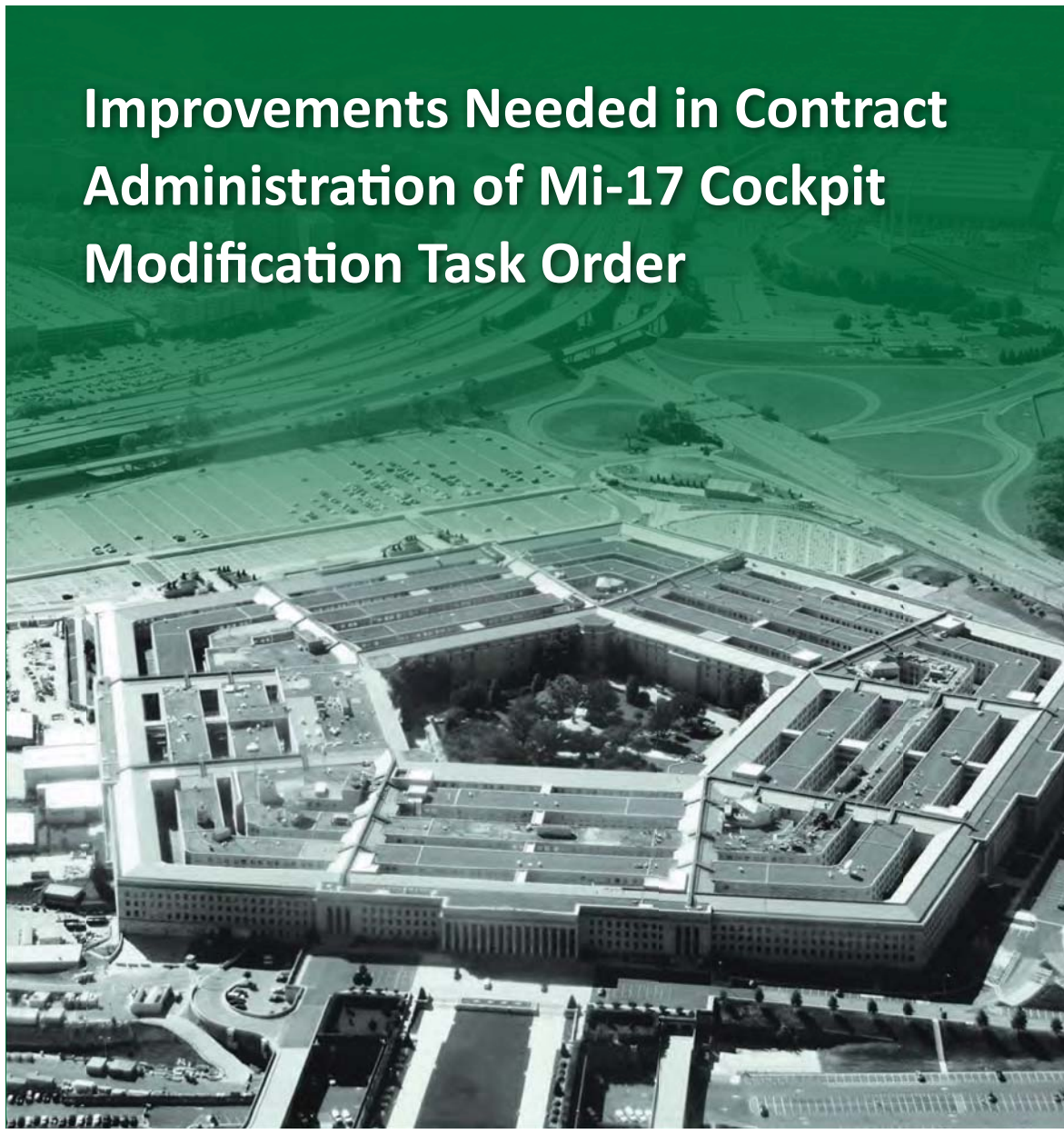


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INSPECTOR GENERAL

U.S. Department of Defense

JULY 28, 2014



Improvements Needed in Contract Administration of Mi-17 Cockpit Modification Task Order

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Results in Brief

Improvements Needed in Contract Administration of Mi-17 Cockpit Modification Task Order

July 28, 2014

Objective

Our objective was to determine whether DoD officials properly awarded and administered indefinite-delivery, indefinite-quantity contract W58RGZ-09-D-0130, Task Order 0102, for the modification of DoD-owned Mi-17 variant aircraft in accordance with Federal and DoD regulations and policies.

Findings

Army Contracting Command (ACC)-Redstone contracting officers did not properly administer Task Order 0102. A contracting officer created a prohibited cost-plus-a-percentage-of-cost type contract under the task order by incorrectly issuing a modification to increase funding for incomplete efforts that included additional fees. As a result, the contracting officer did not provide the contractor with an incentive to control costs, and the contractor received excess fees over [REDACTED] to perform the original contracted tasks; these fees should be recouped. (See Appendix C for details on potential monetary benefits).

The contracting officers awarded the task order and subsequent modifications without adequately evaluating and determining the reasonableness of offered prices. Contracting officers did not perform adequate cost or price analysis, relied on unsupported statements by project management office technical personnel to determine whether prices were fair and

Findings (cont'd)

reasonable, and neglected to perform their duties in accordance with federal regulations by not evaluating price reasonableness of contractor proposals. As a result, the Army had limited assurance that it received fair and reasonable prices for Mi-17 cockpit modification services valued at [REDACTED]

The contracting officer provided consent for a sole-source subcontract without verifying that a noncompetitive award was appropriate. The contracting officer did not evaluate the contractor's request for consent to subcontract or obtain supporting data. As a result, the Army did not obtain the benefits of competition on subcontracted services.

ACC-Redstone officials agreed to recoup fees on material costs that were incorrectly applied to modification 10 of Task Order 0102.

Recommendations

We recommend the Director, ACC-Redstone Non-Standard Rotary Wing Aircraft Directorate, take action to terminate the sixth cockpit modification, establish quality assurance procedures to verify contract files contain adequate documentation and analysis, recoup fees paid (which includes the fee ACC-Redstone has agreed to recoup) and require contracting officers to perform and document analyses of contractor requests for consent to subcontract.

Management Comments and Our Response

Comments from the Executive Director, ACC-Redstone, addressed Recommendations B.1, B.2, and C. We request additional comments on Recommendation A by August 28, 2014. Please see the recommendations table on the back of this page.

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Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Executive Director, Army Contracting Command-Redstone	A	B.1, B.2, and C

Please provide comments by August 28, 2014



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

July 28, 2014

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Improvements Needed in Contract Administration of Mi-17 Cockpit
Modification Task Order (Report No. DODIG-2014-096)

We are providing this report for your review and comment. The Army Contracting Command-Redstone contracting officers did not effectively award and administer W58RGZ-09-D-0130, Task Order 0102. Contracting officers created a cost-plus-a-percentage-of-cost type contract, did not adequately evaluate and determine the reasonableness of offered prices, and did not obtain competitive subcontract pricing. During the audit, we identified that the contractor received excess fees of (b)(4) that should be recouped.

We considered management comments on a draft of this report when preparing the final report. DoD Directive 7650.3 requires that recommendations be resolved promptly. Please provide comments that state whether you agree or disagree with the findings and recommendations. Comments from the Executive Director, Army Contracting Command-Redstone were partially responsive. Therefore, we request additional comments to Recommendation A by August 28, 2014.

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

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

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

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Introduction

Objective

Our audit objective was to determine whether DoD officials properly awarded and administered indefinite-delivery, indefinite-quantity contract W58RGZ-09-D-0130, Task Order 0102, for the modification of DoD-owned Mi-17 variant aircraft in accordance with Federal and DoD regulations and policies. See Appendix A for a discussion of the scope and methodology and prior audit coverage. This is the second of three reports on Task Order 0102. The first report, DODIG-2013-123 “Army Needs To Improve Mi-17 Overhaul Management and Contract Administration,” August 30, 2013, addressed the procurement of overhaul services and parts for Pakistan-owned Mi-17 variant aircraft, awarded by modification to Task Order 0102. This report primarily addresses the administration of the Mi-17 cockpit modifications under Task Order 0102. The third report will primarily address the award of the Mi-17 cockpit modifications.

Mi-17 Aircraft

The Mi-17 supports the United States’ and partner nations’ counterterrorism efforts. The Mi-17 is a medium-lift utility helicopter that can perform both attack and movement missions and is one of the most common helicopters in the world. The Mi-17 is manufactured in Russia at the Kazan helicopter and the Ulan-Ude aviation plants. The governments of Iraq, Pakistan, and Afghanistan requested that the United States provide Mi-17 support for their counterterrorism efforts. The U.S. Government procured Mi-17s to provide those partner nations assistance and address their immediate operational requirements. The Afghans have been using Mi-17 helicopters since the early 1980s because of the aircraft’s ability to operate in the country’s severe environment and fly at high altitudes and in high temperatures with heavy loads.



Figure. Mi-17 Flying Over Afghanistan
Source: U.S. Air Force

Program and Contracting Activities

On January 19, 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics issued an Acquisition Decision Memorandum that directed the Army to establish a project management office (PMO) responsible for executing procurement, sustainment, and technical support to meet user requirements for Non-Standard Rotary Wing Aircraft (NSRWA). The NSRWA PMO manages the procurement and maintenance of Mi-17 aircraft for DoD and partner nations, including Afghanistan, Iraq, and Pakistan.

U.S. Army officials established the NSRWA PMO at Redstone Arsenal in Huntsville, Alabama, under the U.S. Army Program Executive Office for Aviation. The NSRWA PMO's mission is to procure, field, and sustain NSRWA for DoD, allied countries, or as directed by the Under Secretary of Defense for Policy in support of other contingency operations. The NSRWA PMO responsibilities include the procurement of aircraft and parts, modification and overhauls, and logistical support for maintaining and sustaining the Mi-17 aircraft.

On November 5, 2010, the Assistant Secretary of the Army for Acquisition, Logistics, and Technology issued a memorandum to the Heads of U.S. Army Contract Activities, establishing the NSRWA procurement process and designating the U.S. Army Contracting Command (ACC) at Redstone Arsenal, Alabama, as the single DoD contracting organization responsible for pre-award and post-award functions for NSRWA.

