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Inspector General

United States Department of Defense

Logistics Support Contracting for the United States Special Operations Command

Report Documentation Page

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Acronyms and Abbreviations

ADA	Antideficiency Act
COR	Contracting Officer's Representative
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
IG	Inspector General
QASP	Quality Assurance Surveillance Plan
RDT&E	Research, Development, Test, and Evaluation
SOFSA	Special Operations Forces Support Activity
TAPO	Technology Applications Program Office
U.S.C	United States Code
USSOCOM	United States Special Operations Command

INSPECTOR GENERAL
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May 28, 2009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND
COMPTROLLER, UNITED STATES SPECIAL OPERATIONS COMMAND
DIRECTOR, SPECIAL OPERATIONS FORCES SUPPORT ACTIVITY

SUBJECT: Logistics Support for the United States Special Operations Command (Report No. D-2009-083)

We are providing this report for review and comment. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The U.S. Special Operations Command comments were partially responsive. We revised draft Recommendation A.1. and Finding B. We request that the Commander, U.S. Special Operations Command provide additional comments on Recommendation A.1, and the Director, Special Operations Forces Support Activity provide additional comments on Recommendations B.2.a. and B.2.b. We request the additional comments by July 27, 2009.

Please provide comments that conform to the requirements of DoD Directive 7650.3. If possible, send your comments in electronic format (Adobe Acrobat file only) to audacm@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9071 (DSN 664-9071.

Bruce A. Burton
Deputy Assistant Inspector General
Acquisition and Contract Management

Report No. D-2009-083 (Project No. D2008-D000AS-0248.000) May 28, 2009

Results in Brief: Logistics Support for the United States Special Operations Command

What We Did

The overall objective was to determine whether logistics support contracts were properly managed and administered by the United States Special Operations Command (USSOCOM). Specifically, we reviewed 46 task order files for quality assurance controls.

What We Found

The Special Operations Forces Support Activity (SOFSA) contracting officers did not develop and implement a Quality Assurance Surveillance Plan (QASP) or designate properly trained Contracting Officer's Representatives (CORs) for 44 service task orders valued at more than $514 million. This is approximately 30 percent of the overall $1.74 billion obligated as of July 2008 for the two contracts. The SOFSA Contracting Office did designate a COR for the overall contracts; however, it is not feasible for one individual to effectively oversee 2,148 task orders requiring surveillance in 20 locations.

SOFSA allowed contractor employees to perform inherently governmental functions for task orders valued at approximately $82 million.

The United States Army Special Operations Command, Technology Applications Program Office incorrectly funded at least one task order with $63.6 million in procurement funds rather than research, development, test, and evaluation funds.

SOFSA internal controls were not adequate. We identified material internal control weaknesses in the SOFSA contracts we reviewed.

What We Recommend

The Commander, USSOCOM

- issue service contracts only after the Requiring Activity Officials identify a COR in compliance with COR guidance.
- evaluate the SOFSA Business Management Division and the Special Operations and Logistics Center to determine what positions need to be Government positions due to their inherently governmental functions or lower cost.

The Director, SOFSA

- create and implement QASPs and designate properly trained CORs for all future task orders and open task orders scheduled for completion after July 31, 2009.
- develop internal controls and standard operating procedures to ensure that SOFSA contractors and customer contractors do not perform inherently governmental functions.

We also recommend that the Comptroller, USSOCOM report to the DoD Office of the Inspector General the results of his investigation to determine whether an Antideficiency Act violation occurred.

Management Comments and Our Responses

The Director, Center for Special Operations Acquisition and Logistics, responding for USSOCOM, partially agreed with audit Findings A and B, and disagreed with Finding C. The Director agreed with most of the recommendations. We revised Recommendation A.1., and changed Finding B. We request that the Commander, USSOCOM; the Comptroller, USSOCOM; and the Director, SOFSA to provide comments on the final report. See the recommendation table on page ii.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, United States Special Operations Command	A.1.	B.1.a. and B.1.b.
Comptroller, United States Special Operations Command		C.1. and C.2.
Director, Special Operations Forces Support Activity	B.2.a. and B.2.b.	A.2.a. and A.2.b.

Please provide comments by July 27, 2009.

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Introduction

Objectives

The overall objective was to determine whether logistics support contracts USZA22-03-C-0056 and USZA22-03-D-0006 were properly managed and administered by the United States Special Operations Command (USSOCOM). Specifically, we reviewed 46 task order files for quality assurance controls.

Background

This audit was a follow-on to DoD IG Report No. D-2007-100, "Contract for Logistics Support Services for Special Operations Forces," May 18, 2007. We reviewed the same two contracts (USZA22-C-03-0056 and USZA22-D-03-0006) that were discussed in DoD IG Report No. D-2007-100. DoD IG Report No. D-2007-100 contained three findings.

- Finding A: Financial and contracting officials at the Special Operations Forces Support Activity (SOFSA) did not comply with Federal appropriations law and the DoD Regulation 7000.14-R, "DoD Financial Management Regulation (FMR)."
- Finding B: The officials who determine fees at USSOCOM increased the award fees without adequate written justification.
- Finding C: SOFSA contract files did not contain Determinations and Findings documents or support agreements for Economy Act orders received through Military Interdepartmental Purchase Requests from requesting organizations for the contracts.

Findings A and C of Report No. D-2007-100 do not coincide with the scope and objectives of our audit. However, Finding B of Report No. D-2007-100 deals with the improper administration of the contract and, therefore, applies to our audit. USSOCOM concurred with Finding B, which required the fee-determining officials to fully explain and document their rationale for issuing an award fee greater than the Award Fee Evaluation Board deemed appropriate.

U.S. Special Operations Command

The USSOCOM is a combatant command at MacDill Air Force Base in Tampa, Florida. USSOCOM is responsible for planning, synchronizing, and executing global operations against terrorist networks and provides organization, training, and equipment for special operations.

Special Operations Forces Support Activity

SOFSA is a Government-owned and contractor-operated facility in Bluegrass Station, Lexington, Kentucky. Its primary mission is to provide logistics support services to Special Operations Forces worldwide. SOFSA supports USSOCOM and other DoD

Components by providing logistics support including repair, maintenance management, and life cycle sustainment support.

SOFSA Contracts

In 2003, USSOCOM awarded two indefinite-delivery, indefinite-quantity contracts, USZA22-03-C-0056 and USZA22-03-D-0006 (SOFSA contracts), for logistics support services to L3 Communications Integrated Systems with a ceiling price of $2.1 billion. Both contracts had the same scope of work and period of performance and share the $2.1 billion ceiling. The SOFSA contracting division administers the two contracts as one. The contracts allow for cost-plus-award-fee and firm-fixed-price type task orders.

As of July 2008, SOFSA has awarded 2,148 task orders from these two contracts obligating approximately $1.7 billion of the $2.1 billion ceiling. Specifically, SOFSA has awarded:

- 1,014 task orders on the USZA22-03-C-0056 contract valued at approximately $735 million and

- 1,134 task orders on the USZA22-03-D-0006 contract valued at approximately $1.0 billion.

We judgmentally selected 46 task orders, with a total value of approximately $522 million, which is 30 percent of the overall $1.74 billion obligated for the two contracts. Of the 46 task orders selected for review, we identified 44 as services task orders and 2 as product task orders.

Review of Internal Controls

We identified material internal control weaknesses in the SOFSA contracts under evaluation as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. Specifically, SOFSA did not implement Quality Assurance Surveillance Plans (QASP) or designate CORs for service task orders, allowed contractors to perform inherently governmental duties, and potentially violated the Antideficiency Act by using the wrong type of appropriation. DoD Instruction 5010.40 states that internal controls are the organization, policies, and procedures that help program and financial managers achieve results and safeguard the integrity of their programs. The report findings explain the materiality of the weaknesses and provide recommendations for improvement. Specifically, we recommend that SOFSA create and implement a quality assurance surveillance plan and properly designate and train contracting officer's representatives. In addition, we recommend that the Commander, USSOCOM determine what positions need to be Government positions and that SOFSA develop internal controls and standard operating procedures to ensure compliance with regulations on inherently governmental functions. We also recommend the Comptroller, USSOCOM conduct a review of the potential Antideficiency Act violation. We will provide a copy of this report to senior USSOCOM officials responsible for the internal controls at SOFSA.

Finding A. Special Operations Forces Support Activity Contract Oversight

SOFSA contracting officers did not provide adequate contract oversight for 44 service task orders, valued at $514 million, awarded under the SOFSA contracts as required by the Federal Acquisition Regulation (FAR) and DoD guidance. This occurred because the contracting officer did not develop and implement Quality Assurance Surveillance Plans (QASPs) for, or assign Government employee Contracting Officer's Representatives (CORs) to, any of the 44 service task orders. Instead, the contracting officer relied on the customer to determine whether the Government obtained the quality and quantity of products and services for which it contracted. As a result, warfighters may not be receiving the quality and quantity for more than $514 million in products and services for which they contracted.

Quality Assurance Surveillance Plan

FAR Subpart 46.4, "Government Contract Quality Assurance," states that the QASP is a document that allows the Government to determine whether the supplies and services provided by the contractor conform to contract requirements. The Government may either prepare the QASP or require the offerors to submit a proposed QASP for the Government's consideration. The QASP identifies all the work requiring surveillance and how the surveillance will be performed. In addition, FAR 46.103, "Contracting Office Responsibilities," states that the contracting office is responsible for receiving the details of inspection, testing, and other contract quality requirements to ensure the integrity of the supplies or services. Defense Federal Acquisition Regulation Supplement (DFARS) 246.102, "Policy," requires the development and management of a systematic, cost-effective Government quality assurance program to ensure that contractor performance is in accordance with service contract requirements. DFARS 246.102 also requires that products be designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors in accordance with the contract.

We asked the SOFSA chief contracting officer, who is also the Director of the Business Management Division, if the contracting office created or approved QASPs for the 44 service task orders. These 44 task orders are valued at $514. The chief contracting officer stated that SOFSA did not create QASPs for the task orders. She explained that they rely on:

- customer surveys,
- monthly SOFSA Business Management Division meetings held to review customer complaints, and
- quality deficiency reports that the customer submits.

However, this approach did not result in consistent quality assurance by the contracting officer. As a result, the contracting office did not always identify and correct quality issues.

For example, task order 2310, valued at more than $37 million, contained a quality deficiency report in which the customer identified paint chipping and flaking on six MH-47G helicopters. The contractor admitted that the problem with the paint on five of the aircraft stemmed from poor preparation prior to painting. These aircraft needed to be repainted and, therefore, reduced the warfighter's ability to support military operations as scheduled. In addition, the contractor charged the Government approximately $225,000 to repaint the aircraft. While this example does show that the customer identified an issue with the quality of the service provided, the lack of timely and consistent contract oversight resulted in additional work that may have prolonged the delivery of these helicopters to the warfighter and increased the cost to the Government. The contracting officer may have avoided the additional time and funds needed to repaint the aircraft had there been a well-defined QASP and the appropriate Government oversight.

Since our site visit in August 2008, the chief contracting officer has created a QASP template that will be tailored to create all current and future task-order specific QASPs. According to the chief contracting officer, the draft template is still awaiting approval from the Director of SOFSA.

