



# INSPECTOR GENERAL

*U.S. Department of Defense*

FEBRUARY 12, 2015



## Some Contracting Controls at Mission and Installation Contracting Command, Fort Polk, Louisiana, Need Improvement



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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# Results in Brief

## *Some Contracting Controls at Mission and Installation Contracting Command, Fort Polk, Louisiana, Need Improvement*

February 12, 2015

### Objective

We determined whether Mission and Installation Contracting Command (MICC) controls for award, funding, and administration of contracts supporting Fort Polk, Louisiana, Directorate of Public Works functions were effective. This audit is in response to allegations of MICC contract mismanagement made to the Defense Hotline.

### Findings

For the three contracts we reviewed, Fort Polk controls for funding contracts were generally effective, but controls for awarding and administering contracts needed improvement. A Fort Polk program official improperly authorized out-of-scope work; and a contracting official authorized out-of-scope work valued at \$105,944, and Fort Polk contracting officials did not effectively monitor contract performance. These conditions occurred because the contracting officers at the time did not ensure contracting policies and procedures were implemented. In addition, Fort Polk contracting officials incorporated inappropriate construction-related Federal Acquisition Regulation (FAR) clauses for work requirements that were maintenance and repair in nature and incorporated poorly defined performance work statements into the two contracts. This occurred because contracting staff were in a hurry to obligate expiring operations and maintenance (O&M) funds; MICC

### Findings (cont'd)

supervisory reviews were inadequate; and the contracting officer did not request legal reviews of proposed contract awards as required by Army policy.

As a result, Fort Polk officials created an unauthorized commitment by improperly authorizing out-of-scope work on the Horton contract. Furthermore, controls over Fort Polk contract award and administration efforts should be strengthened to eliminate unnecessary risks associated with supporting the Fort Polk Directorate of Public Works function and ensure that the government receives what it paid for.

We partially substantiated two of six Defense Hotline allegations. We found the other four allegations to be unsubstantiated.

### Recommendations

We recommend the Commanders, MICC and Installation Management Command, respectively, review the contracting officers' and project manager's actions regarding one contract award and, as appropriate, initiate management or other actions to hold them accountable. We also recommend the Commander, MICC, determine whether the unauthorized commitment may be properly ratified in accordance with FAR 1.602-3; require detailed supervisory review of proposed contract awards; require contracting officers to take various actions to ensure thorough outside contract review; fully monitor contractor compliance, as required through regulation; and adopt several practices to ensure contracts specifically and accurately describe the projects to be undertaken.

### Management Comments Required

The Commanders, MICC and Installation Management Command, did not respond to the recommendations in the report. We request that the Commanders provide comments on the final report. Please see the Recommendations Table.

## ***Recommendations Table***

Management	Recommendations Requiring Comment
Commander, Mission and Installation Contracting Command	1.a – 1.d
Commander, Installation Management Command	2.a – 2.c

Please provide comments by February 27, 2015.





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

February 12, 2015

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY**

**SUBJECT: Some Contracting Controls at Mission and Installation Contracting Command,  
Fort Polk, Louisiana, Need Improvement (Report No. DODIG-2015-080)**

We are providing this report for your review and comment. The Commander, Mission and Installation Contracting Command, and the Commander, Installation Management Command, did not respond to the draft report. We initiated the audit in response to allegations made to the Defense Hotline regarding Mission and Installation Contracting Command contracting mismanagement. For the three contracts reviewed, Fort Polk funding controls were generally effective, but controls for awarding and administering contracts needed improvement. Specifically, a Fort Polk program official made an unauthorized commitment by improperly authorizing out-of-scope work valued at \$105,944. We partially substantiated two of six Defense Hotline allegations. We found the other four allegations to be unsubstantiated. We conducted this audit in accordance with generally accepted government auditing standards.

DoD Directive 7650.3 requires that recommendations be resolved promptly. Please provide comments that state whether you agree or disagree with the findings and recommendations. If you agree with our recommendations, describe what actions you have taken or plan to take to accomplish the recommendations and include the completion dates of your actions. If you disagree with the recommendations or any part of them, please give specific reasons why you disagree and propose alternative action if that is appropriate. You should also comment on the internal control weaknesses discussed in the report.

Please send a PDF file containing your comments to [cmp@dodig.mil](mailto:cmp@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We should receive your comments by February 27, 2015. Comments provided on the final report must be marked and portion-marked, as appropriate, in accordance with DoD Manual 5200.01. We normally include copies of the comments in the final report. If you consider any matters to be exempt from public release, you should mark them clearly for Inspector General consideration. We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9187 (DSN 664-9187). If you desire, we will provide a formal briefing on the results.

A handwritten signature in blue ink, appearing to read "M. Roark", is positioned above the printed name of the Assistant Inspector General.

Michael J. Roark  
Assistant Inspector General  
Contract Management and Payments

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## Acronyms and Abbreviations

# Introduction

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## Objective

We conducted this audit in response to Defense Hotline allegations that Mission and Installation Contracting Command (MICC) mismanaged contract W9124E-11-C-0021 (Horton contract). Our objective was to determine whether MICC controls for awarding, funding, and administering contracts supporting Fort Polk, Louisiana, Directorate of Public Works (DPW) functions were effective. Specifically, we determined whether MICC officials properly competed contracts and obligated and used contract funds; we also determined whether MICC officials executed contract modifications in accordance with the scope of the contract. See Finding B for a summary of the six allegations made to the Defense Hotline and our responses. We did not review every specific allegation made to the Defense Hotline. We will consider including these in a separate follow-on audit if resources allow. See the Appendix for our scope and methodology.