Logistics Support Facility Contract

On September 1, 2007, Army Sustainment Contracting Command, Rock Island, Illinois, awarded a single award, 5-year indefinite-delivery, indefinite-quantity contract (Original Contract No. W52P1J-07-D-0039) to Science and Engineering Services (SES) to provide all services necessary to support the Program Executive Office's Logistical Support Facility (LSF). Contracting responsibilities were transferred from Rock Island to ACC-Redstone in June 2009. The contract number was changed to W58RGZ-09-D-0130 with a ceiling value of \$208,939,327. The period of performance was extended to April 2013. In April 2013, ACC-Redstone awarded a follow-on LSF indefinite-delivery, indefinite-quantity contract to two contractors.

Task Order 0102

(FOUO) On September 28, 2010, ACC-Redstone awarded contract W58RGZ-09-D-0130-0102 (Task Order 0102), a cost-plus-fixed-fee type contract for the modification of six DoD-owned Mi-17 aircraft. The task order originally established contract line item number (CLIN) 0001 to modify cockpits for four aircraft and established CLIN 0002 for the option of two additional aircraft cockpit modifications, later exercised in April 2011. The contracting officer established additional CLINs to cover increased costs associated with the cockpit modifications. In March 2011, the prime contractor subcontracted with [REDACTED] to assist in modification of the aircraft. The period of performance for the cockpit modifications was originally from September 2010 through September 2011 but because of delays, ACC-Redstone extended performance to December 2013. As of December 2013, a total of 49 contract modifications had been made to Task Order 0102 since contract award, and the contract value has grown from \$8 million to more than \$52 million. Task Order 0102 modifications added maintenance overhauls, pilot training, and the procurement of Government furnished equipment to support another Mi-17 contract. This report specifically discusses the Mi-17 cockpit modifications under Task Order 0102, a total award of \$15.2 million. Modification 36 to Task Order 0102 separated the efforts by CLIN. Table 1 shows the CLINs applicable to the Mi-17 cockpit modifications.

(FOUO) Table 1. CLINs for Cockpit Modifications Under Task Order 0102

CLIN	Description	Value*
(b)(4)	[REDACTED]	[REDACTED]

* Values rounded to nearest dollar

Mi-17 Cockpit Modifications

The Mi-17 aircraft receiving cockpit modifications under Task Order 0102 were delivered to the U.S. Army Aviation Center of Excellence 110th Aviation Brigade at Fort Rucker, Alabama. The U.S. Army Aviation Center of Excellence 110th Aviation Brigade mission is to coordinate and conduct flight instruction and operations to provide the Army with professionally trained CH-47, C-12, and Mi-17 aviators. The purpose of the Mi-17 cockpit modification is to standardize pilot training and common core training programs for maintainers and to enhance the common skills base across the Afghan Ministry of Defense, Afghan Ministry of Interior, and the U.S. Army Aviation Center of Excellence Mi-17 fleet. The Mi-17 cockpit modifications integrate western communication radios, gauges and clocks; relocate instrumentation; add duplicate gauges to both pilot and copilot stations; modify interior and exterior Mi-17 aircraft lighting; and extend the center console rearward.

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 that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in the award and administration of the Mi-17 cockpit modifications under Task Order 0102. Specifically, the ACC-Redstone contracting officers created a prohibited cost-plus-a-percentage-of-cost type contract, did not adequately evaluate and determine the reasonableness of offered prices, and did not evaluate the contractor's request to consent to subcontract in accordance with Federal regulations. Management has taken some corrective actions to address identified problems during the course of the audit. We will provide a copy of the report to the senior official responsible for internal controls in the Department of the Army.

Finding A

Prohibited Cost-Plus-a-Percentage-of-Cost System of Contracting Used for Mi-17 Task Order

(FOUO) The ACC-Redstone contracting officer created a prohibited cost-plus-a-percentage-of-cost type contract under Task Order 0102. Specifically, the contracting officer allowed the contractor to charge a [REDACTED] fee on all costs of material, storage, and aircraft hangar improvements performed under Task Order 0102 CLIN 0002, resulting in payments above the negotiated fixed fee of [REDACTED]. The negotiated fixed fee equaled [REDACTED] of the original estimated task order costs as presented in the contractor's proposal. The contracting officer later permitted the contractor to receive a [REDACTED] fee on costs that were in excess of the original estimated costs, including an additional [REDACTED] fee for material costs that was included in the original cost estimate. This occurred because the ACC-Redstone contracting officer incorrectly issued a modification to increase funding for incomplete Task Order 0102 work that included additional fees. As a result, the contracting officer did not provide an incentive to the contractor to control costs. Consequently, the contractor received excess fees of [REDACTED] to perform the original contracted tasks.

Task Order 0102 Modifications Added Additional Fee

(FOUO) The ACC-Redstone contracting officer allowed the contractor to receive a [REDACTED] fee on the costs of material, storage, and aircraft hangar improvements performed under Task Order 0102 CLIN 0002. Specifically, the contracting officer modified task order CLIN 0002 resulting in an increase of fee from [REDACTED] to [REDACTED]. Federal Acquisition Regulation (FAR) Subpart 16.306, "Cost-plus-fixed-fee contracts," states that a cost-plus-fixed-fee contract is a cost reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost but may be adjusted as a result of changes in the work to be performed under the contract. There were no changes to the contracted

The contracting officer created a prohibited cost-plus-a-percentage-of-cost type of contract by allowing the contractor to receive additional fees on costs for the contractor to complete the two cockpit modifications originally contracted for.

(FOUO) work under CLIN 0002; the only change was in the costs incurred by the contractor to perform that work. The contracting officer created a prohibited cost-plus-a-percentage-of-cost type of contract by allowing the contractor to receive additional fees on costs for the contractor to complete the two cockpit modifications originally contracted for. Section 2306, title 10, United States Code (10 U.S.C. 2306) and FAR 16.1, "Selecting Contract Types," subparagraph 16.102(c), prohibits the use of a cost-plus-a-percentage-of-cost system of contracting.

(FOUO) As part of the fixed fee increase, the ACC-Redstone contracting officer also allowed the contractor to include a [REDACTED] fee on the costs of material that the contractor previously proposed at contract award. Task Order 0102 initially included more than \$2 million of product material costs for the cockpit modifications of 6 aircraft. On modification 10 to Task Order 0102, the contractor proposed more than \$2.2 million, which included \$1.7 million for the same product material to modify 5 aircraft. The contracting officer awarded modification 10 allowing a fee of [REDACTED], representing [REDACTED] of the product material total, to be included in the [REDACTED] fixed fee increase onto the contract. See Appendix C for a summary of potential monetary benefits. The contracting officer calculated the [REDACTED] fee into the cost of the material in the contractor's initial proposal and should not have added another fee to modification 10. The Director, ACC-Redstone NSRWA Directorate, should require the contracting officer to modify the contract to remove the additional fee and recoup from the contractor the [REDACTED] unallowable fixed fee increase.

Government Accountability Office Four-Part Test

A Comptroller General decision, "Marketing Consultants International Limited," B-183705, 55 Comp. Gen. 554, December 10, 1975, citing the Supreme Court in *Muschany vs. United States*, 324 U.S. 49, 61-62 (1945), states that the underlying intent of Congress when prohibiting cost-plus-a-percentage-of-cost contracts was to protect the Government against exploitation when using such a system of contracting. According to the Comptroller General decision, the danger in using a cost-plus-a-percentage-of-cost contract is the incentive to the contractor to pay liberally for cost-reimbursable items because a higher cost means a higher fee to the contractor. Additionally, the Comptroller General decision states that Congress indicated it did not care how a contractor computed the fee or profit as long

¹ Calculation: \$2,229,150*.07=\$156,041.

as the contractor fixed that fee or profit at the time when the Government became bound to pay it by the Government's acceptance of the contractor's bid.

Task Order 0102 CLIN 0002 met all four prohibited cost-plus-a-percentage-of-cost test guidelines outlined in the Comptroller General decision B-183705. In this decision, the Government Accountability Office (GAO) states that the guidelines for determining whether a contract arrangement constitutes a prohibited cost-plus-a-percentage-of-cost contract are whether:

1. payment is based on a predetermined percentage rate,
2. the predetermined percentage rate is applied to actual performance costs,
3. contractor entitlement is uncertain at the time of contracting, and
4. contractor entitlement increases commensurately with increased performance costs.

Predetermined Percentage Rate

(FOUO) The ACC-Redstone contracting officer established a predetermined rate of [REDACTED] for Task Order 0102. Specifically, CLIN 0002 established an option for the completion of two Mi-17 aircraft cockpit modifications at the [REDACTED] rate. The contracting officer established Task Order 0102 CLIN 0002 at an estimated cost of [REDACTED] and a [REDACTED] fixed fee of [REDACTED]. Therefore, CLIN 0002 of Task Order 0102 meets the first part of the GAO four-part test for determining whether the contract constituted prohibited cost-plus-a-percentage-of-cost arrangements.

Percentage Rate Applied to Actual Performance Costs

(FOUO) The ACC-Redstone contracting officer approved the contractor to receive [REDACTED] of actual contractor's performance costs. Once the funds were obligated on contract, the [REDACTED] rate was consistently applied to actual performance costs to complete the Mi-17 cockpit modifications under CLIN 0002. All contractor payments under CLIN 0002 included the predetermined [REDACTED] rate. Therefore, Task Order 0102 CLIN 0002 meets the second part of the GAO four-part test for determining whether the contract contains a prohibited cost-plus-a-percentage-of-cost CLIN.

Uncertain Contractor Entitlement

(~~FOUO~~) The contractor's entitlement was uncertain at the time of contract award because of the contract type used and cost growth under the contract. The contracting officer estimated cost for Task Order 0102 at award; however, because of the contract type the contractor's entitlement was uncertain. According to FAR 16.301-1, cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed, except at its own risk, without the approval of the contracting officer. The contracting officer established a cost-plus-fixed-fee CLIN 0002 with a total estimated value of [REDACTED] at contract award. The contracting officer subsequently increased CLIN 0002 to [REDACTED] based on additional hours being required to complete the cockpit modification effort. Therefore, CLIN 0002 of Task Order 0102 meets the third part of the GAO four-part test for determining whether a contract is a cost-plus-a-percentage-of-cost type contract.

Contractor Entitlement Increased as Performance Costs Increased

(~~FOUO~~) The contractor's fee increased commensurately with additional costs to Task Order 0102 CLIN 0002. Specifically, as the contracting officer modified the contract to obligate additional funds and to incorporate updated cost estimates for completing work under the CLIN, she allowed the contractor to consistently apply the [REDACTED] fee to additional costs. When the contracting officer modified the contract to add cost to CLIN 0002 for the two Mi-17 cockpit modifications, she increased the fixed fee by [REDACTED]. Therefore, the contract meets the fourth part of the GAO four-part test for determining whether a contract is cost-plus-a-percentage-of-cost contract.

