

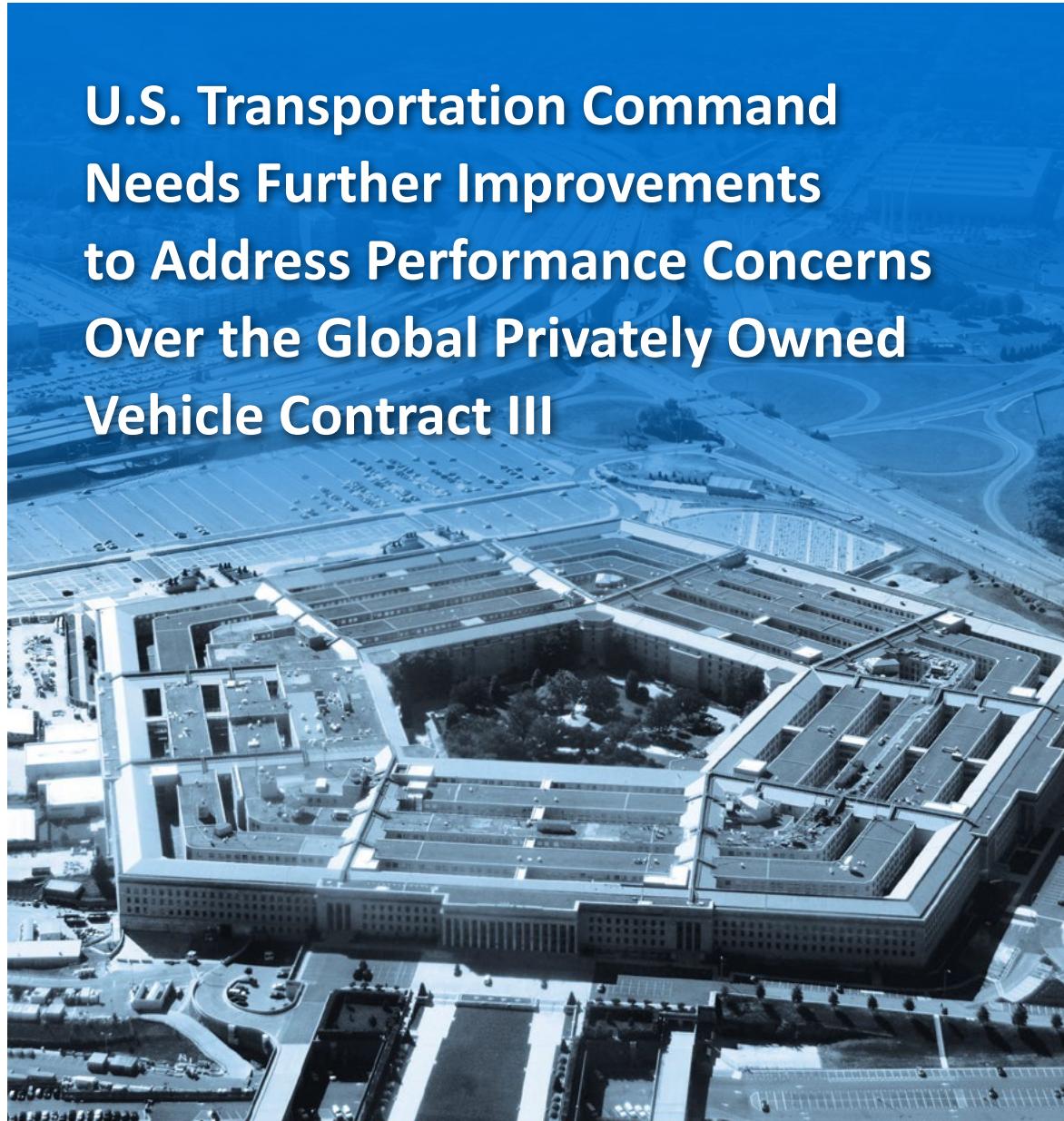


INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 3, 2016

U.S. Transportation Command Needs Further Improvements to Address Performance Concerns Over the Global Privately Owned Vehicle Contract III



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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Mission

Our mission is to provide independent, relevant, and timely oversight of the Department of Defense that supports the warfighter; promotes accountability, integrity, and efficiency; advises the Secretary of Defense and Congress; and informs the public.

Vision

Our vision is to be a model oversight organization in the Federal Government by leading change, speaking truth, and promoting excellence—a diverse organization, working together as one professional team, recognized as leaders in our field.



For more information about whistleblower protection, please see the inside back cover.



Results in Brief

U.S. Transportation Command Needs Further Improvements to Address Performance Concerns Over the Global Privately Owned Vehicle Contract III

February 3, 2016

Objective

We conducted this audit in response to a Congressional request concerning the U.S. Transportation Command (USTRANSCOM) Global Privately Owned Vehicle Contract (GPC) III (HTC711-14-D-R025). Our objective was to determine whether USTRANSCOM contracting personnel incorporated adequate controls to properly monitor contractor performance and to address performance concerns on the GPC III.

Finding

Although USTRANSCOM and the contractor have made progress in addressing performance concerns, USTRANSCOM contracting staff and Surface Deployment and Distribution Command (SDDC) management personnel did not implement adequate controls to ensure proper contract oversight and address performance concerns. Specifically:

- The contracting officer and contracting officer representatives (CORs) did not use the oversight procedures established in the quality assurance surveillance plan to monitor contractor performance. This occurred because the contracting officer did not take action to address the storage conditions at the Chester facility; the contracting officer instructed the CORs not to monitor late deliveries and not issue Contract Discrepancy Reports (CDRs) for the contract's major performance objectives; and the contracting officer and SDDC Program Management did not provide CORs with access to the Transportation Financial Management System to

Finding (cont'd)

re-verify the data submitted by the contractor. Without effective oversight, USTRANSCOM will not have sufficient information to assure transportation services received are consistent with contract quality requirements and performed in a timely manner.

- The CORs certified invoices that did not include unit prices or total billable amount. This occurred because USTRANSCOM contracting staff and SDDC finance personnel approved an improper invoice process. As result, SDDC Finance personnel paid \$162 million in potentially improper payments. Additionally, up to \$5 million of the \$162 million potential improper payments were overpayments related to 27,283 late delivery payments for which USTRANSCOM may hold the contractor accountable.

We commend USTRANSCOM for creating the Fusion Team to review the GPC III and identify areas for improvement and a Customer Response Team to address customer concerns. However, both teams were a temporary and unique means to address GPC III contractor performance concerns and were not intended as a substitute for the normal contract oversight process.

Recommendations

We made several recommendations to address the findings. Among others, we recommend the Director, USTRANSCOM Acquisition, provide oversight personnel with training and system tools to adequately monitor the contractor's performance. See the recommendations sections in the report.

Management Comments and Our Response

The Deputy Commander, U.S. Transportation Command, responding for the Director, USTRANSCOM Acquisition, and the Commander, SDDC, addressed all specifics of the recommendations, and no further comments are required. Please see the Recommendations Table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, U.S. Transportation Command Acquisition Directorate		1a, 1b, 1c, 1d, 1e
Commander, Surface Deployment and Distribution Command		2a, 2b, 2c, 2d
Commander, U.S. Transportation Command		3



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

February 3, 2016

**MEMORANDUM FOR COMMANDER, U.S. TRANSPORTATION COMMAND
COMMANDER, SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND**

**SUBJECT: U.S. TRANSCOM Needs Further Improvements to Address Performance Concerns Over
the Global Privately Owned Vehicle Contract III (Report No. DODIG-2016-044)**

We are providing this report for your information and use. We performed the audit in response to a Congressional request concerning the U.S. Transportation Command Global Privately Owned Vehicle Contract III. While U.S. Transportation Command and the contractor made progress in addressing performance concerns, U.S. Transportation Command contracting staff and Surface Deployment and Distribution Command management did not provide sufficient oversight to ensure transportation services received from the contractor were consistent with contract quality requirements and performed in a timely manner. We conducted this audit in accordance with generally accepted government auditing standards.

We considered management comments on a draft of this report when preparing the final report. Comments from the Deputy Commander, U.S. Transportation Command, also responding for the Director, USTRANSCOM Acquisition, and the Commander, SDDC, conformed to the requirements of DoD Instruction 7650.03; therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9187.

Michael J. Roark
Assistant Inspector General
Contract Management and Payments

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Introduction

Objective

We conducted this audit in response to a Congressional request concerning the U.S. Transportation Command (USTRANSCOM) Global Privately Owned Vehicle Contract (GPC) III (HTC711-14-D-R025). Our objective was to determine whether USTRANSCOM contracting personnel incorporated adequate controls to properly monitor contractor performance and to address performance concerns on the GPC III. See Appendix A for the scope and methodology and prior coverage related to the objective.