## Background

The Fort Polk DPW mission is to provide engineering, housing, master planning, environmental, business operations, and operations and maintenance (O&M) support for the Fort Polk Base Garrison and the Army Joint Readiness Training Center. The U.S. Army Installation Management Command, headquartered at Fort Sam Houston (San Antonio), Texas, is the parent command for the Fort Polk Base Garrison and DPW functions.

MICC Fort Polk supports Army Joint Readiness Training Center and Fort Polk Base Garrison operations (including DPW) by contracting for supplies, services, and minor construction; and providing acquisition planning and contract management services. The U.S. Army Materiel Command and the U.S. Army Contracting Command (ACC), both headquartered at Redstone Arsenal, Alabama, and the MICC, headquartered at Fort Sam Houston, represent the chain of command for the Fort Polk MICC office. MICC Fort Polk officials provided data indicating that in FY 2013, MICC Fort Polk performed 720 contract actions, valued at \$222.3 million and that FY 2013, MICC Fort Polk support of Fort Polk DPW included 163 contract actions, valued at \$38.5 million. We reviewed a sample of seven contract actions from 3 contracts, valued at \$112.7 million. See Table for a summary of contract actions reviewed.

*Table. Fort Polk Contract Actions Reviewed*

Contract Number	Description	Contractor	Business Type	FY13 Contract Actions	FY 2013 Obligated Amount	Total Contract Value
W9124E-11-C-0021	Maintenance and Repair	Horton Construction	8(a)	0	\$0	\$ 1,925,401
W9124J-09-C-0014	Base Operations and Support	Pride Industries (Ability One)	Ability One <sup>1</sup>	5	23,215,092	110,207,319 <sup>2</sup>
W9124E-12-D-0003 Task Order 0026	Maintenance and Repair	WB Construction and Sons, Inc.	8(a)	2	546,644	544,621
<b>Total</b>				<b>7</b>	<b>\$23,761,736</b>	<b>\$112,677,341</b>

<sup>1</sup> The Javits-Wagner-O'Day Act provides employment opportunities for people who are blind or have other severe disabilities. FAR 8.7, "Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled," implements the Act by providing for purchase of supplies or services from Ability One Program participating agencies.

<sup>2</sup> Contract value as of July 30, 2014.

### ***Horton, WB Construction, and Ability One Contract Awards***

Fort Polk contracting officials awarded a firm-fixed-price contract, valued at \$1,943,148, to Horton Construction Company, Inc., an 8(a) firm, on September 13, 2011, for concrete crushing and erosion control. On March 6, 2014, Fort Polk contracting officials issued modification P00005, which deobligated \$17,747 of unused funds, decreasing the Horton contract value to \$1,925,401. The Horton contract had one contract line item number (CLIN) for concrete crushing and erosion control work and one CLIN for a performance bond.

On September 11, 2013, Fort Polk contracting officials awarded firm-fixed-price task order 0026 to WB Construction for \$754,501. The task order statement of work (PWS)<sup>1</sup> required the contractor to overlay approximately 1,400 feet of an existing Fort Polk paved road. The PWS also included extending a 6-inch shoulder by 18 inches on each side of the existing road for approximately 1 mile. On September 26, 2013, Fort Polk contracting officials issued task order modification 01, which revised the PWS to reduce the scope of work, and deobligated \$207,857, decreasing the value to \$546,644. On February 13, 2014, Fort Polk contracting officials issued task order modification 03, which deobligated \$2,022 for an excess bond payment, decreasing the task order value to \$544,621.

<sup>1</sup> Task Order 26 contained a statement of work. The Horton and Ability One contracts contained performance work statements. For the purposes of this report we refer to both statements of work and performance work statements as "PWS."



On May 4, 2009, MICC Headquarters awarded a combination firm-fixed-price and cost-reimbursable contract to Ability One contractor Pride Industries for \$19.6 million. As of September 30, 2013, the total contract value was \$90.5 million. The contract was for general Fort Polk base operations and support, including maintenance of property structures, roads, training areas, training facilities, and utility infrastructure. The contract period of performance consisted of a base year and four 1-year option periods. MICC Fort Polk obligated \$23.3 million on the contract in FY 2013. On May 19, 2009, contract modification P00001 transferred contract administration responsibility from MICC Headquarters to MICC Fort Polk.

## Review of Internal Controls

DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance programs are operating as intended and to evaluate the effectiveness of the controls. We identified the following internal control weaknesses. Fort Polk contracting officials:

- improperly authorized payments for out-of-scope work;
- improperly incorporated project changes into the contract;
- did not review a quality assurance surveillance plan (QASP);
- did not monitor contract performance;
- did not separately price Horton CLINs for different project tasks; and
- used inappropriate construction-related Federal Acquisition Regulation (FAR) clauses and poorly defined PWSs in maintenance and repair contracts.