Cost Added to Contract for Previously Established Mi-17 Cockpit Modifications

(~~FOUO~~) The scope of Task Order 0102 did not change from the modification of 4 aircraft established under CLIN 0001 and the 2 option aircraft established under CLIN 0002 at contract award. The contracting officer modified the contract and added cost to include fee to complete the previously established 2 Mi-17 cockpit modifications under CLIN 0002. The ACC-Redstone contracting officer stated that an additional fee was added to the contract because of a change in scope of

(FOUO) the contract, which required additional work to include the fee. However, the total combined number of aircraft for cockpit modification never increased; in fact, the number of aircraft decreased from 6 to 5. NSRWA PMO officials decided to cancel a modification because of technical problems with one of the six Mi-17 aircraft originally contracted for. Nonetheless, the contracting officer added cost to the contract to perform almost 17-percent less work. In addition, ACC-Redstone officials stated they added additional work and additional hours for hangar improvements and storage to modification 10, which entitled the contractor to fees. However, section 3.8.4, "Facilities," of the original statement of work states, "The Contractor shall provide and maintain licenses and/or certifications for Contractor owned facilities in accordance with Federal Aviation Administration Regulation throughout the duration of this contract. The Contractor shall maintain currency of Contractor facilities for support Mi-17 aircraft." The same section of the revised statement of work for modification 10 contained the same language with the addition of "said hanger facilities must be climate controlled and meet local building codes for hangar storage facilities." The revised statement of work clarified only the tasks that SES had to perform in order for the facilities to meet federal and local requirements, which already existed at the time of the original contract. The revised statement of work did not establish any new work requirements. ACC-Redstone officials should recoup the [REDACTED] fee, representing [REDACTED] of the [REDACTED] in Mi-17 hangar improvements costs, entered on modification 10 to Task Order 0102. The Director, ACC-Redstone NSRWA Directorate, should require the contracting officer to modify the contract to remove the additional fee and recoup from the contractor the [REDACTED] fixed fee increase that was unallowable.

Conclusion

The FAR prohibits cost-plus-a-percentage-of-cost contracts because they do not provide contractors incentives to control costs. The contracting officer did not provide an incentive to the contractor to control costs because the contracting officer allowed the contractor to collect excess fees for additional costs incurred to perform the same modifications to Mi-17 aircraft and maintain the same facilities originally agreed upon. The contractor should not have received fees for increased costs to perform the two Mi-17 cockpit modifications under CLIN 0002. Therefore, modifying the contract to remove fees charged on non-fee bearing expenses should reduce costs and recoup funds.

Management Actions

(~~FOUO~~) ACC-Redstone officials agreed to recoup [REDACTED] for fees on material costs that were incorrectly applied to Modification 10 of Task Order 0102. ACC-Redstone officials also stated that the ACC-Redstone Principal Assistant Responsible for Contracting has taken administrative action against the contracting officer; therefore, we are not making an accountability recommendation in this report.

Management Comments on the Finding and Our Response

The Deputy Commanding General, U.S. Army Materiel Command, endorsed and forwarded comments from the Deputy to the Commanding General, ACC, and the ACC-Redstone Executive Director. The Deputy to the Commanding General, ACC, agreed with the ACC-Redstone Executive Director comments, and the ACC-Redstone Executive Director provided comments on the finding. A summary of the comments from the ACC-Redstone Executive Director on the finding follows, with our response.

ACC-Redstone Executive Director Comments on Fee on Materials in Modification 10

(~~FOUO~~) The ACC-Redstone Executive Director agreed that the fee on material costs recognized in Modification 10 was incorrectly applied and constituted an overpayment in the amount of [REDACTED]. However, the ACC-Redstone Executive Director stated that Modification 10 added work for hangar improvements and storage, work that was allowed a fee.

Our Response

(~~FOUO~~) We take no issue with the additional storage cost. However, hangar improvements added under Modification 10 were not allowed a fee. As detailed in the report, the revised statement of work did not establish any new facility requirements that would entitle the contractor to additional fee. The Director, ACC-Redstone NSRWA Directorate, should require the contracting officer to modify the contract to remove the additional fee and recoup from the contractor the [REDACTED] fixed fee increase.

ACC-Redstone Executive Director Comments on the GAO Four-Part Test

The ACC-Redstone Executive Director disagreed that Task Order 0102 CLIN 0002 met all four prohibited costs-plus-a-percentage of cost test guidelines outlined in the Comptroller General decision B-183705. The Executive Director stated that it met test guideline one but not test guidelines two through four. Specifically, the Executive Director stated the following:

Test Guideline 2: At task order execution, prior to performance, Option CLIN 0002 included the appropriate application of fee, and Modification 05 exercised the option in accordance with the negotiated price under the task order. Modification 10 appropriately applied additional fee to new work yet to be performed under Modification 10 for Hangar Improvements and Storage Costs. Modification 10 also incorrectly applied additional fee to estimated material cost.

~~(FOUO)~~ Test Guideline 3: Based on the fee percentage established at the time of award of Basic Contract W58RGZ-9-D-0130, the contractor is entitled to the basic 7-percent fee for the Option CLIN 0002 effort negotiated at the time of task order award and the subsequent new work added by Modification 10 for Hangar Improvements and Storage Costs. These fee amounts were certain at the time of contracting. The fee amount for the material added by Modification 10 was also certain. However, the fee amount for the material should not have been allowed.

Test Guideline 4: Contractor entitlement to fee for the initial work under Option CLIN 0002 was established prior to the performance of Option CLIN 0002 and was not increased commensurately with increased performance costs. The subsequent new work added by Modification 10 for Hangar Improvements and Storage Costs allowed an increase in fee entitlement commensurate with the increase in costs estimated at the time the modification was awarded related to the new work added for Hangar Improvement and Storage Costs. Fee on the material costs was incorrectly applied.

Our Response

Task Order 0102 CLIN 0002 met all four prohibited costs-plus-a-percentage of cost test guidelines outlined in the Comptroller General decision B-183705. Therefore, the fee that the contracting officer applied to hangar improvements and material costs was incorrectly applied because the ACC-Redstone contracting officer created a prohibited cost-plus-a-percentage-of-cost type contract under Task Order 0102.

(~~FOUO~~) Test Guideline 2, Predetermined Percentage Rate Is Applied to Actual Performance Costs: The contracting officer approved the contractor to receive [REDACTED] of the actual contractor's performance. The contracting office consistently applied a [REDACTED] rate to actual performance costs to complete the Mi-17 cockpit modifications under CLIN 0002. The contracting officer should not have paid the contractor additional fees for hangar improvements because the hangar management was established as the responsibility of the contractor at the beginning of the contract and was not new work. Specifically, section 3.1.1 of the original statement of work defined the contractor responsibility for facilities, and section 3.8.4 required the contractor to maintain currency of contractor facilities to support Mi-17 aircraft. Therefore, the contract meets the second part of the GAO four-part test, because a predetermined percentage rate was being applied to actual performance costs.

(~~FOUO~~) Test Guideline 3, Contractor Entitlement Is Uncertain at the Time of Contracting: The contracting officer estimated cost for Task Order 0102 at award; however, CLIN 0002 increased by more than three times the original CLIN value from approximately [REDACTED] to [REDACTED]. The contracting officer also increased the [REDACTED] fee applied to all costs charged to CLIN 0002. Specifically, the contracting officer added a [REDACTED] fee for storage costs, which was allowed due to an extension in the period of performance of the contract; incorrectly added a [REDACTED] fee for material which the ACC Executive Director agreed to recoup; and incorrectly added a [REDACTED] fee for hangar improvements which was not allowed since this was not new work. Such a large increase in estimated cost and fee indicates contractor entitlement was uncertain at time of contracting. Therefore, CLIN 0002 of Task Order 0102 meets the third part of the GAO four-part test.

(~~FOUO~~) Test Guideline 4, Contractor Entitlement Increases Commensurately With Increased Performance Costs: The contractor's fee increased commensurately with additional costs to Task Order 0102 CLIN 0002. Specifically, as costs were added to the contract, the contracting officer allowed the contractor to consistently apply the 7-percent fee to all cost increases. The [REDACTED] fee added [REDACTED] of costs to work for which a fee had already been negotiated. In addition, the ACC-Redstone Executive Director's response to the draft report included hangar improvement, a contractor-driven requirement that did not support that new work had been added to the contract for facilities management. Since the fees on this contract increased with increases of performance costs, the contract meets the fourth part of the GAO four-part test for determining whether a contract is cost-plus-a-percentage-of-cost contract.

Recommendation, Management Comments, and Our Response

Recommendation A

(FOUO) We recommend the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Aircraft Directorate, require the contracting officer to modify the contract to remove the additional fee and recoup from the contractor the [REDACTED] unallowable fixed fee increase (which includes the [REDACTED] the Army Contracting Command-Redstone agreed to recoup) in accordance with Federal Acquisition Regulation subpart 16.306, “Cost-plus-fixed-fee contracts.”

ACC-Redstone Comments

(FOUO) The ACC-Redstone Executive Director partially agreed, stating she disagreed with recouping the entire amount of [REDACTED] obligated on modification 10. The ACC-Redstone Executive Director stated that the [REDACTED] fixed fee should remain on contract because the scope of work, paragraph 3.8.4, was revised in modification 10 to include new work specifically for hangar improvements per a letter from the contractor. The ACC-Redstone Executive Director stated that according to FAR 16.306, the fixed fee may be adjusted as a result of changes in work to be performed under the contract. The additional fee was thus added to the contract due to a change in the scope of the contract, which required additional work that included fee. The basic contract has a fixed fee equivalent to [REDACTED] of cost for any new work incorporated into cost-plus-fixed-fee delivery orders; therefore, the ACC-Redstone Executive Director believes the [REDACTED] fixed fee is allowable.

(FOUO) The ACC-Redstone Executive Director agreed that the fee on the original material costs was incorrectly applied to modification 10 and constituted an overpayment of [REDACTED]. The ACC-Redstone Executive Director stated ACC-Redstone is in the process of executing a modification for closeout actions under Task Order 0102. The overpayment will be recouped as a reimbursement or settlement offset to potential claims against the government. The ACC-Redstone Executive Director intends to resolve this issue as part of a contract closeout by December 31, 2014.