Contracting Officer's Representatives

DFARS Procedures, Guidance and Information 201.602, "Contracting Officers," states that for service contract actions, contracting officers will designate a properly trained COR in writing before contract performance begins. A COR can assist the contracting officer in the technical monitoring and administration of a contract, though they may not change the terms and conditions of the contract. In addition, a COR must be a Government employee, qualified by training and experience, and designated in writing. In an August 22, 2008, memorandum from the Deputy Secretary of Defense, the Deputy Secretary stated that CORs are used to ensure that contractors comply with all contract requirements and that COR activities would be tailored to the dollar value and complexity of the contract. Both SOFSA contracts contain clauses that direct SOFSA to designate CORs for service task orders.

The former SOFSA chief contracting officer officially designated a member of the SOFSA Business Management Division as the COR for all 2,148 task orders (as of July 2008) issued from the SOFSA contracts. In addition, SOFSA provides support to 20 locations around the world. One individual is not capable of conducting proper and timely surveillance for 2,148 separate task orders that are executed in 20 different locations around the world. In addition, during a meeting with the COR, he stated that he does not perform any COR duties. The current chief contracting officer stated that prior SOFSA management designated a COR only to meet the requirements of the DFARS. Because both contracts are for services, SOFSA contracting officers should have designated properly trained CORs for service task orders before task order performance began. The chief contracting officer has recently begun training and designating CORs and technical representatives in order to remedy the current situation and ensure that each task order issued from the SOFSA contracts receives proper, consistent, and timely oversight.

The chief contracting officer stated that the customers accomplished some quality assurance functions through feedback they submit to the contracting office. However, DoD regulations and guidance do not state that customer feedback is a proper way to satisfy COR responsibilities. A properly designated and trained COR provides timely oversight and support to the contracting officer by providing information on contractor performance without the potential unintended bias of the customer.

During our review of task order 7763, we identified that the contractor had improperly installed a thrust nut lock ring on a C-130 aircraft. The Government customer on the task order discovered the mistake, but only after a test caused damage, which cost the Government approximately $219,000 to fix. The additional cost occurred because the aircraft was operationally tested with the thrust nut lock ring installed improperly, and the repair manual required that several different parts be replaced due to the incident. If the contracting officer had designated a COR to this task order, the mistake could have been discovered prior to the testing, which would have relieved the Government of about $204,000[1] in additional expense. A more somber effect of the improperly installed thrust nut lock ring and the associated parts could have been further damage to the aircraft or loss of life.

Summary of Contract Oversight

The chief contracting officer has recently trained and designated at least two CORs and two technical representatives for the SOFSA contracts who will help ensure that quality assurance measures are implemented and enforced on current and future task orders. However, there is no evidence that these individuals have been assigned to specific task orders. As a result, the 2,148 task orders (as of July 2008), including the 44 we reviewed valued at $514 million, issued under the SOFSA contracts still lack the proper and timely oversight required by Federal and DoD regulations. Until the contracting officer ensures that there is consistent and appropriate COR oversight for all task orders, the contractors may not be fully complying with the cost, schedule, and performance requirements of their contracts.

Follow-On Contract Award

The chief contracting officer stated that USSOCOM awarded a follow-on contract in March 2009. The chief contracting officer stated that the follow on contract is under protest and as a result, SOFSA extended the current contract to October 2009 and increased the ceiling price by $200 million. She stated that the follow-on contract is an indefinite-delivery, indefinite-quantity contract that will have a period of performance spanning 10 years and a $5 billion ceiling. The chief contracting officer further stated that in addition to designating CORs and implementing QASPs for the current SOFSA contracts, she would be doing the same for the follow-on contract.

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[1] The difference between the Government cost to fix the aircraft and the actual expenses represents $15,000 paid by the contractor to the Government because of the contractor's mistake. The contractor also conducted a Six Sigma review to reduce the time aircraft stay in inspection and to provide the findings, recommendations, and estimated benefits to the Air Force Special Operations Command and SOFSA.

Management Comments on the Finding and Our Response

Management Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for USSOCOM, stated that USSOCOM officials partially agreed with Finding A. The Director stated that USSOCOM officials agree that contract oversight for SOFSA off-site projects should greatly improve by adopting the policy to direct future customers to designate a Government employee as a COR.

However, the Director further stated that USSOCOM officials do not agree that contracting officers did not provide adequate contract oversight. He stated that contracting personnel performed monitoring at the contract level, not the task-order level. The Director stated that SOFSA assigned project officers to task orders who prepared bi-weekly reports that included a review of concerns. The Director stated that two of the project officers were appointed as CORs, one for aviation and one for non-aviation. The Director indicated that contractor performance data was available through the Customer Query System maintained by the prime contractor, which allowed Government staff to communicate concerns. He also stated that SOFSA staff reviewed the prime contractor's monthly metrics to determine whether the Government received the products and services for which the Government had contracted. The Director indicated that the Award Fee Board process facilitated the corrective action SOFSA staff would take if contractual performance was deemed inadequate.

Our Response

We disagree with the Director, Center for Special Operations Acquisition and Logistics comments. Our review of the SOFSA task order files revealed that not all task order files contain the bi-weekly reports mentioned by the Director. Some of the files did contain bi-weekly reports but the reports were not prepared on a bi-weekly basis. Further, briefing slides attached to those bi-weekly reports contained information provided by the contractor. Likewise, SOFSA's personnel based their review of the contractors monthly metrics on data from the contractor's Customer Query System. Relying so heavily on contractor provided information, without independent corroboration of the data, for most of the contract oversight creates a conflict of interest. In addition, the documentation used by SOFSA emphasizes customer complaints and concerns. The Award Fee Board system used customer feedback, independent of the contractor, to inform the award fee official's decision regarding the amount of award fee to pay the contractor. However, we could be spending too much for services and the customer might still be happy that they are getting what they want. This approach does not measure or monitor the efficiency of the contractor's performance.

Although the project officers conducted some oversight, they were not designated CORs and the task order files did not show evidence of COR duties performed, nor did they contain a COR file. Although the Director stated that SOFSA appointed two CORs, SOFSA personnel only discussed one COR with the audit team. However, two CORs would still be insufficient to monitor every task order SOFSA issued under the overall

contracts. Finally, each task order is a contract and should have the proper oversight necessary, including a QASP and COR.

Recommendations, Management Comments, and Our Response

Revised Recommendation

As a result of management comments, we revised draft Recommendation A.1. to clarify the nature of the action needed to improve existing contract oversight.

A.1. We recommend that the Commander, USSOCOM issue service contracts or task orders only after the Requiring Activity Official identifies an individual to perform COR duties who fully complies with the COR guidance.

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Commander, USSOCOM, disagreed. The Director stated that existing DoD policies specifically cover the appointment of a COR. The existing policies include a Director, Defense Procurement and Acquisition Policy Memorandum; a Deputy Secretary of Defense Memorandum; the Defense Federal Acquisition Regulation Supplement Subpart 201.602-2; and Procedures, Guidance, and Information 201.302-2. The Director, also explained that USSOCOM anticipates issuing additional guidance after the DoD Panel on Contracting Integrity issues the COR Handbook. He stated that USSOCOM has published guidelines on CORs in the Desktop Contracting Guide. The Desktop Contracting Guide states that the requiring activity official nominates a COR and the contracting officer approves the nominee. The Desktop Contracting Guide also states that the Letter of Designation for a COR or a similar format should be used to document the appointment of CORs.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were partially responsive. We agree that the DoD policies adequately describe why and when to appoint a COR; however, USSOCOM contracting and acquisition personnel did not follow this guidance. We revised Recommendation A.1. to more clearly specify what is needed. The Commander, USSOCOM needs to emphasize the importance of CORs, and USSOCOM customers must be aware that the Commander, USSOCOM will hold them accountable for complying with this guidance. We request that the Commander, USSOCOM provide his plan of action and milestones to implement revised Recommendation A.1. in response to the final report.

A.2. We recommend that the Director, Special Operations Forces Support Activity:

a. Create and implement Quality Assurance Surveillance Plans in accordance with the Federal Acquisition Regulation Subpart 46.4, "Government Contract Quality Assurance," Subpart 46.103, "Contracting Office Responsibilities," and the

Defense Federal Acquisition Regulation Supplement 246.102, "Policy," for all future task orders for contracts USZA22-03-C-0056 and USZA22-03-D-0006 and any open task orders scheduled for completion after July 31, 2009.[2]

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Director, SOFSA, agreed. He stated that SOFSA has a Performance Management Plan that satisfies the intent of the recommendation.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were responsive.

b. Properly designate and train Contracting Officer's Representatives in accordance with the Defense Federal Acquisition Regulation Supplement 201.602, "Contracting Officer," and Deputy Secretary of Defense Memorandum August 22, 2008, for all future task orders for contracts USZA22-03-C-0056 and USZA22-03-D-0006 and any open task orders scheduled for completion after July 31, 2009.

Director, Center Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Director, SOFSA, agreed. He stated that SOFSA has provided training through the Defense Acquisition University and required staff to complete COR certification classes. The Director also stated that USSOCOM is addressing COR training as a part of the USSOCOM Directorate of Procurement 2009 training offered throughout USSOCOM. The Director stated that SOFSA contracting officers are advising customers to nominate personnel for COR training for all future task orders. The Director stated that SOFSA will complete this action by June 1, 2009.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were responsive.

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[2] This date was chosen to exclude those open task orders with little work remaining while still including those open task orders with significant work remaining.

Finding B. Contractors Performing Inherently Governmental Functions

SOFSA management allowed contractors working for the SOFSA Business Management Division to perform inherently governmental functions. In addition, SOFSA contracting personnel took direction and implemented contract changes from contractors working for their customers. Further, SOFSA management and contracting personnel allowed contractors to administer task orders, determine what supplies or services the Government required, and approve contractual documents. Finally, the contractors performing inherently governmental functions did not identify themselves as contractors. These conditions occurred because SOFSA lacks internal controls and standard operating procedures on the performance of inherently governmental functions. As a result, SOFSA may not have correctly administered and protected the best interests of the Government for approximately $82 million in task orders issued under the SOFSA contracts.

FAR Criteria

FAR 2.101, "Definitions," defines an inherently governmental function as a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include activities that require either discretion in applying Government authority or judgment in making decisions for the Government. Additionally these functions involve interpreting and executing the laws of the United States so as to bind it to take or not take some action by contract, policy, regulation, authorization, order, or otherwise.

FAR 7.503, "Inherently Governmental Functions Policy," provides examples of inherently governmental functions including:

- determining what supplies or services are required by the Government;
- approving any contractual documents to include documents defining requirements, incentive plans, and evaluation criteria;
- administering contracts, which includes ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or service;
- determining whether contracts are reasonable, allocable, and allowable; and
- directing and controlling Federal employees.

FAR 37.114, "Special Acquisition Requirements," states that contractors working in situations where their contractor status is not obvious to third parties are required to identify themselves as contractors. This avoids creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. Agencies must ensure that all contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious must identify themselves.

SOFSA Business Management Division Contractors

The SOFSA Business Management Division is composed of 15 Government employees and 17 contractor employees. Of the 17 contractor employees, 9 are from Chenega Advanced Solutions and Engineering, 3 are from Jacobs Technology Incorporated, and 5 are from CACI International, Incorporated.

