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Report No. DODIG-2012-006 November 1, 2011

Inspector General
United States Department of Defense

Counter Narcoterrorism Technology Program Office Task Orders Had Excess Fees, and the Army Was Incorrectly Billed

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Acronyms and Abbreviations

ASBCA	Armed Services Board of Contract Appeals
CAMO	Contracting and Acquisition Management Office
CNTPO	Counter Narcoterrorism Technology Program Office
COR	Contracting Officer's Representative
COTR	Contracting Officer's Technical Representative
DASA(P)	Deputy Assistant Secretary of the Army for Procurement
DCAA	Defense Contract Audit Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
IDIQ	Indefinite-Delivery, Indefinite-Quantity
IG	Inspector General
MOCAS	Mechanization of Contract Administration Services
ODC	Other Direct Cost
PMR	Procurement Management Review
SMDC	Space and Missile Defense Command
USTC	U.S. Training Center

INSPECTOR GENERAL
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November 1, 2011

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Counter Narcoterrorism Technology Program Office Task Orders Had Excess Fees, and the Army Was Incorrectly Billed (Report No. DODIG-2012-006)

We are providing this report for your review and comment. In August 2007, the Army awarded indefinite-delivery, indefinite-quantity contracts to five contractors for the Counter Narcoterrorism Technology Program Office to provide global detection, monitoring, and disruption of narcoterrorist activities. The U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office did not properly manage the task orders included in our review. The task orders contained excess fees on material and other direct cost contract line items and billing errors on other direct cost contract line items. 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 Director of the U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office's comments were partially responsive. As a result of the Director's comments, we revised Recommendations A.2.a and A.2.d and redirected Recommendation B.2. We request additional comments on Recommendations A.2.a, A.2.b, and A.2.d by December 1, 2011.

If possible, send a .pdf file containing your comments 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 [redacted] at (703) 604[redacted] (DSN 664[redacted]).

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

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Results in Brief: Counter Narcoterrorism Technology Program Office Task Orders Had Excess Fees, and the Army Was Incorrectly Billed

What We Did

We reviewed task orders under the Counter Narcoterrorism Technology Program Office (CNTPO) indefinite-delivery, indefinite-quantity (IDIQ) contract to determine whether the U.S. Space and Missile Defense Command (SMDC) Contracting and Acquisition Management Office (CAMO) applied the correct fixed fee to material and other direct cost (ODC) contract line items. SMDC CAMO did not properly manage the task orders in our review. The task orders contained excess fees on material and ODC contract line items and billing errors on ODC contract line items.

What We Found

SMDC CAMO contracting officers awarded 25 task orders to 2 contractors that contained fees in excess of the rates that were incorporated in the contractors' IDIQ contracts. This occurred because SMDC CAMO management did not verify that contract provisions incorporated into the IDIQ contracts for fees were clear and specific. In addition, SMDC CAMO contracting officers used boilerplate language and did not verify the rates used in the IDIQ contracts or task orders. SMDC CAMO overpaid Raytheon approximately $815,000 and U.S. Training Center (USTC) approximately $77,000 in fixed fees and will overpay approximately $446,000 to Raytheon and approximately $20,000 to USTC in additional fixed fees if the IDIQ contracts and related open task orders are not modified to reflect the correct rates.

~~(FOUO)~~ Northrop Grumman charged the Army for [redacted] in non-CNTPO work because the contractor was allowed to directly bill for payment without a detailed invoice review. Also, Northrop Grumman double billed the Army [redacted] for insurance charges because the contracting officer's representative did not conduct in-depth reviews of invoices. Northrop Grumman officials agreed to issue refunds for the incorrect billings. Resolving these problems could save $1,526,279.

What We Recommend

The Deputy Assistant Secretary of the Army for Procurement (DASA[P]) should conduct a review of contracting officers at the SMDC CAMO. The Director, SMDC CAMO, should meet with Raytheon and USTC to reach agreement on the return of excess fees paid. The Director of Contract Operations Directorate A, SMDC CAMO, should ensure that Northrop Grumman refunds the Army and coordinate a more detailed invoice approval process.

Management Comments and Our Response

The DASA(P) agreed with the recommendation, and the comments were responsive. The Director, SMDC CAMO, responded on behalf of the Director of Contract Operations Directorate A, SMDC CAMO, and the Program Director, CNTPO, and partially agreed with the recommendations. The Director agreed that there is a misunderstanding of the terms of the contract but disagreed that the excess fees of approximately $815,000 paid to Raytheon are recoverable. The Director agreed that USTC overbilled fees will be recovered, and Northrop Grumman billing errors will be credited to the Army. We request that the Director, SMDC CAMO, provide additional comments by December 1, 2011. Please see the Recommendations Table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Deputy Assistant Secretary of the Army for Procurement		A.1
Director of U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office	A.2.a, A.2.b, A.2.d	A.2.c
Director of Contract Operations Directorate A, U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office		B.1 and 2

Please provide comments by December 1, 2011.

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Introduction

Audit Objective

The objective was to determine whether other direct costs (ODCs) were fair and reasonable in the task orders issued by the DoD Counter Narcoterrorism Technology Program Office (CNTPO). This audit is one in a series of audits relating to the contracts supporting the DoD CNTPO. For this audit, we reviewed the application of fixed fees for task orders. See Appendix A for a discussion of the scope and methodology and prior audit coverage related to the audit objectives.

DoD Inspector General (IG) Report No. D-2009-109, "Contracts Supporting the DoD Counter Narcoterrorism Technology Program Office," September 25, 2009, found that contracting and program office personnel were not performing adequate management and oversight of the CNTPO task orders. The report also identified a significantly high-dollar value of ODCs compared to the overall task order values; approximately 34 percent of the total potential contract dollar value was ODCs. As a result, we announced this audit to review ODCs.

Background on CNTPO Contracts

The mission of the CNTPO is to execute the Defense Department's strategy to provide global detection, monitoring, and disruption of narcoterrorist activities through effective interagency mission support, technology, and acquisition solutions. CNTPO provides its services to DoD, other Federal agencies, partner nations, and State and local authorities engaged in counterdrug and counter narcoterrorism operations. The Naval Surface Warfare Center, Dahlgren Division, serves as the host command for CNTPO. The CNTPO reports to the Deputy Assistant Secretary of Defense for Counter Narcotics, Counter Proliferation, and Global Threats. The Deputy Assistant Secretary of Defense reports to the Under Secretary of Defense for Policy.

The U.S. Army Space and Missile Defense Command (SMDC) (also referred to as the Army Forces Strategic Command) Contracting and Acquisition Management Office (CAMO), provides contracting support for CNTPO. SMDC CAMO awarded five indefinite-delivery, indefinite-quantity (IDIQ) contracts on August 24, 2007. The CNTPO IDIQ contracts have a total program ceiling of $15 billion with a 5-year period of performance, composed of a base year and 4 option years. SMDC CAMO contracting officials issued the IDIQ contracts to five prime contractors:

- ARINC, Inc. (ARINC);
- Lockheed Martin Integrated Systems, Inc. (Lockheed Martin);
- Northrop Grumman Space & Mission Systems Corporation (Northrop Grumman) (formerly TASC, Inc.);
- Raytheon Technical Services Company LLC (Raytheon); and
- U.S. Training Center, Inc. (USTC) (formerly Blackwater Lodge and Training, Inc.).

The CNTPO IDIQ contracts allow for three task order types—firm-fixed-price, level-of-effort for labor; cost-plus-fixed-fee[1] for material and ODCs; and cost-reimbursable for travel and insurance. The contractors will provide services in three main areas: technology development and application; training, operations, and logistics support; and professional and executive support. Contractors are conducting CNTPO efforts globally, with the highest concentration of work being performed in Southwest Asia (Afghanistan, Iraq, Kazakhstan, and Pakistan), South America (Belize, Colombia, Peru), and the United States. For specific details regarding the scope of our review, see Appendix A.

Internal Control Weaknesses in the Oversight of CNTPO Contracts

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provide reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. The Director, SMDC CAMO (also holds the title of Principal Assistant Responsible for Contracting), and the Director of Contract Operations Directorate A, SMDC CAMO (Director of Directorate A), did not implement internal controls to verify that contracting officers issued task orders with the accurate fee information. In addition, SMDC CAMO contracting officers used boilerplate language and did not verify the rates used in the base IDIQ contracts or task orders. For specific results of these weaknesses, see Finding A of the report. Implementing recommendations in Finding A and B could result in potential monetary benefits of approximately $1.5 million (Appendix C). We will provide a copy of the report to the senior official responsible for internal controls in the Army.

[1] A fixed fee is a negotiated fee that is set at the inception of the contract.

Finding A. Army Contracting Officials Awarded Task Orders With Excessive Fixed Fees

SMDC CAMO contracting officers awarded 25 task orders to 2 contractors that contained fixed fees on material and ODCs in excess of the rates that were incorporated in the contractors' base IDIQ contracts. This occurred because SMDC CAMO management did not verify that contract provisions incorporated into the base IDIQ contracts for fees were clear and specific. In addition, SMDC CAMO contracting officers used boilerplate language and did not verify the rates used in the base IDIQ contracts or task orders. As a result, SMDC CAMO overpaid Raytheon approximately $815,000 and USTC approximately $77,000 in fixed fees and will overpay approximately $446,000 more to Raytheon and $20,000 more to USTC if the contracting officers do not immediately modify both the IDIQ contracts and related open task orders to reflect the correct fixed fees.

Task Order Fees Higher Than Base Contract Fees

~~(FOUO)~~ SMDC CAMO contracting officers awarded task orders to Raytheon and USTC containing fixed fees that exceeded rates incorporated into the base IDIQ contracts for material and ODC contract line items. The solicitation for the IDIQ contract allowed contractors to propose up to a 5-percent fixed fee on material and ODCs. Raytheon proposed a [redacted]-percent fee, and USTC proposed a [redacted]-percent fee in their final proposal revisions to the IDIQ solicitation. A source selection panel selected contractors based on an assessment of technical, management, performance, and cost/price factors. Raytheon and USTC were competitively awarded contracts based, in part, on total costs proposed, including their respective proposed fixed fees of [redacted] percent and [redacted] percent.

The solicitation also included Federal Acquisition Regulation (FAR) Clause 52.215-1, "Instructions to Offerors—Competitive Acquisition," that states, "a written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party." SMDC CAMO entered into binding contracts with Raytheon and USTC by accepting their final proposal revisions and offering awards, in accordance with the FAR.

An Armed Services Board of Contract Appeals (ASBCA) case discussed fees as incorporated into cost proposals. Specifically, the ASBCA stated in its decision in the "Appeal of Scientific Management Associates, Inc.," ASBCA No. 50956, 2000-1 B.C.A. (CCH) P30, 828, 2000 ASBCA LEXIS 39, March 8, 2000, that contractors are contractually bound by the terms of a cost proposal incorporated into the contract.

~~(FOUO)~~ FAR Clause 52.216-18, "Ordering," was incorporated into the Raytheon and USTC base IDIQ contracts. It states that, "all delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control." The IDIQ contracts

~~(FOUO)~~ stated, "All task orders are subject to the terms and conditions of the basic contract. In the event of a conflict between a [task order] and the basic contract, the basic contract will take precedence." Although the [redacted] percent and [redacted] percent proposed by Raytheon and USTC, respectively, were incorporated into the basic IDIQ contracts, SMDC CAMO awarded 14 Raytheon task orders and 11 USTC task orders with fees in excess of the proposed rates. See Appendix B.

SMDC CAMO Contracting Officials Did Not Implement Controls or Reviews

SMDC CAMO management, specifically the Director of SMDC CAMO and the Director of Directorate A, did not verify that contract provisions incorporated into the base IDIQ contracts for fees were clear and specific or that the contracting officers accurately prepared task orders. Inadequate management of the CNTPO task orders was also identified in a prior DoD IG report.