Our Response

(~~FOUO~~) The ACC-Redstone Executive Director response partially addressed the recommendation. Although the ACC-Redstone Executive Director agreed to the [REDACTED] for fees on material cost, we fundamentally disagree with the [REDACTED] paid to the contractor for hangar improvements. As stated in the finding, facilities management was a responsibility of the contractor from inception of the contract. ACC-Redstone officials stated that they added additional work for hangar improvements and storage to modification 10, which was entitled to fee. However, section 3.8.4, "Facilities," of the original statement of work states, "The Contractor shall provide and maintain licenses and/or certifications for Contractor owned facilities in accordance with Federal Aviation Administration Regulation throughout the duration of this contract. The Contractor shall maintain currency of Contractor facilities for support Mi-17 aircraft." The same section of the revised statement of work for modification 10 contained the same language with the addition of "said hanger facilities must be climate controlled and meet local building codes for hangar storage facilities." The Army did not explain how the climate control and local building code requirements equated to a change in contract scope or new work. Therefore, we are standing by our conclusion that hangar improvements were not new work under the contract, and ACC-Redstone officials should recoup the [REDACTED] fee, representing [REDACTED] of the Mi-17 hangar improvements costs, entered on modification 10 to Task Order 0102. We request that the ACC-Redstone Executive Director reconsider their position on the recommendation and provide comments to the final report.

Finding B

Mi-17 Cockpit Modifications Proposal Analyses

ACC-Redstone contracting officers awarded Task Order 0102 and subsequent modifications without adequately evaluating and determining the reasonableness of offered prices. Specifically:

- contracting officers did not adequately analyze offered prices because they relied on unsupported statements by PMO technical personnel to determine whether prices were fair and reasonable.
- for task order modifications, contracting officers did not evaluate the reasonableness of prime or subcontract offered prices. This occurred because the contracting officers neglected to perform proposal analysis to ensure the final agreed-to price was fair and reasonable and did not execute a contract action for the removal of one aircraft cockpit modification.

(FOUO) Furthermore, the contracting officers did not document the contract file with sufficient information to support that prices obtained were fair and reasonable. As a result, the Army had limited assurance that it received fair and reasonable prices for Mi-17 cockpit modification services valued at [REDACTED]. The amount to modify a single Mi-17 cockpit increased from [REDACTED] to [REDACTED].

Proposal Analyses for Task Order 0102 and Modification 10

(FOUO) ACC-Redstone NSRWA Directorate contracting officers did not adequately analyze offered prices. FAR 15.404, "Proposal Analysis," states that the objective of proposal analyses is to ensure that the final agreed-to price is fair and reasonable and describes the analytical techniques and procedures that may be used, singly or in combination with others, to ensure that final prices are fair and reasonable. For the [REDACTED] award of the task order and the [REDACTED] award of modification 10, the contracting officers did not perform adequate cost and price analysis, effectively use cost and pricing

The contracting officers did not perform adequate cost and price analysis, effectively use cost and pricing data, or effectively use independent government cost estimates (IGCEs) to support that prices obtained were fair and reasonable.

(FOUO) data, or effectively use independent government cost estimates (IGCEs) to support that prices obtained were fair and reasonable. Instead, the contracting officers relied on unsupported statements by PMO technical personnel to determine that prices were fair and reasonable.

Cost and Price Analysis

Contracting officers did not adequately perform cost or price analyses for the award of the task order and modification 10. FAR 15.404-1, "Proposal analysis techniques," states that "cost analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required" and price analysis should be used to verify the price offered is fair and reasonable. The contracting officer stated that the cost and price analysis was incorporated into price objective memorandums (POMs). The POMs generally stated that the Government took no exception to the contractor's proposed costs and contained no substantiated analysis. For example, the POM supporting modification 10 provided the following statements without any other details supporting analysis of the proposed costs:

- (FOUO) "The contractor proposed [REDACTED] for direct material. The technical evaluator took no exception to the material. Based on this fact, the Government takes no exception."
- (FOUO) "The contractor proposed [REDACTED] for hangar improvements and storage space. The Government took no exception to the proposed amount."

(FOUO) In addition, the contracting officers did not perform sufficient analysis of proposed costs for the [REDACTED] contract option. ACC-Redstone contracting officials stated that contracting officers used historical data in evaluating the contractor's proposals, but the contracting officers did not document in the contract file the use of purchase histories and prior contracts in performing their cost or price analysis. Finally, the contracting officials could not provide sufficient documentation to support their analysis when requested.

² Unless an exception applies, contracting officers are generally required to obtain certified cost or pricing data before the award of contracts and modifications expected to exceed \$700,000.

Cost and Pricing Data

Contracting officers did not effectively use cost or pricing data to support proposal analysis. FAR 15.403-4, “Requiring certified cost or pricing data,” requires contracting officers to obtain certified cost or pricing data, unless an exception applies or a waiver is granted, before the award or modification of a negotiated contract expected to exceed [REDACTED]. In addition, FAR 15.402, “Pricing policy,” states that contracting officers should obtain certified cost and pricing data along with data other than certified cost and pricing data to establish a fair and reasonable price. The contracting officers obtained Certificates of Current Cost or Pricing Data from the contractor to support the task order and modification 10. However, the contracting officers did not request additional data to determine whether the contractor’s proposed prices were fair and reasonable.

(FOUO) For example, SES’s proposal for modification 10 listed [REDACTED] as the proposed cost for [REDACTED]. The contracting officer accepted the proposed cost without obtaining cost and pricing data and was unable to provide any supporting documentation used to determine whether [REDACTED] pricing was fair and reasonable. After award of modification 10, SES obtained supplier quotes for [REDACTED] [REDACTED] that supported a price of less than [REDACTED]. As a result of not obtaining sufficient cost and pricing data, the contracting officer agreed to [REDACTED] pricing five times more than that supported by supplier quotes.

Independent Government Cost Estimates

Contracting officers did not effectively use IGCEs to support their proposal analyses. FAR 15.404-1 identifies a cost analysis technique that compares the costs proposed by the offeror for individual cost elements with IGCEs by technical personnel. The ACC-Redstone Head of the Contracting Activity Acquisition Instruction states that the IGCE is a crucial document that is one of the many

³ For modifications, the price adjustment amounts must consider both increases and decreases (e.g., a \$200,000 modification resulting from a reduction of \$500,000 and an increase of \$300,000 is a pricing adjustment exceeding \$700,000).

⁴ A Certificate of Current Cost or Pricing Data certifies that to the best of the contractor’s knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price. The certificate does not constitute a representation as to the accuracy of the contractor’s judgment on the estimate of future costs or projections.

⁵ The ACC-Redstone Head of the Contracting Activity Acquisition Instruction establishes instructions to implement the FAR, Defense Federal Acquisition Regulation Supplement, and Army Federal Acquisition Regulation Supplement. It applies to units for which the ACC-Redstone Principal Assistant Responsible for Contracting has responsibility.

tools used by the contracting officer in the evaluation of proposals. This instruction stresses the need to prepare an IGCE for all procurement actions in excess of the simplified acquisition threshold. The instruction states that an IGCE must provide sufficient narrative and analytical detail, including reference material to support its preparation, to verify the validity of a contractor's proposal. Finally, the instruction requires the IGCE to be signed and dated by the preparer and the preparer's immediate supervisor.

(~~FOUO~~) An IGCE for the base award was in the Task Order 0102 contract file; however, the IGCE was not signed, did not identify the originator, and lacked narrative and analytical detail to support its preparation. These deficiencies limited the IGCE's use in assessing the reasonableness of the contractor's proposed costs. According to the contracting office, the IGCE was used as a bottom line comparison; however, the POM did not demonstrate use of the IGCE in evaluating the contractor's proposal. Additionally, the contracting officer did not require an IGCE to support modification 10 for [REDACTED] in increased costs for the cockpit modifications.

Basis for Determining Price Reasonableness

The contracting officers relied on unsupported statements by PMO technical personnel to determine whether prices for the cockpit modifications were fair and reasonable. FAR 15.404-1 states that the contracting officer should request personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management, to perform a technical analysis of proposed types and quantities of materials, labor, processes, and other associated factors to determine the need for and reasonableness of the proposed resources. NSRWA PMO technical analyses for Task Order 0102 did not adequately explain the basis for determining the acceptability of the contractor's proposed costs. Nonetheless, the contracting officers relied heavily on unsupported statements within the technical analyses as their basis for determining that proposed contractor costs were reasonable.

⁶ As defined in the FAR, "simplified acquisition threshold" means \$150,000, except for acquisitions related to supporting a contingency operation or nuclear, biological, chemical, or radiological attack; the term means \$300,000 when performance or purchase is done inside the United States.

⁷ In DODIG-2013-123 "Army Needs To Improve Mi-17 Overhaul Management and Contract Administration," August 30, 2013, we identified deficiencies in NSRWA PMO's performance of technical analysis on other Mi-17—related work under Task Order 0102. We recommended the implementation of a standardized process for conducting and documenting technical analysis.

(FOUO) For example, the contracting officer did not perform an independent analysis of proposed material costs for the task order award. The technical evaluation of material proposed for the base award states, “the evaluators identified that the Non-Recurring Engineering for Night Vision Imaging System compatibility was located in the Bill of Material vice the labor section.” The technical evaluation did not contain further analysis of the [REDACTED] proposed material type, quantity, or costs. The contracting officer stated in the POM that “the technical evaluator evaluated the type and quantity of materials proposed and took no exception to the material,” and the contracting officer accepted the \$3.1 million proposed as his objective position. In response to our questions regarding the lack of documented proposal analysis, ACC-Redstone contracting officials prepared a May 2013 memorandum for record that stated a sampling of 65 percent of the items listed on the Bill of Materials was reviewed for reasonableness. However, the contracting officer did not adequately document cost or price analysis to support the award of the task order in September 2010.

The Director, ACC-Redstone NSRWA Directorate, agreed that contracting officers over-relied on the technical analysis instead of performing independent cost analysis. The ACC-Redstone Standing Operating Procedure (SOP) 715-1 requires contracting officials to prepare a written cost and price analysis report consistent with the value and scope of the acquisition and place it in the contract file. ACC-Redstone officials stated that during the timeframe these contract actions occurred, it was an acceptable practice to incorporate cost analysis into the POM. However, ACC-Redstone officials confirmed that contracting officers are now required to provide a separate cost and price analysis report as required by the SOP.

Price Reasonableness Not Evaluated

The contracting officers did not evaluate the reasonableness of offered prime and subcontractor prices and did not modify the contract to remove the sixth aircraft modification. FAR 15.4, “Contract Pricing,” requires the contracting officer to perform an analysis of contractor proposals to ensure final agreed prices are fair and reasonable.