During the audit, we also notified USTRANSCOM that the contractor was not storing privately owned vehicles (POVs)¹ for Service members and Federal civilians at the Chester Storage Facility, Chester, South Carolina in accordance with the terms of the contract. See Appendix C for additional information regarding USTRANSCOM's notification to IAL and IAL's response.

Background

U.S. Transportation Command

USTRANSCOM transports DoD personnel and cargo worldwide in support of contingency operations during peacetime and wartime. As part of its mission, USTRANSCOM supports the requirement of its Component command, the Military Surface Deployment and Distribution Command (SDDC), for the complete, global transport of POVs that belong to Military Service members and Federal civilian employees.

Global Privately Owned Vehicle Contract III

USTRANSCOM awarded the GPC III on October 24, 2013, totaling \$304.6 million, to International Auto Logistics, LLC (IAL) for transportation and storage services for POVs of Military Service members and Federal civilians. The contract has 3 base periods (22 months - May 2014 through February 2016) and four option periods² that would potentially extend the contract through February 2019 and bring the total value to approximately \$836 million.

¹ POVs are any motor vehicles including authorized contents and installed accessories owned by, or on a long-term lease (12 months or more), to a customer/dependent to provide personal transportation (including motorcycles/mopeds), that are licensed to travel on public highways, and are designed to carry passengers or household goods. The term POV does not include commercial vehicles.

² The base years and option years were not based on full 12-month periods.

Contract Dispute Caused Delay

The GPC III was initially awarded in October 2013, with performance to begin in December 2013. However, the start of GPC III was delayed until May 2014 due to two protests filed by the GPC II contractor. The former contractor, American Auto Logistics, Inc., filed a protest with the Government Accountability Office and subsequently with the Court of Federal Claims to contest the GPC III award to IAL. As a result, IAL performance on the GPC III was delayed until after the Government Accountability Office and Court of Federal Claims determined that American Auto Logistics, Inc. allegations were unfounded. IAL began executing the GPC III on May 1, 2014. The eventual contract start coincided with the beginning of the peak shipping period for POVs (May through August).

Customer Complaints

From May through August 2014, numerous customer complaints on social and news media surfaced regarding POVs shipped under the GPC III. Service members reported:

- delivery delays;
- vehicles shipped to the wrong location;
- difficulties contacting the contractor to obtain information on their vehicles; and
- problems accessing the contractor's online tracking system.

The complaints also generated Congressional inquiries. Service members also submitted complaints to the USTRANSCOM Inspector General (IG).

Contract Oversight Roles and Responsibilities

Contracting Officer

As defined by the Federal Acquisition Regulation (FAR),³ the contracting officer has the authority to enter into, administer, and terminate contracts and make related determinations and findings. For the GPC III, the contracting officer monitors contractor compliance and resolves disagreements on the interpretation of contract terms and conditions; approves the quality assurance surveillance plan (QASP); and reviews the work of the contracting officer's representatives (CORs).

³ FAR Subpart 2.1, "Definitions."

Contracting Officer's Representative

According to the FAR, a COR is designated in writing by the contracting officer to perform specific technical or administrative functions. For the GPC III, the COR serves as a functional expert and monitors, assesses, records, and reports the technical performance of the contractor on a continual basis.

Performance Work Statement—Contractor Responsibilities

According to the performance work statement (PWS) for the GPC III, the contractor assumes all responsibility, liability, and costs for receipt and delivery, processing, and transportation of the POV from point of receipt to final delivery. The contractor is required to:

- operate multiple vehicle processing centers (VPCs);
- prepare POVs for shipment;
- ensure all necessary agriculture and customs clearances are accomplished;
- arrange for and provide inland and ocean transportation of the POVs;
- provide in transit visibility of POV shipments;
- store POVs; and
- resolve POV loss and damage claims.

The PWS also provided the following five major performance objectives and corresponding performance thresholds that the contractor must meet:

- transport 98 percent of POVs within the required delivery date each month;
- resolve 95 percent of claims directly with customers using the on-site settlement process each quarter;
- settle 99 percent of claims within 90 days each quarter;
- receive a satisfactory or better rating for overall customer service on 95 percent of comment cards each month; and
- adhere to voluntary intermodal sealift agreement preferences⁴ on 100 percent of shipments.

⁴ The Voluntary Intermodal Sealift Agreement program is a partnership between the U.S. Government and the maritime industry providing commercial sealift and intermodal capacity to support the emergency deployment and sustainment of U.S. military forces.

Quality Assurance Surveillance Plan—COR Responsibilities

The GPC III QASP provides surveillance procedures for the COR to use in monitoring contractor performance in accordance with the requirements listed in the PWS. Based on the QASP, the COR is required to:

- serve as a functional expert;
- monitor, assess, record, and report technical performance of the contractor on a continual basis;
- schedule surveillance activities;
- evaluate and document contractor performance;
- initiate requests for and evaluate adequacy of corrective actions;
- report contractor performance of contract requirements; and
- notify the contracting officer immediately when an evaluation shows performance does not meet standards.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” May 30, 2013, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses associated with the oversight procedures established in the QASP and certified invoices in accordance with DoD Instruction 5010.40. USTRANSCOM did not have adequate controls in place to monitor contractor performance and to address performance concerns. We will provide a copy of the report to the senior officials responsible for internal controls within USTRANSCOM and SDDC.

Finding

U.S. Transportation Command Needs Further Improvements to Address Performance Concerns Over the Global Privately Owned Vehicle Contract III

Although USTRANSCOM and the contractor made progress in addressing performance concerns on the GPC III contract, improvements are needed in contract oversight. USTRANSCOM contracting staff and SDDC management personnel did not implement adequate controls to ensure proper contract oversight and address all performance concerns. Specifically:

- The contracting officer and CORs did not use the oversight procedures established in the QASP to monitor contractor performance. This occurred because the contracting officer did not take action to address the storage conditions at the Chester facility that were identified by the COR not to be in accordance with the contract requirements; the contracting officer instructed the CORs not to monitor late deliveries and not issue Contract Discrepancy Reports (CDRs) for the contract's major performance objectives; and the contracting officer and SDDC Program Management did not provide CORs with access to the Transportation Financial Management System (TFMS)⁵ to re-verify the invoice data submitted by the contractor that was previously certified by the COR. Without effective oversight, USTRANSCOM will not have sufficient information to assure transportation services received are consistent with contract requirements and are performed in a timely manner.
- The CORs certified invoices that did not include unit prices or the total billable amount, including reductions for late deliveries of POVs.⁶ This occurred because USTRANSCOM contracting staff and SDDC finance personnel approved an improper invoice process. As a result, SDDC Finance personnel paid \$162 million of potential improper payments.⁷ Additionally, up to \$5 million of the \$162 million potential improper payments were overpayments related to 27,283⁸ late deliveries for which USTRANSCOM may hold the contractor accountable.

⁵ SDDC uses the entitlement system TFMS to process transportation payments.

⁶ According to the PWS the contractor is responsible for all missed RDDs unless caused by acts of God, acts of the public enemy, acts of public authority, inherent nature or vice of the cargo, or unless otherwise excused by the contracting officer.

⁷ Office of Management and Budget Circular No. A-123, defines an improper payment as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative or other legally applicable requirements.

⁸ From May 2014 through April 2015.

USTRANSCOM and the Contractor Made Progress Addressing Performance Concerns

In response to the complaints about the contractor's performance, both USTRANSCOM and the contractor began making changes to address performance concerns on the GPC III contract. In July 2014 USTRANSCOM assembled the Fusion Team and Customer Response Team to temporarily increase contract oversight. Specifically, the Fusion Team identified:

- discrepancies in the contractor's data and website reporting;
- process flow problems at Container Freight Stations;
- customs paperwork filing problems; and
- a need for transit time adjustments.

The Customer Response Team answered incoming phone calls from Service members who could not reach the contractor and provided information to the customers regarding the location and estimated delivery date of their vehicles. On August 26, 2014, the response team began to process approximately 1,300 e-mails from Service members who requested assistance to locate their vehicles. See Appendix B for additional information regarding both the Fusion Team and Customer Response Team.

In conjunction with USTRANSCOM's additional oversight, the contractor began taking action to increase their performance. Specifically, the contractor indicated it:

- hired additional staff;
- added roll-on, roll-off shipping capabilities;⁹
- improved website accuracy; and
- made other improvements, including increased training, establishing a call center, and daily customs tracking.

Contractor on-time delivery performance during the 2014 summer peak season was far below the 98 percent on-time delivery requirement in the contract and never exceeded 70 percent. However, the percentage of vehicles that met the RDD had increased to 97 percent for the week ending August 3, 2015.

⁹ Vehicles are driven on and off the vessel.

Although performance has generally improved, USTRANSCOM contracting staff and SDDC management personnel did not properly implement adequate controls to ensure proper contract oversight and address all performance concerns. The Fusion Team and Customer Response Team were temporary and unique means to address GPC III contractor performance concerns and are not a substitute for the established contract oversight process.