We also identified the following internal control weaknesses in Fort Polk program management controls: improper authorization of out-of-scope work and failure to develop or tailor QASPs. We will provide a copy of the final report to the senior official in charge of internal controls in the Army.

## Finding A

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### Some Fort Polk Contracting Controls Need Improvement

For the three contracts we reviewed, Fort Polk controls for funding contracts were generally effective, but controls for properly awarding and administering contracts needed improvement. Fort Polk controls for awarding, funding, and administering FY 2013 Ability One contract actions were effective. In addition, MICC Fort Polk controls for funding and administering the WB Construction task order and for funding the Horton contract were generally effective.

However, Fort Polk controls for properly administering the Horton contract were not effective. Specifically, a Fort Polk program official improperly authorized out-of-scope work;<sup>2</sup> and a contracting official authorized out-of-scope work valued at \$105,944, and Fort Polk:

- contracting officials did not properly incorporate project work requirements and subsequent project changes into the contract;
- program officials did not develop a QASP, and contracting officials did not review a QASP;
- contracting officials did not effectively monitor contract performance; and
- contracting officials approved three contractor invoices containing payments for the out-of-scope work.

This occurred because the contracting officers at the time did not ensure that contracting policies and procedures were implemented.

In addition, MICC Fort Polk controls for awarding the Horton contract and the WB Construction task order were not effective. Specifically, MICC Fort Polk contracting officials:

- did not separately price Horton contract line items for different project tasks to be performed;
- incorporated inappropriate construction-related FAR clauses into the Horton contract and the WB Construction task order for work requirements that were maintenance and repair in nature; and
- incorporated poorly defined PWSs into the Horton contract and the WB Construction task order.

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<sup>2</sup> The PWS defines the contract's performance requirements and the work to be accomplished. Defining the performance requirements includes identifying required outputs, key performance indicators or performance characteristics, and acceptance standards. Any work performed outside the PWS is considered out-of-scope work.

Fort Polk controls for awarding the Horton contract and the WB Construction task order were not effective because:

- contracting staff were in a hurry to complete and issue a contract to obligate expiring O&M funds;
- MICC supervisory reviews were inadequate; and
- the contracting officer did not request legal reviews of proposed contract awards, as required by Army policy.

A Fort Polk program official created an unauthorized commitment when the official improperly authorized out-of-scope work on the Horton contract. Consequently, the MICC Commander needs to determine whether the unauthorized commitment may be properly ratified in accordance with FAR 1.602-3. Furthermore, controls over Fort Polk contract award and administration efforts should be strengthened to eliminate unnecessary risks associated with supporting the DPW function and ensure the Government receives what it paid for.

## Contract Funding Controls Generally Effective

Fort Polk funding controls were generally effective for all three contracts. The United States Code and DoD financial management regulations<sup>3</sup> state that “appropriations shall be applied only to the objects for which the appropriations were made, except as otherwise provided by law.” In addition, DoD financial management guidance established 11 military function titles for DoD appropriations, including military personnel, O&M, procurement, and military construction (MILCON). All three Fort Polk contracts and supporting modifications reviewed complied with the DoD financial management regulation requirements by including Army O&M fiscal-year funding designations appropriate to the work performed under the contracts.

## Some Contracting Administration Controls Needed Improvement

MICC Fort Polk controls for administering the Ability One contract and the WB Construction task order were generally effective, but contract administration controls over the Horton contract needed improvement.

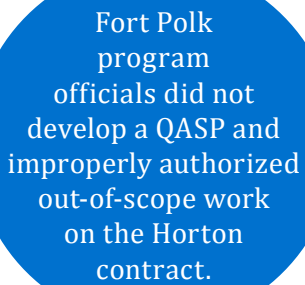
<sup>3</sup> Title 31 U.S.C. Section 1301, “Application,” and the DoD 7000.14-R, “Financial Management Regulation,” Volume 14, Chapter 2, “Antideficiency Act Violations,” November 2010.

### ***Effective Administrative Controls on Two Contracts***

Fort Polk contracting officials performed contract surveillance on the Ability One contract and the WB Construction task order. The Ability One contract surveillance was based on a tailored QASP<sup>4</sup> and surveillance was documented in the electronic Army paperless contract file and virtual contracting enterprise-contracting officer's representative systems. Ability One contractor performance was also assessed and reported in the contractor performance assessment reporting system. Government surveillance for the WB Construction task order did not include a tailored QASP. However, the contracting officer's representative (COR) monitored contractor performance through daily quality assurance records kept in hardcopy files. The COR also electronically prepared and provided monthly status reports and reviews of WB Construction invoices to the contracting officer.

### ***Horton Contract Administration Controls Were Not Effective***

Fort Polk contract administration controls over the Horton contract needed improvement. Fort Polk program officials did not develop a QASP and improperly authorized out-of-scope work on the Horton contract. Fort Polk contracting officials did not ensure that program officials developed a QASP, did not properly modify the contract to reflect changes to project requirements, and did not effectively monitor contractor performance. In addition, MICC contracting officers approved for payment three contractor invoices containing the out-of-scope work. This occurred because the contracting officers did not ensure that contracting policies and procedures were implemented. Contracting officers are responsible for monitoring contractor performance, reviewing a QASP, modifying the contract to reflect changes to contract requirements, and ensuring the contractor is not authorized to perform work outside the scope of the contract PWS.