SOFSA allowed contractors to approve contractual documents that defined requirements, which is prohibited by FAR 7.503. In 3 of the 46 task orders, valued at approximately $18 million, we found that contractors working for SOFSA signed contractual documents as a SOFSA representative. For example, a SOFSA contractor signed the contractor deliverable requirements checklist, which describes the task order's deliverables and due dates. Therefore, the contractor certified that the deliverables described in the document were correct and in accordance with requirements of the tasking from SOFSA. SOFSA attached the contractor deliverable requirements checklist to the task order modification and referred to it in the description of the task order changes.

SOFSA's Customer Contracting Personnel

SOFSA contracting personnel allowed contractors working for their customers to perform inherently governmental functions. We found 14 examples of this, which affected 10 task orders, valued at approximately $80 million. Specifically, we found:

- one instance where a contractor approved overtime for a task order;
- one instance where a contractor approved the closure of a task order and certified that all deliverables had been completed under the task order;
- four instances where contractors requested a cost estimate for supplies or services, which was later made into a task order;
- four instances where a contractor instructed that additional supplies or services be added to a task order;
- two instances where a contractor directed the use of excess funds to acquire additional supplies or services,
- one instance where a contractor directed the removal of a labor position from a task order so that the customer could use the additional funding to fund another task order; and
- one instance where a contractor directed that excess funds be returned to the customer.

In these examples, we found minimal evidence of Government oversight. The only evidence we have that a Government employee working for the customer was aware of a request is an e-mail chain that included the Government employee for 6 of the 14 instances, for the other 8 instances, we found no evidence that a Government employee was included. We reviewed the contracting files for the task orders and did not find evidence that the Government employee confirmed the request or that SOFSA contracting personnel verified that a Government employee initiated the requests.

Contractor Identification

In the inherently governmental examples cited in the previous paragraph, the SOFSA contractors and customer contractors did not identify themselves as contractors as required by the FAR 37.114. We informed the Chief, SOFSA Business Management Division of the inherently governmental issues we found, including the lack of contractor identification. The Chief, SOFSA Business Management Division sent an e-mail to SOFSA contractors stating that they need to identify themselves in their signature block, and their e-mail should indicate that they are a contractor. Although SOFSA personnel took some corrective action, they did not fully address all of the issues. The Chief, SOFSA Business Management Division stated that SOFSA does not have an internal policy on inherently governmental functions but SOFSA personnel follow the FAR. It is apparent from the examples and the e-mail to the contractors that they are not fully aware of all the limitations on contractors performing inherently governmental functions.

For example, SOFSA did not have adequate internal control policies to ensure that their contractors did not approve contractual documentation. In addition, SOFSA did not have standard operating procedures to ensure that their personnel did not accept direction from customer contractors. SOFSA employees and customers violated the FAR by allowing contractors to perform actions prohibited by FAR 7.503.

Use of DoD Civilians

Section 324 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008," added section 2463 to title 10, United States Code (10 U.S.C. 2463). Section 324 of Public Law 110-181 states that the Under Secretary of Defense for Personnel and Readiness will devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, DoD civilian employees to perform functions that are performed by contractors that could be performed by DoD employees. The guidelines and procedures provide for special consideration to be given to using DoD civilian employees to perform any function that is a function closely associated with the performance of an inherently governmental function. In accordance with Section 324 of Public Law 110-181, the Deputy Secretary of Defense issued guidelines and procedures on in-sourcing new and contracted functions on April 4, 2008 (see Appendix C). DoD Components can use DoD civilian employees to perform new functions or functions performed by a contractor if an economic analysis shows that DoD civilian employees are the low-cost provider, or if the DoD Component has determined that the function under review is inherently governmental or exempt from private sector performance.

Conclusion

We found 14 examples in 10 task orders, valued at approximately $80 million, of contractors working for SOFSA customers performing inherently governmental functions. We also found 3 of the 46 task orders, valued at approximately $18 million, where SOFSA contractors signed contractual documents as a Government representative. However, 2 of these 3 task orders overlapped with the other 10 task orders because these 2 task orders contained inherently governmental problems from SOFSA customer contractors and SOFSA contractors. The remaining task order valued at approximately

$2 million was not included in the total for the 10 task orders. As a result, we found inherently governmental problems in 11 task orders valued at approximately $82 million.

Because USSOCOM and SOFSA contractors are performing inherently governmental functions, the Commander, USSOCOM should evaluate the functions of the contractors working for SOFSA and USSOCOM to ensure that they evaluate their contractor support needs in accordance with Section 324 of Public Law 110-181 and the implementing guidance provided by the Deputy Secretary of Defense.[3]

Management Comments on the Finding and Our Response

Management Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Commander, USSOCOM, partially agreed with the finding. He stated that SOFSA has implemented an internal policy that:

- directs all SOFSA support contractors to identify themselves as contractors in all written and electronic communications, and in situations where their contractor status is not obvious;
- states SOFSA support contractors may not sign or approve contractual documentation, including any that define requirements;
- prohibits SOFSA Business Management Division personnel from accepting directions from contractors working for SOFSA customers.

The Director also stated that SOFSA will issue a revision of the Business Management Division Standard Operating Procedure by June 1, 2009, that prohibits the SOFSA Business Management personnel from accepting direction from contractors working for SOFSA customers. The Director, Center for Special Operations Acquisition and Logistics specified that the Director, SOFSA is preparing a memorandum for their customers reminding them that his staff will only accept contractual direction and documentation from, and signed by, Government employees.

However, the Director disagreed that the Commander, USSOCOM did not ensure that DoD civilians perform inherently governmental functions. The Director stated that the Commander, USSOCOM did consider using DoD civilians to perform inherently governmental functions at SOFSA and within USSOCOM Headquarters. The Director stated that the Manpower Requirements Branch of United States Army Special Operations Command, which includes the SOFSA Business Management Division, completed an Inherently Governmental Commercial Activities review in December 2008. He added that the Inherently Governmental Commercial Activities review fully meets the intent of DoD Instruction 1100.22, "Guidance for Determining Work Force Mix." He further stated that, the Manpower Requirements Division of USSOCOM Headquarters,

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[3] Appendix B describes another customer working on the SOFSA contracts performing inherently governmental functions. This customer works for the Army Program Executive Office, Aviation, which is out of the scope of the USSOCOM audit.

which includes the Center for Special Operations Acquisition and Logistics, also completed an Inherently Governmental Commercial Activities review in May 2008.

Our Response

We agree with SOFSA steps to implement policies and procedures to enforce FAR requirements regarding inherently governmental functions. The Commander, USSOCOM has taken the appropriate steps to ensure compliance with DoD Instruction 1100.22. The Commander, USSOCOM should continue to review USSOCOM's workforce mix regularly to prevent the types of inherently governmental violations discussed in the finding. We revised Finding B based on the Directors comments in order to provide more balance to the report and acknowledge the efforts of the Commander, USSOCOM.

Recommendations, Management Comments, and Our Response

B.1. We recommend that the Commander, United States Special Operations Command:

a. Evaluate the Special Operation Forces Support Activity Business Management Division to determine what positions need to be Government positions because of their inherently governmental functions or lower cost in accordance with Section 324 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008."

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Commander USSOCOM, disagreed and stated that USSOCOM met the intent of the recommendation prior to our issuance of the draft audit report. The Manpower Requirements Branch of United States Army Special Operations Command, which includes the SOFSA Business Management Division, completed an Inherently Governmental Commercial Activities review in December 2008. The Director stated that this Inherently Governmental Commercial Activities review meets the intent of DoD Instruction 1100.22. The Director stated that this instruction is the primary consideration cited in the Under Secretary of Defense (Personnel and Readiness) Guidelines and Procedures for Implementation of 10 U.S.C. 2463. The Director, Center for Special Operations Acquisition and Logistics further stated that a separate manpower survey of the SOFSA Business Management Division completed in April 2008 justified an increase in the number of Government contracting billets authorized.

Finally, the Director, Center for Special Operations Acquisition and Logistics indicated that the Special Operations Federal Acquisition Regulation Supplement Subpart 5607.5 was revised in April 2008 to provide guidance pertaining to inherently governmental functions. Subpart 5607.5 states that contracting officers will ensure that each contracting requirement for services is accompanied by a written determination from the

requiring activity that none of the functions contained in the requirement are inherently governmental, based on FAR 7.503.

Our Response

USSOCOM did not provide any evidence of corrective action prior to the issuance of our draft report. However, the Director, Center for Special Operations Acquisition and Logistics comments were responsive. Although the Director disagreed with Recommendation B.1.a., actions taken by the Manpower Requirements Branch of United States Army Special Operations Command to evaluate SOFSA Business Management Division manpower needs for inherently governmental functions satisfy the intent of the recommendation.

b. Evaluate the Special Operations Acquisition and Logistics Center to determine what positions need to be Government positions due to their inherently governmental functions or lower cost in accordance with Section 324 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008."

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Commander USSOCOM, disagreed and stated that USSOCOM took action on the recommendation prior to our issuance of the draft audit report. The Manpower Requirements Division of USSOCOM Headquarters, which includes the Special Operations Acquisition and Logistics Center, completed an Inherently Governmental Commercial Activities review in May 2008. The Director, Center for Special Operations Acquisition and Logistics stated that the Inherently Governmental Commercial Activities review fully meets the intent of DoD Instruction 1100.22. The Director stated that this instruction is the primary consideration cited in the Under Secretary of Defense (Personnel and Readiness) Guidelines and Procedures for Implementation of 10 U.S.C. 2463. The Director stated that the Manpower Requirements Division conducts an analysis every other year of commercial activities of USSOCOM's Joint Table of Distribution. He added that at the request of the Joint Staff, USSOCOM Headquarters is currently in the process of updating the Inherently Governmental Commercial Activities review for FY 2009.

Finally, the Director, Center for Special Operations Acquisition and Logistics stated that USSOCOM Headquarters Contracting Offices received training on inherently governmental functions in October 2008, and the Component contracting offices received similar training in March and April 2009.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were responsive. Although USSOCOM disagreed with recommendation B.1.b., actions taken by USSOCOM Headquarters, Manpower Requirements Division to evaluate the Special Operations Acquisition and Logistics Center manpower needs for inherently governmental functions in 2008 and 2009 satisfy the intent of the recommendation.

B.2. We recommend that the Director, Special Operations Forces Support Activity:

a. Develop internal controls to ensure that Special Operation Forces Support Activity Business Management Division contractors and Government personnel follow all elements of the Federal Acquisition Regulation regarding inherently governmental activities.

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for Director, SOFSA agreed and stated that SOFSA implemented an internal policy that directs all SOFSA support contractors to clearly identify themselves as contractors in all written and electronic correspondence, while attending meetings, in telephone conversations, and while working in other situations where their contractor status is not obvious. He added that the policy also specifically states that SOFSA support contractors are not authorized to sign or approve contractual documentation including any that define requirements.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were partially responsive. While SOFSA officials implemented policy to prevent future inherently governmental issues, the Director did not describe the efforts SOFSA will implement to ensure that contractors comply with this policy. Communicating the FAR requirements to contractors is only one part of the internal controls needed. SOFSA officials should test these controls to oversee their contractors' compliance with the issued guidance. Therefore, we request that the Director, SOFSA provide comments in response to the final report describing how SOFSA personnel will verify their contractors' compliance with FAR requirements regarding inherently governmental functions. We also request that the Director, SOFSA provide a copy of their internal policy with evidence of communication of the policy to SOFSA contractors.

b. Develop standard operating procedures to ensure that the Special Operation Forces Support Activity Business Management Division contracting personnel do not accept direction from customers that are contractors.

