price that the Government would pay under the TRANSCOM tender agreements for transportation services similar to the performance required by Supreme under the Subsistence Prime Vendor Afghanistan contract.

Given the lack of established commercial supply chains and the uncertain nature and fluid threat conditions in Afghanistan, it was reasonable to use rates provided to the Government by commercial air carriers servicing that region, such as TRANSCOM NTE rates, for comparison purposes. In order to achieve a reasonable basis for comparison, the Contracting Officer made appropriate adjustments in comparing the tender rates to the proposed Supreme rates, including factors such as gross weight versus net weight, types of aircraft, and delivery conditions.

In addition to the analysis using TRANSCOM NTE rates, DLA also compared the FF&V airlift rates incorporated into the Subsistence Prime Vendor contract to rates actually paid under TRANSCOM's tender agreements. Under TRANSCOM's spot bid process, order prices are obtained at the time an actual shipment is requested. Although these rates are only for a specific requirement at a single point in time, and are not necessarily reflective of the entire scope of work required of Supreme, these rates were actual rates paid by the Government for similar transportation. DLA sought and obtained documentation from TRANSCOM regarding the rates actually paid under the TRANSCOM tender agreements. Based on an analysis of these spot rates, which were adjusted to compensate for some of the differences between the TRANSCOM orders and the Prime Vendor contract, DLA concluded that the rates supported the price reasonableness of the rates incorporated into Supreme's contract. DLA previously provided supporting documentation to the DODIG audit team: email regarding "NACG Transactions," dated October 23, 2012.

Because DLA reasonably concluded that airlift rates for FF&V were fair and reasonable based on a comparison to the TRANSCOM tender rates, and those FF&V rates were ultimately added to the Subsistence Prime Vendor Afghanistan contract through a bilateral agreement between the Government and Supreme in the form of Modification P00102, no adjustment to the rates is necessary or, without Supreme's agreement, legally allowable.

d. **Recommendation:** Issue guidance on how to process refunds of overpayments on subsistence prime vendor contracts that cross fiscal years to the correct fiscal year appropriations and update customer profiles accurately and timely.

DLA Response: Concur. DLA created a standard operation procedure (SOP) for Afghanistan offline payments for distribution fees. This SOP was created so all obligations and billings are recorded in the same fiscal years. DLA has been following this procedure since May 2011. Any obligations and billing prior to May 2011 for the Subsistence Prime Vendor Afghanistan contract that cross fiscal years were manually processed in EBS by DLA. For all other Subsistence contracts, if billings cross over fiscal years, DLA will process the adjustment and/or correction. DLA will work with the Defense Finance and Accounting Service (DFAS) areas supporting the Military Services (each military service has a DFAS office responsible for handling its own billings) to correct any discrepancies and make any necessary adjustment and/or corrections to billing and Subsistence Total Ordering and Receipt Electronic System (STORES) profiles. These adjustments and/or corrections will be made in accordance with Volume 4, Chapter 3 of the Department of Defense (DOD) Financial Management Regulations (FMR), which contains information on how to process customer credits.

e. **Recommendation:** Conduct reviews of all subsistence prime vendor contracts in effect during FYs 2006 through 2012 to determine whether costs are charged to the appropriate fiscal year appropriation. Initiate corrective actions if incorrect charges are identified.

DLA Response: Partially Concur. DLA concurs with recommendation to review Subsistence Prime Vendor Contracts; however, time and cost constraints prevent DLA from pulling data prior to 2009. DLA has reviewed CONUS and OCONUS contracts determined to be High Risk.

The first review, of 10,847 Subsistence Prime Vendor CONUS and OCONUS contract billings, looked at billings for September and October between FY 2009 and FY 2012 (Sept 2009/Oct 2009 (FY10); Sept 2010/Oct 2010 (FY11); and Sept 2011/Oct 2011 (FY12). The greatest risk period for these billings is the months of September and October because of the transition between the fiscal years. These billings were valued at \$16.8 million. Of these billings, 38, valued at \$41,627.94, were found to be charged to incorrect fiscal year appropriations. This equates to approximately .02%. All of these 38 incorrect billings were corrected.

A second review of data was also conducted for High Risk Items in both CONUS and OCONUS contracts, to determine whether those items were included in contracts and whether billings for those items were charged to the correct appropriations. Items that are considered High Risk are all stock numbers pertaining to Premium Outbound Transportation that are billed from the Operations and Maintenance - Army (OMA) account. These items are considered High Risk because, before creating the order in STORES, additional documentation must be obtained. The additional time necessary to

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obtain this documentation creates a delay between the time when the order is actually placed and completed and when the order finally posts in the system. This delay creates the potential for these High Risk items to be charged to the fiscal year after the fiscal year when the order is actually completed. Although processes have now been put in place to prevent these High Risk items from being billed to the incorrect appropriation, due to the higher likelihood of incorrect billing with these items, DLA conducted an additional review of these items.

The second review selected Local Stock Numbers (LSNs) considered High Risk items. Orders associated with these items were pulled and checked to see if the correct appropriations were billed. There were 43 OCONUS high-risk premium support LSNs that required manual billing to identify premium support services. Other LSNs do not require manual intervention and, therefore, do not carry the same risk as the high risk items. The 43 LSNs were used to run queries for all billings from all Subsistence Prime Vendor Contracts for all vendors both CONUS and OCONUS for the period between FY 2005 and 2012. Note that this did not include just contracts for Subsistence Prime Vendor Afghanistan but all Subsistence Prime Vendor Contracts. The 43 high risk items pertained to OCONUS contracts only. For this review, DLA identified 3,279 OCONUS billings of the High Risk items from FYs 2005 through 2012, valued at over \$1.26 billion. Although billing records were available from 2005 through 2012, appropriation data was not available prior to 2009. As a result, the review of correct appropriations could only be conducted from 2009 forward. Of the 3,279 OCONUS billings reviewed, it was determined that 2,078 records had appropriation documentation available. Of the 2,078 records, 1,996, or approximately 96%, had the correct appropriation cited. All identified errors were corrected.

Adequate corrective action has therefore been accomplished. As a follow-on to confirm the efficacy of the corrective measures taken, DLA will pull all available orders for High Risk items from October 2011 thru December 2012. DLA will apply appropriation data to this report to confirm that each order was billed to the correct appropriation. The estimated date to complete this action will be April 30, 2013.

2. **Recommendation:** Develop a time-phased plan with measurable goals and metrics regarding implementing recommendations in DOD Office of Inspector General Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011.

DLA Response: Concur. DLA is developing a time-phased plan with measurable goals and metrics for items remaining open following resolution of this follow-on audit. The estimated completion date is May 31, 2013.

3. **Recommendation:** Educate contracting officers on the requirement to maintain documentation of the basis for decisions made and data used for fair and reasonable price determinations.

DLA Response: **Concur.** DLA will issue guidance to the contracting community on the requirements to maintain documentation of the basis for decisions made and data used for fair and reasonable price determinations. The estimated completion date is May 31, 2013.



Inspector General Department of Defense