Fort Polk program officials did not develop a QASP and improperly authorized out-of-scope work on the Horton contract.

<sup>4</sup> Typically, the requiring activity that drafts the PWS develops the QASP and surveillance methods, tailoring them to meet contract requirements and operating conditions. The QASP details how and when the Government will survey, observe, test, sample, evaluate, and document contractor performance. A QASP should be tailored in conjunction with the PWS and specify all work requiring surveillance and the method of surveillance.

### ***Fort Polk Officials Authorized Out-of-Scope Work***

A Fort Polk program official improperly authorized out-of-scope work; and a contracting official authorized out-of-scope work valued at \$105,944, on the Horton contract. The project manager stated he made two post-award requests to Horton, in November 2011 and June 2012, to install a Louisiana Garden Club Federation “Blue Star” plaque near Fort Polk’s historic entrance and make enhancements to the nearby area. Some project modifications were not within the scope of the contract PWS for concrete crushing or erosion control. Work that did not meet PWS requirements included laying pavement stones for a monument walkway and installing a glossy marble-like veneer on the monument’s concrete pedestal; work that may be reasonably considered erosion control and, therefore, within the PWS, included planting grass, trees, and foliage, and concrete landscaping of the area. Horton billed, and the Government paid, \$279,680 for work on the historic entrance; however, \$105,944 was for out-of-scope work.



Figure 1. Blue Star Plaque Site Before Enhancement  
Source: Fort Polk Garrison Command





Figure 2. Blue Star Plaque Site After Enhancement  
Source: Fort Polk Garrison Command

The initial contracting officer stated she was unaware that the project manager authorized the November 2011 work.<sup>5</sup> The contracting officer in place in June 2012 was aware of the work and forwarded the project manager's work request to Horton. The contracting officer should have identified a more appropriate contracting vehicle for executing the out-of-scope work paid for under the Horton contract. Two MICC Fort Polk contracting officers paid \$105,944 in O&M funds previously obligated to the Horton contract, and the work requirement was not documented in any contract.<sup>6</sup> As a result, a Fort Polk program official created an unauthorized commitment for the Government. The contracting officer can, if appropriate, ratify the contract. FAR 1.602-3 defines ratification as the "act of approving an unauthorized commitment by an official who has the authority to do so."

<sup>5</sup> Horton initiated the work requested by the project manager on December 27, 2011.

<sup>6</sup> See Ineffective Contract Surveillance and Invoice Approval For Horton Contract section for further discussion of payments made by the contracting officers.

### ***Contracting Officers Did Not Modify the Contract to Properly Incorporate Revisions***

Fort Polk contracting officers did not properly incorporate project work requirements and later project changes into the Horton contract. Three contracting officers worked on the Horton contract. The first contracting officer served from the September 2011 contract inception through January 2012. The second served as an interim approval authority pending the arrival of the third contracting officer in March 2012. Work on the Horton contract was completed by the end of September 2012. We interviewed the first and second contracting officers and the DPW project manager. Fort Polk contracting officials stated that the third contracting officer retired in March 2013, and the COR was on extended medical leave and unavailable to interview.

The initial contracting officer stated she was not aware of the November 2011 contract work on the monument portion of the historic entrance project. The initial contracting officer noted she was very busy during this period and that communication between contracting and program officials needed improvement. The initial contracting officer also stated that project manager had to be reminded about the proper chain of communication and that he needed to include the contracting officer, the contract specialist, and the DPW COR. In a January 30, 2012, e-mail, the project manager told the contractor he would send all future work requests to the contractor through the MICC contract official.

None of the three contracting officers modified the contract in accordance with FAR Part 43 ("Contract Modifications") requirements. Specifically, the contracting officer did not account for revisions to six specific erosion-control projects performed throughout FY 2012. The six projects included work performed on the historic entrance monument project; one project inappropriately included out-of-scope work.

In June 2012, the project manager revised the PWS to include details of the six specific erosion control projects the contractor started. The project manager stated that he did not submit the revised PWS to the contracting officer. Even though the project manager did not submit the revisions to the contracting officer, the contracting officer was aware of the project manager's work request to Horton.

However, the contracting officer did not incorporate the PWS revisions into the contract. All three contracting officers were responsible for monitoring the contract and contractor performance and ensuring compliance with contracting policies and procedures.

### ***Quality Assurance Surveillance Plan Not Developed***

Fort Polk program officials did not develop a QASP for the Horton contract and did not properly tailor a QASP for the WB Construction task order. The QASP should be developed by the requiring activity using the PWS and accepted by the contracting officer. Contracts for services must include QASPs to facilitate assessment of contractor performance. Program officials should tailor the QASP to address the performance risks for the specific contract type and the work effort addressed by contract. A tailored QASP includes quality, quantity, schedule, and sampling methodology for contractor work subject to Government on-site inspections. Government inspections determine whether completed work justifies the amount of contractor-requested payments. Effective surveillance will reduce the risk that the contracting officer does not know what the contractor is doing.