(~~FOUO~~) Within 5 months after contract award, SES revised its pricing because it had to obtain the services of a qualified subcontractor to assist in the cockpit modifications. FAR 15.404-3, "Subcontract pricing considerations," requires contracting officers to determine the price reasonableness for the prime contract, including subcontracting costs. The SES revised pricing identified a new \$4 million subcontract and identified significant price adjustments to direct labor and direct material costs. According to the contracting officer, the prime contractor's revised pricing was not evaluated because the [REDACTED] price proposed was the same as negotiated in the original award. However, the total price adjustment, considering both increases and decreases, as is required by FAR 15.403-4, exceeded the \$700,000 threshold. Accordingly, the contracting officer should have obtained certified cost and pricing data and performed cost analysis of SES's revised proposal for modification 2.

(~~FOUO~~) In addition, the contracting officer did not perform an analysis of SES's proposal for modification 36, which states that [REDACTED] of increased costs included additional work to correct maintenance problems on the aircraft and for the procurement of new parts. The contracting officer stated that the NSRWA PMO considered the work cost growth and determined that the estimate was reasonable. The FAR does not require certified cost or pricing data for proposals used solely for overrun funding; therefore, a cost analysis would not have been required. However, based on our evaluation of the contractor's proposal and discussions with the Director, ACC-Redstone NSRWA Directorate, the proposed costs were not for cost growth. The contractor's proposal stated the proposed costs were for additional work. Furthermore, the contracting officer was unable to provide the NSRWA PMO's determination that the amount was reasonable.

(~~FOUO~~) Additionally, the contracting office did not execute a contract action for the removal of the sixth aircraft cockpit modification. In July 2011, the Russian authorities notified the former Director, ACC-Redstone NSRWA Directorate, that one of the aircraft was not authentic. Upon notification, NSRWA PMO officials decided not to modify this aircraft and designated it as a static trainer. The contracting officer stated she was awaiting a request for contract action from the NSRWA PMO to remove the modification of the sixth aircraft from the task order; however, as of March 2014, the contracting officer had not modified the contract to remove the modification of the sixth aircraft. During the audit, we asked SES about consideration for the reduction to five cockpit modifications. Subsequently, SES issued a modification to remove about [REDACTED] of costs from its subcontract. However, the contracting officer did not negotiate an adjustment

(~~FOUO~~) to the prime contract. Removing costs associated with a sixth cockpit modification could have resulted in an estimated reduction of more than \$1 million. The Director, ACC-Redstone NSRWA Directorate, should take action to terminate the sixth cockpit modification, and as appropriate, negotiate a settlement with the contractor.

Contract File Documentation

The contracting officers did not document the contract file with sufficient information to support that prices obtained were fair and reasonable. Specifically, the contract file was missing price reasonableness determinations and pricing documentation lacked detail, contained errors, and did not support the negotiated prices related to the Mi-17 procurement actions. FAR 15.406-3, "Documenting the negotiation," states that the contracting officer must document the principal elements of the negotiated agreement in the contract file to include the fair and reasonable pricing determination. FAR 4.803, "Contents of contract files," states that data and information related to the contracting officer's determination of a fair and reasonable price are records normally contained in contract files. When we asked for documentation to support price reasonableness, ACC-Redstone officials confirmed that "when reviewing the price objective memorandum now, we recognize areas that may not have been thoroughly addressed." In April 2013, during a previous audit, the ACC-Redstone Principal Assistant Responsible for Contracting (PARC) stated that through reviews of other Mi-17 procurements, ACC-Redstone had found that lack of proper documentation was systemic. The PARC further stated that ACC-Redstone was addressing these shortfalls through additional training and increased levels of review. Appendix B identifies actions taken by ACC-Redstone to improve the preparation and retention of documentation within contract files. The Director, ACC-Redstone NSRWA Directorate, should establish quality assurance procedures to verify contract files contain adequate documentation and analysis to support fair and reasonable price determinations. This documentation, analysis, and all supporting attachments and references should be clearly evident.

Fair and Reasonable Pricing of Cockpit Modifications

(~~FOUO~~) The Army had limited assurance that it received fair and reasonable prices for Mi-17 cockpit modification services valued at [REDACTED]. At contract award, the total estimated cost for six cockpit modifications was [REDACTED] or [REDACTED] per aircraft. The contract value further increased to \$15.2 without the contracting officers adequately determining whether the increased prices were fair and reasonable. As of February 2014, SES had received \$14.1 million for modifying the five of the six cockpits. Therefore, the amount to modify a single Mi-17 cockpit increased from, [REDACTED] to about [REDACTED].

(~~FOUO~~)
The Army had limited assurance that it received fair and reasonable prices for Mi-17 cockpit modification services valued at (b)(4) [REDACTED].

Prior Reporting on Mi-17 Contract Pricing Concerns

In DODIG-2012-135, “Mi-17 Overhauls Had Significant Cost Overruns and Schedule Delays,” and DODIG-2013-123, “Army Needs To Improve Mi-17 Overhaul Management and Contract Administration,” we determined that ACC-Redstone contracting officers did not comply with FAR Subpart 15.4 requirements in evaluating offered pricing for Mi-17 supplies and services. Specifically, contracting officers did not obtain cost and pricing data, document price reasonableness determinations, conduct negotiations, or perform cost analyses. We provided recommendations to Army officials to review the performance of the ACC-Redstone contracting officers, establish controls, and provide training to contracting officials. Both reports were issued after the events discussed in this report occurred, and based on the prior reports’ recommendations, Army officials initiated corrective actions. Appendix B provides details on the relative prior recommendations, management comments, and the status of implementation of those recommendations. For the purposes of this finding, we are not providing recommendations that would duplicate the recommendations in the prior reports.

⁸ For DODIG-2012-135, the responsible contracting officers included contracting officers from the U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office. As of August 2011, the U.S. Army Space and Missile Defense Command/Army Forces Strategic Command transitioned all Contracting and Acquisition Management Office activity to the U.S. Army Materiel Command, ACC-Redstone. The transition included all contract and procurement activities.

Conclusion

ACC-Redstone contracting officers awarded work without adequately evaluating the reasonableness of offered prices. Contracting officers either did not perform any evaluation of offered prices or did not perform sufficient cost and price analysis. Contract files lacked detail and did not support negotiated prices. As result, the Army does not have assurance it received fair and reasonable prices for Mi-17 cockpit modification services.

Management Comments on the Finding and Our Response

The Deputy Commanding General, U.S. Army Materiel Command, endorsed and forwarded comments from the Deputy to the Commanding General, ACC, and the ACC-Redstone Executive Director. The Deputy to the Commanding General, ACC, agreed with the ACC-Redstone Executive Director comments, and the ACC-Redstone Executive Director provided comments on the finding. A summary of the comments from the ACC-Redstone Executive Director on the finding follow, with our response.

ACC-Redstone Executive Director Comments on Amount of Each Mi-17 Cockpit Modification

(FOUO) The ACC-Redstone Executive Director disagreed that the amount to modify a single Mi-17 cockpit increased to approximately [REDACTED]. The ACC-Redstone Executive Director stated that the calculation to determine the increase should be based on six aircraft instead of five aircraft, which would change the increased value to [REDACTED] instead of [REDACTED] per cockpit modification.

Our Response

(FOUO) The contractor performed only five cockpit modifications instead of the original planned six cockpits modifications; however, the contract did not decrease. As of February 2014, SES had received [REDACTED] for cockpit modifications performed under Task Order 0102. Therefore, the DoD paid about [REDACTED] for each of the five cockpit modifications under Task Order 0102. As a result, to represent the actual approximate cost per aircraft, we changed the [REDACTED] per cockpit discussed in the draft report to [REDACTED].

ACC-Redstone Executive Director Comments on Contract Option

(~~FOUO~~) The ACC-Redstone Executive Director disagreed that the ACC-Redstone contracting officer did not perform any cost and price analysis for the \$1 million contract option. The Executive Director stated that a cost and price analysis was performed on the contract option and was incorporated into the POM.

Our Response

(~~FOUO~~) The POM does not contain sufficient analysis of the contract option. Furthermore, the ACC-Redstone contracting officer confirmed that she did not perform cost analysis on the \$1 million contract option when modification 05 was executed. However, based on the ACC-Redstone Executive Director's further explanation, we recognize that the contracting officer made some consideration for option pricing in the original POM. Therefore, we revised our statement to clarify that the contracting officers did not perform sufficient analysis of the proposed costs for the \$1 million contract option.

ACC-Redstone Executive Director Comments on Documenting Cost and Price Analysis

The ACC-Redstone Executive Director disagreed that the ACC-Redstone contracting officer did not document cost and price analysis to support the award of Task Order 0102. The Executive Director stated that the cost and price analysis was incorporated into the POM. In addition, the Executive Director stated that based on interpretation of ACC-Redstone Standard Operating Procedure 715-1, a cost and price analysis report is not necessarily a separate standalone document but maybe included in the POM.

Our Response

We agree that the POM for the base award included a section for cost and price analysis; however, the ACC-Redstone contacting officer's review of cost elements did not include adequate analysis of the proposed costs within the POM to support a fair and reasonable price determination. The ACC-Redstone contracting officials could not provide sufficient documentation to support their analysis of the proposed costs on Task Order 0102. Although ACC-Redstone officials prepared an additional memorandum dated May 2013 to further support their fair and reasonable determination, this memorandum did not support the

performance of detailed cost and price analysis at the time of award. We revised the report to clarify that the cost or price analysis was not “adequately” documented to support the task order award in September 2010.

Recommendations, Management Comments, and Our Response

We recommend that the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Aircraft Directorate:

Recommendation B.1

Take action to terminate the sixth cockpit modification, and as appropriate, negotiate a settlement with the contractor.

ACC-Redstone Executive Director Comments

The ACC-Redstone Executive Director agreed, stating that ACC-Redstone intends to de-scope Task Order 0102 to remove one cockpit modification and recoup fee by December 31, 2014.

Recommendation B.2

Establish quality assurance procedures to verify contract files contain adequate documentation and analysis to support fair and reasonable price determinations. This documentation, analysis, and all supporting attachments and references should be clearly evident.

ACC-Redstone Executive Director Comments

The ACC-Redstone Executive Director agreed, stating that ACC-Redstone NSRWA Directorate has implemented third party reviews for contract actions exceeding \$700,000 to provide additional oversight and to validate supporting documentation in the contract file. The ACC-Redstone Executive Director stated that the ACC-Redstone Pricing Directorate is required to review all contracts and modifications exceeding \$700,000 prior to award to ensure fair and reasonable pricing is obtained. In addition, the Executive Director stated that a checklist will be developed by July 31, 2014, to address systemic issues identified in Program Management Reviews and Department of Defense Office of the Inspector General reports.

