

# Inspector General

United States  
Department of Defense



Improving Army Contract Award and Management for  
Small Arms Acquired Using Afghanistan Security  
Forces Funds

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## Acronyms

ACC	U.S. Army Contracting Command
ANSF	Afghan National Security Forces
ARDEC	U.S. Army Armament Research, Development, and Engineering Center
ASFF	Afghanistan Security Forces Fund
DCMA	Defense Contract Management Agency
DSCA	Defense Security Cooperation Agency
DSHK	Degtyarov-Shpagin Krupnokaliberny
EDA	Electronic Data Access
FAR	Federal Acquisition Regulation
FMS	Foreign Military Sales
FPDS-NG	Federal Procurement Data System - Next Generation
LOA	Letter of Offer and Acceptance
MOR	Memorandum of Request
NTM-A/CSTC-A	NATO Training Mission-Afghanistan/Combined Security Transition Command-Afghanistan
USASAC	U.S. Army Security Assistance Command



**INSPECTOR GENERAL**  
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May 30, 2012

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Improving Army Contract Award and Management for Small Arms Acquired Using Afghanistan Security Forces Funds (Report No. DODIG-2012-093)

We are providing this report for your information and use. DoD has spent at least \$313 million on U.S.- and foreign-manufactured small arms to support the Afghan National Security Forces. U.S. Army Contracting Command officials did not always properly award or manage contract actions, include specific quality requirements, document the requirements, and document the use of commercial acquisition procedures. Improving contract award and management is necessary to ensure that the Department of the Army is procuring quality small arms at fair and reasonable prices and can support the need for items procured, as well as, provide a basis for informed acquisition decisions.

We considered management comments on a draft of this report in preparing the final report. Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3. Therefore, we do not require any additional comments.

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

*Jacqueline L. Wicecarver*  
Jacqueline L. Wicecarver  
Assistant Inspector General  
Acquisition and Contract Management

cc:  
Commanding General, U.S. Army Materiel Command





# Results in Brief: Improving Army Contract Award and Management for Small Arms Acquired Using Afghanistan Security Forces Funds

## What We Did

We evaluated contract award, pricing, and quality assurance provisions for 45 contract actions, valued at approximately \$103.2 million. U.S. Army Contracting Command (ACC) used these contract actions to procure small arms, including accessories and spare parts, with Afghanistan Security Forces Funds. Specifically, we determined whether the contract processes were in accordance with applicable acquisition regulations.

## What We Found

ACC officials did not properly award or manage 19 contract actions in accordance with regulations and did not include specific quality requirements in the contract for 13 contract actions because they did not perform all necessary contracting procedures when accelerating procurements. Specifically, ACC contracting officials did not:

- properly compete or adequately justify sole-source awards for 6 actions,
- adequately determine foreign subcontractor qualifications for 13 actions,
- adequately address contractor nonperformance for 2 actions, and
- require anything other than a visual inspection to verify the correct quantity and weapon type before acceptance for 13 actions.

As a result, ACC contracting centers may have overpaid on six contract actions, and foreign-manufactured small arms may be of lower quality or delivered late or not at all.

In addition, ACC contracting officials did not document the requirement for 25 contract actions and the use of commercial acquisition procedures for 10 contract actions. This occurred because contracting officials did not maintain a letter of offer and acceptance and documentation to

support the commerciality of the small arms in the contract file. As a result, the ACC contracting officials may procure the incorrect item or quantity and may be using acquisition procedures that limit the Government's ability to monitor and inspect the small arms.

## What We Recommend

We recommend the Executive Director, ACC, require contracting officials to:

- develop standard operating procedures for assessing foreign subcontractor capability,
- promptly resolve contractor nonperformance,
- review the contracting officials' actions for contract W91CRB-04-D-0025, order 0006,
- include specific contract dates for obtaining the end-user certificate and delivering the small arms,
- include specific quality requirements and inspection and acceptance provisions in the contract, and
- maintain approved letters of offer and acceptance and market research used to support the commercial item determination in the contract file.

We recommend that the Commanding General, U.S. Army Security Assistance Command, develop guidance that requires approved letters of offer and acceptance be provided to contracting officers.

## Management Comments and Our Response

The Executive Director, ACC, and the Deputy to the Commanding General, U.S. Army Security Assistance Command, agreed with the recommendations and their comments were responsive. Please see the recommendations table on the next page.

## Recommendations Table

<b>Management</b>	<b>Recommendations Requiring Comment</b>	<b>No Additional Comments Required</b>
Executive Director, U.S. Army Contracting Command		A.1, A.2, A.3, A.4, A.5, A.6, B.2.a, and B.2.b
Commanding General, U.S. Army Security Assistance Command		B.1

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# Introduction

## Audit Objective

Our overall objective was to evaluate contract award, pricing, and quality assurance provisions for small arms, including accessories and spare parts, acquired using Afghanistan Security Forces Funds (ASFF). Specifically, we determined whether the contract processes were in accordance with applicable acquisition regulations. See Appendix A for a discussion of the scope and methodology and for prior coverage related to the objective.

## Background on Small Arms Procurements for the Afghan National Security Forces

Congress created ASFF in FY 2005 as an emergency supplemental appropriation for equipment and services to support the Afghan National Security Forces (ANSF). From FY 2005 through FY 2011, Congress appropriated approximately \$39.7 billion to the ASFF. The U.S. Government uses pseudo-Foreign Military Sales (FMS) procedures to procure items and services to support the ANSF through this fund. FMS procedures for purchasing items with ASFF are “pseudo” because the U.S. Government is not selling the small arms to a foreign customer but, instead, to the Department of the Army, who provides those items to the ANSF. DoD has spent at least \$313 million on U.S.- and foreign-manufactured small arms to support the ANSF.

### ***Small Arms Definition***

The DoD Manual 4000.25-2-M, “Military Standard Transaction Reporting and Accounting Procedures,” September 2011, defines small arms as:

- handguns;
- shoulder-fired weapons;
- light automatic weapons up to and including .50-caliber machine guns;
- recoilless rifles, up to and including 106mm;
- mortars up to and including 81mm;
- rocket launchers, man-portable;
- grenade launchers, rifle and shoulder-fired; and
- individually operated weapons that are portable and/or can be fired without special mounts or firing devices and are vulnerable to theft.

The DoD “Report on Progress Toward Security and Stability in Afghanistan and United States Plan for Sustaining the Afghanistan National Security Forces,” April 2011, stated ANSF is primarily being fielded with the following small arms:

- M9 pistols,
- M16 rifles,
- M4 carbines,

- AK47s,
- M249 squad automatic weapons,
- M240B machine guns,
- M2 heavy machine guns, and
- SPG-9 recoilless rifles.

### ***Pseudo-Foreign Military Sales Process***

NATO Training Mission-Afghanistan/Combined Security Transition Command-Afghanistan (NTM-A/CSTC-A) begins the pseudo-FMS process of obtaining small arms for the ANSF by sending a memorandum of request (MOR) to the Defense Security Cooperation Agency (DSCA). The MOR identifies the specific equipment requirements needed for the ANSF. DSCA reviews the request and assigns the request to a DoD implementing agency.

The U.S. Army Security Assistance Command (USASAC) is the implementing agency for small arms acquisitions. USASAC prepares a letter of offer and acceptance (LOA). The LOA identifies what small arms the U.S. Army Contracting Command (ACC) should procure and the appropriate-year funding to purchase the items. The LOA, once approved by DSCA, becomes the agreement on what items in the MOR the ANSF will receive. Both the MOR and LOA are subject to change based on the customer's needs, and an amendment or modification documents those changes.

The Defense Finance and Accounting Service then allocates funds from the ASFF to the pseudo-FMS case, and the ACC contracting centers obligate funds from the ASFF by awarding contracts based on the requirements agreed to within the LOA.

### ***U.S. Army Contracting Command***

The ACC performs the majority of contract work for the Department of the Army. Four of the six ACC contracting centers have awarded contracts for small arms since FY 2005. Those included ACC - Aberdeen Proving Ground, ACC - New Jersey, ACC - Warren, and ACC - Warren (Rock Island). ACC - Warren (Rock Island) is no longer awarding small arms contracts for the ANSF because most of its small arms contract files and responsibilities were transferred to ACC - Warren by March 2011 as a result of the Base Realignment and Closure process. Delivery has been completed for all small arms contract actions awarded by ACC - Aberdeen Proving Ground.

### ***Contract Types Used to Procure Small Arms***

ACC contracting centers were not required to use a specific contract type when procuring small arms for ANSF. ACC contracting centers used indefinite-delivery, indefinite-quantity contracts; firm-fixed-price contracts; or blanket purchase agreements in the majority of small arms acquisitions we reviewed.