Additional Findings on SMDC CAMO Contract Oversight

DoD IG Report No. D-2009-109, "Contracts Supporting the DoD Counter Narcoterrorism Technology Program Office," September 25, 2009, found that SMDC CAMO contracting officials did not have adequate internal controls for managing and administering CNTPO IDIQ contracts. Specifically, the report stated that contracting officers did not properly manage task orders, conduct adequate contract surveillance, ensure that contractor billing was accurate or that the goods and services were received. The DoD IG recommended that the contracting officers receive required training. The Director, SMDC CAMO, stated in her comments on the draft report that SMDC CAMO conducted training reviews semiannually, and that contracting officers had necessary certifications.

The DoD IG also recommended that the Director, SMDC CAMO, conduct an administrative review of contracting officers and take any administrative actions warranted for the deficiencies identified. The Director, SMDC CAMO, stated in her comments on the draft report that the report did not identify any specific infractions that warranted disciplinary actions. The recommendation was redirected to the Deputy Assistant Secretary of the Army (Procurement) (DASA[P]) in the final report.

The DASA(P) comments on DoD IG Report No. D-2009-109 stated that the Deputy Assistant Secretary was requiring the Director, SMDC CAMO, to provide a briefing to address the findings and measures taken to remedy the situation. In addition, the comments stated that the Deputy Assistant Secretary would conduct a previously scheduled procurement management review (PMR) and would pay particular attention to the management of SMDC efforts in support of CNTPO.

The DASA(P) published a memorandum titled, "Department of the Army, Procurement Management Review (PMR) of the U.S. Army SMDC/ARSTRAT CAMO," January 25, 2010. The memorandum stated that the PMR team had assessed the overall risk of contracting operations as "high," which means the organization is at risk of

receiving severe criticism or may suffer serious adverse effects to contracting operations or customer mission requirements because of noncompliance with Federal contracting regulations. The Deputy Assistant Secretary required SMDC CAMO to submit a corrective action plan that addressed all recommendations. The Military Deputy to the DASA(P) published a memorandum titled, "Department of the Army, Procurement Management Review (PMR) of the U.S. Army Space and Missile Defense Command (SMDC) Contract Acquisition Management Office (CAMO), 7-16 December 2009," April 25, 2010. The memorandum stated that the SMDC CAMO corrective action plan was approved.

Additionally, after DoD IG Report D-2009-109 was issued, the Director, SMDC CAMO, separately briefed officials from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the DoD IG audit team. The Director, SMDC CAMO, stated during each briefing that significant progress was made in implementing corrective action measures for staffing, processes and procedures, and training. However, we found additional problems with contracts being overseen by SMDC CAMO that are costing the Army money. The DASA(P) should conduct an additional review of the performance of the SMDC CAMO contracting officers based on our latest findings.

Responsibility for Fee Validation Not Clearly Demonstrated

FAR Subpart 1.602-2, "Contracting Officers," states that contracting officers are responsible for ensuring compliance with the terms of the contract and safeguarding the interests of the United States in its contractual relationships. However, the Director of Directorate A at SMDC CAMO did not demonstrate a clear understanding of the contracting officers' responsibility for fee validation. When asked why task orders were issued with excess fees she stated that:

> *. . . the Director of Directorate A at SMDC CAMO did not* demonstrate *a clear understanding of the contracting officers' responsibility for fee validation.*

- the Defense Contract Audit Agency (DCAA) would typically identify excess fee errors during an incurred cost audit;
- it is the responsibility of the contracting officer, the contracting officer's representatives (CORs), and the contractor to ensure that the rates in each task order are the agreed-to rates; and
- all fees should be reviewed as part of awarding a task order.

~~(FOUO)~~ Because the Director of Directorate A at SMDC CAMO stated that DCAA would typically identify excess fee errors during an incurred cost audit, we contacted the supervisory auditors at the DCAA Raytheon and USTC offices. The DCAA Raytheon and USTC supervisory auditors both stated that the excess fees charged by Raytheon and USTC, respectively, would not have been identified by DCAA because DCAA does not normally review fixed fees. They stated that DCAA relies on the task order language to determine the fixed fee allowed and that DCAA does not refer to the IDIQ contract to determine whether the fixed fee was incorporated into the contract. The supervisory

~~(FOUO)~~ auditors stated that because the task orders stated that up to a 5-percent fixed fee was allowed, DCAA would not have questioned the fees unless they exceeded 5 percent. The DCAA supervisory auditors at both Raytheon and USTC were unaware that their respective contractors had proposed (and should have been charging) less than [redacted]-percent fixed fee on material and ODCs. Therefore, contracting officers should not rely on DCAA to identify incorrect fees in an incurred cost audit because DCAA does not normally review fixed fees.

Because the Director of Directorate A at SMDC CAMO stated that the COR shares the responsibility of ensuring that the agreed-to rates are in the task order, we contacted the CNTPO Program Director, Naval Surface Warfare Center Dahlgren Division, to determine the CORs' role in evaluating fixed-fee rates for material and ODCs. We asked the CNTPO Program Director whether the CORs evaluate the fixed fee as part of their technical review. The Program Director stated that during the technical review of a proposal, the CORs and contracting officer's technical representatives (COTRs) review the overall price to identify any inconsistencies with the Independent Government Cost Estimate. He also stated the fee is reviewed as part of the overall contract review of price, from a technical standpoint. In addition, the Program Director stated that price analysis is conducted by the contracting officers. Therefore, the contracting officers should not rely on CORs to ensure that the fixed-fee rates in the task orders were correct.

Furthermore, the Director of Directorate A at SMDC CAMO should not rely on the contractor to ensure that the fixed-fee rates in the contract were the agreed-to rates. FAR Subpart 7.5, "Inherently Governmental Functions," states that determining whether contract costs are reasonable, allocable, and allowable is considered to be an inherently governmental function. Therefore, the Director of Directorate A at SMDC CAMO should not rely on the contractor to ensure that the fixed-fee rates in the task order are the agreed-to rates because the responsibility for determining whether contract costs are reasonable and allowable is clearly an inherently governmental function.

The Director of Directorate A at SMDC CAMO stated that all fees should be reviewed as part of awarding a task order. However, the Director of Directorate A did not implement controls for contract reviews to ensure that fees were reviewed. The Director of Directorate A and 4 other contracting officers within SMDC CAMO were the signatories on 25 task orders with excess fixed fees on material and ODCs. If the Director of Directorate A and the contracting officers had verified the agreed-to fixed fee in the basic contract against the fixed fee in the task orders, then payment of excess fixed fees would not have occurred.

The Director of Directorate A at SMDC CAMO should not rely on DCAA to identify excess fees, or on the COR or the contractor to ensure that fixed fees are correctly applied to the task orders. The contracting officers should have verified the rates in the basic contract against the rates used in the task orders, and the Director of Directorate A should have implemented controls to ensure that these reviews occurred.

SMDC CAMO Contracting Officers Used Boilerplate Language

~~(FOUO)~~ SMDC CAMO contracting officers included boilerplate language in the IDIQ base contracts and in the task orders. Amendment 0007, the final amendment to the base IDIQ solicitation, allowed the contractors to propose a fee on material and ODCs and stated that a maximum fee of 5 percent was allowed on material and ODC. Raytheon and USTC proposed [redacted]-percent and [redacted]-percent fixed fees on material and ODC contract line items, respectively, in their final proposal revisions that were incorporated into the base contracts. However, the contracting officers issued the base IDIQ contracts and task orders with language in section B that stated that a maximum of 5-percent fees and a minimum of 0-percent fees were allowable on material and ODC contract line items.

~~(FOUO)~~ According to the Director of Directorate A, she asked Raytheon officials why they applied a fixed fee greater than [redacted] percent. According to the Director, Raytheon officials stated that they thought the language in the IDIQ contract and task orders, which stated that a maximum of 5-percent fee was allowable, was the Government's counteroffer to the proposed [redacted]-percent fee; and therefore, Raytheon could charge up to [redacted] percent. The contracting officers created confusion in the IDIQ and task order language because they did not specifically state the negotiated fees for the material and ODC contract line items. Even so, Raytheon and USTC did not comply with their proposed fee for material and ODC contract line items.

~~(FOUO)~~ The remaining CNTPO contractors' (ARINC, Lockheed Martin, and Northrop Grumman) IDIQ contracts and task orders all included the same boilerplate language as Raytheon and USTC; however, ARINC, Lockheed Martin, and Northrop Grumman appropriately charged the fees in accordance with their base IDIQ contracts. The contracting officers should recover all excess fees that Raytheon collected above their proposed [redacted] percent fixed fee and that USTC collected above their proposed [redacted]-percent fixed fee on all task orders issued under the CNTPO base contracts.

In accordance with FAR 43.103(a), contracting officers have the authority to issue bilateral contract modifications to reflect the agreements between the parties modifying the terms of contracts. Currently, the base IDIQ and task order language remains ambiguous. The SMDC CAMO contracting officers should clarify the language in the IDIQ contracts and all open task orders to remove the confusing language and specify the proposed fee accepted by SMDC CAMO.

SMDC CAMO Contracting Officers Did Not Verify Fixed-Fee Calculations

The Director of Directorate A and at least four other contracting officers within SMDC CAMO did not ensure compliance with the terms of the contract, as required by FAR subpart 1.602-2. SMDC CAMO contracting officers did not verify that fixed fees on material or ODC contract line items were correctly calculated before the award of task orders.

~~(FOUO)~~ Based on the proposals we reviewed, the contracting officers inserted the contractors' proposed costs and fees into the contract without verifying that the fees were correct. For example, USTC's proposal for task order 0017 included a fixed-fee rate of [redacted] percent on material and ODCs instead of the agreed-to [redacted] percent. The dollar values for costs and fees were added directly into the task order, resulting in excess fees being transferred from the proposal into the task order. Task order 0017 was signed by the Director of Directorate A. If the contracting officers had checked the calculations of the fixed fee for material and ODC contract line items before awarding the task orders, they would have realized that the fees were incorrect.

SMDC CAMO Overpaid Fees

SMDC CAMO will overpay approximately $1.36 million in fixed fees if the contracting officers do not modify both the IDIQ contracts and related open task orders to reflect the correct fixed fees. See Appendix C for summary of potential monetary benefits.

SMDC CAMO overpaid approximately $815,000 in fixed fees for the 14 task orders paid to Raytheon. Four task orders remain open for Raytheon. SMDC CAMO could overpay approximately $446,000 in additional fixed fees if the contracting officers do not immediately modify the remaining open task orders. The Army will overpay more than approximately $1.26 million in fixed fees on Raytheon's material and ODC contract line items. See Appendix B for more information on overpayments.

SMDC CAMO overpaid approximately $77,000 in fixed fees for the 11 task orders paid to USTC. Three task orders remain open for USTC. SMDC CAMO could overpay approximately $20,000 in additional fixed fees if the contracting officers do not immediately modify the remaining open task orders. The Army will overpay approximately $97,000 in fixed fees on USTC's material and ODC contract line items. See Appendix B for more information on overpayments.

SMDC CAMO Management Action

We notified the Director of Directorate A at SMDC CAMO about Raytheon's excess fixed fees on February 7, 2011. On February 14, 2011, the Director of Directorate A stated that corrective action had been initiated. She also stated that she directed Raytheon to conduct an internal audit of all invoices submitted to the Defense Finance and Accounting Service before October 1, 2010; requested an assist audit from Defense Contract Management Agency; and notified CNTPO CORs and SMDC CAMO staff of the improper billing.

~~(FOUO)~~ Despite our notifying the Director of Directorate A about Raytheon's excess fees, we identified five task order modifications that were issued with incorrect fees after February 7, 2011, when SMDC CAMO was notified. For example, task order 0021, modification 10, was signed April 12, 2011, and increased the estimated cost of ODC by [redacted] and the respective fee by [redacted]. The resulting fee percentage change was

~~(FOUO)~~ [redacted] percent. As a result, contracting officers are continuing to issue task order modifications with excess fees while under the supervision of the Director of Directorate A.