Fort Polk DPW personnel took some measures to improve QASP procedures. On February 18, 2014, the Fort Polk DPW issued a standard operating procedure that tasks the DPW Quality Assurance Branch to develop the QASP and use a variety of surveillance methods documented in the QASP to monitor contractor performance for compliance with contract requirements. The standard operating procedure does not address contracting officer responsibilities; however, the DoD "COR Handbook," March 22, 2012, requires the contracting officer to ensure effective contract surveillance.

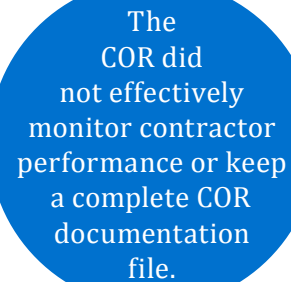
### ***Ineffective Contract Surveillance and Invoice Approval For Horton Contract***

For the Horton contract, Fort Polk contracting officials did not effectively:

- designate a COR,
- monitor Horton contract performance, or
- approve contract payments.

A September 13, 2011, contracting officer letter designated COR authority for the Horton contract. The letter assigned a DPW quality specialist to conduct contractor performance assessments, review contractor payment requests, maintain a QASP and surveillance schedule, and prepare a monthly report to the contracting officer concerning performance of services rendered. The letter required the COR to acknowledge receiving the designation letter. COR and contracting officer files indicated the COR did not sign receipt of the COR designation until February 29, 2012, 24 weeks after the letter was provided.

In addition, the COR did not effectively monitor contractor performance or keep a complete COR documentation file in accordance with his assigned duties. Although he maintained a daily quality assurance record covering contractor work from January 9 through September 23, 2012, the COR did not maintain a QASP or a surveillance schedule, or prepare any monthly reports to the contracting officer on COR activities, as required by the COR designation letter. In addition, the contract file did not contain quality assurance records for work done for any other period covered by the contract.



The COR did not effectively monitor contractor performance or keep a complete COR documentation file.

Fort Polk contracting officials also approved three contractor invoices containing payments for out-of-scope work. The COR and MICC contracting officials reviewed and approved for payment 12 contractor invoices billed from January through November 2012. However, the January, June, and October 2012 payments included out-of-scope work totaling \$105,944. The January 2012 payment was approved by the second contracting officer and the COR. The June and October 2012 payments were approved by the third contracting officer and the COR. Per DoD guidance,<sup>7</sup> the contracting officer is responsible for monitoring invoice payments according to the terms and conditions of the contract and local policy.

## Controls Over Contract Award Need Strengthening

Fort Polk contracting officials did not separately price line items for different project tasks, and they incorporated inappropriate FAR clauses and poorly defined PWSs in the Horton and WB Construction contracts.

<sup>7</sup> See DoD "COR Handbook, Chapter 7, Contract Administration" March 22, 2012.

***Horton Projects Were Not Separately Priced***

Fort Polk contracting officials did not separately price line items for different project tasks. Specifically, the Horton contract CLIN for concrete crushing and erosion control stated the contractor would furnish all labor, materials, and equipment and perform all work incidentals to concrete crushing and erosion control projects at Fort Polk in accordance with the scope of work. Neither the CLIN nor the PWS mentioned the specific Fort Polk work sites or the specific erosion control work to be performed. Specifically, the Horton contract should have had a separately priced CLIN for concrete crushing work and a separately priced CLIN for each planned erosion control project.

***Inappropriate Federal Acquisition Regulation Clauses in Two Contracts***

Fort Polk contracting officials incorporated inappropriate construction-type FAR clauses into the Horton contract and the WB Construction task order, even though the contracts were for maintenance and repair requirements. The MICC contracting officer inappropriately used the term “construction” for maintenance and repair work throughout both contracts. Examples of inappropriate FAR construction clauses included in both the Horton contract and the WB Construction task order were FAR clause 52.236-15, “Schedules for Construction Contracts,” and FAR clause 52.211-12, “Liquidated Damages-Construction.” Examples of additional inappropriate FAR construction clauses included in the Horton contract were FAR clause 52.225-11, “Buy American Act-Construction Materials Under Trade Agreements,” and FAR clause 52.232-5, “Payments under Fixed-Price Construction Contracts.” The MICC Fort Polk Commander agreed that the contracting officer inappropriately used the term “construction” for maintenance and repair work.

***Poorly Defined Performance Work Statements in Two Contracts***

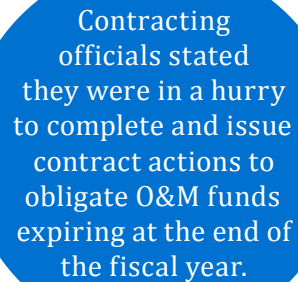
Fort Polk contracting officials incorporated poorly defined PWSs into the Horton and WB Construction contracts. Fort Polk project managers stated that they authored the PWSs for the Horton contract and the WB Construction task order and that the PWSs were written to convey the projects as maintenance and repair. However, the PWSs did not clarify the work to be accomplished, and contracting officials stated they generally used the term “construction” whether work was



minor MILCON or maintenance and repair.<sup>8,9</sup> The Horton contract did not include the specific projects or sites for erosion control which would have better defined work requirements and clarified the scope of contract coverage.