Contracting officials use indefinite-delivery, indefinite-quantity contracts to procure items when they cannot determine the precise quantities of supplies or services the Government will require. Contracting officials issue delivery orders to procure the items

once NTM-A/CSTC-A identifies the requirement. Firm-fixed-price contracts subject a contractor to maximum risk arising from full responsibility for all costs and resulting profit and loss. Blanket purchase agreements use call orders to procure a variety of items in a broad class when the Government does not know in advance the exact items, quantities, and delivery requirements. In this report, the word “order” describes either a delivery or call order.

### ***Assistance Provided to the U.S. Army Contracting Command***

The Program Executive Office Soldier and the U.S. Army Armament Research, Development, and Engineering Center (ARDEC) assisted ACC contracting officials with contractor technical evaluations, small arms market research, and source selection decisions on ANSF small arms procurements. Program Executive Office Soldier is responsible for researching and developing current and future rifles, carbines, heavy machine guns, and grenade launchers. ARDEC provides the engineering support required for the research, development, production, field support, and demilitarization of munitions and weapons.

### **Internal Control Weaknesses With Small Arms Contract Award and Administration**

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 provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses associated with the contract award and administration of 19 small arms contract actions, including accessories and spare parts, at four ACC contracting centers. Specifically, ACC contracting centers did not perform all necessary contracting procedures for competition, determinations of subcontractor responsibility, or poor contractor performance. In addition, controls did not require ACC contracting officials to maintain important documentation in contract files. We will provide a copy of the report to the senior official responsible for internal controls in the Department of the Army.

## **Finding A. ACC Should Improve Contract Award and Management of Small Arms for Afghan National Security Forces**

ACC contracting officials did not properly award or manage 19 of the 45 contract actions<sup>1</sup> we reviewed, valued at approximately \$45.4 million of the \$103.2 million, in accordance with applicable contract regulations. In addition, for 13 contract actions,<sup>2</sup> valued at approximately \$43 million, ACC contracting officials did not include specific quality requirements in the contract to verify that the small arms were in working order before acceptance. This occurred because ACC contracting officials did not perform all necessary contracting procedures when they expedited the procurements. Specifically, the contracting officials did not:

- properly compete or adequately justify sole-source awards for 6 actions,
- adequately determine foreign subcontractor qualifications before award for 13 actions,
- adequately address contractor nonperformance on 2 actions, and
- require Government officials to perform anything other than a visual inspection to verify that the correct weapons and quantity were shipped before acceptance in Afghanistan for 13 actions.

As a result, ACC - Warren (Rock Island) may have overpaid on six contract actions, valued at approximately \$2.3 million, and foreign-manufactured small arms may be delivered late or not at all or be of lower quality. In addition, the Department of the Army may have to pay a delinquent contractor up to \$182,661 in incurred costs and will be unable to recoup the excess costs for any replacement contracts.

### **Expedited Procurement Requests in a Contingency Contracting Environment**

NTM-A/CSTC-A, as the lead U.S. agency responsible for developing and equipping the ANSF, requested that contracting centers expedite procurements to make certain that all funds were obligated before expiration and to receive the required equipment to support combat operations. For example, in 2011, the previous NTM-A/CSTC-A, Afghanistan Deputy Commander for Programs, provided weekly updates to the security assistance community in which he stated that “time matters, we need it faster.” ACC contracting officials stated that there was urgency when procuring small arms because the ANSF is operating in a combat environment.

Contracting officials must comply with the Federal Acquisition Regulation (FAR) when procuring supplies and services despite the pressure to obtain small arms as quickly as

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<sup>1</sup> A contract action may have more than one deficiency.

<sup>2</sup> The 13 contract actions are included as part of the 19 contract actions we reviewed.

possible. The Security Assistance Management Manual directs that FMS acquisitions must be in accordance with Federal and DoD regulations and procedures. Specifically, it states that the “DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself ...” See Appendix B for a list of applicable Federal and DoD contracting regulations and guidance.

## **Improvements to Contract Award and Management for ANSF Are Needed**

ACC contracting officials procuring small arms did not properly award or manage 19 of the 45 contract actions we reviewed. ACC contracting officials did not follow applicable contract regulations when they accelerated contract award. Specifically, they did not properly compete or justify sole-source awards, did not adequately determine foreign subcontractor qualifications, and did not adequately address contractor nonperformance. In addition, ACC contracting officials did not include specific quality requirements in the contract for 13 contract actions to verify that the small arms were in working order before acceptance. Specifically, they only required Government officials to perform a visual inspection of the small arms before acceptance.

ACC contracting officials stated that all ANSF requirements were urgent. This urgency created an atmosphere in which contracting officials accelerated contract award to

*This urgency created an atmosphere in which contracting officials accelerated contract award to obligate funds before expiration or to get quicker delivery of the small arms.*

obligate funds before expiration or to get quicker delivery of the small arms. According to Security Assistance Management Directorate officials, NTM-A/CSTC-A was aware of the contracts that had not reached maximum ordering quantities and would order items on those contracts based on available funds at the end of the fiscal year. For

example, on July 11, 2010, NTM-A/CSTC-A amended a MOR to order an additional 105 40mm multi-launchers because:

the DshKa [sic] heavy machine guns in ‘Amendment A’ could not be put under contract prior to the fiscal year expiration of the allocated funds. Additional multi-launchers and vehicles were added in order to obligate funds prior to fiscal year expiration.

The Department of the Army was required to return the unobligated funds to the Department of the Treasury if the ACC contracting officials did not award the contract or order before the end of the fiscal year. NTM-A/CSTC-A also requested that small arms be delivered quickly. For example, on a May 14, 2010, MOR, NTM-A/CSTC-A required that the delivery of M3 tripods begin in June 2010. The contracting officials attempted to procure these and other items quickly to meet NTM-A/CSTC-A requirements, which resulted in contract award and management problems. Table 1 summarizes the contract award and management problems we identified at the four ACC contracting centers.

**Table 1. Contracting Problems Relating to Small Arms, Accessories, and Spare Parts Using Afghanistan Security Forces Funds**

<b>Contracting Problems</b>	<b>Number of Occurrences</b>	<b>ACC Contracting Center</b>
<b>Award</b>		
Inadequate Competition	6	Warren (Rock Island)
Inadequate Determination of Subcontractor Responsibility	13	Aberdeen Proving Ground, New Jersey, and Warren
Contract Language Limited Inspection Procedures	13	Aberdeen Proving Ground, New Jersey, and Warren
<b>Management</b>		
Contractor Nonperformance Not Adequately Addressed	2	Aberdeen Proving Ground and New Jersey

Appendix C includes a detailed list of the contract actions reviewed and the specific problems identified for each of the 19 contract actions.

***ACC Should Increase the Use of Competition Procedures***

FAR Part 6, “Competition Requirements,” requires contracting officers to promote and provide full and open competition in soliciting offers and awarding Government contracts unless an exception applies.

ACC - Warren (Rock Island) contracting officials awarded contracts or orders based on unfair competition or inadequate sole-source justifications. Specifically, ACC - Warren (Rock Island) contracting officials did not properly compete six contract actions reviewed, valued at approximately \$2.3 million. For example, on September 30, 2009, an ACC - Warren (Rock Island) contracting official awarded contract W52H09-09-D-0313, which was a competitive indefinite-delivery, indefinite-quantity contract for a maximum of 3,000 M22E binoculars.<sup>3</sup> In September 2010, ACC - Warren (Rock Island) awarded orders 0008 and 0009 for 7,800 units and 1,600 units, respectively. These 2 orders were sole-source awards off the original contract and exceeded the maximum contract quantity of 3,000 on the base contract by 213 percent. The justification and approval identified that NTM-A/CSTC-A urgently needed the binoculars in Afghanistan by August 2010. However, ACC - Warren (Rock Island) contracting officials did not award the sole-source orders until September 20, 2010, with delivery dates beginning in October 2010 and ending in March 2011.

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<sup>3</sup> The Army officials identified the M22E binocular as a small arms accessory. The M22E is an artillery-spotting binocular used by the ANSF forward observer to watch the target.