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for Director, SOFSA agreed. He stated that the internal policy discussed in the SOFSA response to Recommendation B.2.a. also includes a directive prohibiting SOFSA personnel from accepting direction from contractors working for SOFSA customers. Further, he added that SOFSA officials drafted a revision to the SOFSA Business Management Division Standard Operating Procedure directing Business Management Division staff not to accept direction from contractors working for SOFSA customers. According to the Director, Center for Special Operations Acquisition and Logistics, the standard operating procedure states that customer direction can only be accepted from a

Government employee. The Director, Center for Special Operations Acquisition and Logistics indicated that the Director, SOFSA is also preparing a memorandum for all SOFSA customers reminding them that SOFSA staff will only accept contractual direction and documentation from and signed by Government employees. These actions will be completed by June 1, 2009.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were responsive. We request that the Director, SOFSA provide the revised standard operating procedures and the memorandum to the DoD Office of Inspector General by, June 15, 2009.

Finding C. Potential Antideficiency Act Violation

The Technology Applications Program Office (TAPO) did not comply with appropriations laws and regulations when funding task order USZA22-03-C-0056-2237 because TAPO funded $63.6 million of the task order with procurement funds rather than research, development, test, and evaluation (RDT&E) funds. This potential violation of the Purpose Statute (section 1301, title 31, United States Code [31 U.S.C. 1301]) and DoD Regulation 7000.14-R, "DoD Financial Management Regulation (FMR)," volume 14, chapter 3, may have caused a violation of section 1341, title 31, United States Code (31 U.S.C. 1341(a)(1)(A)).

Title 31 of the United States Code

Title 31 of the United States Code contains a number of sections that together are referred to as the Antideficiency Act (ADA). The purpose of the ADA is to enforce the constitutional powers of Congress for the purpose, time, and amount of budgetary expenditures made by the Federal Government. We found a potential Purpose Statute violation (31. U.S.C. 1301). The statute states "appropriations shall be applied only to the objectives for which the appropriations were made except as otherwise provided by law." A violation of the Purpose Statute may cause an ADA violation, 31 U.S.C. 1341(a)(1)(A), when the correct funds were not continuously available.

Financial Management Regulation

FMR volume 2a, chapter 1, "RDT&E Appropriations," states that:

> Research, Development, Test, and Evaluation Funds will finance research, development, test and evaluation efforts performed by contractors and government installations, including procurement of end items, weapons, equipment, components, materials and services required for development of equipment, material, or computer application software.

In addition, the FMR, volume 2a, chapter 1, "Related Appropriations," states that:

> Equipment and material approved for production and intended for operational use or inventory upon delivery will be funded in the Procurement appropriations. Product improvement within the current performance envelope on systems in production will be funded in the procurement appropriations as long as no development or operational tests by an independent operation test agency are required.

FMR volume 2a, chapter 1, " Product Improvement," states that:

> Product improvement of major end items and major components of major end items currently in production or in the operational inventory, is subject to the redesign of an item to increase the current performance

envelope, including related development, test and evaluation effort, will be financed in RDT&E.

Finally, the FMR, volume 2a, chapter 1, states that "when, after consideration of the following criteria, there is doubt as to the proper assignment of costs between appropriations, the issue should be resolved in favor of using RDT&E funding."

Task Order USZA22-03-C-0056-2237

SOFSA awarded task order USZA22-03-C-0056-2237 on February 24, 2005, for an initial value of more than $30.4 million to L3 Communications Integrated Systems. As of December 2008, SOFSA modified the task order seven times to increase the cost to $63.6 million. According to the statement of work, the purpose of the task order was to modify one government-furnished UH-60M aircraft, a prototype, into the Special Operations Aviation MH-60M aircraft and provide special instructions to the Government for the purposes of manufacturing the 60 subsequent MH-60M aircraft. TAPO funded the entire $63.6 million with procurement funds.

TAPO Use of Procurement Funding

TAPO incorrectly funded task order USZA22-03-C-0056-2237 with procurement funds, when it should have funded the task order with RDT&E funds. The task order increased the performance envelope of a major end item already in production and required the developmental testing of the new prototype.

UH-60M Black Hawk Helicopter

The FMR states that funding for product improvement to increase the current performance envelope of a major end item currently in production should be RDT&E. In addition, the FMR states that procurement funds are acceptable only if the product improvement is within the performance envelope. Task order USZA22-03-C-0056-2237 modified the UH-60M Black Hawk, a major end item already in production, into a Special Operations Aviation MH-60M Black Hawk helicopter. The Testing Evaluation Program Plan stated that the MH-60M is an upgrade to the Army's UH-60M utility aircraft. In addition, the MH-60M program is expanding the aircraft performance envelope by adding Special Operations Forces engines to the aircraft and a composite tail cone.

The FMR states that procurement funds are acceptable only if the project does not require developmental or operational testing by an independent organization. In a legal review, requested by the SOFSA contracting office in April 2007, the USSOCOM Chief, Acquisition Law questioned the use of procurement funds for the task order. He stated that RDT&E money is required because the first prototype requires developmental and operational testing. However, in an e-mail dated May 2007, the Chief, Acquisition Law stated that he would concur with the task order if SOFSA removed the mention of developmental and operational testing in the statement of work.

In response, the United States Army Program Executive Officer, Rotary Wing issued a memorandum in May 2007 regarding the statement of work for the UH-60M/MH-60M prototype conversion. Based on the recommendation of the USSOCOM Chief, Acquisition Law; the memorandum directed TAPO to replace the phrases "developmental testing" and "operational testing" with "integration and qualification testing" and "user acceptance and certification."

SOFSA subsequently modified the task order to include a statement of work that removed the mention of developmental and operational testing. Removing developmental and operational testing from the statement of work does not negate that SOFSA is performing developmental testing for this task order.

SOFSA stated that task order USZA22-03-C-0056-2237 is not used for performing developmental and operational testing; and therefore, procurement funding is appropriate. TAPO justified the use of procurement funds by stating that the helicopter is a production model aircraft, and the modifications are components from currently operating helicopters. In addition to this task order for one prototype, SOFSA issued a task order for production of two MH-60M aircraft. If the MH-60M was a production model aircraft, then a prototype would not be necessary. TAPO then justified the use of procurement funding by stating that Congress authorized the funding. However, TAPO could not provide sufficient documentation to demonstrate this or provide another explanation for why procurement funding was appropriate.

Summary of Potential ADA

The use of procurement funds is not appropriate for task order USZA22-03-C-0056-2237 because the program is performing independent developmental testing and expanding the aircraft envelope. As a result, TAPO created a potential Purpose Statute violation by using procurement funding when RDT&E funding is required and may have caused a violation of 31 U.S.C. 1341 (a)(1)(A), a section of which is commonly referred to as the ADA.

Management Comments on the Finding and Our Response

Management Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Commander, USSOCOM, disagreed with Finding C, though he agreed with Recommendations C.1. and C.2. The Director stated that the Comptroller, USSOCOM formed a team to conduct a preliminary investigation. The Director also stated that until the Comptroller, USSOCOM completes the investigation; it is premature to state that TAPO did not comply with appropriations laws and regulations when funding task order USZA22-03-C-0056-2237.

Our Response

Though the Director, Center for Special Operations Acquisition and Logistics disagreed with the finding, he did not provide specific reasons. Therefore, we did not make changes to Finding C.

Recommendations, Management Comments, and Our Response

C. We recommend that the Comptroller, United States Special Operations Command:

1. Initiate a preliminary review of the potential Antideficiency Act violation within 10 days of this report to determine whether a violation occurred as required by DoD Regulation 7000.14-R, "Financial Management Regulation (FMR)," volume 14, chapter 3.

2. Complete the preliminary review within 90 days as required by DoD Regulation 7000.14-R, "DoD Financial Management Regulation (FMR)," and provide the results of the preliminary investigation to the DoD Office of Inspector General.

Director, Center for Special Operations Acquisition and Logistics Comments

The Director, Center for Special Operations Acquisition and Logistics, responding for the Comptroller, USSOCOM agreed with Recommendations C.1 and C.2. The Director, stated that the Comptroller, USSOCOM started a preliminary review on March 6, 2009, to check all business transactions and accounting records to determine whether a potential violation exists. The Director stated that USSOCOM reported the information related to this potential Antideficiency Act violation to the Office of the Under Secretary of Defense (Comptroller) Deputy Comptroller. The Director also stated that in accordance with the FMR, the Comptroller, USSOCOM will complete the preliminary review of the potential Antideficiency Act violation within 90 days and provide a copy to the Office of the Under Secretary of Defense (Comptroller) Deputy Comptroller.

Our Response

The Director, Center for Special Operations Acquisition and Logistics comments were responsive. The Comptroller, USSOCOM should provide the preliminary review report to the DoD Office of Inspector General.

Appendix A. Scope and Methodology

We conducted this performance audit from July 2008 to February 2009 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.

Section 842 of Public Law 110-181 requires audits to be performed to identify fraud, waste, and abuse in DoD contracts associated with the logistical support of the wars in Iraq and Afghanistan. The DoD Comprehensive Audit Plan for support of Coalition Forces in Southwest Asia included this DoD Office of the Inspector General audit of USSOCOM to support the public law requirements.

We reviewed Federal and DoD criteria regarding quality assurance and surveillance to evaluate whether the USSOCOM logistic support contracts complied with the criteria. We conducted extensive research of Federal and DoD criteria relating to task order QASP design and implementation requirements, and COR training and experience requirements. The specific criteria we reviewed included DoD directives, instructions, and publications; the FAR; the DFARS; the USSOCOM Federal Acquisition Regulation Supplement, Chairman of the Joint Chiefs of Staff Instructions, the overall contracts, Government Auditing Standards, the United States Code.

We judgmentally selected a sample of 46 task orders from contracts USZA22-03-C-0056 and USZA22-03-D-0006. Our sample of 46 task orders made up 30 percent of the overall obligated value of all task orders issued under the contracts. We judgmentally chose our task order sample from all the task orders by ranking them in three ways: the largest dollar value, the largest change in dollar value, and the largest percentage of change in dollar value. We also excluded any task orders from our sample that were completed before 2006 and that had a current contract value of less than $1 million, or were reviewed during a prior audit.

We conducted this audit at SOFSA Headquarters in Blue Grass Station, Lexington, Kentucky. Specifically, we visited and interviewed SOFSA personnel including the SOFSA Director, the SOFSA Deputy Director, the Chief of SOFSA Business Management Division, the SOFSA COR, the SOFSA Program Analyst in charge of Quality Assurance, and the SOFSA Information Technology Systems Engineer. During our trip to Lexington, we also met with a Defense Contract Management Agency administrative contracting officer and Defense Contract Audit Agency auditors. In addition, we met with a representative from the Offices of the Deputy Under Secretary of Defense for Logistics and Materiel Readiness.