~~(FOUO)~~ In addition, we identified three invoices that were paid with incorrect fees after February 14, 2011, when SMDC CAMO notified us that Raytheon was aware of the issue. For example, on March 9, 2011, Raytheon submitted an invoice (BVN0014) for task order 21. On that invoice, Raytheon applied a [redacted]-percent fee to material contract line item number 3009 and a [redacted]-percent fee to ODC contract line item number 3011. The total excess fee resulting from the incorrect fee rates that Raytheon applied was more than [redacted] The invoice was paid on March 24, 2011. As a result, invoices are still being approved even though the Director of Directorate A stated that CNTPO CORs and SMDC CAMO staff were aware of the improper billing. SMDC CAMO should recoup the excess fees that have already been paid on the contracts to Raytheon and USTC.

Conclusion

The Director of SMDC CAMO and Director of Directorate A did not verify that contracting officers accurately prepared task orders. SMDC CAMO contracting officers included boilerplate language in the IDIQ base contracts and in the task orders and did not verify that fixed fees applied to the material and ODC contract line items were correctly calculated. By preparing task orders that were not in accordance with the base IDIQ contracts, Raytheon charged the Army approximately $815,000 in excess fees and USTC charged the Army approximately $77,000 in excess fees. The contracting officers should take action to recoup these excess fees from the contractor. Additionally, the contracting officers could save the Army approximately $466,000 ($446,000 for Raytheon, $20,000 for USTC) by modifying the contract language in all open task orders. If corrective actions are taken, the Army could receive approximately $1.36 million in potential monetary benefits.

Management Comments on the Finding and Our Response

Director, SMDC CAMO, Comments on the Overall Finding

The Director, SMDC CAMO, stated that the broad references to DoD IG Report No. D-2009-109 are inappropriate. She stated that the prior report found that SMDC CAMO did not have adequate internal controls for managing and administering contracts. Specifically, the report identified problems with the training of personnel assigned, type of task orders employed, contract files maintenance, contract administration, and quality assurance. Additionally, the Director stated that she agreed with the findings in the 2009 report and instituted a corrective action plan in coordination with CNTPO. Therefore, the Director concluded that this report identified no repeat findings.

The Director also stated that the findings from the PMR conducted by the DASA(P) in December 2009 are not relevant and do not identify repeat findings. She stated that none of the findings in the PMR report identified fault with the CNTPO contract or CNTPO

task orders. The Director stated that the problems that were identified in the PMR as being high risk were within the continuity of operations plan, contract execution, and government purchase card sections of the PMR and therefore are not relevant to this report. The Director further stated that the PMR identified that the risk ratings could be mitigated by standardizing operating procedures, issuing policy, and conducting training. SMDC CAMO agreed and addressed each of these areas in a corrective action plan that was accepted by the DASA(P). For the Director's complete analysis and comments on the overall finding, see pages one through five of the Director's comments in the Management Comments section of this report.

Our Response

Although we agree with the Director that the problems identified in this report are not exactly the same as the problems identified in the 2009 DoD IG report and the 2009 DASA(P) PMR, both of those reviews identified problems with contract management. We clarified the wording in this section of the report to state that these are additional findings instead of repeat findings. In this report, we identified problems with contract oversight. Furthermore, the corrective actions that were taken to fix the previously identified problems, such as training and increased personnel, should have allowed the contracting officers to identify and correct the excess fixed fees that were awarded on task orders identified in this report.

Director, SMDC CAMO, Comments on the Referenced ASBCA Case

The Director disagreed with the application of the ASBCA case in Finding A to the Raytheon contract. The Director stated that in that case, the ASBCA held, "[a]s the cost proposal was incorporated into the contract (finding 1), appellant is contractually bound by its terms, which include the composition of its overhead pools." However, in contrast to the cited ASBCA case, the Director stated that Raytheon's final proposal revision rates on materials and other direct costs were not incorporated into the IDIQ contract; therefore, the contractor is allowed to propose a fee ranging from 0 to 5 percent.

Our Response

The ASBCA case is relevant to the treatment of the Raytheon contract. Although the Government did not write the IDIQ contract and task orders to include the proposed fee rates, the intent was that the contractors charge the fee rates that they proposed as evidenced by the fact that the other contractors only charged the fee rates that they proposed. In addition, the source selection panel included cost/price as a factor in awarding Raytheon the contract. See our response to the Director, SMDC CAMO, comments regarding Raytheon fees for Recommendation A.2.a.

Director, SMDC CAMO, Comments on the Task Order Evaluation Process

The Director stated that as noted in the draft report, task order proposals are collaboratively reviewed by the COR, COTR, and contracting officer or specialist. She stated that these individuals follow a task order evaluation guide while reviewing

proposals that requires that any findings or disconnects be documented. She stated that the evaluation includes a review of the rates proposed, as compared to the terms of the contract. She further stated that the evaluation guide specifically states, "discuss whether the labor categories proposed match Attachment 6" and "perform a random sampling of labor rates – do they match Attachment 6?"

Our Response

The task order evaluation guide further supports our finding that fees on material and ODCs are not being reviewed or validated. We agree with the Director that the task order evaluation guide states that there will be a review of labor rates. However, there is no evaluation of material or ODC fee rates in the guide. Under each material and ODC section in the guide is a list of several questions for the reviewer to evaluate; however, none of them are specific to fee rates.

Director, SMDC CAMO, Comments on the Role of DCAA

The Director stated that at the time the task orders were awarded, the prime contractors were under a direct billing authorization—this means that provisional payments were authorized and subject to an audit and the results of that DCAA audit were provided to the contracting officer. The Director stated that the discussion in this report confuses the point that post-award requests for reimbursement included a comparison with the terms of the task order. She also stated that DCAA is correct that its review did not include a review of the solicitation information that was incorporated into the IDIQ contract and task orders. She further stated that DCAA's review assessed payment requests against the terms of the task order.

Our Response

The intent of our discussion was to show that if the IDIQ contract and task order are not written to include the correct fees on material and ODCs, then DCAA cannot be expected to identify excess fees. Therefore, DCAA should not be relied on to identify excess fixed fees because DCAA does not normally review fixed fees.

Director, SMDC CAMO, Comments on Continuing to Award Task Orders

~~(FOUO)~~ The Director stated that the discussion in the draft report regarding SMDC CAMO continuing to award and administer task orders after being notified of the excess fee problem is "inappropriately inferred." She stated that while a contract is in dispute, the Government cannot enforce, nor is the contractor required to accept, terms that are contrary to those set forth in the contract. Additionally, she stated that the specific invoices we use as examples apply to those specific invoices and do not demonstrate the fact that the cumulative value for those contract line items is not higher than [redacted] percent.

Our Response

~~(FOUO)~~ Fee overages continued despite SMDC CAMO being aware of the problem. We revised Recommendation A.2.d to clarify that all future task orders should include the correct fee rate language. In addition, the specific invoices we used as examples in

~~(FOUO)~~ Finding A show that SMDC CAMO contracting officers continued to approve erroneous invoices and that even though the overall material and ODC contract line items averaged a fee of [redacted] percent, that fee was still higher than the [redacted] percent Raytheon proposed.

Director, SMDC CAMO, Comments on Raytheon's Self-Audit

The Director stated that when SMDC CAMO was notified by the audit team about the potential overpayment of fees, the Director of Directorate A tasked Raytheon to conduct a self-audit of fees paid on material, ODCs, and travel. She stated that Raytheon's self-audit identified an additional $6,000 of excess fees paid on travel that were not identified by the audit team. She expects Raytheon to issue a credit for those overpayments on travel fees by September 30, 2011.

Our Response

The contracting officer is responsible for identifying problems with incorrect fees before awarding task orders. The contracting officer should not rely on contractors or other agencies' audits to ensure that fees are accurate and applied correctly during contract administration.

Revised Recommendations

As a result of comments from the Director, SMDC CAMO, we revised Recommendations A.2.a and A.2.d.

Recommendations, Management Comments, and Our Response

A.1. We recommend that the Deputy Assistant Secretary of the Army for Procurement conduct a review of the performance of the contracting officers at the U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office, who oversaw the management of the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts for allowing excess fees and initiate administrative action if appropriate.

Director, SMDC CAMO, Comments

The DASA (P) agreed. The Deputy Assistant Secretary included Army Contracting Center-Redstone in its schedule for FY 2012 PMRs. The Deputy Assistant Secretary stated that the PMR team will include the subject areas of this report as part of its review.

Our Response

The Deputy Assistant Secretary's comments are responsive, and no further comments are required.

A.2. We recommend that the Director of U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office:

a. Meet with the contractors that received excess fees to reach agreement on the return of $77,014 in excess fixed fees by the U.S. Training Center, $815,440 in excess fixed fees by Raytheon, and any additional excess fees that were paid after we notified the Director of Contract Operations Directorate A about the excess fixed fees.

Director, SMDC CAMO, Comments Regarding USTC Fees

~~(FOUO)~~ The Director, SMDC CAMO, agreed to recover funds from USTC. The Director stated that USTC presented a fee rate of [redacted] percent in its proposal in the written narrative and spreadsheet column heading. She stated that a visual inspection of the value indicated that the value proposed was reflective of the intended [redacted] percent that was proposed. However, she stated that when the amounts in the proposal were actually calculated, the value derived indicated a fee rate of [redacted] percent. For example, she stated that on task order 0012, the estimated cost was [redacted] with a fee of [redacted] awarded. The Director stated that a fee rate of [redacted] percent was calculated, as opposed to the [redacted]-percent intended value, resulting in an overpaid fee of [redacted]

The Director stated that when the audit team notified SMDC CAMO of the error, USTC was immediately notified and agreed with the error, stating that it was a miscalculation. She stated that SMDC CAMO is working with USTC and the Defense Finance and Accounting Service to recover any excess fees identified on all open and closed task orders. The Director stated that USTC has since made changes to its internal review process to prevent future incidents of this nature and that she anticipates that all credits will be recovered no later than September 30, 2011.

The Director stated that although SMDC CAMO agreed with the recommendation, the significance of the mathematical error was overstated in the draft report. She stated that it is not possible to verify every calculation in every proposal, to do so would require an increase in personnel for every contracting organization within the DoD.

Our Response

The Director of SMDC CAMO's comments regarding the refund of USTC excess fees are responsive, and no further comments are required. SMDC CAMO took immediate action to notify USTC of the error when it was identified. However, as stated in Finding A, SMDC CAMO needs to stop relying on the contractor to ensure that rates are correct. This is a problem that is recurring on multiple task orders for multiple contractors, and not performing these calculations has resulted in overpayments of fees to USTC totaling approximately $77,000. In this era of shrinking budgets and increased emphasis on economies and efficiencies, DoD needs to exercise proper stewardship over taxpayer money.

Director, SMDC CAMO, Comments Regarding Raytheon Fees

The Director, SMDC CAMO, partially agreed with our finding that Raytheon charged excess fees on material and ODCs. The Director agreed that there is a misunderstanding as to the terms of the solicitation and resultant contract regarding the allowable fee rate for material and ODC contract line items. She also agreed that there is ambiguity in the terms of the solicitation and contract that led to the contracting officer's failure to accept the fee rate offered in Raytheon's final proposal.

However, the Director disagreed that the fees awarded to date and paid to Raytheon are recoverable. She stated that the audit team's interpretation that material and ODC fee rates proposed by the prime contractors are or should have been incorporated into the awarded contracts is only one interpretation. The Director stated that SMDC personnel have a different interpretation based on the terms of the contract inherited by successor contracting officers. The Director stated that contracting officers cannot be expected to ensure the terms of the contract that they inherit are consistent with the pre-award documentation. She stated that it is unrealistic to believe successor contracting officers would have understood the intent of the contracting officer who awarded the basic contracts and then enforce fee rates that were not included in the contracts they were provided for administration.

~~(FOUO)~~ [redacted]

~~(FOUO)~~ [redacted]

~~(FOUO)~~ [redacted]

The Director stated that after additional reviews of this issue in conjunction with legal counsel, it is clear that the final proposed fee rates for materials and ODCs were not accepted by the Government and were not incorporated into the IDIQ contract. She concluded that, for purposes of task order pricing, the allowable fees on material and ODCs fall within a range of 0 to 5 percent as proposed by Raytheon.