In another example, an ACC - Warren (Rock Island) contracting official competed a contract among eight contractors in August 2008. In March 2010, the selected contractor

*The ACC-Warren (Rock Island) contracting official did not reevaluate the price for the new contractor even though this contractor's original bid was approximately \$2.5 million, or 43.3 percent, higher.*

defaulted, and instead of competing the replacement contract, ACC - Warren (Rock Island) awarded contract W52H09-10-D-0200 as a sole-source award to the contractor with the fourth highest bid on the original contract. The ACC - Warren (Rock Island) contracting official did not reevaluate the price for the new contractor even though this contractor's original bid was approximately \$2.5 million, or 43.3 percent, higher

than the defaulting contractor and approximately \$1.6 million or 23.8 percent higher than the second lowest bidder on the original contract.

According to the ACC -Warren Group Chief for Contracting, the default clause in the FAR gave the contracting officer the ability to do what he or she felt was best for the new contract, and the contracting officer was not required to go back and review the contractor's original prices. However, FAR Subpart 49.4, "Termination for Default," states that if the supplies are still required after termination, the contracting officer is to repurchase the same or similar supplies at as reasonable a price as practicable and obtain competition to the maximum extent practicable.

Contracting officers are to provide for full and open competition using competitive procedures to fulfill Government requirements efficiently. ACC - Warren (Rock Island) contracting officials used sole-source justifications to accelerate contract award instead of identifying and using potential sources interested in providing the small arms. The lack of competition could result in overpaying for the small arms. We do not plan to make any recommendations to ACC - Warren (Rock Island) regarding the lack of compliance with FAR part 6 and subpart 49.4 since ACC - Warren (Rock Island) is no longer responsible for awarding small arms contracts supporting the ANSF. However, the Director of Contracting, ACC - Warren, should be aware of the competition problems because there are instances in which the contracts' periods of performance have not expired.

### ***Foreign Subcontractor Responsibility Determinations Should Improve***

FAR 9.104, "Subcontractor Responsibility," states that the contracting officer may directly determine a prospective subcontractor's responsibility using the same standards to determine a prime contractor's responsibility when it is in the Government's interest. This includes when the contract contains urgent requirements or substantial subcontracting.

ACC - Aberdeen Proving Ground, ACC - New Jersey, and ACC - Warren contracting officials did not adequately determine foreign subcontractor qualifications before award for 13 actions, valued at approximately \$43 million. The foreign subcontractor was either manufacturing or supplying 100 percent of the small arms procured for all

13 contract actions. ACC contracting officials did not review the foreign subcontractors' qualifications and, in some instances, only obtained a certification from the foreign countries that the subcontractors complied with the local laws related to safety and security. To meet FAR 9.104 requirements to determine a prospective subcontractor's responsibility, the contracting officials could have requested that Defense Contract Management Agency (DCMA) officials provide information regarding the foreign subcontractor's capability and past performance. According to a DCMA official, DCMA knows about the past performance of some small arms foreign manufacturers.

In one example, an ACC - New Jersey contracting official awarded contract W15QKN-11-A-0517, order 0001, in March 2011, for foreign-manufactured Degtyarov-Shpagin Krupnokaliberny (DSHK) machine guns without considering past performance of the U.S. prime contractor or any foreign subcontractors. The contracting officer terminated the order for convenience in August 2011 because the subcontractors could not provide DSHK machine guns. The ACC - New Jersey contracting official indicated that she had incorporated lessons learned on future awards and would evaluate past performance of the prime contractor, but not the foreign subcontractors, when procuring foreign-manufactured small arms.

However, when the ACC - New Jersey contracting official recompeted the requirement for the DSHK machine guns, she did not use information on the contractor's past performance. As a result, ACC - New Jersey contracting officials awarded the replacement order to a contractor that another ACC contracting center had terminated for default because the contractor did not meet the delivery dates for foreign-manufactured small arms.

As required by FAR 9.104, it is in the Government's interest to make certain that the foreign subcontractors are qualified and capable of providing quality small arms, accessories, and spare parts when extensive subcontracting is required. Not considering past performance in the source selection increases the risk of awarding contracts to repeat poor performers. This could result in the ANSF not receiving the small arms in a timely manner and impact ANSF operations. ACC contracting officials that procure foreign-manufactured small arms for the ANSF should conduct an assessment of the foreign subcontractor's capability and past performance before awarding a contract or order. These contracting officials should also contact DCMA officials when completing source selections to evaluate past performance of both the prime contractor and any proposed subcontractors.

### ***Contracting Officials Did Not Adequately Address Contractor Nonperformance***

FAR Subpart 49.4 states that the Government has the right to terminate the contract for default if the contractor fails to deliver the supplies within the time specified in the contract, perform any other contract provision, or make progress, and those failures endanger performance of the contract. FAR Part 12, "Acquisition of Commercial Items," subpart 4, permits the Government to terminate a contract for commercial items for cause. By not terminating contracts in accordance with Federal regulations, the

Department of the Army may have to pay incurred costs for work that did not provide any benefit to DoD or ANSF.

ACC - Aberdeen Proving Ground and ACC - New Jersey contracting officials did not terminate two contracts for default even though the contractors did not provide the required small arms or make adequate progress. ACC - Aberdeen Proving Ground did not terminate the contract because contracting officials believed it would be quicker to obtain the small arms from the delinquent contractor than solicit and compete a new contract award. The ACC - New Jersey contracting officer improperly terminated a contract for convenience because of potential complications with terminating the contract for default and because she wanted to award the replacement contract before the end of the fiscal year.

### **ACC - Aberdeen Proving Ground**

ACC - Aberdeen Proving Ground contracting officials did not take action before December 2010 to modify the order, issue a show-cause notice, or terminate the order when the contractor did not provide the small arms as required. ACC - Aberdeen Proving Ground contracting officials awarded contract W91CRB-04-D-0025, order 0006, to

*Taos Industries, Inc., did not deliver any of the small arms by this date or for the ensuing 3 years.*

procure various foreign-manufactured small arms in December 2007. One of the line items was for 225 SPG-9 recoilless rifles, valued at approximately \$1.3 million, with delivery scheduled in April 2008. The contractor, Taos Industries, Inc., did not deliver any of the small arms by this date or for the ensuing 3 years. On

December 22, 2010, the contracting officer modified the order's delivery date and has since extended the period of performance four times. Taos Industries, Inc. delivered 130 of the 225 SPG-9 recoilless rifles between May 2011 and October 2011. The contractor delivered the remaining 95 SPG-9 recoilless rifles in January 2012, 4 years after contract award, and only provided minimal consideration for the late delivery in the form of small arms accessories valued at approximately \$58,000.

ACC - Aberdeen Proving Ground and USASAC officials stated that they communicated with the contractor after the delivery due date passed, but accepted the contractor's statements that he was doing everything he could to obtain and ship the SPG-9 recoilless rifles. The contracting officials also indicated that they spoke with NTM-A/CSTC-A officials and learned that NTM-A/CSTC-A officials were undecided as to whether they needed the small arms in Afghanistan. Documentation provided by the Special Projects Office - New Cumberland contracting officer representative indicated that in January 2010, NTM-A/CSTC-A officials were not sure whether they wanted the SPG-9 recoilless rifles and asked whether they could substitute a different small arm for the SPG-9 recoilless rifle. In December 2010, NTM-A/CSTC-A officials indicated that the SPG-9 recoilless rifles were urgently needed in-country, and they did not want to cancel the contract.

The contracting officer should have taken action before December 2010 to promptly address the contractor's nonperformance and confirm that the contractor could make

progress in delivering the requested small arms once the contractor missed the initial delivery date. ACC contracting officials should terminate contracts or orders for default when the contractor does not provide the small arms in accordance with contract terms and when the contracting officer determines that the contractor cannot provide adequate assurance of future performance. In addition, ACC should review the performance of the contracting officials that did not take action to modify the order, issue a show cause notice, or terminate the order when the contractor did not provide the small arms as required before December 2010.

### **ACC - New Jersey**

An ACC - New Jersey contracting official terminated an order for convenience even though the contractor took responsibility for not being able to deliver the small arms. The ACC - New Jersey contracting official awarded contract W15QKN-11-A-0517, order 0001, on March 9, 2011, for 336 DSHK machine guns and accessories for approximately \$4.5 million. The prime contractor, Global Access Technologies, planned to use a foreign subcontractor to provide 100 percent of the DSHK machine guns 15 days after order award and obtaining the end-user certificate from the U.S. Government.<sup>4</sup> The initial subcontractor, as well as two other subcontractors identified by the prime contractor, could not provide the small arms. The prime contractor e-mailed ACC - New Jersey, stating that it “assume[d] all responsibility for not being able to deliver the contract items...”

The contracting officer terminated the order for convenience, which allowed the contractor to request approximately \$182,000 in incurred costs despite providing none of the DSHK machine guns. The contracting officer informed the contractor that it was entitled to approximately \$8,800, then left the remaining amount obligated on the order to make sure funding was available to pay any future claim amounts. The Department of the Army will have to return any remaining funds to the Department of the Treasury after it pays the claim amount, instead of using the funds for other procurements.