USTRANSCOM and SDDC Did Not Provide Effective Contractor Oversight

The contracting officer and CORs did not use the oversight procedures established in the QASP to monitor contractor performance. The oversight was not adequate because the contracting officer did not take action to address the storage conditions at the Chester storage facility; the contracting officer instructed the CORs not to monitor late deliveries and not issue CDRs for the contract's five major performance objectives; and the contracting officer and SDDC Program Management did not ensure CORs had access to the TFMS to perform their required oversight responsibilities.

Vehicles at the Chester Storage Facility Were Not Stored in Accordance With Contract Requirements

At the Chester storage facility, the contractor did not store POVs in accordance with contract requirements. The contract required vehicles be covered, locked, and stored in accordance with standard commercial practices.

Specifically, numerous leaks were present throughout the facility, which allowed water to drip onto numerous vehicles. In addition, vehicles were unlocked; dirt and debris accumulated on uncovered vehicles; and vehicles were parked in standing water (see Figure on following page).

... leaks were present throughout the facility, which allowed water to drip onto numerous vehicles.



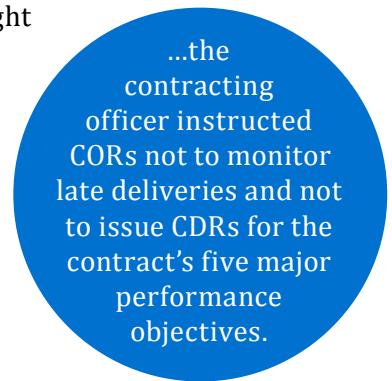
Figure. Vehicles Not Stored in Accordance with Contract Requirements
Source: DoD OIG

On April 27, 2015, we notified USTRANSCOM personnel of the conditions we observed at the Chester storage facility. We suggested that they conduct an assessment to determine if the vehicles at the facility were stored in conditions as required by the contract. Although the COR had provided repeated e-mails and photographs to report the leaking roof, the contracting officer stated she was unaware of the extent of problems identified. The contracting officer did not take action to correct the identified problems until we notified USTRANSCOM of the problems 10 months after the CORs initial notification to the contracting officer.

As a result of our notification, the Deputy Director, USTRANSCOM Acquisition Business Operations, responded with the numerous actions USTRANSCOM and SDDC would take. On May 22, 2015, the contractor responded to the USTRANSCOM contracting officer memorandum stating it was fully committed to a solution that meets the requirements of the contract and enables them to deliver the best possible service. See Appendix C for additional information regarding USTRANSCOM's notification to IAL and IAL's response. The Director, USTRANSCOM Acquisition, should perform a review to determine whether the contracting officer's actions were appropriate and in compliance with the requirements of the performance work statement and quality assurance surveillance plan. Based on that review, The Director, USTRANSCOM Acquisition, should provide additional training or take administrative action as appropriate. Further, the Director, USTRANSCOM Acquisition, should conduct a review of the contractor's actions to remedy the identified storage discrepancies and determine whether the actions were acceptable.

CORs Did Not Consistently Document and Report Contractor Performance Shortfalls

The contracting officer and CORs did not use the oversight procedures established in the QASP to monitor contractor performance. This occurred because the contracting officer instructed CORs not to monitor late deliveries and not to issue CDRs for the contract's five major performance objectives. The contracting officer stated that the major objectives would be monitored at her level and not at the COR/VPC level. However, in December 2014 USTRANSCOM changed direction and instructed the CORs to monitor delivery dates. Yet, the contracting officer did not rescind the instructions that limited the use of CDRs.



...the contracting officer instructed CORs not to monitor late deliveries and not to issue CDRs for the contract's five major performance objectives.

The QASP states the five major performance objectives are the most important metrics that, when met, will ensure contractor performance is satisfactory. While the contractor is fully expected to comply with all requirements in the PWS, the government's assessment of contractor performance will focus mainly on the five major performance objectives.

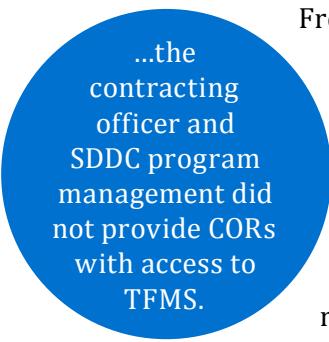
According to the DoD COR Handbook,¹⁰ CORs prepare CDRs to notify the contractor of a pending discrepancy that fails to meet the contract requirements. In most instances, the purpose of the CDR is to allow the contractor to correct the

¹⁰ The DoD COR Handbook, March 22, 2012, addresses key aspects of contract quality surveillance and the roles and responsibilities of the contracting officer and the COR.

discrepancy without interference from the Government. The CDR, while not the only method to alert the contractor of poor performance, is a formal notice to the contractor to immediately correct the unacceptable performance. The Handbook states that it is the responsibility of the COR to document all performance issues and provide reports on contract performance to the contracting officer.

For the GPC III, CORs were responsible for oversight and surveillance of operations at 39 contractor locations worldwide. A thorough assessment of performance should include all aspects of the contractor's performance including the five major performance objectives as observed and documented by the CORs. CDRs are an important tool to ensure that performance concerns are brought to the contractor's attention for resolution and should be used in accordance with the DoD COR Handbook and the QASP. The contracting officer restricted the CORs oversight responsibilities and their ability to create CDRs for the five major performance objectives, which limited USTRANSCOM's ability to fully assess contractor performance and ensure that it was satisfactory. The Director, U.S. Transportation Command Acquisition, should require contracting officer's representatives to document unacceptable contractor performance regarding the five major performance objectives, as required in the quality assurance surveillance plan, and train the contracting officer's representatives accordingly.

CORs Could Not Access TFMS



From the beginning of the contract's period of performance in May 2014, CORs could not verify data in TFMS, as required by the QASP. This occurred because the contracting officer and SDDC program management did not provide CORs with access to TFMS. According to the QASP, after the COR certifies the invoice, the contractor will submit an electronic file and the hard copy invoice to SDDC. Upon receipt, SDDC inputs the invoices into TFMS. The QASP requires CORs to periodically access TFMS and verify data (such as the invoice number, contract line item number, transportation control number, total billable amount and other invoice data) against the data on the hard copy invoice. As a result, CORs could not perform this oversight requirement and could not review TFMS data to re-verify that the invoice previously certified by the COR did not change when the contractor submitted it to SDDC for payment. The Commander, Surface Deployment and Distribution Command, should provide Transportation Financial Management System access to the contracting officer's representatives to perform their responsibilities in the quality assurance surveillance plan.

...the contracting officer and SDDC program management did not provide CORs with access to TFMS.

Improvements Are Needed in the Invoice Approval Process

USTRANSCOM and SDDC Finance oversight of contractor-submitted invoices was inadequate and needs improvement to ensure compliance with Federal, DoD, and PWS requirements related to certifying proper invoices and collecting contractor debt.

COR Certified Contractor Invoices Lacked Key Elements

The COR-certified invoices did not include unit prices or the total billable amount, including reductions for late deliveries of POVs. Specifically, contractor invoices did not include an invoice number, unit price information, payment terms, extended amounts, RDD date, and total invoice amount.

FAR subpart 32.905 states that a proper invoice must include these elements:¹¹

- name of the contractor;
- invoice number;
- unit price;
- quantity;
- shipping terms;
- payment terms; and
- any other information or documentation required by the contract.

In addition to the FAR, the DoD Financial Management Regulation¹² requires invoices to also contain correct information to be considered proper. Finally, PWS Appendix E, “Payment and Invoicing,” provides procedures to submit and approve invoices. The procedures require that CORs ensure a proper invoice was submitted in accordance with the provisions of the contract and that it accurately reflects services provided. The PWS also requires CORs to certify all invoices for payment and that the invoices account for the reductions for missed RDDs.

¹¹ This invoice requirement listing does not include all elements.

¹² DoD Regulation 7000.14-R, “DoD Financial Management Regulation,” volume 10, chapter 8, section 0804.

...invoices submitted by the contractor for COR approval did not contain the necessary elements of a proper invoice.

The invoices submitted by the contractor for COR approval did not contain the necessary elements of a proper invoice. For example, on June 27, 2014, the contractor submitted, and the COR for the Norfolk VPC approved, an invoice for 27 POVs that were delivered. Although the invoice provided details such as the name of the contractor, order numbers, contract line item number, and pick up dates, it did not include key information on pricing as required by FAR subpart 32.905. As a result, the invoices submitted by the contractor and approved by the COR were improper based on FAR and DoD Financial Management Regulation requirements.

During the audit, the contractor, at the request of USTRANSCOM and SDDC, updated the invoice format to include total-dollar amounts. Specifically, as of May 2015, the invoices submitted by the contractor contained the necessary pricing elements of a proper invoice. The updated invoices, subsequently approved by the CORs, meet the FAR and DoD Financial Management Regulation requirements for a proper invoice.