The Director stated that Raytheon's response to SMDC CAMO's letter further substantiates the Government's intent to allow awardees the ability to propose a fee of 0 to 5 percent on material and ODCs. The Director stated that Raytheon's argument is supported by relevant case law and referenced DoD IG Report No. D-2011-073, "Audit of the Afghanistan National Army Equipment Maintenance Apprenticeship and Services Program Contract," June 14, 2011. The report's background states that the contractor's request for equitable adjustment was denied. The contractor's initial proposal included a clause allowing the contractor to receive an equitable adjustment if parts exceeded $15 million per year. The request for equitable adjustment was denied because the contractor's initial proposal was not incorporated into the final contract. The Director concluded that this same principle applies to Raytheon's fees for material and ODCs. She stated that the terms of the contract allowed for 0 to 5 percent on material and ODC fees because Raytheon's proposed fee rates were not incorporated into the base IDIQ contract.

The Director stated that the approach of allowing the contractor to propose a fee rate within a range permits contractors to propose a fee based upon the risk level of the requirement presented in each task order. For example, task orders involving less risk could allow for lower fee rates, while higher risk work could warrant a higher fee rate.

The Director stated that the solicitation proposed that all rates applicable to material and ODCs would be incorporated into the IDIQ contract as Attachment 6: B0 Rates for Contract; however, the worksheet provided to contractors to complete for add-ons for material and ODCs did not include fee rates. The Director stated that the term "add-ons" related to material and ODCs, but the contract did not state specifically that these were fees. Add-ons are typically those indirect rates based on the contractor's cost accounting systems and disclosure statements. Section B of the awarded contracts formed the basis for pricing task orders, but Raytheon's proposed fee rates on material and ODCs were not included. The Director stated that the solicitation did not specify that it was the Government's intent to incorporate fixed-fee rates on material or ODCs, despite the information presented in Section IX of the cost proposal preparation instructions.

The Director explained that the initial solicitation issued by the Government contained material and ODC contract line items, but it did not allow for fees on either one. However, she stated that in response to industry questions, the Government changed its stance and allowed a range of fee rates from 0 to 5 percent on material and ODCs beginning with Amendment 0004 to the solicitation. The Director quoted parts of section B of the solicitation that discussed pre-negotiated labor and ODC indirect rates, which includes fixed-priced level-of-effort, fixed-price labor with cost-plus-fixed-fee ODCs, and cost-plus-fixed-fee labor with cost and/or cost-plus-fixed-fee ODC task orders (see the Director's comments in the Management Comments section of this report).

~~(FOUO)~~ The Director stated that Raytheon proposed a [redacted]-percent fee on materials on task order 0003 (Task Order Requirements Package 0010) and a [redacted] percent fee on materials on task order 0011 (Task Order Requirements Package 0078). She also stated that this shows Raytheon's compliance with the terms of the contract.

The Director stated FAR clause 52.215-1 supports SMDC CAMO's stance that the written award conveyed by the Government and accepted by Raytheon identified the intent of both parties to allow a fee range of 0 to 5 percent on material and ODCs. She stated that the audit team's interpretation of the clause in Finding A is incorrect.

Our Response

The Directors comments are partially responsive. The selection of contractors was based in part on cost, and the Government's intent was to use the rates that the contractors initially proposed. All the contractors, except Raytheon, abided by the intent of the IDIQ contract. In fact, USTC charged excess fees and has agreed to refund the amounts overcharged. The Director of Contract Operations Directorate A, SMDC CAMO, stated that the IDIQ contracts and task orders should have included the specific fee rates proposed by each contractor.

The contracting officers did not enforce that rate when issuing the task orders. Additionally, the contracting officers did not update the language of the IDIQ contracts or task orders, leaving the same boilerplate language that was in the solicitation, which allowed Raytheon to propose a fee within a range. The contracting officers also did not verify that the fees proposed by contractors on material and ODCs were accurate before awarding the task orders. The Director stated that is it not practical to verify every calculation based on the overpayment of USTC fixed fees. However, SMDC CAMO overpaid approximately $1.36 million in fixed fees, which could have been used to support the warfighter.

If the contracting officers had performed these tasks, the Government and Raytheon would have been clear on the terms of the contract from the beginning. Even though there was ambiguity in Raytheon's contract regarding the allowable fee rate for material and ODC contract line items, four of the five contractors complied with their proposed

fee rates. This shows that the Government's intent—that the contracting officer would incorporate the contractors' proposed fees into the IDIQ contracts and task orders—had been communicated.

The Director, SMDC CAMO, should meet with Raytheon and come to an agreement on the fee rate for material and ODC contract line items and the potential repayment of $815,440 in excess fixed fees. Raytheon should be made aware that by taking advantage of ambiguities in contract terms, they have not fulfilled the intent of their proposed pricing arrangement and are not attempting to conserve spending to better support the warfighter. The Director, SMDC CAMO, should seek a resolution that is in the best interest of the Government. Additionally, regardless of the stance that the Director, SMDC CAMO, takes on this issue, the Director can still request a voluntary refund as defined in Defense Federal Acquisition Regulation Supplement (DFARS) 242.7100, "Voluntary Refunds." Specifically, DFARS Procedures, Guidance, and Information 242.710 states that a voluntary refund may be solicited after determining that no contractual remedy is readily available to recover the amount sought and that voluntary refunds can be requested when the contracting officer concludes that the contractor overcharged the Government. We request that the Director, SMDC CAMO, conduct a meeting with Raytheon by December 1, 2011 and provide us comments on the results within 2 weeks of holding the meeting.

b. Institute an internal control plan that ensures that contracting officers are verifying the accuracy of all fees before awarding future task orders.

Director, SMDC CAMO, Comments

The Director, SMDC CAMO, agreed. She stated that the Director, Directorate A, issued a memorandum during the course of this audit requiring contracting officers to verify calculations and rates within proposals to identify any mistakes or errors. The Director also stated that this topic was covered during information training sessions in May 2011.

Our Response

The Director's comments are partially responsive. Although the memorandum, attached worksheet, and training sessions are helpful to ensure that contracting officers perform their duties and verify the accuracy of fees, they do not constitute an internal control plan. SMDC CAMO management needs to continue to take a proactive approach to ensure that contracting officers are verifying the accuracy of task orders before award. We request that the Director develop an internal control plan and provide a copy to us by December 1, 2011.

c. Require that contracting officers update the standard language used in the indefinite-delivery, indefinite-quantity contracts and all open task orders for each prime contractor to reflect the contractually agreed-to fixed fees for materials and other direct costs.

Director, SMDC CAMO, Comments

The Director, SMDC CAMO, partially agreed. The Director stated that basic IDIQ contracts for each contractor are being modified to update terms and conditions, including incorporating the fee rates, and completion is expected no later than September 30, 2011. She also stated that updating Raytheon's contract is predicated upon the successful negotiation of the fee rates on materials and ODCs, which is not yet final.

The Director stated that modifying existing task orders would be difficult and there were no findings in this report to require this recommendation. She stated that regardless of the terms of a contract, errors will occur; therefore, a more aggressive scrutiny of invoices and documentation is a more prudent and practicable approach than modifying each open task order. She also stated that this effort is further discussed in her response to Recommendation B.2.

Our Response

The Director's comments are partially responsive. However, no further comments are required because the Director's corrective actions proposed in Recommendations A.2.b and actions taken in Recommendation B.2 are being implemented to ensure that all open and future task orders contain accurate fee information. Raytheon should not be treated differently than the other contractors and needs to have its IDIQ contract modified. Additionally, the discussions throughout Finding A and specifically, the table in Appendix B, show that we have identified specific open task orders that have incorrect fees.

d. Require that contracting officers include standardized language that reflects the amount of fixed fees for materials and other direct costs in all future task orders and modifications as of October 1, 2011.

Director, SMDC CAMO, Comments

The Director, SMDC CAMO, disagreed with the draft report recommendation regarding stopping the issuance of any task orders or modifications until Recommendation A.2.c was completed. The Director stated that other than a concern with Raytheon's fees, for which a remedy is already being discussed, there were no findings warranting a complete halt of all contract actions that are directly supporting the warfighter. Additionally, she stated that a failure to modify task orders as necessary would be a breach of contract on the Government's part, resulting in potential litigation liability and impact on the organizations and units supporting the task orders.

Our Response

Based on the Director's comments and the action taken for Recommendation A.2.c, we revised the recommendation. We request that the Director, SMDC CAMO, provide additional comments on the revised recommendation by December 1, 2011.

Finding B. Contractors Billed the Army Incorrectly

The Army was incorrectly charged for ODCs under two CNTPO task orders because Northrop Grumman billed for non-CNTPO work under one CNTPO task order and double billed on another. The Deputy Director, CAMO stated that this occurred because, at the time, Northrop Grumman was authorized to submit requests for provisional payment directly to the Defense Finance and Accounting Service. However, both of the billing errors occurred because CORs did not conduct in-depth reviews of the invoices. As a result, Northrop Grumman overbilled the Army $168,279. Northrop Grumman agreed that they incorrectly billed the Army and should issue refunds to the Army for the incorrect billings.

Charge for Non-CNTPO Work

~~(FOUO)~~ Northrop Grumman charged the Army for ODCs under the CNTPO task order W9113M-07-D-0007-0020 for [redacted] of non-CNTPO work. Northrop Grumman billed the Army for squibs[2] that were in support of a Lockheed Martin contract because Northrop Grumman was authorized to submit requests for provisional payment directly without a detailed invoice review. Northrop Grumman submitted task order 0020, invoice BVN0007, to the Army for payment. We identified that the subcontractor invoice to support Northrop Grumman invoice BVN0007 contained a Lockheed Martin contract number. On February 2, 2011, we contacted Northrop Grumman for clarification. On March 14, 2011, a Northrop Grumman official acknowledged that the charges for the squibs were for a Lockheed Martin contract and were incorrectly charged under the CNTPO contract. The Northrop Grumman official stated that Northrop Grumman would refund the Army for the squibs and the program management office fee and profit fee added to the charges on invoice BVN0007. On June 29, 2011, Northrop Grumman refunded [redacted] to the Army.

Double Billing

~~(FOUO)~~ Northrop Grumman double billed the Army for [redacted] of ODCs under CNTPO task order W9113M-07-D-0007-0021. Northrop Grumman submitted task order 0021, invoices BVN0022 and BVN9024, to the Army for payment for insurance charges. We identified that the subcontractor invoices to support the Northrop Grumman invoices contained duplicate charges for insurance that covered the same period of time. On April 15, 2011, we asked Northrop Grumman for clarification. On May 5, 2011, a Northrop Grumman official acknowledged that invoices BVN0022 and BVN9024 were the same. The Northrop Grumman official stated that Northrop Grumman would issue a refund for the double billing and program management office fee and profit fee added to the charges on invoice BVN9024. On June 9, 2011, Northrop Grumman refunded [redacted] to the Army.

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[2] A squib is an explosive charge of high-temperature powder.

Although the Deputy Director, CAMO, stated that these invoices were submitted while Northrop Grumman was authorized to submit requests for provisional payment directly to the Defense Finance and Accounting Service, task order 0021, invoices BVN0022 and BVN9024, were submitted after Northrop Grumman's direct submission authority was rescinded. The COR signed Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," that certified that task order 0021, invoices BVN0022 and BVN9024, were correct and proper for payment. The double billing for insurance charges on task order 0021, invoices BNV0022 and BVN9024, occurred because for ODCs, the COR only checked that the invoice matched the proposal. The CORs did not obtain receipts or review supporting documentation for vouchers. Specifically, the CORs did not question the ODCs as long as there were funds on the contract to cover invoices. Without a more in-depth invoice approval process, billing errors could continue to occur.