*The contracting officer terminated the order for convenience, which allowed the contractor to request approximately \$182,000 in incurred costs despite providing none of the DSHK machine guns.*

The contracting officer stated that one of the reasons she terminated the order for convenience was because the order did not include firm delivery dates. The delivery was contingent on obtaining the end-user certificate and export licenses. The contracting officer also contacted ACC - New Jersey Legal Counsel, and he supported her decision despite initially recommending terminating the order for cause. However, neither the contracting officer nor the Legal Counsel could provide documentation for the legal opinion. In the absence of appropriate documentation within the contract file, we determined that because of the contractor’s admission of responsibility, its

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<sup>4</sup> An end-user certificate certifies that the Armed Forces of Afghanistan will use the items ordered for the Ministry of Defense for Afghanistan, and the Ministry of Defense for Afghanistan will not divert or export those items to a third party without the consent of the exporting country’s government.

nonperformance, and the continued need for the small arms support, the contracting officer should have terminated the order for cause.

This order and any future contracts or orders should clearly indicate dates for delivery and for obtaining the end-user certificate. The contracting officer could have terminated the order for cause and requested that the contractor pay any excess costs for the replacement contract because the contractor took full responsibility for its nonperformance. Eventually, ACC - New Jersey awarded an order for 303 of the 336 small arms from another contractor.

### ***Foreign Small Arms Inspection Procedures Could Be Strengthened***

FAR Part 46, “Quality Assurance,” requires that contracts include inspection and other quality requirements necessary to protect the Government’s interest. Agencies should only perform contract quality assurance on subcontracted supplies or services when it is in the Government’s interest. This could include requesting that DCMA monitor the contractor’s performance to verify that product performance complies with the terms and conditions of the contract.

ACC contracting officials did not include specific quality terms and conditions in the contract for 13 contract actions to verify that the small arms were in working order before acceptance. The contract only required the prime contractor to provide copies of test results certifying the weapon was “manufactured to safely and reliably fire all ammunition...”. However, the contract did not provide a quantifiable definition for “safely and reliably.”

According to contract, program, and DCMA officials, additional quality requirements are difficult to address because there are no standards and specifications for the U.S. procurement of foreign-manufactured small arms. DoD cannot require foreign

subcontractors to manufacture or supply small arms that meet U.S. standards. DCMA and program officials acknowledged that more could be done to determine the quality of the foreign-manufactured small arms, but NTM-A/CSTC-A would have to request that the requirement be included in the contract terms and provide funding for the additional requirement. ACC contracting officials required DCMA and NTM-A/CSTC-A officials to perform only a visual inspection to confirm that the correct quantity, condition, and weapon-type were shipped before acceptance in Afghanistan.

*DCMA and program officials acknowledged that more could be done to determine the quality of the foreign-manufactured small arms.*

It is in the Government’s interest for ACC contracting officials that procure foreign-manufactured small arms for the ANSF to include specific quality requirements or additional inspection provisions within the contract because the foreign subcontractor is manufacturing or supplying 100 percent of the small arms. In addition, since ACC has a limited history of procuring foreign-manufactured weapons, ACC contracting officials should coordinate with DCMA, Program Executive Office Soldier, ARDEC, and any

other office they deem appropriate to develop standard operating procedures that would identify how contracting officials should determine foreign subcontractor capability when the manufacturer is not required to meet U.S. standards or specifications. This would provide assurance that the small arms were in working order before shipment and acceptance in Afghanistan.

## **Conclusion**

ACC contracting officials did not always properly award or manage contracts. Contract award problems may have resulted in overpayment because ACC did not properly compete six contract actions, valued at approximately \$2.3 million. One of the benefits of competition is to obtain quality products at fair and reasonable prices. When competition is eliminated, the benefit is lost. In addition, contract award and management problems may have resulted in late delivery, lesser quantities, and lower quality small arms.

It is important that ACC contracting centers develop standard operating procedures that will provide assurance that the Department of the Army is procuring quality small arms at fair and reasonable prices. It is also important that ACC contracting officials perform due diligence to make certain that prime contractors and their subcontractors are responsible and qualified to supply the required small arms, accessories, and spare parts that are urgently needed. Insufficient contract management may have resulted in ANSF's receiving fewer small arms than required or small arms arriving in Afghanistan much later than requested, which could impact ANSF operational readiness. In addition, the Department of the Army may also have to pay costs for poor work and pay additional costs to replace the poor performers.

## **Recommendations, Management Comments, and Our Response**

### **A. We recommend the Executive Director, U.S. Army Contracting Command:**

**1. Require contracting officials to conduct an assessment of the foreign subcontractor's capability and past performance, including contacting the Defense Contract Management Agency before awarding a contract, delivery order, or call order when a requirement involves extensive subcontracting.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC would issue an ACC Contracting Note to remind contract officials to follow FAR 9.101-4 when it is appropriate and to work with DCMA representatives when completing source selections to evaluate past performance of both prime and proposed major subcontractors.

**2. Require contracting officers to promptly resolve contractor nonperformance by following Federal Acquisition Regulation, subparts 12.4 and 49.4, requirements to terminate a contract when the contractor does not provide the**

**small arms, including accessories and spare parts, in accordance with contract terms.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC issue an ACC Contracting Note to contracting officials to resolve contractor nonperformance issues promptly, in accordance with FAR subparts 12.4 and 49.4.

**3. Perform a review of the contracting official's actions before December 2010 for contract W91CRB-04-D-0025, order 0006. If appropriate, initiate administrative action on the contracting officials who awarded and managed the order.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that ACC - Aberdeen Proving Ground Division D reviewed the contracting official's actions and determined that administrative action against the contracting officer was not warranted. The contracting officer demonstrated good faith in the proper exercise of business judgment, and the actions taken were in the best interest of the Government.

**4. Require contracting officials to include specific contract dates for obtaining the end-user certificates and delivering the small arms.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC would issue an ACC Contracting Note to contracting officials reminding them to clearly identify the contract date in the contract so that it may be used for end-user certificates in accordance with ACC Desk Book Part 25.

**5. Develop, in conjunction with Defense Contract Management Agency; U.S. Armament Research, Development, and Engineering Center; Program Executive Office Soldier; and any other appropriate offices, standard operating procedures that identify how contracting and program officials should assess foreign subcontractor capabilities to provide small arms, including accessories and spare parts, when these contractors are not required to meet U.S. standards and specifications.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC would coordinate with appropriate offices, such as DCMA, ARDEC, and Program Executive Office Soldier to establish standard operating procedures that identify how contracting and program officials should assess foreign subcontractor capabilities to provide small arms when these contractors are not required to meet U.S. standards and specifications.

**6. Require that contracting officials include specific quality requirements and provisions for inspection and acceptance within the contract to provide assurance that small arms, including accessories and spare parts, are in working order before acceptance in Afghanistan.**

***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC would issue an ACC Contracting Note reminding contracting officials to include specific quality requirements and provisions for inspection and acceptance within the contract actions in accordance with FAR subpart 46.201.

***Our Response***

The Executive Director's comments on all recommendations were responsive, and no further comments were required.

## **Finding B. Small Arms Contract Files Were Missing Documentation**

ACC contracting officials did not document the need for the requirement for 25 of 45 contract actions, valued at approximately \$49.3 million of the \$103.2 million, and the use of commercial acquisition procedures for 10 of 45 contract actions, valued at approximately \$19.2 million. This occurred because contracting officials did not obtain and maintain an LOA to support the requirement and did not have documentation in the contract file to support that the foreign-manufactured small arms were commercial items as required by the FAR. As a result, ACC contracting officials could procure the incorrect item or quantity because the LOA was not in the file to validate the customer request. In addition, ACC contracting officials could be inappropriately using commercial acquisition procedures that may limit the Government's ability to monitor and inspect the foreign-manufactured small arms before delivery.

### **Contract File Requirements**

The FAR, Defense Contingency Contracting Handbook, and Commercial Item Handbook provide guidance on contract administration documentation and contract file management. Each discusses the necessary elements of a Government contract file.

FAR Subpart 4.8, "Government Contract Files," prescribes requirements for establishing and maintaining contract files. It identifies that the documentation in the contract files needs to provide a complete background as a basis for decisions during the acquisition process and on actions taken. Further, it provides examples of the records normally contained in the contract file, which include purchase requests, acquisition planning information, and other presolicitation documents.