## Push to Obligate Expiring Funds

In the case of the Horton contract and the WB Construction task order, contracting officials stated they were in a hurry to complete and issue contract actions to obligate O&M funds expiring at the end of the fiscal year. Fort Polk contracting personnel worked in late August through September in FY 2011 and FY 2013 to award the respective contract actions.



Contracting officials stated they were in a hurry to complete and issue contract actions to obligate O&M funds expiring at the end of the fiscal year.

The initial program office purchase request for the Horton contract was dated July 27, 2011, with four subsequent purchase request revisions.

In August 2012, MICC issued the MICC Desk Book, First Edition, which required that purchase requests for maintenance and repair contracts be submitted no later than May 31 to allow contracting officers enough time to put a contract in place for a mid-September award. The present MICC Desk Book, issued November 19, 2013, revised the purchase request submission date to no later than the first week of May.

MICC headquarters officials stated that the requiring activity provided an incomplete requirement package after the cutoff date for fiscal year-end requirements; the officials noted this has been a typical problem with prior fiscal year-ends and often resulted in insufficient time to ensure a thorough procurement. MICC headquarters officials believed that compliance with the MICC Deskbook should minimize or eliminate such problems. Consequently, we are not making a recommendation on the end-of-year contract funding.

<sup>8</sup> 10 U.S.C. Section 2805, "Unspecified Minor Construction," allows use of O&M appropriations to carry out minor MILCON projects costing not more than \$750,000. The limit is raised to \$1,500,000, where the minor MILCON project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening. Maintenance and repair work is generally performed using O&M funds.

<sup>9</sup> The Horton contract and the WB Construction task order were maintenance and repair contracts. We did not review any minor MILCON contracts.

## Supervisory Reviews Could Be Improved

MICC supervisory reviews did not address the need to separately price projects, clarify PWSs, or remove construction-related FAR clauses when the work was O&M in nature. The MICC Desk Book requires supervisory reviews through Solicitation Review Board and Contract Review Board processes for procurements above the simplified acquisition threshold. However, the MICC Fort Polk Commander stated that contract reviews needed improvement.

Supervisory reviews did not address the need to separately price projects, clarify PWSs, or remove construction-related FAR clauses when the work was O&M in nature.

## Contracting Officer Needs to Request Legal Reviews

Fort Polk legal officials did not perform a legal review of the Horton contract or an adequate legal review the WB Construction task order in accordance with the Fort Polk U.S. Army Contracting Agency Policy Letter, "Use of Legal Resources," July 30, 2007. The policy letter requires mandatory legal reviews for any solicitation, modification, award, option exercise, or task or delivery order valued over \$300,000 or any proposed ratification of an unauthorized commitment. The policy requires the contracting officers to submit a written request for legal opinions for any mandatory review actions or other contracting officer identified issue. The contracting officer stated that she did not request a legal review for either the Horton Contract or the WB Construction task order.<sup>10</sup> Consequently, the contracting officer did not seek the appropriate technical expertise necessary to assure the proposed Horton contract work was within scope and the Horton contract and WB Construction task order were properly defined as maintenance and repair.

## Conclusion

A Fort Polk program official created an unauthorized commitment when the official improperly authorized out-of-scope work in the Horton contract. Controls over MICC Fort Polk contract award and administration efforts should be strengthened to eliminate unnecessary risks in supporting the DPW function. Although Fort Polk officials used proper funding types for contracts reviewed, they should strengthen their controls over contract awards by using CLINs to properly separate contract deliverables for assessment and payment and by reviewing draft PWSs to ensure

<sup>10</sup> Fort Polk legal advisors did not perform a legal review of the Horton contract. On September 13, 2011, a Fort Polk legal advisor signed a contract review board approval of the price negotiation memorandum for the Horton contract. A September 4, 2013, Fort Polk legal review stated there was no objection to the award of the WB Construction task order. The legal review did not address the maintenance and repair nature of the task order or the poorly defined PWS.

clarity of tasks and to better define maintenance and repair requirements. Fort Polk officials should also make contract administration improvements including requiring contracting officers to incorporate project work requirements and subsequent project changes into the contract.

## **Recommendations**

### ***Recommendation 1***

**We recommend the Commander, Mission and Installation Contracting Command:**

- a. Review the contracting officers' actions and, as appropriate, initiate management or other actions to hold the contracting officer accountable for:**
  - 1) not monitoring the contractor's performance for contract W9124E-11-C-0021;**
  - 2) not modifying contract W9124E-11-C-0021 to account for revisions to six specific erosion control projects performed throughout FY 2012; and**
  - 3) approving contract W9124E-11-C-0021 January, June, and October 2012 invoices, which included out-of-scope work.**
- b. Determine whether the unauthorized commitment created by improperly authorizing out-of-scope work may be properly ratified in accordance with Federal Acquisition Regulation 1.602-3, "Ratification of Unauthorized Commitments."**
- c. Require contracting officers:**
  - 1) to properly review a quality assurance surveillance plan that uses a variety of surveillance methods to monitor contractor performance for compliance with contract requirements and effectively monitor contractor performance, as required by the DoD "COR Handbook," March 22, 2012;**
  - 2) with contracting officer's representatives, to properly document receipt of contracting officer's representatives' designation letters and properly document contractor performance in accordance with assigned duties, as required by the DoD "COR Handbook," March 22, 2012;**