Conclusion

Northrop Grumman incorrectly billed the Army for $168,279 under the CNTPO contract. A Northrop Grumman official acknowledged that incorrect billings occurred and agreed to refund the amount incorrectly billed to include the program management fee and profit applied. The Director of Directorate A should follow up with Northrop Grumman to ensure that the incorrect billings are refunded to the Army. If corrective actions are taken, the Army could receive $168,279 in potential monetary benefits.

Redirected Recommendation

Based on the comments from the Director, SMDC CAMO, we redirected Recommendation B.2 to her office.

Recommendations, Management Comments, and Our Response

B. We recommend that the Director of Contract Operations Directorate A, U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office:

1. Ensure that Northrop Grumman refunds the Army the $168,279 that was incorrectly billed.

Director, SMDC CAMO, Comments

The Director, SMDC CAMO, responding on behalf of the Director, Directorate A, agreed. The Director stated that it is her understanding that the DoD IG audit team worked directly with Northrop Grumman regarding credits owed to the Government. She stated that SMDC CAMO received information from Northrop Grumman demonstrating that credits have been issued.

Our Response

We worked directly with Northrop Grumman personnel to identify the errors and the total amounts that were incorrectly billed. Northrop Grumman provided us documentation

showing that credits were issued and the Director, SMDC CAMO, agreed that the credits were issued. The Director's comments are responsive, and no further comments are required.

2. Coordinate with the Program Director of the Counter Narcoterrorism Technology Program Office to determine whether a more detailed invoice approval process is necessary.

Director, SMDC CAMO, Comments

The Director, SMDC CAMO, responding on behalf of the Director, Directorate A, and the Program Director, CNTPO, agreed. The Director and Program Director coordinated comments in response to this recommendation. They stated that CNTPO has initiated efforts to enhance its invoice review process. Specifically, they stated that in June 2011, CNTPO conducted an internal invoice review process analysis that indentified areas for enhancement and the following improvement actions to:

- Hire an experienced individual whose sole responsibility will be to review all invoices prior to being reviewed and approved by the COR and COTR. They stated that this individual started on August 1, 2011.
- Develop a more detailed invoice review checklist. (A copy of the checklist was provided to the audit team.) They stated that the checklist will be treated as a "living" document to ensure that it is as comprehensive as necessary.
- Refine the CNTPO invoice review process to include the newly hired invoice reviewer. (A copy of the proposed workflow was provided to the audit team.)

Additionally, they stated that SMDC CAMO will institute a random review of invoices that are approved by the COR and COTR starting on October 1, 2011. (A copy of the review checklist was provided to the audit team.)

Our Response

The Director and Program Director's comments are responsive, and no further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from October 2010 through July 2011 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.

We conducted interviews and gathered documentation covering the period from August 2008, when the sample of task orders contained in DoD IG Report D-2009-109 ended, through April 2011. We downloaded all the CNTPO task orders and modifications within that timeframe from the Electronic Document Access Web site. We then downloaded all the invoices for those task orders that contained ODC contract line items from the Wide Area Workflow Web site.

We visited CNTPO in Dahlgren, Virginia, and SMDC CAMO in Huntsville, Alabama, to gather background information and contract files. We also met with contracting officers, CORs, COTRs, and management at those locations. We met with DCAA and Defense Contract Management Agency personnel to discuss their roles and responsibilities with CNTPO contracts. We met with prime contractors and subcontractors who requested entrance conferences and contacted others by phone and e-mail to gather documentation to support the invoices.

While reviewing Raytheon task orders, we found that Raytheon was charging the Army excess fixed fees on material and ODC contract line items. We reviewed all Raytheon task orders with materials and ODCs to ensure that correct fixed fees were being applied. We reviewed all task orders for all the prime contractors to determine whether the overcharging of fixed fees was a systemic problem. We found that USTC was also overcharging fixed fees for material and ODCs.

Use of Computer-Processed Data

We relied on computer-processed data from Electronic Document Access Web site. Electronic Document Access is a web-based system that provides secure online access, storage, and retrieval of contracts and contract modifications to authorized users throughout the Department of Defense. We used documents retrieved from Electronic Document Access to determine the approximate value of ODCs for task orders under the CNTPO contract. We compared our analysis of the CNTPO task orders to data provided by the contracting office to verify the ODC dollar value for CNTPO task orders. As a result of our analysis, we are confident that data collected from the Electronic Document Access Web site was sufficiently reliable for determining the approximate value of ODCs for task orders under the CNTPO contract.

In addition, we relied on data from Wide Area Workflow Web site. Wide Area Workflow is a web-based system for electronic invoicing, receipt, and acceptance. We

used documents retrieved from Wide Area Workflow to determine the amount of fee paid on material and ODC contract line items to the prime contractors. We compared our analysis of fee paid on material and ODCs provided by Wide Area Workflow documents to the disbursement amount from the Mechanization of Contract Administration Services (MOCAS) Disbursement History report. As a result of our analysis, we are confident that data collected from the Wide Area Workflow site was sufficiently reliable for determining the amount of fee paid on material and ODCs.

We also relied on MOCAS Disbursement History reports. The MOCAS Disbursement History shows the detailed obligation and disbursement transactions on the contract. We used the MOCAS Disbursement History to determine the material and ODC contract line items that have been paid by the Defense Finance and Accounting Service for each task order. We verified that the information was accurate by matching the disbursement amount from the MOCAS report to the total amount invoiced in Wide Area Workflow. As a result of our analysis, we are confident that the data collected from the MOCAS Disbursement History were sufficiently reliable for determining the material and ODC contract line items paid for each task order.

Prior Coverage

During the last 5 years, the DoD IG has issued one report regarding CNTPO. Unrestricted DoD IG reports can be accessed at http://www.dodig.mil/audit/reports.

DoD IG

DoD IG Report No. D-2009-109, "Contracts Supporting the DoD Counter Narcoterrorism Technology Program Office," September 25, 2009

Appendix B. SMDC CAMO Overpaid Fee Amounts

Table B-1. Overpaid Fees to Raytheon

Task Order	Overpaid Excess Fees	Open and Closed Task Order Status	Potential Additional Excess Fees
0002	$ 12,328.18	Closed	$ 0.00
0003	2,941.25	Closed	0.00
0005	3,290.13	Closed	0.00
0006	1,864.70	Closed	0.00
0008	13,904.28	Closed	0.00
0009	4,218.86	Closed	0.00
0010	23,579.98	Closed	0.00
0012	88,578.49	Open	36,416.84
0013	106,963.26	Open	328,709.82
0014	287,401.58	Closed	0.00
0015	80,110.23	Closed	0.00
0016	120,556.05	Closed	0.00
0019	24,957.87	Open	23,278.93
0021	44,745.09	Open	57,467.31
Total	**$815,439.95**		**$445,872.90**

Table B-2. Overpaid Fees to USTC

Task Order	Overpaid Excess Fees	Open and Closed Task Order Status	Potential Additional Excess Fees
0005	$ 302.87	Closed	$ 0.00
0010	1,123.63	Closed	0.00
0011	6,121.81	Closed	0.00
0012	1,597.77	Closed	0.00
0013	2,996.96	Closed	0.00
0015	505.70	Closed	0.00
0016	13,527.53	Closed	0.00
0017	45,280.90	Open	9,640.61
0018	742.61	Closed	0.00
0020	4,777.13	Open	9,585.13
0022	37.10	Open	784.42
Total	**$77,014.00**		**$20,010.16**

Appendix C. Summary of Potential Monetary Benefits

Recommendations	Type of Benefit	Amount of Benefit
A.2.a	Questioned costs. Recoup and prevent excess fees paid to contractor.	$1,358,000
B.1	Disallowed cost. Recover money for Non-CNTPO work and double billing charged by contractor.	168,279
	Total	**$1,526,279**

Deputy Assistant Secretary of the Army for Procurement Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

SAAL-PK

AUG 17 2011

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, 400 ARMY NAVY DRIVE, ARLINGTON, VIRGINIA 22202

SUBJECT: Department of Defense Inspector General (DoD IG) Draft Report Dated July 15, 2011, Counter Narcoterrorism Technology Program Office Task Orders Had Excess Fees, and the Army Was Incorrectly Billed (Project No. D2011-D000AS-0004.000)

1. The subject report makes one recommendation to the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)). Specifically, the DoD IG recommends that DASA(P) conduct a review of the performance of the contracting officers at the U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office, who oversaw the management of the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts for allowing excess fees and initiate administrative action if appropriate.

2. The DASA(P) concurs with the recommendation and provides the enclosed comment.

3. Point of contact for this memorandum is [redacted]

Enclosure

for TW Colongeche
Kim D. Denver
Deputy Assistant Secretary
of the Army (Procurement)

ENCLOSURE

Draft Audit Recommendation A1:

We recommend that the DASA(P) conduct a review of the performance of the contracting officers at the U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office, who oversaw the management of the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts for allowing excess fees and initiate administrative action if appropriate.

DASA(P) Response:

The DASA(P) included Army Contracting Center-Redstone (ACC-RSA) in its schedule for FY12 Procurement Management Reviews (PMRs). ACC-RSA provides senior contracting management for U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office operations. During the conduct of the scheduled PMR, the DASA(P) team will specifically include the subject areas of this report as part of their review.

U.S. Space and Missile Defense Command, Contracting and Acquisition Management Office Comments

DEPARTMENT OF THE ARMY
U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND/
ARMY FORCES STRATEGIC COMMAND
POST OFFICE BOX 1500
HUNTSVILLE, ALABAMA 35807-3801

REPLY TO
ATTENTION OF

SMDC-RDC-A 15 August 2011

MEMORANDUM FOR Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Agency Response to Draft Report Project No. D2011-D000AS-0004.000, CNTPO Task Orders Have Excess Fees, and the Army was Incorrectly Billed

1. Thank you for the opportunity to review the above-subject draft report. Request that you consider this response and information below concerning Finding A and Finding B when finalizing your report.

a. Finding A.

(1) Recommendation A.2.a. Prior to addressing the specific findings, overarching statements presented in the draft report must be addressed.

(a) Failure to Implement Internal Controls or Reviews: The draft report indicates that the findings presented in this report are repeat findings of those presented in DoD IG Report D-2009-109, September 2009. In that report, the DoD IG found that USASMDC/ARSTRAT CAMO did not have adequate internal controls for managing and administering the CNTPO IDIQ contracts. The findings were centered into four major areas of concern: training of personnel assigned; type of task orders employed; contract files maintenance; contract administration; and, quality assurance. To address the findings and recommendations, USASMDC/ARSTRAT CAMO and CNTPO instituted a corrective action plan. To date, all corrective actions have been implemented. ***Moreover, this draft report identified no repeat findings*** of those set forth in DoD IG Report D-2009-109, September 2009. As such, USASMDC/ARSTRAT ***CAMO believes that the broad references to the 2009 report are inappropriate***. To highlight our concerns, the following is provided:

(i) The DoD IG Report D-2009-109, September 2009, identified internal control weaknesses for USASMDC/ARSTRAT CAMO. Per the Report, SMDC CAMO did not have adequate internal controls for managing and administering CNTPO IDIQ contracts. Specifically, SMDC contracting officials did not properly complete training requirements; maintain complete contract files; use firm-fixed-price, level-of-effort, or cost contracts; develop quality assurance surveillance plans; or designate trained contracting officer's representatives for task orders. In addition, CNTPO officials did not conduct proper contract surveillance or properly fund task orders.

(ii) USASMDC/ARSTRAT CAMO agreed with findings and instituted a corrective action plan in concert with CNTPO. In the corrective action plan, USASMDC/ARSTRAT CAMO and CNTPO ***made substantial organizational and procedural changes*** as follows:

- Staffing: At the time of the audit USASMDC/ARSTRAT CAMO had only two personnel assigned to support this contract. The audit occurred during the fourth quarter, where focus of the limited resources was on the award of requirements and obligation of expiring funding. Moreover, given the workload and limited staffing, auditors were advised that the contract files were not fully compiled, with some information in hard copy form in the files and other information in electronic format.