The Director, Defense Procurement and Acquisition Policy, issued the "Defense Contingency Contracting Handbook," June 2010, which supplements the FAR and serves as a reference for contracting officers operating in a contingency contracting environment. The Contingency Contracting Handbook further defines and explains purchase requests and contract file content.

Chapter 3, "Contingency Funding and Requirements Process," provides that the contracting officer obtain an adequate description of the requirement and states that what a contracting officer considers an acceptable purchase request at the beginning of the contingency operation will, and should be, different once the contingency stabilizes. Initially, the contracting office can accept verbal requests; however, the office must obtain an adequate description of the requirement and later obtain a written request with all the required documentation. All purchase requests must have a good description of required services or supplies and certification of funding. Chapter 6, "Contract Administration," identifies that the contract files must be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process.

The Office of the Secretary of Defense for Acquisition, Technology, and Logistics (Acquisition Initiatives), “Commercial Item Handbook,” Version 2.0, recommends that contracting officers satisfy the FAR 2.101 commercial item definition<sup>5</sup> by fully and adequately documenting the market research and rationale supporting a commercial item conclusion within the contract file. Contracting officers must document any decision to overturn a previous commercial or noncommercial determination by any Government agency. In addition, the Handbook recommends that when procuring commercial items, the Government must rely on the contractors’ existing quality control systems as a substitute for Government inspection and testing before acceptance, unless customary market practices for the item being procured include in-process inspection.

## Requirement for Small Arms Not Supported by Documentation

ACC contracting officials did not document the need for the requirement for 25 of 45 contract actions, valued at approximately \$49.3 million. This occurred because ACC contracting officials did not maintain an LOA to support the requirement in the contract file as required by the FAR. Although ACC contracting officials acknowledged that the LOA should be included in the contract file, they did not always obtain or keep an LOA in the file. Table 2 identifies the ACC contracting center, number of contract actions reviewed, and number of contract files that did not contain an LOA.

**Table 2. ACC Contract Files Without an LOA**

ACC Contracting Center	Contract Actions Reviewed	Contract Files That Did Not Contain an LOA	Contract Action Amount (in millions)
Aberdeen Proving Ground	2	2	\$22.4
New Jersey	16	13	19.6
Warren (Rock Island)	25	10	7.2
Warren	2	0	0.0
<b>Total</b>	<b>45</b>	<b>25</b>	<b>\$49.3*</b>

\*Total does not sum because of rounding.

The FAR requires that a purchase request be included in the contract file. The Contingency Contracting Handbook is more specific and recommends that the purchase request include a good description of required services or supplies. According to the U.S. Army Research, Development and Engineering Command Associate Counsel,<sup>6</sup> the LOA

<sup>5</sup> FAR 2.101 defines commercial items as those customarily used by the general public or by nongovernmental entities for other than governmental purposes and have been sold or offered for sale, leased, or licensed to the general public.

<sup>6</sup> U.S. Army Research, Development and Engineering Command Associate Counsel provided legal assistance to the contracting officials at ACC - Aberdeen Proving Ground.

represents the purchase request and is the source document, establishes the requirement for an item, and is the basis for contract award.

According to a USASAC official, NTM-A/CSTC-A continually changed the ANSF requirements. These changes resulted in LOA amendments. Some examples of LOA amendments included NTM-A/CSTC-A requesting that ACC contracting officials use funds originally planned for DSHK machine guns to procure 40mm multi-launchers or increasing the quantity of M22E binoculars from 500 to 7,800. Because the LOA documents the changes to requirements, USASAC should provide the LOA and amendments to the contracting officials, and those officials should maintain the applicable LOAs in the contract file. Although we did not identify any instances in which the contracting official procured the incorrect item or quantity, maintaining the LOA within the contract file would support NTM-A/CSTC-A needs ACC contracting officials to procure these items.

## **Commercial Item Acquisition Procedures Not Supported**

An ACC - New Jersey contracting official did not document the use of commercial item acquisition procedures for 10 of 45 contract actions. This occurred because an ACC - New Jersey contracting official did not have documentation in the contract file to

*An ACC - New Jersey contracting official did not have documentation in the contract file to support that the foreign-manufactured small arms were commercial items.*

support that the foreign-manufactured small arms were commercial items as required by the FAR. Specifically, the contracting official did not provide documentation that she conducted market research to support the commercial item determination. In addition, the contracting official could not provide documentation for not considering a previous

noncommercial determination on foreign-manufactured small arms. The contracting official stated that she did not maintain any market research documentation for those 10 contract actions, and she relied on the Program Manager Soldier Weapons official to perform the market research for the small arms.

### ***Documentation Needed for Commercial Item Justifications***

An ACC - New Jersey contracting official did not have documentation to support that the foreign-manufactured small arms procured on 10 contract actions were commercial items. The Commercial Item Handbook instructs the contracting officer to document the market research conducted to support the commercial item determination. The Handbook provides contracting officials with examples of documentation that should be included in the contract file to support their decisions. Documentation could include queries of vendor Internet sites, industry catalogs or product literature, market pricing and technical information from commercial or Government sources, or conversations with knowledgeable individuals in Government and industry.

The contracting officer stated that small arms have customarily been used for nongovernmental purposes, and based on market research, the foreign-manufactured small arms met the definition of commercial items in FAR 2.101. In addition, the contracting officer stated that the small arms are sold, leased, and licensed to the general

public. However, the contracting officer did not document her determination that the foreign-manufactured small arms were commercial items as defined by FAR 2.101.

### ***Documentation Regarding Previous Commercial Item Determinations***

An ACC - New Jersey contracting official also did not maintain documentation that explained why she did not consider a previous noncommercial item determination made by ACC - Aberdeen Proving Ground contracting officials for the same item. The Commercial Item Handbook recommends that a contracting officer document any decision to overturn a previous commercial or noncommercial determination by any Government agency. An ACC - New Jersey contracting official stated he was unaware that ACC - Aberdeen Proving Ground contracting officials had previously procured three of the same foreign-manufactured small arms. Those included the SPG-9 recoilless rifle, RPG-7 grenade launchers, and the DSHK machine gun. ACC - Aberdeen Proving Ground did not use commercial acquisition procedures and, instead, determined these items were not commercial.

We were unable to determine whether the small arms were commercial as defined by FAR 2.101 because neither ACC contracting center maintained that documentation on the foreign-manufactured small arms. Without documentation, we believe the SPG-9

*The rifle was for destroying tanks, self-propelled artillery mounts, other armored vehicles, and personnel.*

recoilless rifle may not meet the FAR 2.101 definition of commercial items, which states that commercial items are “of a type customarily used by the general public...” For example, the contractor for the SPG-9 recoilless rifle stated the rifle was for destroying tanks, self-propelled artillery mounts, other armored vehicles, and personnel. ACC contracting officials should document their

decisions to use commercial acquisition procedures and include sufficient supporting documentation in the contract file. In addition, ACC contracting centers should share information and lessons learned when procuring similar items.

### **Conclusion**

Documentation in the contract files should demonstrate a complete history of the need for items procured and provide a basis for acquisition decisions. Without this documentation, contracting officials could procure the incorrect item or quantity or use inappropriate acquisition procedures. Because the contracting officials are procuring items used in a contingency environment, the requirements may change over time. Therefore, it is necessary to maintain a copy of the document that supports the requirement. Maintaining the LOA will validate the procurement and provide greater assurance that the small arms procured meet requirements current at that time.

In addition, the ACC - New Jersey contracting official may be limiting the Government’s ability to monitor and inspect the foreign-manufactured small arms before delivery by using commercial acquisition procedures when these procedures do not apply. Commercial acquisition procedures require the Government to rely on the contractor’s existing quality assurance systems as a substitute for Government inspection and testing.

It is critical that supporting documentation be contained in the contracting file to support contracting officials' commercial item determination and provide assurance that additional testing and inspection is not needed.

## **Recommendations, Management Comments, and Our Response**

**B.1 We recommend that the Commanding General, U.S. Army Security Assistance Command, develop guidance that requires approved letters of offer and acceptance be provided to contracting officers for acquisitions using the Afghanistan Security Forces Fund.**

### ***U.S. Army Security Assistance Command Comments***

The Deputy to the Commanding General responded for the Commanding General, USASAC. He agreed and stated that USASAC officials would issue guidance by July 1, 2012, to the Security Assistance community on the importance of including a copy of the implemented LOA in the Contracts Requirement Package. Although guidance for establishing, maintaining, and disposing of contract files exists in FAR subpart 4.8, there is no specific mention of the LOA. There is no overarching policy that provides guidance on including the LOA in the Contracts Requirement Package, as each Life Cycle Management Command has developed an internal process based on each individual organization. The issue of the retention of the LOA documents in the ACC file is entirely an ACC issue.