The original methodology for the project consisted of four areas for the task orders under contracts USZA22-03-C-0056 and USZA22-03-D-0006. The selected areas were QASP,

COR, Surveillance, and Acceptance. Our main purpose for evaluating these areas was to determine if the Government received what it paid for. However, during the site visit to the SOFSA headquarters, we realized SOFSA had not created a QASP or designated a COR for the task orders under evaluation. Therefore, we restructured the project methodology to include these attributes in our review. During the course of this work, we identified instances where SOFSA allowed contracted employees to perform inherently governmental functions and identified one task order that potentially violates the ADA. We also reviewed documentation from project officer files for each task order in our sample, including the original task orders, modifications, statements of work, requirements documents, funding documents, and emails among others. We eliminated the planned Surveillance and Acceptance audit work.

Use of Computer-Processed Data

We used computer-processed data from the Federal Procurement Data System - Next Generation and Standard Procurement System to help choose our judgmental sample of task orders for the audit. We determined that the information was computer-processed data. However, we relied on the data contained in the contracting files to support our findings. Therefore, we did not perform a formal reliability assessment of the computer-processed data.

Prior Coverage

During the last five years, the DoD Inspector General (IG) has issued one report discussing the logistics support contracts at USSOCOM. Unrestricted DoD IG reports can be accessed at http://www.dodig.mil/audit/reports.

DoD IG

DoD IG Report No. D-2007-100, "Contract for Logistics Support Services for Special Operations Forces," May 18, 2007.

Appendix B. Other Matters of Interest

Contract Type

FAR Subpart 16.3, "Cost-Reimbursement Contracts," states that cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. FAR Subpart 16.4, "Incentive Contracts," states that a cost-plus-award-fee contract will not be awarded unless the contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort and cost involved. In addition, FAR Subpart 16.2, "Fixed-Price Contracts," states that a firm-fixed-price contract provides a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract and places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.

While the basic indefinite-delivery, indefinite-quantity contracts allow the task orders issued under them to be either firm-fixed-price or cost-plus-award-fee type contracts, none of the 46 task orders in our sample were firm-fixed-price. However, we identified 6 task orders out of the 46 that should have been issued as firm-fixed-price contracts rather than cost-plus-award-fee contracts. For example, one of the task orders was issued for the purchase, packaging, and shipping of Government off-the-shelf equipment. The cost of purchasing, packaging, and shipping Government off-the-shelf equipment can be estimated with sufficient accuracy to provide a price that is not subject to any adjustment on the basis of contractor's cost experience. Therefore, SOFSA did not follow the FAR in determining the appropriate contract type to use for this task order. The SOFSA chief contracting officer stated that most of the task orders were issued as cost-plus-award-fee because the contractor's accounting system for firm-fixed-price did not meet Defense Contract Audit Agency standards. However, a Defense Contract Audit Agency report found the L3 Communications Integrated Systems accounting system to be adequate for 2003. As a result, SOFSA has placed the contracting risk solely on the Government and may be paying more than necessary for the work performed on the cost-plus-award-fee type contracts.

Other Contractors Performing Inherently Governmental Functions

We found a SOFSA customer contractor working on the SOFSA contracts in the Apache Attack Helicopter Program Management Office who performed inherently governmental functions. The Apache Attack Helicopter Program Management Office is part of the Army Program Executive Office, Aviation. Although we did not review the Program Executive Office, Aviation, we determined that the Program Executive Office, Aviation should evaluate the inherently governmental functions performed in the Apache Attack Helicopter Program Management Office for contracts USZA22-03-C-0056 and USZA22-03-D-0006. The Program Executive Office, Aviation should do this to ensure that the Program Executive Office, Aviation complies with Section 324 of Public Law 110-181 and the implementing guidance provided by the Deputy Secretary of Defense.

See Finding B for more information on inherently governmental functions and Section 324 of Public Law 110-181.

Appendix C. DoD Section 324 Guidance

THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

APR 0 4 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, JOINT STAFF
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-sourcing New and Contracted Out Functions

Section 324 of the FY 2008 NDAA, Public Law No. 110-181, January 28, 2008 (attached), added a new section 2463 to title 10, United States Code (U.S.C.) that requires the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to develop guidelines and procedures to ensure that the Department considers using DoD civilian employees to perform new functions or functions that are performed by contractors. It also requires these guidelines and procedures to be issued no later than 60 days after the enactment of the FY 2008 NDAA, directs the DoD Inspector General to submit a report on implementation of section 2463 to the congressional defense committees within 180 days of enactment of the Act, and repeals section 343 of the National Defense Authorization Act for Fiscal Year 2006 (FY 2006 NDAA).

This memorandum issues the 10 U.S.C. §2463 guidelines and procedures prepared by USD(P&R) (attached). The July 27, 2007, Under Secretary of Defense for Acquisition, Technology and Logistics (USD (AT&L)) policy memorandum (attached) that implemented section 343 of the FY 2006 NDAA which has now been repealed, is cancelled.

Section 2463 of title 10, U.S.C., directs the Department to give special consideration to using DoD civilian employees to perform certain categories of functions and to use the inventory of contractors (required by section 807 of the FY 2008 NDAA) to identify those functions. It also precludes the Department from conducting public-private competitions to implement 10 U.S.C. §2463 and prohibits the Department from placing limitations or restrictions on the number of functions that may be converted to performance by DoD civilian employees. The USD(P&R) is implementing the guidelines and procedures as part of the Manpower Management program consistent with 10 U.S.C. §129a. The guidelines and procedures state that DoD Components can use DoD civilian employees to perform new functions or functions that are performed by a contractor if an economic analysis shows that DoD civilian employees are the low cost

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provider, or the DoD Component has determined, consistent with DoD Instruction 1100.22, "Guidance for Determining Workforce Mix," that the function under review is inherently governmental or exempt from private sector performance. This guidance will help ensure that when DoD Components make decisions to use DoD civilian employees, the decisions are fiscally informed and analytically based.

This new legislation should improve our ability to reduce costs and manage the Defense workforce. However, as DoD Components decide to use DoD civilian employees to perform new and expanded mission requirements and to in-source contracted work, the size of the Department's in-house workforce will increase. This will have the attention of Congress. If we are to retain the authority provided under 10 U.S.C. §2463 and continue to benefit from its flexibility, the Department must demonstrate to Congress how it is being used to reduce workforce costs, realign inherently governmental and exempt functions for government performance, and manage more efficiently and effectively. The attached guidelines and procedures call on you to manage closely 10 U.S.C. §2463 actions to ensure responsible stewardship of Defense resources and to assist the USD(P&R) with reporting to Congress on the Department's progress with implementing section 324 of the FY 2008 NDAA and 10 U.S.C. §2463.

If there are questions on the attached guidelines and procedures please contact [redacted] in the OUSD(P&R) at [redacted].

Attachments:
As stated

cc:
USD(AT&L)
USD(P&R)
D, PA&E
DoD IG

PUBLIC LAW NO. 110-181

SEC. 324. GUIDELINES ON INSOURCING NEW AND CONTRACTED OUT FUNCTIONS.

<< 10 USCA § 2463 >>

(a) CODIFICATION AND REVISION OF REQUIREMENT FOR GUIDELINES.--

(1) IN GENERAL.--Chapter 146 of title 10, United States Code, is amended by inserting after section 2462 the following new section:

"§ 2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions

"(a) GUIDELINES REQUIRED.--(1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.
"(2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

"(b) SPECIAL CONSIDERATION FOR CERTAIN FUNCTIONS.--The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that--
"(1) is performed by a contractor and--
"(A) has been performed by Department of Defense civilian employees at any time during the previous 10 years;
"(B) is a function closely associated with the performance of an inherently governmental function;
"(C) has been performed pursuant to a contract awarded on a non-competitive basis; or

"(D) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or
"(2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

"(c) EXCLUSION OF CERTAIN FUNCTIONS FROM COMPETITIONS.--The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A-76, or any other provision of law or regulation before--
"(1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;
"(2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or
"(3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.

"(d) USE OF FLEXIBLE HIRING AUTHORITY.--(1) The Secretary of Defense may use the flexible hiring authority available to the Secretary under the National Security Personnel System, as established pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).
"(2) The Secretary shall make use of the inventory required by section 2330a(c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).

"(e) DEFINITIONS.--In this section the term 'functions closely associated with inherently governmental functions' has the meaning given that term in section 2383(b)(3) of this title.".

(2) CLERICAL AMENDMENT.--The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2462 the following new item:

"2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions.".

(3) DEADLINE FOR ISSUANCE OF GUIDELINES AND PROCEDURES.--The Secretary of Defense shall implement the guidelines and procedures required under section 2463 of title 10, United States Code, as added by paragraph (1), by not later than 60 days after the date of the enactment of this Act.

(b) INSPECTOR GENERAL REPORT.--Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report on the implementation of this section and the amendments made by this section.

(c) CONFORMING REPEAL.--The National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) is amended by striking section 343.

Under Secretary of Defense (Personnel and Readiness)'s Guidelines and Procedures for Implementation of 10 U.S.C. §2463 (as added to the U.S.C. by Section 324 of the FY 2008 NDAA)

1. **CONSIDERATION FOR THE USE OF CIVILIAN EMPLOYEES.** DoD Components are to ensure consideration is given, on a regular basis, to using DoD civilian employees to perform new functions and functions that are performed by contractors but that could be performed by government employees.

2. **SPECIAL CONSIDERATION FOR CERTAIN CATEGORIES OF FUNCTIONS.** Special consideration shall be given to using DoD civilian employees to perform any function that is performed under contract and: (A) has been performed by DoD civilian employees at any time during the previous ten years; (B) is closely associated with the performance of an Inherently Governmental (IG) function; (C) has been performed pursuant to a contract awarded on a non-competitive basis; or (D) has been determined by a contracting officer (CO) to have been performed poorly during the five years preceding the date of such determination, because of excessive costs or inferior quality. In addition, special consideration shall be given to using DoD civilian employees to perform new mission requirements, particularly if the new requirements entail functions that are similar to functions previously performed by DoD civilian employees or are closely associated with the performance of an IG function.

3. **IDENTIFICATION OF CONTRACTED FUNCTIONS.**

3.1. DoD Components shall make use of the inventory required by 10 U.S.C. §2330a(c), as amended by section 807 of the FY 2008 NDAA, to identify functions that should be considered for performance by DoD civilian employees in accordance with paragraph 2 above. However, DoD Components shall not delay implementation of 10 U.S.C. §2463 until the inventory required by section §2330a(c) is finished, but should proceed with identifying functions that should be considered for DoD civilian employee performance and proceed with conversions as provided by P&R's guidelines and procedures.

3.2. 10 U.S.C. §2330a(e), as amended by section 807 of the FY 2008 NDAA, requires DoD Components to review the contracts and activities in the inventory to ensure that the inventory: (1) does not include any personal services contracts that were entered into or are being performed in a manner that is inconsistent with applicable statutory and regulatory requirements; (2) does not include any inherently governmental functions; and (3) to the maximum extent practicable, does not include any functions closely associated with inherently governmental functions. If there are functions or activities under contract that are determined to be inherently governmental or exempt from private sector performance, they should be converted to government performance consistent with DoD Instruction 1100.22 or, if no longer required, eliminated.