  Since the audit, USASMDC/ARSTRAT CAMO has increased its staff from two personnel at the time of the audit to nine personnel. Similarly, CNTPO has increased manning by 22 personnel. To augment these personnel, contractor personnel are also used to execute support functions which include files management, documentation control and subject matter expert quality assurance assistance.

- Training: SMDC and CNTPO have conducted training, to include training specifically tailored to address the type and complexity of requirements executed under this contract, and has identified additional training requirements to bolster the proficiency level of personnel administering this contract.

- Processes:
  - A structured approach to task order management has been implemented, with defined roles and responsibilities throughout the process, from task concept to task completion.
  - A robust, multi-tiered approach to quality assurance has been implemented, to include the implementation of a task order surveillance plan for each task order. This approach delegates authority to Contracting Officer Representatives at the contract level, and Contracting Officer's Technical Representatives and Subject Matter Experts at the task order level. This approach also included the establishment of a prepositioned quality assurance cell in Afghanistan.
  - Contract administration delegations provided to the DCMA Corporate Administrative Contracting Officers (CACO) have been updated to include a request for the CACO to subdelegate tasks/responsibilities as the CACO determines necessary based upon the place of performance and nature of the requirement.
  - The invoice process was changed from the typical provisional payment process authorized by DCMA and DFAS, to a mandatory 100% review of all invoices and supporting documentation prior to approval.

- Contract files include a standardized contract file checklist, tailored to the requirements of this program.
- Peer reviews have been initiated and include reviews for all actions executed. The reviews consider the soundness and executability of the proposed task order acquisition strategy and task order administration approaches, as well as compliance with all statutes, regulations and policies. A finding of the initial audit included the failure to obtain approval for the contract type selected for the task order. Although the contract types utilized were authorized by blanket determinations and finding and the acquisition strategy at the contract level, each task order now includes a D&F when other than a firm, fixed price arrangement is utilized. Additionally, the task order strategies employ firm, fixed price arrangements to the greatest extent practicable. The peer review also reviews the task order file to ensure all required signatures are presented in the file documentation, and all theater business clearances are obtained prior to task order award.
- A Government Property Management System was deployed by CNTPO and tracks all government-furnished property and contractor acquired property on each task order. This system augments property administration support provided by DCMA. A Government Property Administrator (GS-1102-13) has been hired by USASMDC/ARSTRAT CAMO, with responsibility of all property oversight, to include identification of property in requirements statements and changes in property requirements throughout the life of the task orders.

(b) The draft report also infers that findings of a Program Management Review (PMR) conducted in December of 2009 by the Deputy Assistant Secretary of the Army (Procurement), or DASA(P) are relevant and that the findings identified in the draft report are repetitive of the findings presented in the DASA(P) PMR report. USASMDC/ARSTRAT CAMO believes that references to DASA(P) 2009 PMR report ***are inappropriate and are not relevant*** to the findings identified in the 2011 draft report. Moreover, it is important to note that ***none of the findings in the PMR report identified fault with the CNTPO contract or CNTPO task order***.
In the report, the PMR team indicated that the overall risk of contracting operations was high because of high risk ratings in contract execution, continuity of operations plan and the government purchase card. The review team opined that the risk ratings could be mitigated by standardizing operating procedures, issuing policy and conducting training.
USASMDC/ARSTRAT CAMO concurred and addressed each of these areas in the corrective action plan accepted by DASA(P). The findings that were assessed as high risk and the corrective action are as follows:

(i) Within the Continuity of Operations Plan (COOP) section of the PMR, the reviewers noted that USASMDC/ARSTRAT CAMO was included in the overarching SMDC COOP, but did not have a separate COOP specific to USASMDC/ARSTRAT CAMO. The correct action plan included development of a COOP for USASMDC/ARSTRAT CAMO. That plan has been developed and has been deployed during COOP exercises.

(ii) Within the Contract Execution section of the PMR, the reviewers assessed the risk of contract execution as high based upon a lack of adequate preaward and non-competitive documentation. The findings were similar to a finding in the 2009 IG report in that contract files were incomplete, but not relevant to the 2011 draft IG report.

- Files where the DD 2579, Small Business Coordination Report were not included. USASMDC/ARSTRAT CAMO disputed this finding, advising that we were unable to replicate the findings of the team. It appeared that some of the contract actions cited as missing pre-award documentation did not require those documents. For example, many of the actions were SBIR/STTR, contracts resulting from Broad Agency Announcements or actions otherwise authorized by statute. These actions do not require a DD2579. In addition, one file noted by the team was a task order and the DD 2579 requirement was satisfied at the basic contract/solicitation level. This finding is not relevant to the 2011 draft IG report.

- There were no Determination and Findings to support the use of Cost-Plus-Fixed-Fee type contracts. USASMDC/ARSTRAT CAMO did not dispute this finding. Files had no evidence of synopsis of proposed contract or contract awards as required by FAR 5.201. USASMDC/ARSTRAT CAMO's review determined that only 3 contracts out of the total actions reviewed required a synopsis. Policy guidance was issued to emphasize and remind personnel regarding synopsis requirements. This finding is similar to a finding in the 2009 IG report in that contract files were incomplete, but not relevant to the 2011 draft IG report.

- Files did not contain evidence that a Price/Cost Analysis was completed and no actual statement in the file that the contractor's final negotiated price is considered fair and reasonable. The files included were simplified acquisitions where a full price/cost analysis report was not required. However, USASMDC/ARSTRAT CAMO agreed that additional emphasis was required in this area and addressed it in a "Back to Basics" training course that was conducted on 2010. This finding is similar to a finding in the 2009 IG report in that contract files were incomplete, but not relevant to the 2011 draft IG report.

- There is no evidence in the file that the contracting officer checked the Excluded Parties List before contract award. USASMDC/ARSTRAT CAMO concurred with the finding and executed a policy and compliance reminder drawing attention

to this oversight. This finding is similar to a finding in the 2009 IG report in that contract files were incomplete, but not relevant to the 2011 draft IG report.

- Although 13 actions were awarded as an Undefinitized Contract Action (UCA), there was no evidence of a Determination or the required approval from the Head of Contracting Agency (HCA). The PMR failed to recognize that the HCA had delegated authority to the PARC to approve issuance of UCAs. However, USASMDC/ARSTRAT CAMO agreed additional emphasis was needed in this area and issued a UCA policy memorandum to reinforce compliance with applicable regulations. This finding is similar to a finding in the 2009 IG report in that contract files were incomplete, but not relevant to the 2011 draft IG report.

(iii) Within the Government Purchase Card (GPC) section of the PMR, the reviewers found that improper certifications were made by Billing Officials (BO). USASMDC/ARSTRAT CAMO agreed with the basic fact that improper certifications were made; however, highlighted the extenuating circumstances including death of a BO and reassignment of another BO that were documented in the file, but not presented in the report. Corrective actions were taken to ensure alternates were designated for all BOs. This finding is not relevant to the 2011 draft IG report.

(c) ***The findings in this draft 2011 IG report are not repeat findings of the 2009 IG report and have no relevance to the 2009 DASA(P) PMR***. These findings reflected (1) a dispute of the fee rates that were incorporated into the basic contracts, (2) a mathematical error in fee calculation that has since been corrected, and (3) a billing error that has since been corrected.

(i) **RECOMMENDATION A.2.A – RECOUP EXCESS FIXED FEES THAT HAVE BEEN PAID TO U.S. TRAINING CENTER (USTC).** ***USASMDC/ARSTRAT CAMO concurs with recommendation A.2.a concerning the USTC fees.*** During the course of the audit, it was discovered that the fee rate proposed by USTC in the stated task orders was depicted as [redacted] but that a mathematical calculation of the fee value proposed provides a rate slightly higher than [redacted]

Revised

To ensure clarity of this finding, it must be noted that USTC presented a fee rate of [redacted] in their proposal as a stated value [redacted] in the written narrative and in the spreadsheet column header. A visual inspection of the value indicated that the value proposed was reflective of the [redacted] proposed. However, when actually calculated, the value derived indicated a fee rate of [redacted] For example, on task order 0012 the estimated cost was [redacted] with a commensurate fee of [redacted] awarded. A calculation of the fee rate indicated a percentage of [redacted] vice the [redacted] presented as the intended value; a difference of [redacted] Similarly, on task order 0014, the estimated cost was [redacted] with a fixed fee of [redacted] The fee value was overstated by [redacted] based upon the mathematical error identified.

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When this error was discovered, USTC was immediately notified. USTC concurred with the issue and advised the error was the result of a miscalculation. USASMDC/ARSTRAT CAMO is working with USTC and DFAS to recover the fee overage, including credits on task orders that are physically complete. Further, USTC reviewed the basis for this error and made changes to its internal review process to prevent future incidents of this nature (Encl 1). It is anticipated that all required credits will be recovered no later than 30 September 2011.

Enclosures omitted because of length. Copies will be provided upon request.

As stated, USASMDC/ARSTRAT CAMO concurs with the recommendation; however, the ***significance of this mathematical error was overstated*** in the draft report. It is not practicable to verify every calculation in every proposal received. To expect such would increase the manning requirement for every contracting organization within the DoD; an expectation that cannot be satisfied with the limited resources authorized.

Revised

(d) **RECOMMENDATION A.2.A – RECOUP EXCESS FIXED FEES THAT HAVE BEEN PAID TO RAYTHEON TECHNICAL SERVICES COMPANY, LLC (RAYTHEON).** ***Nonconcur with recommendation to recover purported excess fees owed by Raytheon***. USASMDC/ARSTRAT CAMO ***concurs that there is a misunderstanding as to the terms of the solicitation and resultant contract*** regarding the fee rate that should be allowable on Materials and ODCs. Further, USASMDC/ARSTRAT CAMO agrees that there was an ambiguity in the terms of the solicitation and contract that lead to the awarding Contracting Officer's failure to accept the fee rate offered in Raytheon's Final Proposal Revision (FPR). However, for the reasons stated below, ***fees awarded to date and paid are not recoverable for the reasons stated below***.

The DoD IG team's premise concerning this finding is based upon the IG's interpretation that the Materials and Other Direct Costs (ODCs) fee rates proposed by the prime contractors in their respective final proposal revision are (or should have been) incorporated into the awarded contracts. However, as discussed below, it is our viewpoint that the DoD IG team's premise and interpretation represents one interpretation of the terms of the solicitation/contract. A separate interpretation can be and was drawn based upon the terms of the contract inherited by successor Contracting Officers. Today, the acquisition workforce is faced with substantial turnover. The successor Contracting Officers ***reviewed the terms of the contract*** that they took over to administer, which was the final documented agreement between the parties. A reasonable person would agree that it is neither realistic nor practicable to expect successor Contracting Officers that inherit contracts in a post award state to review preaward documentation to ensure the terms of the contract they inherit are consistent with the preaward documentation.

The following discussion demonstrates that there was not a meeting of the minds regarding the fee rates that should have been and were incorporated into the basic contracts. Given that, it is unrealistic to believe that successor Contracting Officers would have understood the intent of the Contracting Officer awarding the basic contracts and ***enforced fee rates that were not included in the contracts*** they were provided to administer.

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(i) During the preliminary stages of the DoD IG Team's review, the Director, Contract Operations Directorate A, CAMO, informed the inspection team that the FPR rates proposed by the prime contractors for Materials and ODCs were not incorporated into the contracts. Rather, the terms of the contracts included a fee range of 0 to 5% on Materials and ODCs that may be proposed at the task order level.

(ii) In response to an inquiry made by the DoD IG team during the audit regarding the FPR fee rate proposed by Raytheon, the Director and the DOD IG team reviewed preaward information, including the pricing instructions set forth in the solicitation which indicated (see page 125 of Amendment 0007 – Encl 2):

Enclosures omitted because of length. Copies will be provided upon request.

SECTION IX

Fee/Profit

Provide the prime Contractor's and Subcontractor's proposed fee/profit percentage(s) and base(s). All proposed fee/profit shall be fixed. Exhibit B0 Firm Fixed Price and CPFF labor rates shall include profit.