**B.2. We recommend the Executive Director, U.S. Army Contracting Command:**

**a. Establish guidance that requires approved letters of offer and acceptance be maintained in the contract file for all Afghanistan Security Forces Fund contract actions.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC would issue an ACC Contracting Note to communicate to contracting officials the importance of including approved LOAs in the contract file, and if the LOA is stored separately from the official file, including in the contract file a memorandum for the record that identifies the location of the document.

**b. Require contracting officers to document the types of market research used to support the commerciality determination and include that documentation in the contract file. If the commerciality determination is different from a previous commercial or noncommercial determination by another U.S. Army Contracting Command contracting center, the contracting officer must document that decision.**

### ***U.S. Army Contracting Command Comments***

The Executive Director agreed and stated that by July 1, 2012, Headquarters - ACC would issue an ACC Contracting Note to contracting officials to document the

commercial item determination within the contract file. This includes the types of market research used in the decision. If the commerciality determination is different from a previous commercial or noncommercial determination issued by another ACC contracting center, the contracting officer must document any differences in the decisions.

### ***Our Response***

The comments from the Deputy to the Commanding General and ACC Executive Director on all recommendations were responsive, and no further comments were required.

## Appendix A. Scope and Methodology

We conducted this performance audit from July 2011 through April 2012 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We determined whether the contract processes related to the contract award, pricing, and quality assurance provisions for small arms were in accordance with applicable acquisition regulations. We used the contract and FMS case file documentation and interviews with contracting, security assistance, and program office personnel to determine whether the contract processes were in accordance with applicable regulations. We evaluated the contract award, pricing, and quality assurance and determined whether the:

- contract vehicle used affected the price reasonableness determination,
- competitive procedures were used and whether there were adequate sole-source justifications,
- contracting and security assistance offices were able to provide documentation that supported the small arms requirement,
- contracting officer's price reasonableness determination was adequate, and
- contracting processes, specifically the review of foreign subcontractors' capability, commercial item determinations, and contract language affected the level of quality assurance of foreign-manufactured small arms.

To perform the audit, we requested a list of Department of the Army contract actions using ASFF to procure small arms, including accessories and spare parts, from ACC and the U.S. TACOM Life Cycle Management Command Security Assistance Management Directorate. Those two activities identified 64 actions, valued at approximately \$145.9 million, which ACC contracting centers at Warren, Michigan; Rock Island, Illinois; Picatinny, New Jersey; and Aberdeen Proving Ground, Maryland, awarded from FY 2009 through August 2011.

For the purposes of the audit, we considered a contracting action to be either a contract, delivery order awarded under a basic contract, a call order awarded under a blanket purchase agreement, or a modification to a contract in which a purchase was made. We identified two additional actions, valued at \$15.7 million, for a total of 66 actions, valued at approximately \$161.6 million. We then selected a nonstatistical sample of 45 actions awarded during the months of July, August, and September for FY 2009 and FY 2010 because the funds on those actions expired at fiscal year-end and October through August 2011 to assess current contracting practices. The approximate value of the sample was \$103.2 million.

To accomplish the audit objective, we met with the following offices and reviewed the following data:

- We contacted officials from the following offices to understand their roles in the small arms contract process and to obtain contract and FMS case file documentation for each of the sample contract actions:
  - ACC - Aberdeen Proving Ground,
  - ACC - New Jersey,
  - ACC - Warren,
  - Program Executive Office Soldier,
  - ARDEC,
  - USASAC,
  - U.S. TACOM Life Cycle Management Command Security Assistance Management Directorate,
  - Special Projects Office - New Cumberland,
  - DSCA,
  - DCMA,
  - Defense Logistics Agency, and
  - Under Secretary of Defense for Acquisition, Technology, and Logistics.
  
- We reviewed applicable regulations and publications, including the FAR; DoD Regulation 7000.14-R, “DoD Federal Management Regulation;” Security Assistance Management Manual; Defense Contingency Contracting Handbook; and Commercial Item Handbook.

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

We relied on computer-processed data from the Electronic Data Access (EDA) system and the Federal Procurement Data System - Next Generation (FPDS-NG). The EDA system stores contracts, contract orders, and contract modifications. The FPDS-NG collects procurement data. We used FPDS-NG to obtain queries to determine small arms procurements issued in FY 2009 through August of FY 2011. We used the information from the FPDS-NG queries in conjunction with the EDA system to obtain contract, order, and modification documentation.

We compared the contracts, orders, and modifications obtained from the EDA system to the contracts, orders, and modifications in the ACC contract files and verified that the documentation we obtained from the EDA system was accurate. We used the information from the FPDS-NG queries to determine whether the contract action list provided by ACC and the U.S. TACOM Life Cycle Management Command Security Assistance Management Directorate was complete. We only used the data to identify which contract actions to review and then used only the contract file documentation to support our findings and recommendations. As a result of our analysis, we determined that the data within the EDA system and FPDS-NG were sufficiently reliable for the purpose of our review.

## **Prior Coverage**

During the last 5 years, the Government Accountability Office (GAO), the Department of Defense Inspector General (DoD IG), and the Army Audit Agency have issued four reports discussing topics related to contract award or quality assurance for contingency operations. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Army Audit Agency reports can be accessed from a .mil domain over the Internet at <https://www.aaa.army.mil/>.

### **GAO**

GAO Report No. GAO-08-1087, “Military Operations: DoD Needs to Address Contract Oversight and Quality Assurance Issues for Contracts Used to Support Contingency Operations,” September 26, 2008

### **DoD IG**

DoD IG Report No. D-2010-035, “Defense Logistics Agency Contracts for M2 Machine Gun Spare Parts in Support of Operations in Southwest Asia,” January 11, 2010

DoD IG Report No. D-2009-102, “Price Reasonableness Determinations for Contracts Awarded by the U.S. Special Operations Command,” September 18, 2009

### **Army Audit Agency**

AAA Report No. A-2010-0060-ALA, “Pricing and Funding Security Assistance to Iraq and Afghanistan: U.S. Army Security Assistance Command,” March 3, 2010

## Appendix B. Criteria

Several regulations and publications provide guidance concerning competition, subcontractor responsibility, quality assurance and inspection procedures, termination of contracts, and contract file documentation.\*

### ***Competition***

**FAR Part 6, “Competition Requirements,” April 1, 2011**, requires contracting officers to promote and provide full and open competition in soliciting offers and awarding Government contracts unless an exception applies. It adds that contracting officers shall provide full and open competition through use of the competitive procedures that are best suited to the circumstances of the contract actions.

### ***Subcontractor Responsibility***

**FAR Subpart 9.1, “Responsible Prospective Contractors,” August 4, 2011**, requires prospective contractors to affirmatively demonstrate the responsibility of their proposed subcontractors. In addition, when it is in the Government’s interest to do so, the contracting officer may directly determine a prospective subcontractor’s responsibility; for example, when the contract contains urgent requirements or substantial subcontracting, using the same standards to determine a prime contractor’s responsibility.

**FAR 15.305, “Proposal Evaluation,” April 1, 2011**, requires the past performance evaluation to take into account past performance information regarding predecessor companies and subcontractors that will perform major or critical aspects of the requirement.

**FAR 42.202, “Assignment of Contract Administration,” June 30, 2011**, states that the prime contractor is responsible for managing its subcontracts, and the contract administration office’s review of subcontracts is normally limited to evaluating the prime contractor’s management of the subcontract.

### ***Quality Assurance and Inspection Procedures***

**FAR Part 12, “Acquisition of Commercial Items,” May 31, 2011**, requires the Government to rely on the contractors’ existing quality assurance systems instead of Government inspection and testing before acceptance unless customary market practices for the item include in-process inspection.

**FAR Part 46, “Quality Assurance,” June 14, 2007**, requires agencies to ensure that contracts include inspection and other quality requirements necessary to protect the Government’s interest and conduct quality assurance before acceptance by, or under the

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\* Although sections of the FAR and the Defense Contingency Contracting Handbook were revised after ACC awarded some actions within our sample, we did not identify any changes that would affect the results of the review.

direction of, Government personnel. It also requires that the contracting officer obtain the specifications for inspection, testing, other contract quality requirements essential to ensuring the integrity of the supplies or services and verify that the contractor fulfills those quality requirements. The Government must perform contract quality assurance on subcontracted supplies or services only when it is in the Government's interest.