USTRANSCOM and SDDC Approved an Improper Invoice Process

CORs certified improper invoices because USTRANSCOM contracting staff and SDDC finance personnel approved an improper invoice process. According to the PWS, CORs are required to certify invoices for payment and return the certified invoices to the contractor. The contractor then submits the certified invoice through TFMS for payment. Additionally, the PWS states that when the contractor delivers a vehicle after its RDD, the invoiced amount is reduced by \$30 per day for a maximum of 7 days.

...CORs certified and returned the invalid invoices to the contractor, who in turn applied unit prices and total payment amount but did not make reductions for late deliveries.

USTRANSCOM contracting staff and SDDC finance personnel implemented an invoice approval process that required CORs to verify completion of service but not unit prices, reductions for late deliveries, or total invoiced amounts as required by the PWS.¹³ The CORs certified and returned the invalid invoices to the contractor, who in turn applied unit prices and total payment amount but did not make reductions for late deliveries. After the payment information was applied, the contractor submitted the

¹³ The contractor corrected the improper invoice format in May 2015.

invoice documentation to SDDC Finance where the invoice was loaded into TFMS for payment. Under this process, CORs did not have visibility of unit prices, any reductions for late deliveries, or the total payment amounts needed to properly verify and certify the POV transportation charges.

USTRANSCOM personnel stated initial problems with the contractor's information system, specifically the inability to adjust invoice amounts, prevented the reduction of invoices to account for the missed RDDs. As a result, the contracting officer decided that any penalties for late deliveries would be recouped after the invoice was paid through offsets. However, in doing so, the contracting officer did not follow the demand letter process outlined in the FAR¹⁴ to establish a debt and recoup the overpayments. The Commander, Surface Deployment and Distribution Command, should conduct a review to determine whether payments were improper and should be reported in accordance with the Improper Payments Elimination and Recovery Improvement Act. The Commander, Surface Deployment and Distribution Command, should review all invoices that were not prepared in accordance with the Federal Acquisition Regulation and DoD regulations to verify if the invoices and payment amounts were accurate and if performance met contract requirements. The Commander, U.S. Transportation Command, should provide training for the contracting officer and contracting officer's representatives on proper invoicing, how to review invoices, and demand letter and offset processes.

SDDC Made Potential Improper Payments and Did Not Pursue Fees for Late Deliveries

As a result of the improper invoice process, USTRANSCOM personnel paid \$162 million of potential improper payments. Additionally, up to \$5 million of the \$162 million were overpayments related to 27,283 late deliveries¹⁵ that USTRANSCOM may need to recoup from the contractor. Office of Management and Budget Circular No. A-123 defines an improper payment as "any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements."



USTRANSCOM personnel paid \$162 million of potential improper payments.

¹⁴ FAR Part 32.6 "Contract Debts."

¹⁵ For the period from May 2014 through April 2015.



From May 2014 through April 2015, USTRANSCOM potentially overpaid the contractor approximately \$5 million for 27,283 late deliveries...

USTRANSCOM's acceptance of invalid invoices and lack of payment certification violated contractual requirements, potentially violated statutory (legal) requirements, and resulted in the \$162 million of potential improper payments.¹⁶ In addition, USTRANSCOM and SDDC did not hold the contractor financially accountable for all potential overpayments that resulted from invoices not properly reduced for missed RDDs.¹⁷

From May 2014 through April 2015, USTRANSCOM potentially overpaid the contractor approximately \$5 million for 27,283 late deliveries because USTRANSCOM accepted invoices that were not reduced by the contractor for missing the RDD as required by the PWS.

In December 2014, USTRANSCOM developed a new process on how the contracting staff would document and apply the offsets. The new process requires more COR involvement and gives SDDC Finance the ability to issue demand letters and offset future payments. In June 2015, USTRANSCOM updated the PWS to state the contractor's liability for the missed RDDs will begin after invoicing and upon written demand issued by the contracting officer. The PWS also stated that the contractor will notify the contracting officer of all POV shipments subject to the liability as part of the monthly RDD report.

¹⁶ The contractor corrected the improper invoice format in May 2015.

¹⁷ According to the PWS, the contractor shall be responsible for all missed RDDs unless caused by acts of God, acts of the public enemy, acts of public authority, inherent nature or vice of the cargo, or unless otherwise excused by the contracting officer.

The Table below shows the number of POVs USTRANSCOM identified past the RDD each month and the estimated overpayments.

Table. Required Delivery Date Penalties

Month	Number of POVs Past Required Delivery Date	Estimated Overpayment Amount
May 2014	106	\$14,220
June 2014	1,209	175,500
July 2014	3,905	668,280
August 2014	4,536	831,540
September 2014	4,627	891,240
October 2014	5,477	1,061,340
November 2014	3,184	580,500
December 2014	1,765	308,370
January 2015	1,609	293,820
February 2015	511	90,750
March 2015	273	46,440
April 2015	81	12,960
Total	27,283	\$4,974,960

During the audit, SDDC issued demand letters for overpayments from December 2014 through April 2015, totaling \$752,340 of the potential \$5 million. However, as of August 2015, USTRANSCOM and SDDC had not issued demand letters or processed offsets related to the potential overpayments on the late deliveries from May 2014 through November 2014.

The contracting officer did not issue demand letters or pursue contractor debt in a timely manner. Rather than issue demand letters, USTRANSCOM adopted an unofficial process where debts were reviewed by and negotiated with the contractor in an attempt to avoid arbitration.¹⁸ The contracting officer provided the contractor with a list of vehicles that were subject to the late delivery penalties and the corresponding penalty amounts for review. The contracting officer relied on the contractor to determine the correct number of vehicles that were late and

¹⁸ Arbitration is the process of settling a dispute by presenting it to a third party or group for determination.

the total debt amount owed. The lack of prompt demand letters could potentially limit USTRANSCOM's ability to collect the potential overpayments and assess interest on late debts. The Director, U.S. Transportation Command Acquisition, in coordination with the Commander, Surface Deployment and Distribution Command should take appropriate action to ensure that all overpayments are recouped.

Conclusion

Without effective oversight, USTRANSCOM will not have sufficient information to assure transportation and storage services received are consistent with contract quality requirements and performed in a timely manner. USTRANSCOM needs to provide its oversight personnel training, system tools, and procedures to adequately monitor the contractor's performance. Additionally, the contracting officer limited the COR's ability to fully assess contractor performance, CORs could not verify invoices in TFMS, and invoices were not processed in accordance with Federal and DoD regulations. Finally, USTRANSCOM did not recoup approximately \$5 million in potential invoice overpayments resulting from missed RDDs. See Appendix D for details on the potential monetary benefits.

Management Comments on the Finding and Our Response

Summaries of management comments on the finding and our responses are in Appendix E.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Director, U.S. Transportation Command Acquisition:

- a. Perform a review to determine whether the contracting officer's actions were appropriate and in compliance with the requirements of the performance work statement and quality assurance surveillance plan.

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Director, USTRANSCOM Acquisition, agreed, stating that USTRANSCOM performed a detailed review of the contracting officer's action.

- b. Provide additional training or take administrative action, as appropriate, based on the review of the contracting officer's actions.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Director, USTRANSCOM Acquisition, agreed, stating that the training was completed.

- c. Conduct a review of on the contractor's actions to remedy the identified storage discrepancies and determine whether the actions were acceptable.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Director, USTRANSCOM Acquisition, agreed, stating that the review was completed and addressed with the contractor.

- d. Require contracting officer's representatives to document unacceptable contractor performance regarding the five major performance objectives, as required in the quality assurance surveillance plan, and revise the contracting officer's representative training materials accordingly.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Director, USTRANSCOM Acquisition, agreed, stating that the CORs were directed to document performance in accordance with the QASP and was reinforced at COR training events.

- e. Take appropriate action to ensure that all overpayments are recouped.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Director, USTRANSCOM Acquisition, agreed, stating that the contracting officer was in the process of recouping the overpayments.

Our Response

The Deputy Commander's comments addressed all specifics of the recommendation, and no further comments are required.

Recommendation 2

We recommend that the Commander, Surface Deployment and Distribution Command:

- a. Provide Transportation Financial Management System access to contracting officer representatives to perform their responsibilities in the quality assurance surveillance plan.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Commander, SDDC, agreed, stating that SDDC is working on implementing a solution with a planned completion date of December 31, 2016.

- b. Conduct a review to determine whether the payments were improper and should be reported in accordance with the Improper Payments Elimination and Recovery Improvement Act.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Commander, SDDC, agreed, stating that SDDC will complete the review by February 28, 2016.

- c. Review all invoices that were not prepared in accordance with the Federal Acquisition Regulation and DoD regulations to verify if the invoices and payment amounts were accurate and if performance met contract requirements.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Commander, SDDC, agreed, stating that SDDC will complete the review by February 28, 2016.

- d. Take appropriate action to ensure that all overpayments are recouped.**

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Commander, SDDC, agreed, stating that SDDC already identified and collected numerous overpayments and was working with the contracting officer to recoup all overpayments related to the late deliveries.