The Director and the DoD IG team also reviewed the terms of Raytheon's FPR which states (see paragraph 5.9.4 of FPR – Encl 3)(emphasis added):

[redacted]

[redacted]

[redacted]

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(iii) Since issuance of that letter, in conjunction with assigned legal counsel USASMDC/ARSTRAT, the CAMO Director has conducted additional analysis and obtained further information that has bearing on this issue. Specifically, review of this additional information and the terms of the contract, which was executed as a bilateral agreement, substantiates that the terms of the awarded contract are clear in that (1) the final proposed fee rates for Materials and ODCs were not accepted by the Government, and (2) were not incorporated into the resultant contract. Therefore, for purposes of task order pricing, the allowable fee on Materials and ODCs falls ***within a range of 0 to 5%,*** as proposed by Raytheon at the task order level.

(iv) In addition, Raytheon's response (Encl 5) to the initial CAMO inquiry concerning the fee highlights the terms of the contract, which further substantiate the Government's intent to permit awardees the ability to propose fee on Materials and ODCs ***up to a 5% maximum fee limit.***

Enclosures omitted because of length. Copies will be provided upon request.

Raytheon's arguments are compelling and supported by relevant case law and prior DoD audit reports. Of particular note is the cited DoD IG report No. D-2011-073, published 14 June 2011, which refers to a contractor's proposal provision being irrelevant where the parties failed to incorporate it into the resulting contract. The report states, *"[before the audit, KRCC-A and DCMA denied the contractor's request for equitable adjustment for parts reimbursement and additional warehouse space. Regarding the parts reimbursement, the contractor's initial proposal included a clause allowing the contractor to receive an equitable adjustment if parts reimbursement costs exceeded $15 million per year. KRCC denied the request for reimbursement because the contractor's initial proposal was not incorporated into the final contract."*

This same principle applies to the fee on Materials and ODCs where the terms of the contract provided the opportunity for the contractor to propose a fee within a range of 0 to 5% and the ***FPR fee rates were not incorporated into the resultant contract***.

(v) The solicitation that conveyed the Government's requirements (Encl 6) included Material and ODC Contract Line Items (CLINs). The Government's intent regarding allowable fee on Materials and ODCs was clarified through communications with prospective offerors during the acquisition solicitation process. Of importance, the initial solicitation authorized 0% fee on ODCs. However, in response to industry questions posed prior to the receipt of proposals (Encl 7), the Government advised prospective offerors, "*[t]he Government is considering **a capped fee** for CLIN [0]004 (Material) and CLIN 0007 (ODCs); if utilized see RFP AMD 0004.*[1] Subsequently, solicitation Amendment 0004 (Encl 8) was issued, which changed the nomenclature of the Material and ODC CLINs and authorized **a range of fee rates** (i.e., "***A MAXIMUM OF 5.0% AND A MINIMUM OF 0.0% FEE ALLOWABLE ON THIS CLIN.***"). As quoted below, Amendment 0004 also modified the proposal preparation instructions (page

[1] Question Set 1 – Question 192 (see Encl 7)

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33) to advise prospective offerors that *a maximum fee of 5%* was allowed on ODCs (emphasis added).

> *If Other Direct Costs (ODC) are split between the prime Contractor and Subcontractor(s), the offeror shall provide a chart showing the ODC proposed by the prime Contractor and the proposed ODC by the Subcontractor(s) (to include teaming partners/members). Offerors should show that the total proposed loaded ODC costs equal the amounts in Section B of the RFP.* ***A Maximum Fee of 5% is allowed on ODC.*** *Examples of anticipated ODC for which cost has been provided include testing equipment, detection equipment, navigation equipment, secure and nonsecure communications equipment, photo equipment, radar equipment and night vision systems.*

During contract administration, this approach permits prime contractors to propose a fee (up to the 5% maximum fee) based upon the nature of the requirement presented in each task order and the competitive position each firm elected to take in the competition of each task order. For example, task order requirements involving less risk will typically involve lower fee rates, while high risk endeavors (such as performance in a combat area or implementation of a novel approach) may warrant a higher fee rate.

(vi) The solicitation also advised prospective offerors that the proposed firm, fixed price labor rates and the cost-plus-fixed-fee labor rates (which were fully burdened rates inclusive of profit/fee), as well as indirect rates that would be applicable to Materials, ODCs, Travel and Defense Base Act insurance (hereafter referred to as DBA), would be incorporated into the basic contract as Attachment 6: B0 Rates for Contract. Specifically, the provision entitled PRENEGOTIATED PROFIT ARRANGEMENTS was included in Section B of the solicitation, which states (emphasis added):

> ***Profit for each direct labor hour*** *is included in the fixed-price direct labor rates set forth in Exhibit B0 in Section J of this RFP.*
>
> ***Fixed Fee for each direct labor hour*** *is included in the cost plus fixed fee labor rates set forth in Exhibit B0 in Section J of this RFP.*
>
> *There is no fee/profit applicable to travel and DBA Insurance.*

Moreover, the worksheet provided to contractors to complete for the add-ons for Materials and ODCs did not include fee rates (Encl 9).

Enclosures omitted because of length. Copies will be provided upon request.

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(vii) Section B of the solicitation also included a provision entitled PRENEGOTIATED LABOR AND OTHER DIRECT COST INDIRECT RATES, which states (emphasis added):

> *The parties agree that **the fixed-price rates** and **cost plus fixed fee (CPFF) rates** set forth in Exhibit B0, Section J of this RFP, shall be utilized to establish task order (T/O) prices.*
> *For labor performed in foreign countries, the specific country's OCONUS labor rates shall be applicable and shall be in accordance with the following provision, entitled "EMPLOYEE COMPENSATION IN FOREIGN COUNTRIES."*
> *The **Exhibit B0 fixed prices and cost plus fixed fee prices per DPPH** are applicable for contract performance, as ordered by properly executed task orders hereunder.*
> *(NOTE TO OFFEROR: Complete this provision in accordance with Section L – Instructions, Conditions and Notices to Bidders," L.4.5 VOLUME V – COST, SECTION VI – PRIME DIRECT LABOR. The tables in Exhibit B0 shall be completed and included in Volume I, General.)*
>
> ***Fixed-priced Level-of Effort** T/Os will be issued at a total price. The price shall be arrived at by utilizing the appropriate fixed-price direct labor (including profit) category rates (i.e. rates by contractor site or Government site and by CONUS or OCONUS), and **fixed-price ODC add-on rates set forth in Exhibit B0.***
> ***Cost Plus Fixed Fee** T/Os will be issued at a total CPFF. The total CPFF shall be arrived at by utilizing the appropriate **CPFF direct labor category rates** (i.e. rates by contractor site or Government site and by CONUS or OCONUS) set forth in Exhibit B0.*
>
> ***Fixed-Price labor with Cost-Plus Fixed Fee Other Direct Cost** T/Os will be issued with a) a defined number of hours from specific labor categories using the fixed-price direct labor (including profit) rates set forth in Exhibit B0; b) **an estimated cost for DBA insurance, travel and material, including associated indirect costs at the fixed indirect rates specified in Exhibit B0, and fee, as applicable.** Note that there are CONUS and OCONUS established loaded composite labor rates. OCONUS (by specific country) rates are based on the combination of Danger Pay (as applicable by specific country), Post Allowance (as applicable by specific country) and Hardship Differentials (as applicable by specific country) combined factors.*

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> ***CPFF labor with Cost and/or Cost-Plus Fixed Fee Other Direct Cost*** *T/Os will be issued with a) a defined number of hours from specific labor categories using the CPFF direct labor rates set forth in Exhibit B0; and b)* ***an estimated cost for DBA insurance, travel and material, including associated indirect costs at the indirect rates specified in Exhibit B0, and fee, as applicable.***
>
> *Note that there are CONUS and OCONUS established loaded composite labor rates. OCONUS (by specific country) rates are based on the combination of Danger Pay (as applicable by specific country), Post Allowance (as applicable by specific country) and Hardship Differentials (as applicable by specific country) combined factors.*
>
> *For labor performed in foreign countries only, the above labor rates shall be adjusted in accordance with the following provision, entitled "Employee Compensation in Foreign Countries."*

(viii) The nomenclature of the Material and ODC CLINs and the above provisions set forth in Section B of the solicitation were made part of the awarded contract (as an example, see Encl 10, Raytheon contract award). The solicitation also incorporated Attachment 4 - DD 254, Contract Security Classification and Attachment 6 - B0: Rates for Contract in full text, and referenced at Attachment 7 the offeror's Small Business Participation and Small Business Subcontracting Plan and Section K – Certifications and Representations. ***No other terms from the offerors' proposals were incorporated into the contract, to include incorporation by reference.***

Enclosures omitted because of length. Copies will be provided upon request.

Attachment 6 sets forth (1) the awarded contractor's indirect rates applicable to materials, ODCs, travel and DBA and (2) the awarded contractor's labor rates (see Encl 5) which set the maximum rate (inclusive of profit/fee) that may be proposed (and in the case of a fixed price order, invoiced). As stated in Section B of the awarded contracts, these rates formed the basis for pricing task orders. ***Not included in the awarded contract, was Raytheon's FPR fee rates on Materials and ODCs (emphasis added).***

(ix) As discussed above, during the solicitation phase the allowable ODC fee rate was revised from 0% (as presented in the initial RFP), *to a range from 0 to 5%,* (as stated in Amendment 0004 to the solicitation). Pursuant to the RFP, FACTOR 4: COST/PRICE (emphasis added), *"[v]arious price analysis techniques will be used in determining the realism and reasonableness of proposed* ***base labor rates, loaded labor rates, add-ons to ODCs, and bottom-line prices related to the overall cost and Task Orders 0001, 0002 and 0003****. The Government will make an in-depth analysis of excessively low* ***labor rates****, loaded* ***labor rates****, DBA Insurance,* ***ODC add-ons****,* ***and bottom-line prices proposed****. Proposed labor hours, travel dollars, material dollars and other direct costs will be evaluated to determine whether they are*

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in accordance with the RFP. The contractor's proposed compensation plan and its application to the overall basic IDIQ contract and Task Orders 0001, 0002 and 0003 (to include Post Allowance, Danger Pay and Hardship differential) will be evaluated. The results of the cost realism analysis will be applied to the evaluation of the technical factor and management factor to aid in assessing the offeror's understanding of the magnitude and complexity of the contract requirements."(emphasis added) The term 'add-ons" as they relate to Materials and ODCs did not state that these add-ons were intended to include fee. Typically, "adders" or "add-ons" mean those indirect rates, that per the firms cost accounting system and disclosure statement are applicable to be added on to direct material and ODC costs.
The solicitation did not specify that it was the Government's intent to incorporate fixed fee rates on Materials or ODCs, despite the information presented in Section IX of the cost proposal preparation instructions.

(x) A detailed and full review of task orders issued to Raytheon finds that it has not proposed [redacted] fee on Materials/ODCs in every case. For example, under Task Order Request for Proposals (TORP) 0010, Raytheon proposed [redacted] fee on materials; there were no ODCs proposed (Encl 11). Similarly, under TORP 0078, Raytheon proposed [redacted] fee on materials (Encl 12); again there were no ODCs proposed. These representational examples illustrate compliance with the terms of the contract in that fee may be proposed on Materials and ODCs within a range of 0 to 5%.

Enclosures omitted because of length. Copies will be provided upon request.

(xi) As stated, ***Raytheon's FPR rates were not included in the bilaterally executed contracts***. The ***DoD IG interpretation*** of Federal Acquisition Regulation (FAR) Clause 52.215-1,"Instructions to Offerors—Competitive Acquisition," which the inspection team states that USASMDC/ARSTRAT CAMO entered into binding contracts with Raytheon and USTC by accepting their final proposal revisions and offering awards, in accordance with the FAR ***is incorrect***.