3.3. Section 2330a(e) also requires DoD Components to review the inventory to identify activities that should be considered for conversion: (1) to performance by DoD civilian

employees as required by section 2463; or (2) to an acquisition approach that would be more advantageous to the DoD. In addition, section 2330a(e) requires DoD Components to develop a plan to provide for appropriate consideration to be given to the conversion of these activities within a reasonable period of time.

4. **CONSIDERATIONS GOVERNING 10 U.S.C. §2463 ACTIONS**. DoD Components shall comply with 10 U.S.C. §129a, as implemented by DoD Instruction 1100.22, "Guidance for Determining Workforce Mix," when considering whether to use DoD civilian employees to perform new or expanded mission requirements, and functions that are performed by contractors but that could be performed by DoD civilian employees.

4.1. If functions/activities are no longer required, they shall be eliminated.

4.2. If new or expanded mission requirements or functions performed under contract are determined to be IG or exempt from private sector performance for reasons stated in DoD Instruction 1100.22, the functions shall be converted to government performance. In such cases, an economic analysis need not be performed.

4.3. For all other new or expanded mission requirements, and for all other functions that are performed under contract but that could be performed by DoD civilian employees, DoD Components shall perform an economic analysis to determine whether DoD civilians or private sector contractors are the low cost provider and should perform the work. Qualified cost analysts/experts shall perform the analyses using cost factors/models that account for the full costs of manpower, as appropriate, and make "like comparisons" of all relevant costs. Decisions on which costs to include (e.g., overhead, facilities, equipment, supplies, health and retirement benefits) shall depend on what is needed to achieve "like comparisons" and whether the costs are of sufficient magnitude to influence the final decision. Additional guidance on cost factors and cost models that address the full costs of manpower and "like comparisons" will be provided by a working group established at the direction of the Deputy Secretary of Defense in the Program Decision Memorandum IV, dated December 13, 2006. The working group is being led by the Office of the Director, Program Analysis and Evaluation, OUSD(Comptroller), and OUSD(Personnel and Readiness), in coordination with OUSD(Acquisition, Technology and Logistics).

4.4. If a decision is made to use DoD civilians, but the Director of the local Human Resources Office (HRO) determines that qualified DoD civilians cannot be hired to perform the function, officials may contract (or continue to contract) for the services provided the function is not IG or exempt from private sector performance.

5. **EXCLUSION OF FUNCTIONS FROM COMPETITION**. Consistent with 10 U.S.C. §2463, DoD Components may not conduct public-private competitions under chapter 146 of title 10, U.S.C; Office of Management and Budget Circular A-76; or any other provision of law or regulation before: (A) assigning DoD civilian employees to perform a new mission requirement; (B) converting functions performed by contractors (covered in paragraph 2 above) to performance by DoD civilian employees; or (C) expanding the scope of functions performed by DoD civilian employees. Consistent with current policy, DoD Components shall not perform a

public-private competition when converting a contracted function to government performance that is determined to be inherently governmental or exempt from private sector performance based on the guidance in DoD Instruction 1100.22.

6. **NO LIMITATIONS OR RESTRICTIONS**. No limitations or restrictions are to be placed on the number of functions or activities that may be converted from contractor to DoD civilian performance.

7. **PROCEDURES GOVERNING 10 U.S.C. §2463 ACTIONS.** Requests for manpower shall be fiscally informed and closely managed to ensure responsible stewardship of Defense resources.

7.1. When a DoD Component has a new or expanded mission requirement or is considering whether to convert from contractor to government performance, manpower managers shall follow standard manpower management procedures to determine and validate the manpower requirements. This shall include verifying the mission, functions, and tasks to be performed, required level of performance, and (consistent with title 10 U.S.C. §129) workload necessary for mission success. Also, the effectiveness, efficiency, and economy of the activity shall be assessed to determine if improvements can be made to reduce workload. Officials shall ensure that performance requirements (i.e., required capability or outcome) are accurately stated and directly relate to mission priority, available resources, and acceptable risk. In addition, the workforce mix (i.e., mix of military and civilian manpower and contract support) shall be determined consistent with policy in DoD Instruction 1100.22 and this memorandum. However, in certain cases, workforce mix decisions may depend on the availability of DoD civilian personnel as indicated in paragraph 4.4 above.

7.2. DoD Component officials are accountable for the management and employment of their resources. Defense officials shall prioritize workforce requirements (to include manpower and contract support) according to the criticality of the mission and acceptable level of risk so that requests for resources can be considered relative to other competing needs. Requests for additional manpower shall be fully justified, prioritized, and include a funding source or offset based on a reprioritization of other manpower/contract support or program requirements.

7.3. Manpower managers shall reassess their manpower and workforce mix every four years. If activities have not been fully resourced for several years, manpower managers shall assist officials in determining whether mission or performance requirements are overstated or have marginal benefit and should be tailored or eliminated. This will help ensure that manpower requirements are not overstated and reflective of mission priorities and acceptable risk.

7.4. The DoD Component's principal official for manpower management may prescribe supplemental regulations if it is determined they are needed for effective management of 10 U.S.C. §2463 actions.

8. **GUIDELINES FOR DOCUMENTATION OF 10 U.S.C. §2463 ACTIONS.**

8.1. DoD Components shall make every effort to determine the workforce mix and priority of the activity in sufficient time to document the full-time equivalents and funding source or offset to pay for the DoD civilian employees in their program/budget submissions. However, DoD Components may authorize over-hire positions to preclude a gap in service provided the manpower requirements have been documented/validated and sufficient funds are available to pay for the civilian positions.

8.2. The DoD Component's principal official for manpower management shall maintain oversight of 10 U.S.C. §2463 actions and (as required by 10 U.S.C. §129a) include in the official's annual submissions for the Defense Manpower Requirements Report (DMRR) a complete justification for converting contracted functions to DoD civilian employee performance. DMRR submissions shall separately report the number of civilian authorizations that were established because the functions were determined to be inherently governmental or exempt from private sector performance and the number established because DoD civilian employees were determined to be the low cost provider or it was determined by the contracting officer (as provided in paragraph 2 above) that the functions under contract were performed poorly. The DoD Component's principal official for manpower management shall justify in DMRR submissions any significant increases in DoD civilian authorizations that result from 10 U.S.C. §2463 actions for new or expanded mission requirements and summarize plans for converting additional functions from contractor to DoD civilian employee performance.

8.3. Increases to the Defense workforce at Major Department of Defense Headquarters activities that result from 10 U.S.C. §2463 actions shall be reported to Congress consistent with section 901 of the FY 2008 NDAA.

8.4. Supporting documentation for 10 U.S.C. §2463 decisions (to include copies of economic analyses, decisions made by local HRO Directors, and determinations made by the contracting officers) shall be retained for four calendar years so that DoD Components can justify their 10 U.S.C. §2463 decisions in the event of a Government Accountability Office (GAO) audit or other similar review.

9. **GUIDELINES FOR USE OF FLEXIBLE HIRING AUTHORITY**. Components shall leverage all available hiring and compensation flexibilities to facilitate the performance by DoD civilian employees of functions described in paragraph 2 above. This shall include flexibilities available through the National Security Personnel System (NSPS). Mission requirements (to include any mission essential tasks) and performance objectives shall be used to help officials establish employee performance plans, performance criteria, and job objectives, as appropriate.

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JUL 2 7 2007

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, JOINT STAFF
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of Section 343 of the 2006 National Defense Authorization Act

This memorandum implements Section 343 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163 (Attachment). Section 343 requires the Secretary of Defense to prescribe guidelines and procedures for ensuring that consideration is given to using federal government employees for work that is currently performed, or would otherwise be performed, under Department of Defense contracts. Special consideration shall be given to contracts that: (A) have been performed by federal government employees at any time on or after October 1, 1980; (B) are associated with the performance of inherently governmental functions; (C) were not awarded on a competitive basis; or, (D) have been determined by a contracting officer to be poorly performed due to excessive costs or inferior quality.

As reported in the FY 2007 President's Budget, the Department spent over $105 billion on Service Contract Support in FY 2005. To ensure the Department is spending taxpayer dollars wisely, it is important for DoD Components to consider the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of commercial activities when reprioritizing programs, assessing risk, and building program and budget submissions, consistent with section 129a of title 10, United States Code and this policy memorandum. Section 129a requires the Secretary of Defense to use the least costly form of personnel, consistent with military requirements and other needs of the Department.

Section 343 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163 authorizes the guidelines to provide for the use of federal government employees without first conducting a public-private competition under the A-76 Circular, when appropriate. The use of federal government employees is appropriate under the following circumstances.

Federal employees may be used to perform commercial activities not otherwise exempted under the DoD Manpower Mix Criteria when an economic analysis shows that they are the low cost provider for contracts that: (A) have been performed by federal

government employees at any time on or after October 1, 1980; (B) are associated with the performance of inherently governmental functions; (C) were not awarded on a competitive basis; or (D) have been determined by a contracting officer to be poorly performed due to excessive costs or inferior quality. For new requirements and for work that is contracted (unless the contract was awarded through public-private competition), an economic analysis may be used in lieu of recompeting the contract or of performing a public-private competition under OMB Circular A-76 to determine the low cost provider. In such cases, DoD Components shall use COMPARE costing software and 343 costing rules to perform the economic analysis. Variances to COMPARE may be approved by the DoD Competitive Sourcing Official (CSO). Activities that are returned to government performance as a result of such economic analyses will be reported in the DoD Commercial Activities Management Information System.

When converting contracted activities, DoD Components may use this authority until such actions exceed 3% of a Component's authorizations coded under OMB reason code B (commercial reviewable) in the DoD Component's approved Inherently Governmental/Commercial Activities (IG/CA) Inventory for the previous fiscal year. Actions exceeding this limit require prior notification of the DoD CSO. At any time, the DoD CSO may intervene or stop a section 343 action. All such actions shall be in compliance with sections 129 and 129a of Title 10, U.S.C. For new requirements and when converting contracted activities to Government performance, DoD Components will use the flexible hiring authority available through the National Security Personnel System wherever possible.

DoD Components shall document and report all DoD authorizations established as a result of converting contract performance to government performance via a separate column identified in the FY2007 IG/CA Inventory Guidance and explained in the accompanying narrative. The Office of Under Secretary of Defense for Personnel and Readiness and my office will review the Department's annual IG/CA inventory to improve the inventory process.

This policy will be reviewed 18 months after implementation to identify possible procedural changes. The review will identify the scope of Section 343 implementation and allow for changes ensuring maximum flexibility as the Department makes reasonable sourcing decisions to meet mission requirements using the most cost effective and efficient sources.

John J. Young, Jr.
Acting

Attachments:
As stated

US Special Operations Command Comments

UNITED STATES SPECIAL OPERATIONS COMMAND
7701 TAMPA POINT BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

SOAL

MAR 3 1 2009

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, 400 ARMY NAVY DRIVE, ROOM 801, ARLINGTON, VIRGINIA 22202-4704

SUBJECT: Response to Draft Report of Department of Defense Inspector General Audit of the Logistics Support for the United States Special Operations Command, Project No. D2008-D000AS-0248.000

1. On 24 February 2009, the Department of Defense (DoD) Office of the Inspector General (IG) issued a Draft Report on the Logistics Support for the United States Special Operations Command (USSOCOM), Project No. D2008-D000AS-0248.000.

2. USSOCOM appreciates the time and effort the DoD IG Team invested in providing a very thorough and professional review of the activities at the Special Operations Forces Support Activity. USSOCOM's response to the subject report is contained within the enclosed document.