Our Response

The Deputy Commander's comments addressed all specifics of the recommendation, and no further comments are required.

Recommendation 3

We recommend that the Commander, U.S. Transportation Command, provide training for the contracting officer and contracting officer's representatives on proper invoicing, how to review invoices, and the demand letter and offset processes.

U.S. Transportation Command Comments

The Deputy Commander, USTRANSCOM, responding for the Commander, USTRANSCOM, agreed, stating the contracting officer and CORs received joint training and would do so again in December 2015.

Our Response

The Deputy Commander's comments addressed all specifics of the recommendation, and no further comments are required.

Appendix A

Scope and Methodology

We conducted this performance audit from December 2014 through October 2015 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.

Review of Documentation and Interviews

To obtain information and source documentation related to the adequacy of USTRANSCOM controls to monitor contractor performance and address performance concerns on the GPC III, we visited and interviewed personnel (to include the contracting officer and numerous contracting officer's representatives within the continental United States) from:

- USTRANSCOM, Scott Air Force Base, Illinois;
- SDDC, Scott Air Force Base, Illinois;
- Vehicle Processing Center and storage facility, Dallas, Texas;
- Vehicle Processing Center, St. Louis, Missouri;
- Vehicle Processing Center, Charleston, South Carolina, and storage facility, Chester, South Carolina;
- Vehicle Processing Center and container freight station, Norfolk, Virginia; and
- Vehicle Processing Center, Baltimore, Maryland.

During site visits to the vehicle processing centers, container freight station, and storage facilities, we observed daily procedures by the contractor, subcontractors, and CORs. We also examined key documents such as COR files, e-mails, comment cards, invoices, and sign-in sheets related to the audit objective.

We obtained and reviewed Federal and DoD guidance related to quality assurance surveillance, invoicing, improper payments, and POVs. Specifically we focused our review on:

- Title 5 Code of Federal Regulation 1315.9 “Required Documentation,” January 1, 2014;
- Office of Management and Budget Circular No. A-123, Appendix C “Requirements for Effective Estimation and Remediation of Improper Payments,” October 20, 2014;
- The Joint Travel Regulation, Uniformed Service Members and DoD Civilian Employees, Chapter 5, “Permanent Duty Travel, Part A, Section 6 POV Transportation and Storage,” October 1, 2014;
- Defense Transportation Regulation, Part IV Personal Property, Chapter 408, “Transportation of POVs,” October 24, 2014;
- DoD Regulation 7000.14-R, “Financial Management Regulation,” Volume 10, Chapter 8, “Commercial Payment Vouchers and Supporting Documents,” August 2012;
- Federal Acquisition Regulation Subpart 32.6, “Contract Debts;”
- Federal Acquisition Regulation Subpart 46.4, “Government Contract Quality Assurance;”
- Federal Acquisition Regulation Subpart 52.212-4, “Contract Terms and Conditions-Commercial Items;”
- Defense Federal Acquisition Regulation Supplement Subpart 204.802, “Contract Files,” December 31, 2012; and
- DoD COR Handbook, March 22, 2012.

Use of Computer-Processed Data

We used computer-processed data provided by USTRANSCOM from TFMS and the contractor’s Transportation Reporting and Cross ‘X’ Functional System (TRAX).¹⁹ We used summary reports that USTRANSCOM compiled from TFMS and TRAX including; payment amount, information related to late deliveries, and potential recoupment amounts from May 2014 through April 2015.

¹⁹ TRAX was customized by IAL for the specific needs of POV care, transportation management and complete in-transit-visibility. The system reportedly allows the contractor, its partners, and Service members to locate every vehicle, whether in storage, at a VPC, on a truck or across an ocean.

At the time of audit, USTRANSCOM was in the process of reconciling the recoupment amounts with the contractor and the amounts were subject to change. Accordingly, we did not verify the late delivery amounts provided by USTRANSCOM. We also reviewed correspondence between the contracting officer and the contractor regarding the ongoing reconciliation process. We determined that the summary reports were sufficiently reliable to be used as an estimate of contractor overpayments and potential recoupments pending completion of the reconciliation process.

We used summary charts (point-to-point graphs) that showed TRAX information related to the contractor's weekly on-time delivery performance from May 2014 through July 2015. The charts were prepared by USTRANSCOM data analysts due to minor issues with the integrity of the contractor's TRAX information. We interviewed the USTRANSCOM official in charge of the data analysts who monitored, filtered, and improved the usefulness of the raw TRAX data. We determined the cleansed TRAX data depicted in the charts were a sufficiently reliable indicator of the contractor's on-time delivery performance.

Prior Coverage

No prior coverage has been conducted to determine whether adequate controls were incorporated to monitor performance for the prior global privately owned vehicle contracts during the last 5 years.

Appendix B

USTRANSCOM's Temporary Improvements to Early Performance Concerns

During July 2014, USTRANSCOM determined that additional oversight of the contractor's performance was needed and put in place a temporary Fusion Team that consisted of acquisition staff, SDDC POV program personnel, and data analysts. The USTRANSCOM IG also formed a Customer Response Team to address service member complaints. The Fusion Team and Customer Response Team reviewed customer complaints, answered questions, identified problems, and provided daily feedback to USTRANSCOM leadership.

Throughout the summer peak season, the contractor did not meet the initial required delivery date (RDD) performance requirements established in the GPC III. As a result in October 2014, the Fusion Team directed SDDC and USTRANSCOM contracting staff to conduct an independent analysis of the transit times that existed on the GPC III. The intent of the study was to validate the GPC III transit times and to determine whether those transit times accurately reflect what is commercially deliverable at the required level of performance.

In November 2014, USTRANSCOM contracting staff and SDDC personnel completed their analysis and determined the transit times needed adjustment. The transit times were subsequently revised with contract modification P00004 dated December 1, 2014. As a result, transit times for full service routes between continental United States and Europe were generally lengthened. For example, the transit time (and corresponding RDD) for a POV shipped from New England to Germany increased from 43 days to 62 days.

Early in the contract, the contractor did not establish effective customer service to address customer complaints. In late August 2014, the USTRANSCOM IG began to staff a customer response team to answer the incoming phone calls from Service members who could not reach the contractor and to provide information to the customers as to the location and estimated delivery date of their vehicles. On August 26, 2014, the response team began to process approximately 1,300 e-mails from Service members who requested assistance to locate their vehicles. By September 2014, the team had five full-time staff members to answer e-mails and phone calls from Service members and Federal civilian employees.

We commend USTRANSCOM for creating the Fusion Team to review the GPC III and identify areas for improvement and a Customer Response Team to address customer concerns. However, both teams were a temporary and unique means to address initial GPC III contractor performance concerns and were not intended as a substitute for the normal contract oversight process.

Appendix C

Conditions at Chester Storage Facility and Responses

At the Chester storage facility, the contractor did not store POVs in accordance with contract requirements. As a result of our notification, the Deputy Director, USTRANSCOM Acquisition Business Operations, responded with the numerous actions USTRANSCOM and SDDC would take. On May 11, 2015, the contracting officer sent the contractor a memorandum to correct the identified storage discrepancies immediately and provide:

- a plan to correct facility problems at the Chester site (leaking roof and plumbing);
- a plan to clean excessively dirty POVs and maintain cleanliness where POVs are stored without a car cover;
- details and a damage assessment on all POVs impacted by the problems noted above;
- a plan to correct and reduce or minimize damage already sustained to the affected POVs; and
- adequate assurance that future performance at the Chester storage site will comply with contract requirements, to include delivering POVs to customers in the condition in which the POVs were tendered to the contractor.

On May 22, 2015, the contractor responded to the USTRANSCOM contracting officer memorandum stating that the contractor was fully committed to a solution that meets the requirements of the contract and enables them to deliver the best possible service. Further, it was their intention to eliminate the water leaks and provide a clean and dry environment for all stored vehicles at an alternate site nearby. In addition, the contractor planned to clean the excessively dirty POVs and maintain cleanliness where POVs were not covered. Additionally, the contractor professionally cleaned and detailed 456 affected POVs and worked with a service member and COR to repaint one affected POV.

Appendix D

Potential Monetary Benefits Table

Recommendations	Type of Benefit*	Amount of Benefit	Account
1.e and 2.d	Transportation Working Capital Fund	\$5 million	997X4930.FD30.TTTGPC00000.2015.22N8. 7750.13102K.5135.A15PV7750

*Potential monetary benefits are funds put to better use or questioned costs.

Appendix E

Management Comments on the Finding and Our Response

The Deputy Commander, USTRANSCOM, responding for the Commander, SDDC, and Director USTRANSCOM Acquisition, provided the following comments on the Finding. For the full text of the Deputy Commander's comments, see the Management Comments section of the report.

U.S. Transportation Command Comments—Managers' Internal Control Program

The Deputy Commander stated that USTRANSCOM has a Managers' Internal Control Program in place, but the report focused on the contracting officer and CORs and not the requirements of DoD Instruction 5010.40.