Specifically, the FAR clause states, *"f.(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party."* This sentence, when read in its entirety, provides that either a written award **OR** acceptance of a proposal… "shall result in a binding contract without further action by either party." (Emphasis added) In this case, the written award conveyed the Government and accepted by Raytheon recorded the intent of the parties to permit the award of fee on Materials and ODCs within a range of 0 to 5%. Further, as stated above, th***e Government did not incorporate the FPR fee rates on Materials and ODCs, but did incorporate the labor rates and indirect rates set forth in Attachment 6***. As such, the Government's intent in terms of the rates that would be authorized to be proposed and invoiced under task orders issued was clear in the terms of the awarded contract, albeit that the awarded contract did not accept Raytheon's FPR fee rates on Materials and ODCs.

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(xii) Furthermore, the ***DoD IG interpretation*** and use of the Armed Services Board of Contract Appeals (ASBCA) case entitled "Appeal of Scientific Management Associates, Inc." (ASBCA No. 50956, 2000-1 B.C.A. (CCH) P30, 828, 2000 ASBCA LEXIS 39, March 8, 2000), ***is incorrectly applied and is improperly cited*** as relevant legal precedence. In the ASBCA case in question, the Appellant's claim sought reimbursement of costs totaling $158,445 in indirect costs incurred. The Appellant asserted that these costs were incurred, *inter alia,* as a result of unsuccessful negotiations for relief from indirect cost ceilings incorporated into the contract. In this case, the ASBCA held, "[a]s the cost proposal was incorporated into the contract (finding 1), appellant is contractually bound by its terms, which include the composition of its overhead pools." However, in contrast to the cited ASBCA case, as discussed above Raytheon's FPR rates on Materials and ODCs were not incorporated into the resultant contract. As such, the terms of the resulting contract allow the prime contractor to propose fee at the task order level within a range of 0 to 5%.

(xiii) [redacted]

(xiv) ***Several areas of discussion regarding this finding require clarification.***

Regarding page 5 of the report where the evaluation process is discussed, it should be noted that task order proposals are collaboratively reviewed by the COR, COTR and Contracting Officer/Contract Specialist. The Task Order Evaluation Guide (Encl 13) requires documentation by the COR/COTR of their findings regarding the realism of the price proposed. Disconnects between the price proposal and technical proposal are documented and presented to the Contracting Officer for resolution. This review includes a review of the rates proposed, as compared to the terms of the contract. The following is an excerpt from the Technical Evaluation Guide:

> *Labor categories match Attachment 6 of the basic contract: Discuss whether the labor categories proposed match Attachment 6.* ***Perform a random sampling of labor rates*** *– do they match Attachment 6?*

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Enclosures omitted because of length. Copies will be provided upon request.

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Encl 14 also provides an example of a technical evaluation where the rates were questioned by the evaluator. The Contracting Officer reviews the pricing information to ensure consistency between the price proposed and the terms of the contract, among other considerations. In post award, the COR/COTR review invoices to ensure requests for reimbursement are consistent with performance and the terms of the task order.

Enclosures omitted because of length. Copies will be provided upon request.

Regarding the role DCAA and DCMA play (see page 6 of the report), at the time the task orders identified were awarded, the prime contractors were under a direct billing authorization, whereby provisional payments were authorized and subject to later audit. DCAA and DCMA perform these audits and provide feedback to the Contracting Officer. Moreover, the comments made confuse the point that post award administration compares the request for reimbursement to the terms of the task order. The comments made by DCAA are correct in that their review ***does not*** include a review of the solicitation information that was not incorporated into the contracts, nor pricing terms that are not incorporated into the task orders. Additionally, DCAA's review does assess payment requests against the terms of the task order.

Regarding the IG's comments on page 8 regarding the continuation to award and administer task orders awarded to Raytheon at the fee rates within the terms of the contract, the implications of such actions were inappropriately inferred. ***While a contract is in dispute, the Government cannot enforce, nor is the contractor required to accept, terms that are contrary to those set forth in the contract.***

Regarding the IG's comments on page 9 in which Raytheon purportedly applied a [redacted] percent fee to material contract line item 3009 and a [redacted] percent fee to ODC contract line item 3011 under W9113M-07-D-0008-0021 (Encl 15), the following table summarizes the fee rates for the Material and ODCs line items, which ***demonstrate proposal of fee rates of*** [redacted] In reviewing ***invoices*** under this task order, it was found that fee rates of [redacted] and [redacted] appeared to be applied respectively to Materials and ODCs when looking ***solely*** at invoice BVN0014. However, when reviewing all invoices to date (BVN0001 through BVN00013), it was noted that the prior invoices requested reimbursement at less than the [redacted] rate. The cumulative values do not reflect reimbursement of more than the negotiated and authorized fee values.

[redacted]

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Regarding the concerns regarding overpayment of fees, when the concerns regarding potential overpayment of fee were highlighted, the Director tasked Raytheon to conduct a self-audit of fees paid on Materials, ODCs and travel. The self-audit conducted by Raytheon on fees paid on travel ***identified excess fees paid on travel that were not identified by the IG*** (see Encl 16). Raytheon is in the process of executing credit invoices for these overpayments. It is anticipated that these invoices will be processed before 30 September 2011.

Enclosures omitted because of length. Copies will be provided upon request.

(2) **RECOMMENDATION A.2.B – INSTITUTE AN INTERNAL CONTROL PLAN THAT ENSURES THAT CONTRACTING OFFICERS ARE VERIFYING THE ACCURACY OF ALL FEES BEFORE AWARDING FUTURE TASK ORDERS.** ***USASMDC/ARSTRAT CAMO concurs.*** During the conduct of the audit, a memorandum (Encl 17) was issued by the Director, Contract Operations Directorate A, CAMO, requiring contracting officers to verify calculations within proposals received to ensure no mistakes in proposals or other errors we apparent, and to ensure the rates proposed were equal to or less than the maximum rates set forth in the CNTPO contracts. This topic was also covered during information training sessions with the CNTPO contracting support team during the May 2011 timeframe.

(3) **RECOMMENDATION A.2.C – REQUIRE THAT CONTRACTING OFFICERS UPDATE THE STANDARD LANGUAGE USED IN THE INDEFINITE-DELIVERY, INDEFINITE-QUANTITY CONTRACTS AND ALL OPEN TASK ORDERS FOR EACH PRIME CONTRACTOR TO REFLECT THE CONTRACTUALLY AGREED TO FIXED FEES FOR MATERIALS AND OTHER DIRECT COSTS.** ***USASMDC/ARSTRAT CAMO concurs in part.*** The basic contracts are being modified (completion expected NLT 30 September 2011) to update terms and conditions of the contract, which include language that will incorporate the FPR fee rates, among other changes to the terms and conditions. It should be noted that the update to Raytheon's contract is predicated upon the successful negotiation of the fee rates on Materials and ODCs, which is not yet final.

Regarding the modification of existing task orders, the workload associated with this recommendation is prohibitive particularly given that there were no findings to warrant execution of this recommendation. Regardless of the terms of any contract, billing errors will occur. More aggressive scrutiny of invoices and supporting documentation is a more prudent and practicable approach, which is discussed further in the response to Finding B below.

(4) **RECOMMENDATION A.2.D. – STOP ISSUING TASK ORDERS OR MODIFICATIONS UNTIL CONTRACTING OFFICERS COMPLETE THE ACTION IN RECOMMENDATION A.2.C.** ***USASMDC/ARSTRAT CAMO nonconcurs.*** Aside from the concern with Raytheon's fees, which USASMDC/ARSTRAT CAMO has demonstrated above are not recoverable and has discussed a remedy to, there were no findings that would warrant a complete halt of execution of contractual actions under this contract that provides direct support to the warfighter. Moreover, failure to modify task orders, to implement agreed to terms and

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conditions (for example, provision of incremental funding) would amount to a breach of contract on the Government's part, resulting potential litigation liability in addition to the impacts created on the organizations and units supported by these task orders.

b. Finding B.

(1) **RECOMMENDATION B.1 – OVERPAYMENT OF INVOICES – NORTHROP GRUMMAN**. ***USASMDC/ARSTRAT CAMO concurs with the recommendation.***

Enclosures omitted because of length. Copies will be provided upon request.

It is understood that the IG worked directly with Northrop regarding credits owed to the Government regarding the following invoices. We received information from Northrop that the credits have been issued. These can be found at Encls 18 and 19.

(2) **RECOMMENDATION B.2 – COORDINATION CNTPO AND USASMDC/ARSTRAT CAMO**. ***USASMDC/ARSTRAT CAMO concurs***. However, it does not appear that this report was issued to the Department of the Navy for its comment. Therefore, recommend rewording Recommendation B.2 as stated below, which USASMDC/ARSTRAT CAMO has coordinated with CNTPO.

Redirected

> *Recommend that the Director of Contract operations, Directorate A, U.S. Army Space and Missile Defense Command, Contracting and Acquisition Management Office coordinate with the Program Executive, DoD Counter Narcoterrorism Technology Program Office to determine whether a more detailed invoice approval process is necessary.*

Additionally, note that CNTPO has initiated efforts to enhance its invoice review process. Of importance, in June, 2011, CNTPO conducted an internal invoice review process analysis, which identified several areas for enhancement and the following improvement actions:

- Initiate personnel action to hire an experienced individual whose sole responsibility will be the detailed review of all invoices prior to submission to the COTR/COR for review and approval. The individual was hired and started work at CNTPO on Monday, 1 August 2011.

- Develop a more detailed invoice review check list to ensure consistency of reviews and enhance identification of potential problems. A copy of the draft checklist is provided at Encl 20. This checklist will be treated as a living document, with revisions made as warranted to ensure a comprehensive review of invoices and supporting documentation.

- Refine the CNTPO invoice review process to include the invoice reviewer. Encl 21 provides the proposed workflow.

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In addition to the action taken by CNTPO, USASMDC/ARSTRAT CAMO Directorate A will institute a random review of invoice certifications executed by the COR/COTR on 1 October 2011. The review checklist is provided at Encl 22.

2. Point of contact for the above-subject matter is [redacted]

Encls

MARY C. DICKENS
Director, Contracting and
Acquisition Management Office

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Enclosures omitted because of length. Copies will be provided upon request.

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SUMMARY OF ENCLOSURES

Enclosures omitted because of length. Copies will be provided upon request.

1. USTC fee calculation corrective action

2. Solicitation W9113M-06-R-0014, Amendment 7

3. Raytheon FPR Section IX

4. Letter to Raytheon, dated 6 June 2011, Subject W9113M-07-D-0008, Other Direct costs (ODCs) and Materials Fee

5. Raytheon letter dated 6 July 2011, Subject CNTPO Contract W9113M-07-D-0008, Other Direct Costs (ODCs) and Materials Fee

6. Solicitation W9113M-06-R-0014 (conformed copy through Amendment 0007)

7. Question Set 1 – Question 192 – to Solicitation W9113M-06-R-0014

8. Solicitation W9113M-06-R-0014, Amendment 4

9. Solicitation W9113M-06-R-0014, Worksheet provided with pricing instructions

10. W9113M-07-D-0008

11. W9113M-07-D-0008, TORP 0010, Raytheon Cost Proposal

12. W9113M-07-D-0008, TORP 0078, Raytheon Cost Proposal

13. CNTPO MAIDIQ Task Order Evaluation Guide

14. Task Order Evaluation Example

15. W9113M-07-D-0008-0021

16. Raytheon letter dated 9 May 2011, Subject Self –Audit of Invoices Prior to 1 October 2010 - W9113M-07-D-0008

17. Memorandum from Director, Contract Operations Directorate A to CNTPO Contracting Officers/Contract Specialists, dated 14 February 2011

18. W9113M0-07-D-0007-0020, invoice BVN0007

19. W9113M0-07-D-0007-0020, invoices BVN0022 and BVN9024

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20. CNTPO Invoice Review Checklist

21. CNTPO Invoice Review Process

22. USASMDC/ARSTRAT – Invoice Checklist

Enclosures omitted because of length. Copies will be provided upon request.

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Inspector General
Department of Defense

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