**DSCA, "Security Assistance Management Manual," DoD 5105.38-M, October 3, 2003,** provides guidance for the administration and implementation of Security Assistance and for the FMS program. The Manual indicates that there are standard terms and conditions for each LOA. The standard terms and conditions state that when procuring for an FMS customer, DoD will, in general, employ the same contract clauses, the same contract administration, and the same quality and audit inspection procedures as would be used in procuring for itself; except as requested by the FMS customer and agreed to by DoD.

### ***Contract Termination***

**FAR Subpart 49.4, "Termination for Default," undated,** indicates that the Government has the right to terminate the contract for default if the contractor fails to make delivery of the supplies within the time specified in the contract, perform any other provision of the contract, or make progress and that failure endangers performance of the contract. However, if the Government has taken any action that might be construed as a waiver of the contract delivery date, the contracting officer should send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. If the Government terminates the contract for default, the Government is not liable for the contractor's costs on undelivered work. If the supplies are still required after termination, the contracting officer shall repurchase the same or similar supplies against the contractor's account as soon as practicable, at as reasonable a price as practicable, and obtain competition to the maximum extent practicable. If the repurchase is at a price above that price of the terminated contract, the contracting officer shall make written demand on the defaulting contractor for the total amount of the excess.

**FAR Part 12, "Acquisition of Commercial Items," May 31, 2011,** permits the Government to terminate a contract for commercial items for convenience or cause. If the contract is terminated for cause, the Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess procurement costs together with any incidental or consequential damages incurred because of the termination. If the contracting officer terminates a contract for commercial items for convenience, the Government should pay the contractor a percentage of the contract price. This would reflect the percentage of the work performed before the notice of the termination for fixed-price contracts.

**DoD Regulation 7000.14-R, "DoD Financial Management Regulation," Volume 3, Chapter 10, "Accounting Requirements for Expired and Closed Accounts," June 2009,** maintains that the Government can use expired funds for procurement when there is a continuing bona fide need for the items, the original contract was made in good faith, and when the original contract was terminated for default.

## ***Contract File Documentation***

**FAR Subpart 4.8, “Government Contract Files,” February 2, 2012,** requires that the documentation in the files be sufficient to constitute a complete history of the transaction for providing a complete background as a basis for decisions in the acquisition process and to support actions taken. It further provides examples of the records normally contained in contracting office contract files, including the purchase request, acquisition planning information, and other presolicitation documents.

**Office of the Secretary of Defense for Acquisition, Technology, and Logistics (Acquisition Initiatives), “Commercial Item Handbook,” Version 2.0, undated,** recommends that contracting officers fully and adequately document the market research and rationale supporting a conclusion that the commercial item definition of FAR 2.101 has been satisfied. The Handbook provides samples of a commercial item checklist and a market research report that contracting officials can use to determine whether commercial items are available to meet the Government’s needs.

**Director, Defense Procurement and Acquisition Policy, “Defense Contingency Contracting Handbook,” June 2010, Chapter 3, “Contingency Funding and Requirements Process,”** states that what is considered an acceptable purchase request at the beginning of the contingency operation will, and should be, different once the contingency stabilizes. Initially, the contracting office can accept verbal requests; however, the contracting office must obtain an adequate description of the requirement as well as later obtain a written request with all the required documentation. The chapter also recommends that the deployed commander or his or her designee must approve the purchase request document. All purchase requests must have a good description of required services or supplies and certification of funding.

**Director, Defense Procurement and Acquisition Policy, “Defense Contingency Contracting Handbook,” June 2010, Chapter 6, “Contract Administration,”** recommends that contract files be organized and sufficiently annotated to document the actions taken and the supporting rationale for the entire procurement process.

## Appendix C. Summary of Contract Award, Management, and Documentation Problems

	Contract Number / Order / Modification	Inadequate Competition	Inadequate Determination of Subcontractor Responsibility	Contract Award Language Limited Inspection Procedures	Inadequately Addressed Contractor Nonperformance	Requirement Not Supported in Contract File	Commercial Item Justification Not Supported in Contract File
<b>ACC – Aberdeen Proving Ground</b>							
1	W91CRB-09-C-0112		X	X		X	
2	W91CRB-04-D-0025 / Order 0006		X	X	X	X	
	<b>Subtotal</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>0</b>
<b>ACC – New Jersey</b>							
3	W15QKN-07-A-0095 / Order 0013		X	X		X	X
4	W15QKN-09-D-0019 / Order 0001						
5	W15QKN-09-D-0019 / Order 0002						
6	W15QKN-09-D-0019 / Order 0005						
7	W15QKN-11-A-0008 / Order 0001 / Modification P00001		X	X		X	X
8	W15QKN-11-A-0004 / Order 0001		X	X		X	X
9	W15QKN-11-A-0004 / Order 0002		X	X		X	X
10	W15QKN-11-A-0004 / Order 0004		X	X		X	X

	<b>Contract Number / Order / Modification</b>	<b>Inadequate Competition</b>	<b>Inadequate Determination of Subcontractor Responsibility</b>	<b>Contract Award Language Limited Inspection Procedures</b>	<b>Inadequately Addressed Contractor Nonperformance</b>	<b>Requirement Not Supported in Contract File</b>	<b>Commercial Item Justification Not Supported in Contract File</b>
11	W15QKN-11-A-0004 / Order 0005		X	X		X	X
12	W15QKN-11-A-0004 / Order 0006		X	X		X	X
13	W15QKN-11-A-0517 / Order 0001		X	X	X	X	X
14	W15QKN-11-A-0529 / Order 0001		X	X		X	X
15	W15QKN-11-A-0529 / Order 0003		X	X		X	X
16	W15QKN-10-A-0162 / Order 0003					X	
17	W15QKN-10-A-0284 / Order 0004					X	
18	W15QKN-10-A-0284 / Order 0006					X	
	<b>Subtotal</b>	<b>0</b>	<b>10</b>	<b>10</b>	<b>1</b>	<b>13</b>	<b>10</b>
	<b>ACC – Warren (Rock Island)</b>						
19	W52H09-05-D-0323 / Order 0010					X	
20	W52H09-06-D-0229 / Order BR02					X	
21	W52H09-07-C-0173 / Modification P00009	X				X	
22	W52H09-07-D-0425 / Order 0033					X	
23	W52H09-07-D-0425 / Order 0048						
24	W52H09-07-D-0425 / Order BR02						

	<b>Contract Number / Order / Modification</b>	<b>Inadequate Competition</b>	<b>Inadequate Determination of Subcontractor Responsibility</b>	<b>Contract Award Language Limited Inspection Procedures</b>	<b>Inadequately Addressed Contractor Nonperformance</b>	<b>Requirement Not Supported in Contract File</b>	<b>Commercial Item Justification Not Supported in Contract File</b>
25	W52H09-08-D-0121 / Order 0012						
26	W52H09-08-D-0122 / Order 0002						
27	W52H09-09-D-0037 / Order 0005						
28	W52H09-09-D-0037 / Order 0006						
29	W52H09-09-D-0313 / Order 0008	X				X	
30	W52H09-09-D-0313 / Order 0009	X				X	
31	W52H09-09-D-0270 / Order 0006	X					
32	W52H09-09-P-0329						
33	W52H09-09-P-0372					X	
34	W52H09-09-P-0374						
35	W52H09-10-C-0096						
36	W52H09-10-C-0104					X	
37	W52H09-10-D-0006 / Order 0007						
38	W52H09-10-D-0200 / Order 0001	X				X	
39	W52H09-10-P-0298						
40	W52H09-11-D-0001 / Order 0001						
41	W52H09-11-P-0024	X					
42	W56HZV-09-D-0175 / Order 0001					X	

	<b>Contract Number / Order / Modification</b>	<b>Inadequate Competition</b>	<b>Inadequate Determination of Subcontractor Responsibility</b>	<b>Contract Award Language Limited Inspection Procedures</b>	<b>Inadequately Addressed Contractor Nonperformance</b>	<b>Requirement Not Supported in Contract File</b>	<b>Commercial Item Justification Not Supported in Contract File</b>
43	W56HZV-11-D-0049 / Order 0001						
	<b>Subtotal</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>
<b>ACC – Warren</b>							
44	W52H09-10-C-0104 / Modification P00004						
45	W56HZV-10-C-0465		X	X			
	<b>Subtotal</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>TOTAL</b>	<b>6</b>	<b>13</b>	<b>13</b>	<b>2</b>	<b>25</b>	<b>10</b>

# U.S. Army Materiel Command Comments



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
4400 MARTIN ROAD  
REDSTONE ARSENAL, ALABAMA 35898-5340

AMCIR

09 MAY 2012

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN:  
[REDACTED] Program Director, Acquisition and Contract Management,  
4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Reply to DoDIG Draft Report – Improving Army Contract Award and  
Management for Small Arms Acquired Using Afghanistan Security Forces Funds (Project No.  
D2011-D000AT-0246.000)

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

2. The AMC point of contact is [REDACTED]

2 Encls

1. ACC Response
2. USASAC Response

  
JOHN F. WHARTON  
Brigadier General, USA  
Chief of Staff

# U.S. Army Contracting Command Comments



REPLY TO  
ATTENTION OF:

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

AMSCC-IR

27 APR 2012

MEMORANDUM FOR [REDACTED] Director, Internal Review and Audit Compliance Office,  
Headquarters, U.S. Army Material Command, 4400 Martin Road, Redstone Arsenal, AL 35898

SUBJECT: Improving Army Contract Award and Management for Small Arms Acquired Using  
Afghanistan Security Forces Funds, (Project No. D2011-D000AT-0246.000) (D1235) (10594)

1. Reference memorandum and audit report, Office of Inspector General – Department of Defense, 4 April 2012, subject: same as above.
2. The Army Contracting Command (ACC) responds with the following comments.