Our Response

The ACC-Redstone Executive Director addressed all specifics of the recommendations, and no further comments are required.

Finding C

Contracting Officer’s Consent To Subcontract

(FOUO) The ACC-Redstone contracting officer provided consent for a sole-source subcontract for Mi-17 cockpit modification services without verifying that a noncompetitive award was appropriate. This occurred because the contracting officer did not evaluate SES’s request for consent to subcontract or obtain supporting data. As a result, the Army did not obtain the benefits of competitive pricing on [REDACTED] in subcontracted services and had no assurance that fair and reasonable prices for Mi-17 cockpit modification services were obtained.

Prime Contractor Subcontracting Responsibilities

The prime contractor’s subcontracting responsibilities were outlined in the LSF contract. The LSF contract incorporated FAR Clause 52.244-5, “Competition in Subcontracting,” that required the prime contractor to select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract. Additionally, the LSF contract incorporated FAR Clause 52.244-2, “Subcontracts,” which requires the prime contractor to obtain the contracting officer’s written consent before placing any subcontract exceeding \$650,000.

Contracting Officer’s Consent To Subcontract Responsibilities

(FOUO) The ACC-Redstone contracting officer allowed SES to noncompetitively award a [REDACTED] subcontract for Mi-17 cockpit modification services without verifying that SES’s actions were appropriate. FAR 44.202, “Contracting Officer’s Evaluation,” describes the contracting officer’s responsibilities when providing the prime contractor consent to subcontract. Specifically, the contracting officer was required to review the contractor’s notification and supporting

(FOUO) The ACC-Redstone contracting officer allowed SES to noncompetitively award a [REDACTED] subcontract for Mi-17 cockpit modification services without verifying that SES’s actions were appropriate.

⁹ (FOUO) The subcontract referenced is the same [REDACTED] subcontract that was added in modification 2 to Task Order 0102 and discussed in Finding B.

(~~FOUO~~) data to ensure the proposed subcontract was appropriate for the risks involved and consistent with current policy and sound business management. FAR 44.202 further states that the contracting officer must review the request and supporting data and consider whether:

- adequate price competition was obtained or its absence properly justified,
- the selection of the services was technically justified, and
- the contractor had a sound basis for selecting and determining the responsibility of the particular subcontractor.

(~~FOUO~~) The FAR stresses the particular need for careful and thorough consideration when subcontracts are proposed for award on a noncompetitive basis. SES's justification was not sufficient to support the noncompetitive award. Specifically, SES based its justification on FAR 6.302-1, "Only one responsible source and no other supplies or services will satisfy agency requirements." According to SES, it conducted an Internet-based market survey to locate responsible sources for performing Mi-17 cockpit modifications. Although, SES was aware of other certified companies performing Mi-17 work, SES determined that [REDACTED] was the only certified source qualified to provide the services within the contract schedule. SES did not document its market survey. In addition, the documentation SES provided did not include the other qualified sources and support for the determination that the other sources would not be able to meet the contract requirements.

Consent To Subcontract

The contracting officer did not perform any analysis to validate SES's request for consent to subcontract, obtain supporting data, and consider whether the prime contractor adequately justified a noncompetitive subcontractor award. According to FAR 44.202, the contracting officer must consider whether the contractor properly justified the absence of price competition and had a sound basis for selecting the particular subcontractor.

FAR Subpart 4.8, "Government Contract Files," states the documentation in the contract files must provide a complete background as the basis for informed decisions and support the actions taken. FAR 4.803 further requires that the contract files include justifications and approvals, determinations and findings, and associated documents. The contract file did not demonstrate that the contracting officer evaluated whether the subcontractor was technically qualified;

that lack of competition was properly justified; or that the contractor performed adequate cost and price analysis or comparisons for the required work. The Director, ACC-Redstone NSRWA Directorate, should implement procedures to require NSRWA Directorate contracting officers to perform and document adequate analyses of contractor requests for consent to subcontract before providing their consent to subcontract.

Benefits of Competition Not Obtained

(FOUO) The Army did not obtain the benefits of competitive pricing for ██████████ in subcontracted cockpit modification services. According to the Office of Management and Budget “Guidelines for Increasing Competition and Structuring Contracts for the Best Results,” competition drives down costs, motivates better contractor performance, helps to curb fraud and waste, and promotes innovation. Normally, competition establishes price reasonableness; however, the contracting officer did not verify adequate competition and did not analyze the subcontract price. Therefore, the Army had no assurance it obtained a fair and reasonable price.

Recommendation, Management Comments, and Our Response

Recommendation C

We recommend the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Directorate, implement procedures to require Non-Standard Rotary Wing Aircraft Directorate contracting officers to perform and document adequate analyses of contractor requests for consent to subcontract before providing their consent to subcontract.

ACC-Redstone Executive Director Comments

The ACC-Redstone Executive Director agreed, stating that NSRWA Director will implement an internal policy requiring the ACC-Redstone contracting officers to submit requests for consent to subcontract one level above the contracting officer for review and approval prior to final submission to the contractor.

Our Response

The ACC-Redstone Executive Director addressed all specifics of the recommendation, and no further comments are required.

Appendix A

Scope and Methodology

We conducted this performance audit from February 2013 through April 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This is the second in a series of reports. The first report included the award and administration of Task Order 0102 for the overhaul of Mi-17 aircraft (Report No. DODIG-2013-123, "Army Needs To Improve Mi-17 Overhaul Management and Contract Administration.") The scope of this report specifically focused on the award and administration of the Mi-17 cockpit modification effort.

We visited the NSRWA PMO, ACC-Redstone, and SES in Huntsville, Alabama, to obtain contract files, gather supporting documentation, and interview contracting officers, program management, Defense Contract Management Agency, and SES personnel. We reviewed Task Order 0102 and contract file documentation for compliance with the FAR, DFARS, and United States Code. We examined contractor provided documentation, and interviewed contracting officials to determine whether contracting officers adequately determined price reasonableness for the Mi-17 cockpit modifications. In addition, we determined whether the NSRWA Directorate contracting officer followed FAR procedures before providing consent to subcontract.

We examined Task Order 0102 proposals, contract award, and modifications 5 and 10 documentation for CLIN 0002 to determine work performed, and amounts established to include fees for the cockpit modifications. To validate concerns reported in Finding A regarding the use of a prohibited cost-plus-a-percentage-of-cost system of contracting, we applied the GAO four-part test outlined in the Comptroller General decision B-183705, and applicable FAR and United States Code sections. Also, we reviewed SES invoices to determine fees submitted under CLIN 0002.

Use of Computer-Processed Data

We relied on computer-processed data from the Mechanization of Contract Administration Services Disbursement History and DoD Electronic Document Access website. The Mechanization of Contract Administration Services Disbursement History reports, which we received from the Defense Contract Management Agency, Contract Manager, showed the detailed obligation and disbursement transactions on the contract. We relied on Mechanization of Contract Administration Services Disbursement History reports to identify contract payments disbursed from July 2011 through September 2012. We matched the disbursement amounts from these reports to invoices provided by the contractor. The disbursement transactions reviewed were accurate based on the hardcopy invoices. We concluded that data collected from the Mechanization of Contract Administration Services Disbursement History report were sufficiently reliable for determining the amount paid on the contract.

The DoD Electronic Document Access is a Web-based system that provides secure online access, storage and retrieval contracts, and contract modifications to authorized users through DoD. We downloaded Task Order 0102 and modifications from the DoD Electronic Document Access website. We compared the information that we obtained from Electronic Document Access with contract documentation from the ACC-Redstone contracting officer, to verify the accuracy of the Electronic Document Access contract values. We concluded that data collected from the DoD Electronic Document Access database was sufficiently reliable for the purpose of identifying the Task Order 0102 and its modifications.

Use of Technical Assistance

We did not use technical assistance in conducting this audit.

Prior Coverage

During the last 5 years, the GAO, Department of Defense Inspector General (DoD IG), Special Inspector General for Afghanistan Reconstruction (SIGAR), and Army Audit Agency issued six reports discussing Mi-17 aircraft. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>. Unrestricted SIGAR reports can be accessed at <http://www.sigar.mil/>.

GAO

GAO Report No. GAO-13-319R, "Mi-17 Helicopter Procurement," April 1, 2013

DoD IG

DoD IG Report No. DODIG-2013-123, "Army Needs To Improve Mi-17 Overhaul Management and Contract Administration," August 30, 2013

DoD IG Report No. DODIG-2012-135, "Mi-17 Overhauls Had Significant Cost Overruns and Schedule Delays," September 27, 2012

DoD IG Report No. DODIG-2012-036, "DoD Needs to Improve Accountability and Identify Costs and Requirements for Non-Standard Rotary Wing Aircraft," January 5, 2012

Army Audit Agency

Army Audit Agency Report No. A-2011-0060-ALM, "Mi-17 Helicopter Airworthiness and Flight Safety," February 11, 2011

SIGAR

SIGAR Report No. SIGAR Audit 13-13, "Afghan Special Mission Wing: DOD Moving Forward with \$771.8 Million Purchase of Aircraft that the Afghans Cannot Operate and Maintain," June 28, 2013

Appendix B

Recommendations from Prior Reports and Additional Actions Taken

In DODIG-2012-135, “Mi-17 Overhauls Had Significant Cost Overruns and Schedule Delays,” and DODIG-2013-123, “Army Needs To Improve Mi-17 Overhaul Management and Contract Administration,” we reported on Mi-17 pricing. Relative recommendations from these reports are provided in this appendix along with management comments and actions, and the status of implementation of those recommendations. Additionally, this appendix identifies subsequent actions taken by ACC-Redstone officials to ensure that procurement actions are properly prepared and documented.