- 3) to use contract line items to properly distinguish between contract deliverables for proper assessment and payment, as required by the DoD "COR Handbook," March 22, 2012;
  - 4) to include proper contract terminology and contract clauses for actions that are maintenance and repair in nature, as required by Defense Federal Acquisition Regulation Supplement subpart 204.71, "Uniform Contract Line Item Numbering System;"
  - 5) to review Fort Polk Department of Public Works-prepared performance work statements to ensure tasks are clear, as required by the DoD "COR Handbook," March 22, 2012; and should properly define differences between minor military construction and maintenance and repair requirements, as required by Title 10 U.S. Code 2805 and DoD Financial Management Regulation 7000.14-R, volume 14, chapter 2, "Antideficiency Act Violations;" and
  - 6) to request legal reviews of proposed contract awards, as required by Fort Polk U.S. Army Contracting Agency Policy Letter, "Use of Legal Resources," July 30, 2007.
- d. Require detailed supervisory review of proposed contract awards, including review of contract type and performance work statement development and approval.

### *Management Comments Required*

The Commander, Mission and Installation Contracting Command, did not respond to the recommendations in the report. We request that the Commander provide comments on the final report.

## **Recommendation 2**

We recommend the Commander, Installation Management Command:

- a. Review the project manager actions and, as appropriate, initiate management or other actions to hold the project manager accountable for directing the contractor in November 2011 to perform out-of-scope work for contract W9124E-11-C-0021.
- b. Require Fort Polk program officials properly to tailor or develop quality assurance surveillance plans that use a variety of surveillance methods to monitor contractor performance for compliance with contract requirements, as required by the DoD "COR Handbook," March 22, 2012.

- c. **Review the contracting officer's representative actions on contract W9124E-11-C-0021 and, as appropriate, initiate management or other actions to hold the contracting officer's representative accountable for not effectively monitoring contractor performance in accordance with assigned duties.**

*Management Comments Required*

The Commander, Mission and Installation Contracting Command, did not respond to the recommendations in the report. We request that the Commander provide comments on the final report.



## Finding B

### Defense Hotline Contract Allegations and Responses

We received a Defense Hotline complaint alleging Fort Polk contracting officials:

- inappropriately placed O&M funds on the Horton contract for MILCON work;
- used the contract for non-appropriated fund work on the Fort Polk golf course, including building a monument on the course;
- awarded the contract to an 8(a) firm on a sole-source basis even when other 8(a) firms were available to compete;
- awarded contracts without proper specifications or drawings; and
- extended construction contracts and delivery orders numerous times without proper justification.

The request also alleged Fort Polk project managers made decisions to revise work or perform additional work and that contracts were subsequently modified to support those changes. We partially substantiated two of the six allegations.

The allegations are discussed below.

#### Allegation 1

Contracting officials placed O&M Funds on the Horton contract for MILCON work.

##### *DoD IG Response*

We did not substantiate the allegation. The Horton contract included multiple FAR construction contract clauses but did not include any MILCON work. However, the contract PWS included references to both “construction” and “repair.” The MICC Fort Polk Director of Contracting and the contracting officer initially stated that the contract was for minor MILCON. Fort Polk DPW managers and engineers stated the contracted work was not minor MILCON but facility support, maintenance, and repair. The MICC Director subsequently agreed with DPW. The MICC Director noted that MICC Fort Polk does not use MILCON funding. We concluded the Horton contract work appeared to be for maintenance and not MILCON. See Finding A for further details and recommendations.

## Allegation 2

Contracting officials used the Horton contract for nonappropriated fund work on the Fort Polk golf course, including building a monument on the course.

### *DoD IG Response*

We partially substantiated the allegation. Fort Polk contracting officials used the Horton contract for repair and improvement of an existing monument, but the monument was not on the golf course. Horton contract funding codes were properly designated as Army O&M. The historic-entrance monument project was not subject to non-appropriated funding because it was not on the golf course. However, portions of the historic-entrance monument project were not within the scope of the contract PWS for concrete crushing or erosion control. Horton invoiced \$105,944, for out-of-scope work on the monument, veneer, and walkway. See Finding A for further details and recommendations.

## Allegation 3

Contracting officials awarded the Horton contract to an 8(a) firm on a sole-source basis even when other 8(a) firms were available to compete.

### *DoD IG Response*

We found the allegation unsubstantiated. The \$1.9 million contract was below the \$4 million competition threshold established in the FAR 19.8, "Contracting with the Small Business Administration (the 8(a) Program)." Consequently, Fort Polk contracting officials were not required to compete the contract through the 8(a) process.

## Allegation 4

Contracting officials awarded contracts without proper specifications or drawings.

### *DoD IG Response*

We found the allegation unsubstantiated. Neither the FAR nor the Defense Federal Acquisition Regulation Supplement includes a requirement for specifications and drawings for maintenance and repair contracts.

## Allegation 5

Fort Polk project managers made decisions to revise work or perform additional work and later modified the contract to support those changes.

### *DoD IG Response*

We partially substantiated the allegation. A Fort Polk program official improperly authorized additional work on the Horton contract, including out-of-scope work; and a contracting official authorized out-of-scope work valued at \$105,944.