Our Response

We determined whether USTRANSCOM officials, such as the contracting officer and CORs, effectively implemented controls to oversee contractor performance. We identified that the contracting officer and CORs did not follow the controls established in the QASP. As a result, USTRANSCOM did not have adequate controls in place to monitor contractor performance and to address performance concerns. We address internal control weaknesses as part of every audit.

U.S. Transportation Command Comments—Chester Storage

The Deputy Commander agreed that some storage conditions were unacceptable and had since been addressed. He stated vehicles did not require covers and were not required to be locked based on authorized directives from the contracting officer. He also stated that USTRANSCOM provided the DoD IG detailed records contradicting the report's assertion that the contracting officer did not take action to correct the identified problems until 10 months after notification.

Our Response

We used the oversight requirements detailed in the PWS and QASP that were in place in April 2015 when we performed our Chester storage facility inspection and made our observations. We alerted USTRANSCOM of the poor storage conditions at the Chester storage facility. In April 2015, the contract required vehicles to be covered, locked, and stored in accordance with standard commercial practices. According to the FAR, any approvals or disapprovals of requests for waivers or deviations from contract requirements should be maintained in the contract file.

However, the contracting officer did not document any decisions or authorizations concerning the alteration of the POV storage requirements. On June 2, 2015, the contracting officer signed contract modification P00006 authorizing the updated contract requirements referenced in the Deputy Commander's comments.

In response to our observations, USTRANSCOM issued a memorandum, on May 11, 2015, to the contractor stating that the condition and operation of the Chester storage facility violated the requirement to store POVs in accordance with commercial practices. USTRANSCOM requested the POV storage discrepancies be immediately remedied. The evidence we obtained showed that the COR responsible for oversight of the Chester storage facility made multiple attempts to alert the contracting officer of storage issues. The COR provided the contracting officer with photographs of the leaks present in the Chester storage facility in July 2014. However, the contracting officer did not provide evidence to support that actions were taken to address the leaks at the storage facility before our site visit in April 2015. USTRANSCOM issued the May 11, 2015, memorandum to the contractor 10 months after the COR initially notified the contracting officer of the water leaks.

U.S. Transportation Command Comments—Monitoring Contractor Performance

The Deputy Commander stated that the contracting officer directed the CORs not to issue CDRs for major performance objectives because they were measured contract-wide. He further stated that the contracting officer did not instruct the CORs to not monitor late deliveries, and there was no direction to the CORs that restricted or hindered the ability of USTRANSCOM or SDDC to monitor contractor performance metrics.

Our Response

We obtained e-mails and other testimonial evidence that indicated the contracting officer instructed CORs not to monitor late deliveries before December 2014. The contracting officer instructed CORs to begin tracking late deliveries in December 2014, but did not address the CDRs. CDRs are an important tool to ensure that performance concerns are brought to the contractor's attention for resolution. According to the QASP, CDRs created by the CORs are reviewed by the contracting officer before they are issued. Once submitted by the COR, the contracting officer determines whether or not to issue the CDR. Therefore, although CORs do not have contract-wide performance visibility, CDRs submitted by the CORs provide the contracting officer with valuable insight on contractor performance at specific VPCs. Restricting a method of surveillance for the major performance objectives potentially limits USTRANSCOM's ability to fully assess contractor performance.

U.S. Transportation Command Comments—COR Access to TFMS

The Deputy Commander stated that CORs did not have access to TFMS; however they did not need it to verify invoices because the same information was available in the contract PWS and pricing matrix. Additionally, COR access to TFMS did not impact contract oversight. He further stated that TFMS access as initially described in the QASP proved to be unfeasible and the function of matching COR certifications was subsequently moved to SDDC G8.

Our Response

Access to TFMS was an internal control requirement of the QASP to ensure the contractor did not alter the invoice once it was approved by the COR. The invoice process used by USTRANSCOM relied on the contractor to submit the COR approved invoice to SDDC. Upon receipt, SDDC inputs the invoices into TFMS. The COR loses visibility of the invoice once the invoice is approved and returned to the contractor. Without access, CORs could not verify that the invoice data in TFMS matched the invoice previously certified and provided to the contractor.

U.S. Transportation Command Comments—Elements on COR Certified Invoices

The Deputy Commander stated that unit prices on invoices reviewed by CORs were secondary to the price review performed by SDDC G8, and invoices for COR certification were updated to include unit prices. He indicated the draft report merged the separate definitions for an improper invoice and an improper payment. He stated that the invoice process and internal controls preclude the possibility of making an improper payment. The Deputy Commander stated that the absence of line item pricing on documents reviewed by the CORs did not make the payments incorrect.

Our Response

The \$162 million in transportation payments made before May 2015 were potentially improper because they represented payments that should not have been made under statutory, contractual, administrative, or other legally applicable requirements. The contract line item number “CLIN” reference is an element that the contractor’s invoices contained. However, the invoices were deficient based on FAR, DoD FMR, and PWS requirements because they did not contain unit prices or total-dollar amounts. The lack of unit prices or total-dollar amounts caused all invoices submitted without those required elements to be improper invoices.

According to the PWS, CORs are required to approve proper invoices and return improper invoices back to the contractor to correct. However, this PWS requirement was not followed by the CORs. Instead, the contracting officer e-mailed instructions to the CORs requiring that they approve invoices submitted by the contractor, which included those without dollar amounts and deductions for missed delivery dates.

As a result, the CORs subsequently certified improper invoices that should have been returned to the contractor as required by the PWS. OMB Circular No. A-123, Appendix C, defines an improper payment as any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative or other legally applicable requirements. Under this definition, USTRANSCOM made potential improper payments because the process of CORs approving improper invoices violated statutory and contractual requirements. In May 2015, the contractor corrected this problem when it modified its invoices to include total-dollar amounts.

U.S. Transportation Command Comments—Payment Deductions for Late Deliveries

The Deputy Commander stated that the contracting officer directed the contractor to use an alternate process due to shortcomings in the electronic invoicing system. He added that the alternate process was subsequently formalized in a contract modification and that the former process described in the original PWS was inappropriate. He indicated the contracting officer's direction was appropriate, was fully documented, and within the authority of the contracting officer. The Deputy Commander stated FAR 22.603 places responsibility on the billing office to collect debts identified by the contracting officer. He stated the invoice process was proper and the contracting officer's decision to process offsets through a negotiated settlement did not constitute an overpayment.

The Deputy Commander disagreed that the contracting officer did not issue demand letters or pursue contractor debt in a timely manner. He stated that USTRANSCOM used a negotiated process to avoid litigation and follow DoD policy and FAR 33.204 regarding dispute resolution. He also stated the contracting officer did not rely on the contractor to determine the number of late deliveries and owed amounts. According to the Deputy Commander, the contractor reviewed the late deliveries and owed amounts as identified by the Government to determine the number of affected POVs and associated amounts. He stated no improper payments or overpayments were made and the dispute resolution process approved by the contracting officer complied with law and regulation. He further stated that to say every payment to the contractor (\$162 million) was improper was inconsistent with the invoice process as detailed to the audit team.

Our Response

Although the contracting officer is responsible for determining debt owed to the Government, late delivery penalties are a form of negative performance incentive allowed by the FAR. The initial PWS placed the responsibility for reducing invoices on the contractor before billing and payment. It was the COR's responsibility to review invoices and question the invoices that are not properly reduced for late deliveries prior to approving the invoice for payment. Any disagreements over price reductions should have been forwarded to the contracting officer for resolution.

Additionally, the contracting officer did not document any discussions or approvals to deviate from the contract requirements until a memorandum was created, almost 1 year after performance began, that attempted to summarize early communications held with the contractor. No additional information or documentation was provided to support specific agreements reached with the contractor concerning late delivery penalties. On June 2, 2015, the contracting officer signed contract modification P00006 authorizing the updated contract requirements. Under the new requirements, USTRANSCOM would pay invoices in full, then pursue any overpayments made through monthly demand letters.

The contracting officer did not take timely action to identify the total number of late deliveries and the corresponding penalty amount from May 2014 through December 2014. While the FAR allows for alternative dispute resolution, it also states that the contracting officer will issue a final decision if the contracting officer and the contractor are unable to reach agreement on the existence or amount of a debt within 30 days. Additionally, FAR 32.603(a) states:

If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall determine promptly whether an actual debt is due and the amount. Any unnecessary delay may contribute to loss of timely availability of the funds to the program for which the funds were initially provided; increased difficulty in collecting the debt; or actual monetary loss to the Government.

The contracting officer gave the contractor a spreadsheet of late deliveries in February 2015; however, the contracting officer did not issue a demand letter to recover the overpayments. As of August 2015, the contracting officer and contractor did not agree on the amount of debt owed from May 2014 through November 2014.