3. My point of contact for this response is [redacted], or email at [redacted]

Encl
as

JAMES W. CLUCK
Director, Center for Special Operations
Acquisition and Logistics

UNITED STATES SPECIAL OPERATIONS COMMAND
RESPONSE TO DEPARTMENT OF DEFENSE INSPECTOR GENERAL
DRAFT AUDIT REPORT NO. D2008-D000AS-0248.000
ENTITLED "LOGISTICS SUPPORT FOR THE
UNITED STATES SPECIAL OPERATIONS COMMAND"

SUMMARY SECTION

The overall objective of the Department of Defense Inspector General (DoD IG) audit was to determine whether logistics support contracts USZA22-03-C-0056 and USZA22-03-D-0006 were properly managed and administered by the United States Special Operations Command (USSOCOM). The response contained herein to the Draft Report is broken into three sections:

A) Findings of the Draft Report.

B) USSOCOM comments related to the findings of the Draft Report.

C) USSOCOM response to the recommendations of the Draft Report.

FINDINGS OF THE DRAFT REPORT

1. The DoD IG findings are summarized below:

   A) Special Operations Forces Support Activity (SOFSA) contracting officers did not provide adequate contract oversight for 44 service task orders, valued at $514 million, awarded under the SOFSA contracts as required by the Federal Acquisition Regulation (FAR) and DoD guidance.

   B) SOFSA management allowed contractors working for the SOFSA Business Management Division (BMD) to perform inherently governmental functions.

   C) The Technology Applications Program Office (TAPO) did not comply with appropriations laws and regulations when funding task order USZA22-03-C-0056-2237 because TAPO funded $63.6 million of the task order with procurement funds rather than research, development, test, and evaluation (RDT&E) funds.

DoD IG Finding A. Special Operations Forces Support Activity Contract Oversight (Reference Draft Report, Page 3).

Finding A: SOFSA contracting officers did not provide adequate contract oversight for 44 service task orders, valued at $514 million, awarded under the SOFSA contracts as required by the Federal Acquisition Regulation (FAR) and DoD guidance. This occurred because the contracting officer did not develop and implement Quality Assurance Surveillance Plans (QASPs) for, or assign Government employee Contracting Officer's Representatives (CORs) to, any of the 44 service task orders. Instead, the contracting officer relied on the customer to determine whether the Government obtained the quality and quantity of products and services for which it contracted. As a result, war fighters may not be receiving the quality and quantity for more than $514 million in products and services for which they contracted.

USSOCOM Response to Finding A. Partially Concur.

USSOCOM concurs that contract oversight for SOFSA off-site projects should greatly improve by accepting the DoD IG recommendation A.1. (adopting the USSOCOM policy which directs all future customers wishing to contract for services under a Special Operations Command contract to support the contracting office by providing a Government employee to be designated and trained as a Contracting Officer's Representative).

USSOCOM does not concur with the opinion that SOFSA contracting officers did not provide adequate contract oversight. SOFSA project officers monitored compliance with contractual requirements for every task order for cost, schedule, and performance. They prepared bi-weekly reports for the Chief of the Program Support Division (PSD) prior to the formation of the Business Management Division (BMD). The PSD Chief position description was classified as a Supervisory Contract Operations Officer GS grade series 1101-13. Prior to the formation of the BMD, PSD had a total of twelve to fourteen project officers assigned. Two of the SOFSA population of twelve to fourteen project officers were appointed as lead project officers and CORs: one for aviation and one for non-aviation. While every task order did not have an identified COR, every task order was assigned to one of the twelve to fourteen project officers. The bi-weekly reports included a review of concerns and issues related to cost, schedule and performance. The reports from the project officers were rolled up into a single report and submitted by the PSD Chief directly to the SOFSA Supervisory Contracting Officer. Therefore, contract monitoring was performed at the contract level, but not at the task order level.

Customers and SOFSA project officers had near real time contractor performance data available through the Customer Query System (CQS) maintained by the prime contractor. This system allowed all contract parties (Government, customer, and prime contractor) to have access to cost and schedule information. The system also allowed the Government staff (SOFSA and customers) to communicate any concerns relating to the project.

Additionally, the monthly metrics submitted by the prime contractor and reviewed by the SOFSA staff are used to determine whether the Government obtained the quality and quantity of products and services for which the Government has contracted. Metric submissions include assessments on the Contractor's ability to accurately identify problems and initiate effective/efficient corrective action when required, while assessing the Contractor's ability to meet Government allotted suspense times. Furthermore, the Award Fee Board process facilitated the review, documentation, discussion, and corrective action to be initiated if contractual performance was deemed to be inadequate.

SOFSA has a Performance Management Plan that follows the recommendations of the DoD IG. Additional details are provided in USSOCOM's response to DoD IG recommendation A.2a below.

DOD IG Finding B. Contractors Performing Inherently Governmental Functions (Reference Draft Report: Page 7). Page 10

Finding B: SOFSA management allowed contractors working for the SOFSA Business Management Division to perform inherently governmental functions. In addition, SOFSA contracting personnel took direction and implemented contract changes from contractors working for their customers. Further, SOFSA management and contracting personnel allowed contractors to administer task orders, determine what supplies or services the Government required, and approve contractual documents. Finally, the contractors performing inherently governmental functions did not identify themselves as contractors. These conditions occurred because SOFSA lacks internal controls and standard operating procedures on the performance of inherently governmental functions and because the Commander, USSOCOM did not ensure that consideration was given to ensuring that DoD civilians perform inherently governmental functions. As a result, SOFSA may not have correctly administered and protected the best interests of the Government for approximately $82 million in task orders issued under the SOFSA contracts.

USSOCOM Response to Finding B. - Partially Concur.

Relative to the DoD IG assertion of lack of internal controls and standard operating procedures, SOFSA has implemented an internal policy that directs all SOFSA support contractors to clearly identify themselves as contractors in all written and electronic correspondence, while attending meetings, in telephone conversations, and while working in other situations where their contractor status is not obvious. The policy also specifically states that SOFSA Support Contractors are not authorized to sign or approve contractual documentation including any that define requirements (for example, the contractor deliverable

requirements checklist). Additionally, the SOFSA BMD contractor support personnel are identified as contractor employees in the signature blocks of their e-mail and their email address.

The internal policy discussed in the SOFSA Response to Recommendation B.2.a. includes a directive that SOFSA BMD personnel shall not accept direction from contractors working for SOFSA customers. Further, a revision to the SOFSA BMD Standard Operating Procedure (SOP) will be implemented 60 days after the issuance of this response to reinforce direction to BMD staff prohibiting acceptance of direction from contractors working for SOFSA customers. The SOP states customer direction can only be accepted from a Government employee. The Director is also preparing a memorandum to be sent to all customers that reminds them that the SOFSA staff will only accept contractual direction from and contractual documentation signed by Government employees. The Annual SOFSA Workloading Conference held in the summer will also provide a forum to address this issue with customers.

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Page 10

USSOCOM does not concur with the DOD IG's finding that the Commander, USSOCOM did not ensure that consideration was given to ensuring that DoD civilians perform inherently governmental functions. USSOCOM did consider the utilization of Department of Defense civilians regarding the performance of Inherently Governmental Functions at SOFSA and within HQ USSOCOM. First, the Manpower Requirements Branch of United States Army Special Operations Command (USASOC) which, at this time, includes the Special Operation Forces Support Activity BMD completed an Inherently Governmental Commercial Activities (IGCA) review in December of 2008. This IGCA review fully meets the intent of DoD Instruction 1100.22, Guidance for Determining Work Force Mix. This instruction is the primary consideration cited in the Under Secretary of Defense (Personnel and Readiness) Guidelines and Procedures for Implementation of 10 U.S.C. 2463 (as added to the U.S.C by Section 324 of the fiscal year (FY) 2008 National Defense Authorization Act (reference pages 24-27 of the DoD IG draft report)).

Additionally, the Manpower Requirements Division of HQ USSOCOM, which includes the Special Operations Acquisition and Logistics Center, completed an Inherently Governmental Commercial Activities (IGCA) review in May of 2008. This IGCA review fully meets the intent of DoD Instruction 1100.22, Guidance for Determining Work Force Mix. This instruction is the primary consideration cited in the Under Secretary of Defense (Personnel and Readiness) Guidelines and Procedures for Implementation of 10 U.S.C. 2463 (as added to the U.S.C by Section 324 of the FY 2008 National Defense Authorization Act (reference pages 24-27 of the DoD IG draft report)).

DOD IG Finding C. Potential Antideficiency Act Violation (Reference Draft Report: Page 11). Page 18

Finding C: The Technology Applications Program Office (TAPO) did not comply with appropriations laws and regulations when funding task order USZA22-03-C-0056-2237 because TAPO funded $63.6 million of the task order with procurement funds rather than research, development, test, and evaluation (RDT&E) funds. This potential violation of the Purpose Statue (section 1301, title 31, United States Code [31 U.S.C. 1301]) and DoD Regulation 7000.14-R, "DoD Financial Management Regulation (FMR)," volume 14, chapter 3, may have caused a violation of section 1341, title 31, United States Code (31 U.S.C. 1341(a)(1)(A)).

USSOCOM Response to Finding C. Nonconcur.

While USSOCOM concurs with recommendations C.1 and C.2 located on pages 13 and 14 of the Draft DoD IG Report, it nonconcurs with Finding C at this time. The USSOCOM Comptroller has formed a team that is conducting a preliminary investigation. Until the preliminary investigation is completed by the USSOCOM Comptroller, it is premature to state that TAPO did not comply with appropriations laws and regulations when funding task order USZA22-03-C-0056-2237.

RESPONSE TO DoD IG RECOMMENDATIONS OF THE DRAFT REPORT

DoD Recommendation A.1 (Reference Draft Report, Page 6). We recommend that the Commander, United States Special Operations Command issue guidance that directs all future customers wishing to contract for services under a Special Operations Command contract to support the contracting office by providing a Government employee to be designated and trained as a Contracting Officer's Representative. Revised Page 7

USSOCOM Response to Recommendation A.1. Nonconcur.

USSOCOM nonconcurs with this DoD IG recommendation. The following existing DoD policies specifically cover the appointment of Contracting Officer's Representatives:

i) Director, Defense Procurement and Acquisition Policy (DPAP) Memorandum dated 06 December 2006 entitled, "Designation of Contracting Officer's Representatives on Contracts for Services of Department of Defense Requirements."

ii) Deputy Secretary of Defense Memorandum dated 22 August 2008 entitled, "Monitoring Contract Performance in Service Contracts."

iii) Defense Federal Acquisition Regulation Supplement (DFARS) subpart 201.602-2 and Procedures, Guidance, and Information (PGI) 201.302-2

Further, USSOCOM anticipates issuing additional guidance after the issuance of the Contracting Officer's Representatives Handbook currently being developed by the DoD Panel of Contract Integrity.

Finally, at the time of this DoD IG report, USSOCOM already had published guidelines on the appointment of Contracting Officer Representatives. Chapter 1, paragraph 3 of USSOCOM's Desktop Contracting Guide provides the following guidance:

Guidelines for the Appointment of Contracting Officer and Technical Representatives.