A Fort Polk program official created an unauthorized commitment when the official improperly authorized out-of-scope work on the Horton contract. Fort Polk contracting officers did not modify the Horton contract to reflect work revisions. See Finding A for further details and recommendations.

## Allegation 6

Contracting officials extended construction contracts and delivery orders numerous times without proper justification.

### *DoD IG Response*

We found the allegation unsubstantiated. The three contracts reviewed did not include any improper contract extensions. One modification to the Horton contract and one modification to the WB Construction task order extended the periods of performance because of bad weather.

## Appendix

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### Scope and Methodology

We conducted this performance audit from February through December 2014 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. To develop our audit scope, we summarized the key allegations and then incorporated the allegations into specific audit objectives that identified the controls to be tested. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### Review of Documentation and Interviews

This audit was initiated because of allegations to the Defense Hotline of MICC mismanagement on the Horton contract. In addition to the Horton contract, we used a FY 2013 Fort Polk universe of 163 contract actions that supported DPW, valued at \$38.5 million, to draw a nonstatistical sample of seven additional FY 2013 contract actions to review. The seven actions included the WB Construction task order and the Ability One contract. Early in our preliminary field work, we decided to review contract DACA87-94-C-0008, an energy savings performance contract to install and maintain geothermal heat pumps on Fort Polk in a separate audit.

To review MICC Fort Polk contract controls, we obtained and reviewed the following documents except as noted for all three contracts:

- basic contracts and subsequent modifications,<sup>11</sup>
- applicable purchase requests,
- price negotiation memorandums,
- government cost estimates,
- QASPs (where available),
- COR designation letters,
- small business administration 8(a) acceptance letters, (specific to the Horton contract review),
- COR daily quality assurance records,
- COR monthly reports to the contracting officer (where available),

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<sup>11</sup> For the Ability One contract we reviewed FY 2013 modifications, determinations to exercise contract options, and exercised contract options.

- contractor payment invoices, and
- Government analysis and approvals for payment included on Form 1133-E Rev 1, "Payment for Contractor Performance," and in hardcopy wide-area workflow system documentation.

We obtained and reviewed the following criteria:

- 10 U.S.C. 2805, "Unspecified Minor Construction,"
- 31 U.S.C. 1301, "Appropriations – Application,"
- Javits-Wagner-O'Day Act, 41 U.S.C. section 8501-8506 (criteria specific to the Ability One contract review),
- FAR 1.602-2, "Contracting Officer Responsibilities,"
- FAR 1.602-3, "Ratification of Unauthorized Commitments,"
- FAR subpart 8.7, "Acquisition from Nonprofit Agencies Employing People who are Blind or Severely Disabled" (criteria specific to the Ability One contract review),
- FAR subpart 15.4, "Contract Pricing,"
- FAR subpart 19.8, "Contracting with the Small Business Administration (The 8(a) Program)" (criteria specific to the Horton contract review),
- FAR part 43, "Contract Modifications,"
- Defense Federal Acquisition Regulation Supplement subpart 204.71, "Uniform Contract Line Item Numbering System,"
- DoD Financial Management Regulation 7000.14-R, volume 2A, chapter 1, section 0106, "Uniform Budget and Fiscal Accounting Classification,"
- DoD Financial Management Regulation 7000.14-R, volume 2B, chapter 6, "Military Construction/Family Housing Appropriations,"
- DoD Financial Management Regulation 7000.14-R, volume 14, chapter 2, "Antideficiency Act Violations,"
- DoD "COR Handbook," March 22, 2012,
- "The MICC Desk Book," August 2012 and November 2013 editions, and
- Fort Polk U.S. Army Contracting Agency Policy Letter, "Use of Legal Resources," July 30, 2007.

We reviewed six specific allegations concerning the Horton contract. We interviewed the Fort Polk MICC Commander and Deputy Commander, contracting, and DPW program office personnel. We visited or contacted Fort Polk MICC contracting and DPW program office personnel. In addition to contract documentation noted above we observed the results of erosion control and rock crushing project work at Fort Polk sites, including the historical monument



site to make a determination of whether the work was within the scope of the Horton contract. In addition, we interviewed MICC contracting personnel, DPW project managers, quality assurance personnel, and Fort Polk garrison resource-management office personnel to discuss their processes for awarding, funding, and administering the Horton contract, the WB Construction task order, and the Ability One contract.

### **Use of Computer-Processed Data**

We did not rely on computer processed data to reach our conclusions.

### **Use of Technical Assistance**

We did not use technical assistance in conducting this audit.

### **Prior Coverage**

No prior audit coverage has been performed on the subject during the last 5 years.

## Acronyms and Abbreviations

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<b>ACC</b>	Army Contracting Command
<b>CLIN</b>	Contracting Line Item Number
<b>COR</b>	Contracting Officer's Representative
<b>DPW</b>	Directorate of Public Works
<b>FAR</b>	Federal Acquisition Regulation
<b>MICC</b>	Military Installation Contracting Command
<b>MILCON</b>	Military Construction
<b>O&amp;M</b>	Operation and Maintenance
<b>PWS</b>	Performance Work Statement
<b>QASP</b>	Quality Assurance Surveillance Plan

# **Whistleblower Protection**

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