Table 2. DODIG-2012-135, “Mi-17 Overhauls Had Significant Cost Overruns and Schedule Delays,” September 27, 2012

Recommendation	Management Response and Actions	Status
<p>Recommendation B.1: We recommended that the Executive Director, Aviation and Missile Life Cycle Management Command/Army Space and Missile Defense Command, ACC implement a process to use the ACC-Redstone Arsenal directorate of cost/price analysts and the Defense Contract Management Agency pricing analysts to assist in fair and reasonable price determinations for all contracts related to Mi-17 aircraft.</p>	<p>The Executive Deputy to the Commanding General, U.S. Army Materiel Command, agreed. He stated that during the past year, ACC-Redstone placed emphasis on restoring its cost and price analysis capability. He also stated that U.S. Army Materiel Command would provide a SOP regarding using the newly established pricing organization by June 15, 2012, and further stated that contracting specialists and contracting officers would use Defense Contract Management Agency and the ACC-Redstone Pricing Directorate as directed or needed.</p>	<p>Recommendation is closed. The Executive Deputy’s comments addressed the recommendation, and no further comments were required.</p>
<p>Recommendation B.3: We recommended that the Executive Director, Aviation and Missile Life Cycle Management Command/Army Space and Missile Defense Command, ACC establish controls to verify that the contracting officers:</p> <ol style="list-style-type: none"> Use cost or price analyses appropriately in accordance with FAR 15.404-1. Obtain cost and pricing data for modifications expected to exceed \$700,000, as required by FAR subpart 15.4. Document fair and reasonable price determinations in accordance with FAR 15.406-3. 	<p>The Executive Deputy to the Commanding General, U.S. Army Materiel Command, agreed. He stated that a policy and compliance guide would be distributed across ACC-Redstone by July 31, 2012. The Executive Deputy’s comments partially addressed the recommendation. We noted that the distribution of guidance was a proactive first step but stressed the need for establishing controls. The Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology), agreed and commented that the Army had established controls, specifically referencing the ACC-Redstone SOP 715-1. Also, Headquarters, ACC, recommended that the PARC perform a review of the Mi-17 Program every 6 months and report the findings to the ACC Operations Group, Management Assessment Division. The review would contain validation that the contract administration performed by NSRWA Division complies with SOP 715-1.</p>	<p>Recommendation is open. As of May 2013, ACC-Redstone had performed its initial review of Mi-17 contracts. Closure of this recommendation is pending receipt of documentation.</p>

Table 3. DODIG-2013-123, "Army Needs To Improve Mi-17 Overhaul Management and Contract Administration," August 30, 2013

Recommendation	Management Response and Actions	Status
<p>Recommendation A.1.d: We recommended the ACC-Redstone PARC review the performance of the contracting officer at the NSRWA Directorate, who administered Task Order 0102.</p>	<p>(FOUO) The ACC-Redstone PARC, partially agreed. Although disagreeing with elements of the finding, the PARC established a special review team to perform a review of Mi-17 contract files and contracting officer performance. The PARC stated she would consider the finding of this team in deciding whether the contracting officer's performance merited administrative action.</p>	<p>Recommendation is open. The team is awaiting documentation on the agreed upon actions.</p>
<p>Recommendation C.2: We recommended that the ACC-Redstone PARC provide training to the ACC-Redstone NSRWA Directorate contracting officer for:</p> <ul style="list-style-type: none"> a. Consenting to subcontract requirements in accordance with FAR Subpart 44.2. b. Obtaining cost and pricing data for modifications expected to exceed \$700,000, as required by FAR subpart 15.4. c. Documenting contract fair and reasonable price determinations in accordance with FAR 15.406-3. d. Conducting price negotiations in accordance with FAR 15.405. e. Using cost analysis before awarding contracts in accordance with FAR 15.404-1. 	<p>The ACC Redstone PARC, partially agreed. Although disagreeing with elements of the finding, the PARC agreed that ACC-Redstone did find shortfalls in proper documentation that are being addressed through additional training and increased levels of review. In addition, ACC-Redstone contracting officers would attend a pricing course by the end of May 2013 that reinforced costing techniques. The PARC also stated that on February 13, 2013, she reduced the review and approval thresholds for all contract actions to maintain adequate oversight of contract administration performed by the ACC-Redstone contracting officers.</p>	<p>Recommendation is open. The team is awaiting documentation on the agreed upon actions.</p>
<p>Recommendation C.3: We recommended that the ACC-Redstone PARC establish procedures to verify that the NSRWA Directorate contracting officers obtain cost and pricing data for modifications expected to exceed \$700,000 in accordance with FAR 15.403-4.</p>	<p>The ACC-Redstone PARC agreed, stating that the ACC-Redstone Pricing Directorate would be involved in all actions that exceed the \$700,000 threshold for obtaining cost and pricing data. The PARC stated that she reduced the review and approval thresholds for all NSRWA contract actions to maintain adequate oversight of contracting officers' contract administration. The PARC stated that before negotiations with the contractor, Pricing Directorate officials must review and approve the POM. The PARC also stated that contracting officers can no longer waive the requirement for the Price Negotiation Memorandum. In addition, the Pricing Directorate officials must review and approve the Price Negotiation Memorandum before award.</p>	<p>Recommendation is open. The team is awaiting documentation on the agreed upon actions.</p>

Management Actions Taken

In October 2013, the audit team requested ACC-Redstone officials to explain what steps, procedures, controls, or other actions ACC-Redstone and the NSRWA Directorate were taking to improve the preparation and retention of documentation within contract files with specific emphasis on supporting prices as fair and reasonable. In response, ACC-Redstone officials identified the following steps and procedures they were implementing:

- The PARC implemented reduced review and approval thresholds for all contract actions on the NSRWA program.
- On actions over \$700,000, the Pricing Directorate is performing a pricing report for all NSRWA actions and the Pricing Directorate must review and approve the POM and Price Negotiation Memorandum.
- A milestone tracking system was implemented to ensure a clear understanding of status actions across the NSRWA contracting office and PMO.
- New contracts awarded in fiscal year 2013 were required to be inputted into a paperless contracting file system.
- Senior contracting officials within the NSRWA Directorate attended a pricing development course.
- ACC-Redstone developed a refresher training course to address systemic issues and scheduled to provide the “Contracting Refresher Course” to the NSRWA Directorate in fiscal year 2014.
- In addition to the Pricing Directorate review, the Director, ACC-Redstone NSRWA Directorate, established an internal third party review of NSRWA Directorate contract actions.

Appendix C

Summary of Potential Monetary Benefits

Recommendation	Type of Benefit	Amount of Benefit
A	Questioned costs. Recoup increase fixed fee from contractor that was unallowable.	(b)(4)

* (FOUO) The amount includes material fee of [REDACTED] and hangar improvement fee of [REDACTED] but does not include the storage fee of [REDACTED]

Management Comments

U.S. Army Materiel Command



REPLY TO
ATTENTION OF:

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

AMCIR

22 May 2014

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN:
(b)(6) Acquisition, Parts, and Inventory
4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Comments on DoDIG Draft Report, Improvements Needed in
Contract Administration of Mi-17 Cockpit Modification Task Order, Project D2013AS-
0097

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

2. The AMC point of contact is (b)(6)
(b)(6)

Encl

Patricia E. McQuiston
PATRICIA E. McQUISTION
Lieutenant General, USA
Deputy Commanding General

U.S. Army Materiel Command (cont'd)



REPLY TO
ATTENTION OF:

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

MAY 06 2014

AMSCC-IR

MEMORANDUM FOR (b)(6), Director, Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898-5340

SUBJECT: Draft Report "Improvements Needed in Contract Administration of Mi-17 Cockpit Modification Task Order, "April 10, 2014 (Project No. D2013-D000AS-0097.000), (D1420) (1660)

1. Memorandum, Inspector General, Department of Defense, 12 February 2014, subject as above.
2. The Army Contracting Command (ACC) concurs with the enclosed ACC-Redstone response to the referenced document.
3. The ACC point of contact is (b)(6), Evaluator, Internal Review and Audit Compliance Office, (b)(6)
(b)(6)

Encl

Michael R. Hutchison
MICHAEL R. HUTCHISON
Deputy to the Commanding General

U.S. Army Materiel Command (cont'd)



DEPARTMENT OF THE ARMY
ARMY CONTRACTING COMMAND - REDSTONE
BUILDING 5303 MARTIN ROAD
REDSTONE ARSENAL, ALABAMA 35898-5000

APR 25 2014

CCAM-PSP

MEMORANDUM FOR (b)(6), Internal Review and Audit Compliance Office,
U.S. Army Contracting Command, 3334A Wells Road, Redstone Arsenal, Alabama
35898-5000

SUBJECT: Response to April 10, 2014 Request for Comments on OIG Draft Audit Report,
"Improvements Needed in Contract Administration of Mi-17 Cockpit Modification Task
Order," April 10, 2014 (Project No. D2013-D000AS-0097.000)

1. The Army Contracting Command-Redstone provides the subject enclosed response.
2. The servicing legal advisor for the contract associated with this audit has concurred with the response (e-mail enclosed).
3. The subject response has been reviewed for the inclusion of For Official Use Only information and has been appropriately marked.
4. The point of contact for this action is (b)(6) (ACC-RSA Audit Liaison),
CCAM-PSP, (b)(6)

2 Encls

For Rebecca E. Weirick
REBECCA E. WEIRICK
Executive Director
Army Contracting Command-Redstone

ENCL

U.S. Army Materiel Command (cont'd)

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COMMAND COMMENTS
In Response to April 10, 2014 Request for Comments
on OIG Draft Audit Report,
"Improvements Needed in Contract Administration of
Mi-17 Cockpit Modification Task Order,"
April 10, 2014 (Project No. D2013-D000AS-0097.000)

PART I: Following, quoted from the audit report, are the OIG recommendations; and Army Contracting Command-Redstone's (ACC-RSA's) responses to the recommendations.

Recommendation A:

(~~FOUO~~) We recommend the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Aircraft Directorate, require the contracting officer to modify the contract to remove the additional fee and recoup from the contractor the (b)(4) unallowable fixed fee increase (which includes the (b)(4) the Army Contracting Command-Redstone agreed to recoup) in accordance with Federal Acquisition Regulation subpart 16.306, "Cost-plus-fixed-fee contracts".

Command Comments: Partial Concur with Finding A.

(~~FOUO~~) ACC-RSA disagrees with recouping the total amount of (b)(4) obligated on modification 10. The amount of (b)(4) in fixed fee should remain on the contract because the scope of work, paragraph 3.8.4, was revised in modification 10 to include new work specifically for hangar improvements per letter from SES dated 2010 December 8 (Attachment 1). Per FAR 16.306, the fixed fee "may be adjusted as a result of changes in the work to be performed under the contract." The additional fee was thus added to the contract due to a change in the scope of the contract which required additional work that included fee. The basic contract has a fixed fee equivalent to (b)(4) of cost for any new work incorporated into cost-plus-fixed-fee (CPFF) delivery orders (DOs). ACC-RSA believes the (b)(4) fixed fee is allowable.