In addition to the overpayment and uncollected debt problem, USTRANSCOM's acceptance of improper invoices and lack of payment certification caused all payments made to the contractor to be potential improper payments. USTRANSCOM made potential improper payments because the process of CORs approving improper invoices violated statutory and contractual requirements. In May 2015, the contractor corrected this problem when it modified its invoices to include total-dollar amounts.

U.S. Transportation Command Comments—Potential Monetary Benefits

The Deputy Commander agreed the contractor owed refunds for late vehicle deliveries, but due to law and facts applicable to each shipment, he could not state if the \$5 million was accurate.

Our Response

The \$5 million in potential monetary benefits was a USTRANSCOM estimate of overpayments. We agree that the amount may change pending review and included in the draft report language stating that USTRANSCOM was in the process of reconciling the recoupment amounts and the amounts were subject to change. However, while the recoupment process is ongoing, the potential monetary benefit was the estimate originally provided by USTRANCOM.

Management Comments

U.S. Transportation Command Comments



UNITED STATES TRANSPORTATION COMMAND
508 SCOTT DRIVE
SCOTT AIR FORCE BASE, ILLINOIS 62225-5357

23 November 2015

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: TCDC

SUBJECT: DODIG Draft report (Project No. D2015-D000CL-0091.000) U.S. Transportation Command Needs Further Improvements to Address Performance Concerns over the Global Privately Owned Vehicle Contract III

1. The United States Transportation Command (USTRANSCOM) staff has reviewed the subject report and provided responses to recommendations 1.a – 1.e, 2.a – 2.d, and 3 found in DODIG Draft Report.
2. For additional information or assistance, please contact [REDACTED]
[REDACTED]

A handwritten signature in black ink, appearing to read "STEPHEN R. LYONS".
STEPHEN R. LYONS
Lieutenant General, USA
Deputy Commander

2 Attachments:

1. USTRANSCOM response
2. DODIG Draft Report

cc:
SDDC
TCAQ
TCJA
TCJ5/4
TCAC

U.S. Transportation Command Comments (cont'd)

**DODIG Draft Report (Project No. D2015-D000CL-0091.000)
U.S. Transportation Command Needs Further Improvements to
Address Performance Concerns over the Global Privately Owned
Vehicle Contract III**

- I. USTRANSCOM thanks DoDIG for its thorough review of the GPCIII contract. While USTRANSCOM can appreciate the strict PWS and QASP language interpretations cited by DoDIG, we believe the PWS and QASP deviations directed by the contracting officer in the face of intense performance challenges were proper and necessary. Adherence to processes in the PWS and QASP recommended by DoDIG would not have been in the best interest of the Government or military service members. Ultimately, USTRANSCOM PWS and QASP changes led to improved contract oversight and contractor performance. The contractor has, and will continue to be held accountable for performance failures.
- II. USTRANSCOM is not minimizing the very poor performance of the contractor as the contract started and during the 2014 summer moving season. Performance one and a half years ago was unacceptable and many service members were adversely impacted by delivery delays. While performance in the summer of 2014 was unsatisfactory and not intended, the contract is currently executing as intended (at or above PWS metrics) and produced \$54M in savings in the first year of performance. USTRANSCOM comments on the draft findings take into consideration current performance through November 2015 including a successful high volume 2015 summer moving season. USTRANSCOM is confident the current PWS, QASP, and contract administration practices are more than sufficient to ensure successful performance continues.
- III. USTRANSCOM provides the following factual and process comments regarding the draft findings:
 1. *Manager's Internal Control Program.* IAW DoD Instruction 5010.40, USTRANSCOM has a Managers' Internal Control Program in place. However, the report comments seem to focus on the contracting officer and CORs, not requirements of DoD Instruction 5010.40.
 2. *Chester Storage Conditions.* Chester storage conditions were reported by the COR to the Contracting Officer over a period of time and the Contracting Officer reacted appropriately based on the information provided by the COR. While some storage conditions were not acceptable and have since been addressed, vehicles did not require covers and POVs were not required to be locked based on authorized directives from the Contracting Officer, as described below.
 - a. The current contractor advised, particularly in the humid conditions of Chester, SC, covering these vehicles could facilitate mold growth in vehicles. As a result, the SDDC Program Management Office and

U.S. Transportation Command Comments (cont'd)

USTRANSCOM Contracting Office agreed to direct the contractor to use the contractor's discretion regarding the use of covers to minimize mold growth in Service Members' stored vehicles. Subsequently, the requirement to cover stored vehicles was modified in the PWS to permit discretionary use of vehicle covers. The requirement for POVs in storage to be locked was also removed from the PWS as the contractor is responsible for securing all stored POVs already and certain model POVs with dead batteries cannot be unlocked to be maintained (or jump started) if the battery dies while the POV is locked without vehicle dealer assistance. Service Members' POVs remain fully protected with all damage liability (to include mold) remaining with the contractor.

The draft report comment “[t]he contracting officer did not take action to correct the identified problems until...10 months after the CORs initial notification...” is not accurate. USTRANSCOM previously provided DoDIG detailed records in response to this comment that directly contradict this finding.

3. *Monitoring Contractor Performance.* The Contracting Officer did not instruct CORs not to monitor late deliveries, but did direct them not to issue CDRs on global contract metrics to which they had no visibility. CORs were instructed not to issue CDRs for major performance objectives because the major performance objectives are measured contract-wide. CORs are responsible for monitoring performance at the VPC(s) to which they are assigned and do not have contract-wide responsibility or visibility. CORs cannot determine whether the contractor is meeting a contract-wide performance objective, therefore a COR-issued CDR for a global contract metric serves no legitimate purpose. No direction to the CORs restricted or hindered the ability of USTRANSCOM or SDDC to monitor contractor performance of PWS performance metrics.
 - a. Major performance areas were monitored at the USTRANSCOM and SDDC Headquarters level, by both the Contracting Officer and SDDC Program Management Office, all of whom were engaged with the contractor on a daily basis regarding performance (formal meeting schedule provided to audit team). As initial unsatisfactory performance issues increased, USTRANSCOM stood up the GPC fusion cell which included numerous staff, including contracting and program management personnel. This cell was designed to monitor all aspects of the contractor's performance. USTRANSCOM and SDDC received updated data on every POV shipped at least weekly. POV data was tracked, analyzed, and briefed on a weekly basis (see weekly slides provided to audit team), providing copiously detailed oversight beyond what CORs, individually or collectively, were capable of monitoring at the VPC level. Additionally, the Contracting Office sent numerous emails and letters in response to the contractor's corrective action plans which was developed to address these performance objectives, as well as a formal memorandum

U.S. Transportation Command Comments (cont'd)

signed by the Contracting Officer regarding poor performance (provided to audit team). The level of contract oversight was and is appropriate, as evidenced by contract performance over the last seven months.

4. *COR Access to Transportation Financial Management System (TFMS).* CORs did not have access to TFMS, however, did not need it to verify invoices as the same information was available in the contract PWS and pricing matrix. Further, as described below, SDDC made the final invoice check after service was verified by the CORs. The entire process was and is legal, proper, and FIAR compliant. COR access to TFMS did not impact contract oversight.
 - a. The report states "...the contracting officer and SDDC Program Management did not provide CORs with access to the Transportation Financial Management System (TFMS)...." To clarify, TFMS is an SDDC system and due to the remote locations and accessibility issues for many of the CORs, TFMS access as initially described in the QASP proved to be unfeasible. As such, in order to maintain complete accountability in the invoice certification process, the function of "matching" COR certifications to contractor invoices in TFMS was moved to SDDC G8. This ensured SDDC could fully maintain verification between the invoice data certified by the CORs and the invoices submitted by the contractor on each invoice line item with no degradation in invoice processing oversight. The QASP has been updated to reflect this required process adjustment.
5. *Elements on COR Certified Contractor Invoices.* The report states that CORs certified invoices without unit prices or the total billable amount. Of note, invoicing reports reviewed by CORs contained a CLIN reference for each service billed with a corresponding fixed-price CLIN listed in the contract which was available to all CORs. The COR-approved CLIN is then matched by SDDC G8 to contractor-submitted invoices (including unit prices) to verify both CLINs and associated amounts invoiced are accurate prior to payment issuance. As a result, unit prices on invoices reviewed by CORs is secondary to the price review function performed by SDDC G8 based on services certified as performed by the CORs (process described below). Regardless, invoices for COR certification have been updated to include unit prices.
 - a. The draft merges the definitions of "improper invoice" and "improper payment" such that any invoice lacking a single element is improper and therefore results in a de facto improper payment. These definitions, however, are separate. An invoice missing a data element may be improper, but the resultant payment must be assessed separately to determine whether the payment "...should not have been made or was made in an incorrect amount." Regarding the invoicing process, SDDC G8 has implemented internal controls which preclude the possibility of making improper payments. Within TFMS, SDDC G8 establishes the

U.S. Transportation Command Comments (cont'd)

CLIN data in accordance with the IDIQ contract and this data is subsequently referenced when individual task orders are created within TFMS based upon the receipt of order data from the contractor. The COR certification document created by the contractor then provides line level charge information for each order which had been fulfilled. This document is provided to the COR for review/certification and contains the appropriate task order number, TCN, CLIN, quantity and unit price. The contractor generates an invoice based upon the certified COR document and sends a FAR-compliant invoice via interface to TFMS. The invoice transaction contains the task order, TCN, CLIN, quantity, and unit price. SDDC accounts payable staff then use task order obligation data, invoice data, and COR certification data to insure all payable amounts are in accordance with the contract and authorized by the COR. This process is not improper.