**Recommendation A.1:**

Require contracting officials to conduct an assessment of the foreign subcontractor's capability and past performance, including contacting the Defense Contract Management Agency (DCMA) before awarding a contract, delivery order or call order when a requirement involves extensive subcontracting.

**Command Comments: Concur**

HQ-ACC will issue an ACC Contracting Note to remind contracting officials when it is appropriate to follow Federal Acquisition Regulation (FAR) 9.104-4 – Subcontractor responsibility. Additionally, contracting officials will be reminded to work with their DCMA representatives when completing source selections to evaluate past performance of both prime and proposed major subcontractors. This communication to the workforce will occur no later than 1 July 2012.

**Recommendation A.2:**

Require contracting officers to promptly resolve contractor nonperformance by following FAR subparts 12.4 and 49.4, requirements to terminate a contract when the contractor does not provide the small arms, including accessories and spare parts, in accordance with contract terms.

**Command Comments: Concur**

HQ-ACC will issue an ACC Contracting Note to remind contracting officials to promptly resolve contractor nonperformance issues in accordance with FAR subparts 12.4 and 49.4. This communication to the workforce will occur no later than 1 July 2012.

**Recommendation A.3:**

Perform a review of the contracting officials' actions before December 2010 for contract W91CRB-04-D-0025, order 0006. If appropriate, initiate administrative action on the contracting officials who awarded and managed the order.

SUBJECT: Improving Army Contract Award and Management for Small Arms Acquired Using Afghanistan Security Forces Funds, (Project No. D2011-D000AT-0246.000) (D1235) (10594)

**Command Comments: Concur**

ACC-APG Division D reviewed the contracting official's actions before December 2010, specifically for Contract W91CRB-04-D-0025, Order 0006. The contracting officer demonstrated good faith in the proper exercise of business judgment and took actions that were in the best interest of the Government. Administrative action against the Contracting Officer is not warranted.

**Recommendation A.4:**

Require contracting officials to include specific contract date for obtaining the end-user certificates and delivering the small arms.

**Command Comments: Concur**

ACC-HQ will issue an ACC Contracting Note to remind contracting officials to clearly identify the contract date in the contract so that it may be used for end-user certificates in accordance with ACC Desk Book Part 25. This communication to the workforce will occur no later than 1 July 2012.

**Recommendation A.5:**

Develop, in conjunction with Defense Contract Management Agency; U.S. Armament Research, Development, and Engineering Center; Program Executive Office Soldier; and any other appropriate offices, standard operating procedures that identify how contracting and program officials should assess foreign subcontractor capabilities to provide small arms, including accessories and spare parts, when these contractors are not required to meet U.S. standards and specifications.

**Command Comments: Concur**

HQ-ACC will coordinate with the Defense Contract Management Agency; U.S. Armament Research, Development, and Engineering Center; Program Executive Office Soldier; and any other appropriate offices, to establish standard operating procedures that identify how contracting and program officials should assess foreign subcontractor capabilities to provide small arms, including accessories and spare parts, when these contractors are not required to meet U.S. standards and specifications. Coordination will begin no later than 1 July 2012.

**Recommendation A.6:**

Require that contracting officials include specific quality requirements and provisions for inspection and acceptance with the contract to provide assurance that small arms, including accessories and spare parts, are in working order before acceptance in Afghanistan.

**Command Comments: Concur**

ACC-HQ will issue an ACC Contracting Note to remind contracting officials to include specific quality requirements and provisions for inspection and acceptance within contract actions in accordance with FAR Subpart 46.201. This communication to the workforce will occur no later than 1 July 2012.

SUBJECT: Improving Army Contract Award and Management for Small Arms Acquired Using Afghanistan Security Forces Funds, (Project No. D2011-D000AT-0246.000) (D1235) (10594)

**Recommendation B.2:**

We recommend the Executive Director, U.S. Army Contracting Command:

a. Establish guidance that requires approved letters of offer and acceptance be maintained in the contract file for all Afghanistan Security Forces Fund contract actions.

**Command Comments: Concur**

ACC-HQ will issue an ACC Contracting Note to communicate to contracting officials the importance of ensuring approved letters of offer and acceptance are included in the contract file. The memorandum will also dictate that in the case that documentation is stored separately from the official contract file a memo for record shall be issued and placed in the official file to identify the location of the documents. This communication to the workforce will occur no later than 1 July 2012.

b. Require contracting officers to document the types of market research used to support the commerciality determination and include that documentation in the contract file. If the commerciality determination is different from a previous commercial or noncommercial determination by another U.S. Army Contracting Command contracting center, the contracting officer must document that decision.

**Command Comments: Concur**

ACC-HQ will issue an ACC Contracting Note to remind contracting officials to clearly document in the contract file commerciality determinations to include the types of market research utilized in the decision process. If the commerciality determination differs from a previous determination issued by another U.S. Army Contracting Command contracting center, to the best of their knowledge contracting officials shall document any differences in decisions. This communication to the workforce will occur no later than 1 July 2012.

3. The ACC point of contact is [REDACTED]

Encl



CAROL E. LOWMAN  
Executive Director

# U.S. Army Security Assistance Command Comments



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY SECURITY ASSISTANCE COMMAND  
4402 MARTIN ROAD  
REDSTONE ARSENAL, AL 35898-5000

AMSAC-IR

3 May 2012

MEMORANDUM FOR [REDACTED] Director, Internal Review and Audit  
Compliance Office, U.S. Army Materiel Command, 4400 Martin Road, Redstone  
Arsenal, AL 35898-5000

SUBJECT: DoDIG Draft Report, "Improving Army Contract Award and Management  
for Small Arms Acquired Using Afghanistan Security Forces Funds" (Project  
No. D2011-D000AT-0246.000)

1. Reference memorandum, Office of the Inspector General, Department of Defense, 4 April 2012, attaching draft report, subject as above.
2. We have reviewed the DoDIG draft report. Recommendation B.1 states, "We recommend that the Commanding General, U.S. Army Security Assistance Command, develop guidance that requires approved letters of offer and acceptance be provided to contracting officers for acquisitions using the Afghanistan Security Forces Fund."
3. The U.S. Army Security Assistance Command (USASAC) concurs with this recommendation.
  - a. USASAC's Deputy Chief of Staff, G3/5 will work in coordination with the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation to issue guidance to the Security Assistance (SA) community on the importance of including a copy of the implemented Letter of Offer and Acceptance (LOA) in the Contracts Requirement Package (CRP). The assembly of the CRP is a collaborative effort between the Program Executive Office/Program Manager and the corresponding Security Assistance Management Directorate at the Life Cycle Management Commands (LCMCs).
  - b. Although guidance exists in the Federal Acquisition Regulation (Subpart 4.8) concerning requirements for establishing, maintaining and disposing of contract files, there is no specific mention of the LOA. There is no overarching policy that provides guidance on including the LOA in the CRP, as each LCMC has developed an internal process based on their individual organization. The issue of the retention of the LOA documents in the Army Contracting Command (ACC) file is entirely an ACC issue. USASAC will issue guidance to the SA community by 1 July 2012.

AMSAC-IR

SUBJECT: DoDIG Draft Report, "Improving Army Contract Award and Management for Small Arms Acquired Using Afghanistan Security Forces Funds" (Project No. D2011-D000AT-0246.000)

4. Point of contact for this action is [REDACTED]

5. USASAC – The Army's Face to the World.



ROBERT L. MOORE  
Deputy to the Commanding General





# Inspector General Department of Defense