(~~FOUO~~) ACC-RSA agrees that fee on the original material costs was incorrectly applied to modification 10 and constituted an overpayment in the amount of (b)(4). ACC-RSA is in the process of executing a modification for close out actions under DO 0102 and the overpayment will be recouped as a reimbursement or a settlement offset to potential claims against the Government. ACC-RSA intends to resolve this issue as part of contract close-out by 31 December 2014.

Recommendation B.1:

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"We recommend that the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Aircraft Directorate . . . [t]ake action to terminate the sixth cockpit modification, and as appropriate, negotiate a settlement with the contractor."

Command Comments: Concur. ACC-RSA intends to de-scope the DO to remove one cockpit modification and recoup fee by 31 December 2014.

Recommendation B.2:

We recommend that the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Aircraft Directorate . . . [e]stablish quality assurance procedures to verify contract files contain adequate documentation and analysis to support fair and reasonable price determinations. This documentation, analysis, and all supporting attachments and references should be clearly evident.

Command Comments: Concur. The ACC-RSA Non-Standard Rotary Wing Aircraft (NSRWA) Directorate has implemented third party reviews for actions exceeding \$700,000 to provide additional oversight and to validate supporting documentation to the contract file. In addition to the third party review, a checklist will be developed to address systemic issues identified in PMRs and IG reports. Further, the ACC-RSA Pricing Directorate is required to review all contracts and modifications exceeding \$700,000 prior to award to ensure fair and reasonable pricing is obtained. The checklist will be completed by 31 July 2014.

Recommendation C:

We recommend the Director, Army Contracting Command-Redstone Non-Standard Rotary Wing Directorate, implement procedures to require Non-Standard Rotary Wing Aircraft Directorate contracting officers to perform and document adequate analyses of contractor requests for consent to subcontract before providing their consent to subcontract.

Command Comments: Concur. The NSRWA Director will implement an internal policy 15 May 2014, whereby the contracting officer shall submit requests for consent to subcontract one level above the contracting officer for review and approval prior to final submission to the contractor. Contracting officers shall ensure the required documentation pursuant to FAR 52.244-2 is in the contract file.

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PART II: Following, quoted from the audit report, are major elements of the OIG's findings with which ACC-RSA disagrees; and ACC-RSA's comments regarding the findings. The same or similar comments were provided by ACC-Redstone in response to the Discussion Draft Audit Report but were not acknowledged in the Draft Audit Report.

Finding A:

Reference Draft Audit Report page 5, Task Order 0102 Modifications Added Additional Fee:

(FOUO) The ACC-Redstone contracting officer allowed the contractor to receive a (b)(4) fee on the costs of material, storage, and aircraft hangar improvements performed under Task Order 0102 CLIN 0002. Specifically, the contracting officer modified task order CLIN 0002 resulting in an increase of fee from (b)(4) to (b)(4).

Command Comments:

(FOUO) ACC-RSA agrees that fee on material costs recognized in Modification 10 was incorrectly applied and constituted an overpayment in the amount of (b)(4); ACC-RSA intends to recoup this fee. However, Modification 10 in fact added work for hangar improvements and storage that was entitled to fee.

(FOUO)

	<u>Original CLIN 0002 (Option Exercised by Mod 5)</u>	<u>Hangar Improvements Added by Mod 10</u>	<u>Storage Costs Added by Mod 10</u>	<u>Material Added by Mod 10</u>	<u>Total CLIN 0002 as of Mod 10</u>
Cost	(b)(4)				
Fixed Fee					
Total Price					

Reference Draft Audit Report page 7, Government Accountability Office Four-Part Test:

Task Order 0102 CLIN 0002 met all four prohibited cost-plus-a-percentage of cost test guidelines outlined in the Comptroller General decision B-183705. In this decision, the Government Accountability Office (GAO) states that the guidelines for determining whether a contract arrangement

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constitutes a prohibited cost-plus-a-percentage-of-cost contract are whether:

1. payment is based on a predetermined percentage rate,
2. the predetermined percentage rate is applied to actual performance costs,
3. contractor entitlement is uncertain at the time of contracting, and
4. contractor entitlement increases commensurately with increased performance costs.

Command Comments:

Test Guideline 1: ACC-RSA agrees. The * fee was previously negotiated under competitively awarded Basic Contract W58RGZ-09-D-0130. This fee is to be utilized for all cost-plus-fixed-fee DOs.

(FOUO)* (b)(4)

Test Guideline 2: ACC-RSA disagrees. At DO execution, prior to performance, Option CLIN 0002 included the appropriate application of fee and Modification 05 exercised the option in accordance with the negotiated price under the DO. Modification 10 appropriately applied additional fee to new work, yet to be performed under Modification 10 for Hangar Improvements and Storage Costs. Modification 10 also incorrectly applied additional fee to estimated material cost. ACC-RSA agrees that fee on the material costs was incorrectly applied to Modification 10 and constituted an overpayment in the amount of; ACC-RSA intends to recoup this fee.

(FOUO) (b)(4)

Test Guideline 3: ACC-RSA disagrees. Based on the fee percentage established at the time of award of Basic Contract W58RGZ-9-D-0130, the contractor is entitled to * fee for the Option CLIN 0002 effort negotiated at the time of DO award and the subsequent new work added by Modification 10 for Hangar Improvements and Storage Costs. These fee amounts were certain at the time of contracting. The fee amount for the material added by Modification 10 was also certain, but should not have been allowed.

(FOUO) (b)(4)

Test Guideline 4: ACC-RSA disagrees. Contractor entitlement to fee for the initial work under Option CLIN 0002 was established prior to the performance of Option CLIN 0002 and was not increased commensurately with increased performance costs. The subsequent new work added by Modification 10 for Hangar Improvements and Storage

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Costs allowed an increase in fee entitlement that was commensurate with the increase in estimated costs related to the new work added for Hangar Improvement and Storage Costs. ACC-RSA agrees that fee on the material costs was incorrectly applied.

Finding B:

Reference Draft Audit Report page 11, Mi-17 Cockpit Modifications Proposal Analyses:

(FOUO) “The amount to modify a single Mi-17 cockpit increased from (b)(4) to approximately (b)(4).”

Command Comments:

(FOUO) ACC-RSA disagrees. The total obligated for cockpit modifications on DO 0102 is (b)(4). This value divided by five (5) aircraft is (b)(4) per cockpit modification, which appears to be the calculation used by the OIG. However, the effort should appropriately be divided by six (6) aircraft which changes the value from (b)(4) to (b)(4) per cockpit modification.

Reference Draft Audit Report page 13, Cost and Price Analysis:

“In addition, the contracting officers did not perform any analysis of proposed costs for the [*] contract option.”

(FOUO) (b)(4)

Command Comments: ACC-RSA disagrees. A cost and price analysis was performed on this effort and is incorporated into the Price Objective Memorandum (POM) (Attachment 2). A cost analysis was used to evaluate the cost elements of the proposal. This analysis is in Section B of the POM. The POM includes the analysis of each cost element. Direct labor rates, overhead rates, general & administrative costs and fixed fee were all negotiated as part of Basic Contract W58RGZ-9-D-0130. The proposal was reviewed to ensure the contractor proposed these cost elements in accordance with the terms on the basic contract. The other elements, including direct material, storage space and travel, were evaluated through use of purchase history for similar efforts to include review of travel costs through comparison with travel sites and through technical analysis. Based on the above, the contracting officer determined that the price was fair and reasonable. When reviewing the POM now, we recognize areas that may not have been thoroughly addressed. Therefore an additional memorandum (Attachment 3) was prepared to further support our fair and reasonable determination. This memorandum was included in the contract file.

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Reference Draft Audit Report page 15, Basis for Determining Price Reasonableness:

“However, the contracting officer did not document cost or price analysis to support the award of the task order in September 2010.”

Command Comments: ACC-RSA disagrees. The cost and price analysis for this effort was incorporated into the POM. Based on our interpretation of the ACC-RSA SOP 715-1, a cost and price analysis report is not necessarily a separate standalone document but may be included in the POM.

Per the ACC-RSA Policy Division Chief:

A POM/PNM should be summarized by cost element documenting that the overall price is fair and reasonable. A competitive action would not require a cost element breakdown. Senior leadership at their discretion may have accepted the POM/PNM [Price Negotiation Memorandum] with a comprehensive in-depth summary of cost when a cost report was not prepared. However, it is incumbent upon the contracting officer and the contract specialist to ensure the contract file is properly documented in regard to the proposal analysis and associated reports that may have been developed in support of a fair and reasonable price. If the POM/PNM was determined to be adequate for cost reporting, the contract file should indicate as such in the appropriate Tab index. For example, in the hardcopy contract checklist the tab is B7 Cost/Price/Audit reports.

The policy office verified that offices within the ACC-RSA are in fact developing pricing reports for the files or preparing a memo for the file regarding their cost/price analysis. In addition, ACC-RSA leadership acknowledges that comprehensive POMs and PNMs with in-depth cost/price summaries have been accepted where a stand alone cost/price report was not developed. As you are aware PCG [Policy and Compliance Guidance] 2012-10 dated 2 July 2012 issued a revision to SOP Subpart 15.404 in its entirety. The revision was a result of the re-establishment of the Pricing Directorate within the ACC-RSA. The Pricing Directorate will provide written price/cost analysis reports or reviews in response to the Contracting Officer's requests, including profit or fee objectives on actions over \$50M. In addition, for the NSRW [Non-Standard Rotary Wing] Directorate, PCG 2013-20 dated 26 Jun 2013, established the threshold for Pricing Directorate involvement be lowered to \$700,000 when there is a requirement to obtain Certified Cost or Pricing Data and a Certificate of Current Cost and Pricing data (or a waiver from the requirement).

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Attachments: (All are FOUO)

Attachment 1, SES letter dated 2010 December 8
Attachment 2, Delivery Order 0102 POM dated 2010 September 28
Attachment 3, Memorandum for Record dated 2013 April 17

Note: ~~All FOUO markings on individual portions of this document and the entirety of each of the attachments are based on exemption from release under Freedom of Information Act Exemption 4.~~

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7

Acronyms and Abbreviations

ACC	Army Contracting Command
CLIN	Contract Line Item Number
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
IGCE	Independent Government Cost Estimate
LSF	Logistics Support Facility
NSRWA	Non-Standard Rotary Wing Aircraft
PARC	Principal Assistant Responsible for Contracting
PMO	Project Management Office
POM	Price Objective Memorandum
SES	Science and Engineering Services
SOP	Standard Operating Procedures

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