(Revised February 2007)

(a) A Contracting Officer's Representative (COR) is nominated by the Requiring Activity Official (RAO) and approved by the Contracting Officer (CO/KO). The RAO will provide a signed written qualification statement to the Contracting Officer. When the RAO is not the direct supervisor of the nominee, the supervisor of the nominee should also sign the statement. The supervisor of the COR nominee is responsible for ensuring that the designated individual possesses the qualifications and experience commensurate with the authority empowered to them to oversee the contractor.

(b) The RAO should consider whether an alternate COR appointment is required and discuss this matter with the Contracting Officer during the planning stages of the procurement. The alternate COR nominee is required to meet all the same requirements of the primary COR.

(c) Each contracting office shall be responsible for establishing a COR Awareness Training Program. SOAL-KM shall provide overall guidance and assistance when requested and promotes the use of the internet-based COR Mentor Course available from the Federal Acquisition Institute. The Contracting Officer is responsible for ensuring that the mandatory training is completed prior to commencement of contract performance.

(d) The Letter of Designation for Contracting Officer's Representative (COR) or a similar format should be used to document the appointment of CORs. Distribute copies of the letter to all parties on the contract distribution list and give the original to the COR.

(1) A separate designation letter must be on file for each contract whenever a COR is appointed to represent the Contracting Officer on multiple contracts.

(2) The COR authority is terminated immediately upon contract completion.

(3) If the COR is unable to perform his/her assigned functions for the specified time, the KO/CO should be contacted in writing as soon as a decision is made to change or to terminate the designation of the COR. The request for delegation of a new COR must be submitted by the RAO.

(4) Contracting Officers may terminate delegation of a COR as deemed appropriate. The termination should be made in writing.

(End SOFARS DCG abstract)

Timeline for Completion of Recommendation A.1. Not applicable.

DoD Recommendation A.2a (Reference Draft Report, Page 6). We recommend that the Director, Special Operations Forces Support Activity:

> a. Create and implement Quality Assurance Surveillance Plans in accordance with the Federal Acquisition Regulation Subpart 46.4, "Government Contract Quality Assurance," Subpart 46.103, "Contracting Office Responsibilities," and the Defense Federal Acquisition Regulation Supplement 246.102, "Policy," for all future task orders for contracts USZA22-03-C-0056 and USZA22-03-D-0006 and any open task orders scheduled for completion after July 31, 2009.

USSOCOM Response to Recommendation A.2.a. Concur.

SOFSA has a Performance Management Plan that follows the recommendations of the DoD IG. The task orders will implement the plan by applying task order specific criteria for each task order as recommended in the DoD IG draft report. All open task orders scheduled for completion after July 31, 2009 will comply with FAR and DFARS criteria of establishing a QASP and designating a COR for each task order. SOFSA will continue to ensure that all work is performed to the Government's specifications.

Timeline for Completion of Recommendation A.2a. This will be accomplished 60 days after issuance of this response.

DoD Recommendation A.2b (Reference Draft Report, Page 6). We recommend that the Director, Special Operations Forces Support Activity:

> b. Properly designate and train Contracting Officer Representatives in accordance with the Defense Federal Acquisition Regulation Supplement 201.602, "Contracting Officer," and Deputy Secretary of Defense Memorandum August 22, 2008, for all future task orders for contracts USZA22-03-C-0056 and USZA22-03-D-0006 and any open task orders scheduled for completion after July 31, 2009.

USSOCOM Response to Recommendation A.2.b. Concur.

SOFSA has taken corrective action by enlisting the assistance of the Defense Acquisition University (DAU) in delivering on-site training and requiring staff completion of on-line courses required for Contracting Officer Representative (COR) certification. Training has been conducted by the Defense Acquisition University at Bluegrass Station, KY (SOFSA). COR Training was conducted 16-17 December 2008; contracting staff training was conducted 10-11 February 2009. Additionally, Contracting Officers at SOFSA are advising customers at HQ USSOCOM and its components to nominate Government employees for formal training and

appointment as CORs for all future task orders. COR Training is also being addressed as part of the USSOCOM Directorate of Procurement 2009 Training Program throughout HQs USSOCOM and its components.

Timeline for Completion of Recommendation A.2.b. This will be accomplished 60 days after issuance of this response.

DoD Recommendation B.1a (Reference Draft Report, Page 10). We recommend that the Commander, United States Special Operations Command:

> a. Evaluate the Special Operation Forces Support Activity Business Management Division to determine what positions need to be Government positions because of their inherently governmental functions or lower cost in accordance with Section 324 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008."
>
> **USSOCOM Response to Recommendation B.1a.** Nonconcur.

This action was initiated prior to the DoD IG audit. The Manpower Requirements Branch of United States Army Special Operations Command (USASOC) which, at this time, includes the Special Operation Forces Support Activity Business Management Division completed an Inherently Governmental Commercial Activities (IGCA) review in December of 2008. This IGCA review fully meets the intent of DoD Instruction 1100.22, Guidance for Determining Work Force Mix. This instruction is the primary consideration cited in the Under Secretary of Defense (Personnel and Readiness) Guidelines and Procedures for Implementation of 10 U.S.C. 2463 (as added to the U.S.C. by Section 324 of the fiscal year (FY) 2008 National Defense Authorization Act (reference pages 24-27 of the DoD IG draft report)). A separate manpower survey of the Special Operation Forces Support Activity Business Management Division was completed in April 2008 justifying an increase in the number of Government Contracting billets authorized (specifically an increase in the Table of Distribution and Allowances (TDA)).

In addition, the Special Operations Federal Acquisition Regulation Supplement (SOFARS) subpart 5607.5 was revised in April 2008 and provides the following guidance pertaining to Inherently Governmental Functions:

> Contracting Officers shall insure that each contracting requirement for services is accompanied by a written determination from the requiring activity that none of the functions contained in the requirement are inherently governmental as defined in FAR 7.503. A formal Determination and Finding (D&F) is required. Disagreements over the determination shall be resolved by the Contracting Officer and reviewed at one level above the Contracting Officer. Should the Contracting Officer and Chief of the Contracting Office fail to agree on the conclusion, forward the package to SOAL-KM (Procurement Management Division) for a final determination.

This formal D&F requirement described in the SOFARS citation above further addresses the requirements of FAR 7.503, DFARS 207.503, and DoD Instruction 1100.22.

Timeline for Completion of Recommendation B.1a. None. Actions associated with this recommendation are continuously ongoing.

DoD Recommendation B.1b (Reference Draft Report, Page 10). We recommend that the Commander, United States Special Operations Command:

> b. Evaluate the Special Operations Acquisition and Logistics Center to determine what positions need to be Government positions due to their inherently governmental functions or lower cost in accordance with Section 324 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008."

USSOCOM Response to Recommendation B.1b. Nonconcur.

This action was initiated prior to the DoD IG audit. The Manpower Requirements Division of HQ, USSOCOM which includes the Special Operations Acquisition and Logistics Center, completed an Inherently Governmental Commercial Activities (IGCA) review in May 2008. This IGCA review fully meets the intent of DoD Instruction 1100.22, Guidance for Determining Work Force Mix. This instruction is the primary consideration cited in the Under Secretary of Defense (Personnel and Readiness) Guidelines and Procedures for Implementation of 10 U.S.C. 2463 (as added to the U.S.C. by Section 324 of the FY 2008 National Defense Authorization Act (reference pages 24-27 of the DoD IG draft report). The Manpower Requirements Division conducts an analysis every other year of commercial activities of USSOCOM's Joint Table of Distribution (JTD). However, at the request of the Joint Staff HQ, USSOCOM is currently in the process of updating the IGCA review for FY 2009.

In addition to the SOFARS update referenced in USSOCOM's response to Recommendation B.1a, formal training on Inherently Governmental Functions was conducted with the HQ's USSOCOM Contracting Offices in October 2008. This same training is being provided to Component Contracting Offices in March and April 2009. The training is also available electronically, to include the power point slides and a streaming video presentation on the USSOCOM Directorate of Procurement Training Bookshelf.

Timeline for Completion of Recommendation B.1b. None. The actions/analysis associated with this recommendation have are continuously ongoing at HQs, USSOCOM.

DoD Recommendation B.2a (Reference Draft Report, Page 10).

a. Develop internal controls to ensure that Special Operation Forces Support Activity Business Management Division contractors and Government personnel follow all elements of the Federal Acquisition Regulation regarding inherently governmental activities.

USSOCOM Response to Recommendation B.2a. Concur.

SOFSA has implemented an internal policy that directs all SOFSA support contractors to clearly identify themselves as contractors in all written and electronic correspondence, while attending meetings, in telephone conversations, and while working in other situations where their contractor status is not obvious. The policy also specifically states that SOFSA Support Contractors are not authorized to sign or approve contractual documentation including any that define requirements (for example, the contractor deliverable requirements checklist).

Timeline for Completion of Recommendation B.2.a. Not applicable.

DoD Recommendation B.2b (Reference Draft Report, Page 10).

b. Develop standard operating procedures to ensure that the Special Operation Forces Support Activity Business Management Division contracting personnel do not accept direction from customers that are contractors.

USSOCOM Response to Recommendation B.2b. Concur.

The internal policy discussed in the SOFSA Response to Recommendation B.2.a. also includes a directive that SOFSA personnel shall not accept direction from contractors working for SOFSA customers. Further, a revision to the SOFSA Business Management Division (BMD) Standard Operating Procedure (SOP) has also been drafted to direct BMD staff to not accept direction from contractors working for SOFSA customers. The SOP states customer direction can only be accepted from a Government employee. The Director of SOFSA is also preparing a memorandum to be sent to all customers that reminds them that SOFSA staff will only accept contractual direction received from and contractual documentation signed by Government employees.

Timeline for Completion of Recommendation B.2.b. This will be accomplished 60 days after issuance of this response.

DOD IG Recommendation C.1 (Reference Draft Report, Pages 13-14). We recommend that the Comptroller, United States Special Operations Command:

1. Initiate a preliminary review of the potential Antideficiency Act violation within 10 days of this report to determine whether a violation occurred as required by DoD Regulation 7000.14-R, "Financial Management Regulation (FMR)," volume 14, chapter 3.

USSOCOM Response to Recommendation C.1. Concur.

The Comptroller, USSOCOM initiated a preliminary review on 06 March 2009 to check all business transactions and accounting records to determine whether a potential violation exists. The information related to this potential Antideficiency Act violation was also reported to the Office of the Under Secretary of Defense (Comptroller) Deputy Comptroller (OUSD(C)DCFO).

Timeline for Completion of Recommendation C.1. Complete. As stated above, Comptroller, USSOCOM initiated a preliminary review on 06 March 2009.

DOD IG Recommendation C.2 (Reference Draft Report, Page 14). We recommend that the Comptroller, United States Special Operations Command:

2. Complete the preliminary review within 90 days as required by DoD Regulation 7000.14-R, "DoD Financial Management Regulation (FMR)," and provide the results of the preliminary investigation to the DoD Office of Inspector General.

USSOCOM Response to Recommendation C.2. Concur.

Per the DoD FMR, the Comptroller, USSOCOM will complete the preliminary review within 90 days and provide a copy of the preliminary review report to OUSD(C)DCFO.

Timeline for Completion of Recommendation C.2. The estimated completion date for this preliminary review is 05 June 2009.

Inspector General
Department of Defense