- b. The report states that "...SDDC Finance personnel paid \$162 million of potential improper payments." The presence of line item pricing on COR review documents (see discussion above) is not determinative of whether payment(s) should not have been made or were made in an incorrect amount. Additionally, direction provided within the Contracting Officer's authority, followed by contract modification to reflect the same, negates the alleged basis of improper payments where the Contracting Officer's direction was documented and followed, as in this case.

6. *Payment deductions for Late Deliveries of POVs.* After contract performance began, USTRANSCOM concluded price reductions for late RDDs on initial invoices were not possible due to the electronic invoicing system used under the old contract, because the invoiced amount had to match the paid amount in the payment system for electronic payment to be authorized. As a result, the Contracting Officer directed the contractor to utilize an alternate and workable process in order to make a determination as to whether a debt to the Government existed, make official demand for any debts, and collect any debts from the contractor. This direction was later formalized in a contract modification. The initial contracting officer direction which authorized this process before the official contract modification was proper under the law, and necessary based on current operating systems. The new process reflects best commercial practices and supports system capabilities of both the contractor and the Government that were unknown at the time of contract issuance. Additionally, variance from original PWS language was necessary because determination as to whether exclusions apply (see PWS paragraph 1.3.5.1) must be made as part of the FAR 32.603 debt determination. As such, the process described in the original PWS paragraph 1.3.5.1.1, requiring an automatic deduction for missed RDDs, was not appropriate, and the Contracting Officer's direction did not constitute approval of an improper process, was fully within the authority of the Contracting Officer,

U.S. Transportation Command Comments (cont'd)

was documented in the contract file¹, and was in the best interest of the Government.

- a. Regarding the process established for the collection of the amounts owed to the Government, the Contracting Officer, in conjunction with SDDC G8, is following the demand letter process to establish a debt and recoup amounts owed. Also, please note FAR 22.603 places responsibility to identifying debts and places responsibility on the “billing office” to collect debts identified by the Contracting Officer. CORs cannot permissibly perform the function of either determining whether a deduction is warranted or demanding adjustment of invoice amounts by the contractor. The process change in collecting amounts associated with late deliveries had to be altered for both practical and compliance purposes, and the contract has been updated to reflect this process. Authorized modifications to processes, oral or otherwise, do not render a process “improper.” The ASBCA and Court of Federal Claims have both found contracting officers have the authority to make oral changes to a contract so long as followed with written direction -- which was the case on this contract. The invoice process was not improper, and the decision of the contracting officer to affect the offset by negotiated settlement does not constitute an overpayment.
- b. The report states “The contracting officer did not issue demand letters or pursue contractor debt in a timely manner. Rather than issue demand letters, USTRANSCOM adopted an unofficial process where debts were reviewed by and negotiated with the contractor in an attempt to avoid arbitration.” Given the number of individual instances (over 27,000) potentially generating contract debts, other workload under the circumstances, and the magnitude of data review involved, the Contracting Officer’s action was timely. Also, the recoupment process, as discussed above, was directed within the Contracting Officer’s authority and was not unofficial. Finally, the GPC contract does not contain provisions for arbitration. The issue of recoupment for missed RDDs is contentious and fact driven for every single POV. To avoid litigation, USTRANSCOM elected to pursue a negotiated process to resolve the dispute. Negotiated settlements are a preferred method to litigation and favored by DoD. This authorized direction by the Contracting Officer was correct and consistent with DoD policy regarding disputes. FAR 33.204 states “The Government’s policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer’s level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable.” To find this process “improper” or

¹ Memorandum For Record documenting this direction and process was provided to the audit team.

U.S. Transportation Command Comments (cont'd)

claim it resulted in “overpayment” overlooks congressional intent to resolve disputes at the contracting officer level.

- c. The report states “The contracting officer relied on the contractor to determine the correct number of vehicles that were late and the total debt amount owed.” The Contracting Officer did not rely on the contractor to determine the number of affected POVs or the amounts owed. Analysis and calculations were performed by the Government to determine the number of affected POVs and associated amounts, with an opportunity for review granted to the contractor.
 - d. No improper payments or overpayments were made on the contract. The invoicing and dispute resolution process approved by the Contracting Officer was compliant with law and regulation and is now memorialized in the contract. To state every payment to the contractor (\$162M) was improper is inconsistent with the invoice process as detailed to the DoDIG team.
7. *Potential Monetary Benefits Table.* TCAQ concurs with DODIG that IAL does owe refunds for late vehicle delivery, but due to the law and facts applicable to each shipment, cannot state the Potential Monetary Benefits (PMB) of \$5 Million is accurate as stated in Recommendation 2d.

IV. USTRANSCOM Responses to Draft Recommendations

1. **Recommendation 1a:** Perform a review to determine whether the contracting officer’s actions were appropriate and in compliance with the requirements of the performance work statement and quality assurance surveillance plan.

USTRANSCOM RESPONSE: Concur with comments

USTRANSCOM performed a detailed review of the contracting officer’s action on this contract.

Recommendation 1b: Provide additional training or take administrative action, as appropriate, based on the review of the contracting officer’s actions.

USTRANSCOM RESPONSE: Concur with comments

Training has been conducted with the contracting officer and CORs.

Recommendation 1c: Conduct a review of on the contractor’s actions to remedy the identified storage discrepancies and determine whether the actions were acceptable.

USTRANSCOM Response: Concur with comments

U.S. Transportation Command Comments (cont'd)

The review is complete and has been addressed with the contractor.

Recommendation 1d: Require contracting officer's representatives to document unacceptable contractor performance regarding the five major performance objectives, as required in the quality assurance surveillance plan, and revise the contracting officer's representative training materials accordingly.

USTRANSCOM Response: Concur with comments

CORs have been directed to document performance objectives IAW the QASP. This has been reinforced at COR training events.

Recommendation 1e: Take appropriate action to ensure that all overpayments are recouped.

USTRANSCOM Response: Concur with comments

The Contracting Officer is working to recoup all monies owed to the Government.

Recommendation 2a: The DODIG recommends that the Commander, Military Surface Deployment and Distribution Command provide Transportation Financial Management System access to Contracting Officer Representatives to perform their responsibilities in the quality assurance surveillance plan.

USTRANSCOM Response: Concur with comments

SDDC agrees that greater access to information for CORs would enhance the Quality Assurance Surveillance Plan. SDDC is working to provide the CORs with access to financial data and certification capability by implementing an electronic invoicing solution through the Treasury Invoice Processing Platform (IPP). This should be implemented by 31 December 2016.

Recommendation 2b: The DODIG recommends that the Commander, Military Surface Deployment and Distribution Command conduct a review to determine whether the payments were improper and should be reported in accordance with the Improper Payments Elimination and Recovery Improvement Act.

USTRANSCOM Response: Concur with comments

SDDC will conduct this review by 28 February, 2016.

Recommendation 2c: The DODIG recommends that the Commander, Military Surface Deployment and Distribution Command review all invoices that were not prepared in accordance with the Federal Acquisition Regulation and DoD

U.S. Transportation Command Comments (cont'd)

regulations to verify if the invoices and payment amounts were accurate and if performance met contract requirements.

USTRANSCOM Response: Concur with comments

SDDC will conduct this review by 28 February, 2016.

Recommendation 2d: The DODIG recommends that the Commander, Military Surface Deployment and Distribution Command take appropriate action to ensure that all overpayments are recouped.

USTRANSCOM Response: Concur with comments

To date, SDDC has identified and collected numerous vendor overpayments. Additionally, SDDC is working with the contracting officer to recoup all missed required delivery date (RDD)-related debts.

Recommendation 3: We recommend that the Commander, U.S. Transportation Command, provide training for the contracting officer and contracting officer's representatives on proper invoicing, how to review invoices, and the demand letter and offset processes.

USTRANSCOM Response: Concur with comments

The contracting officer and CORs have trained together and will train together again in December 2015 regarding these topics.

Acronyms and Abbreviations

- CDR** Contract Discrepancy Report
COR Contracting Officer's Representative
FAR Federal Acquisition Regulation
GPC Global Privately Owned Vehicle Contract
IAL International Auto Logistics, LLC
IG Inspector General
POV Privately Owned Vehicles
PWS Performance Work Statement
QASP Quality Assurance Surveillance Plan
RDD Required Delivery Date
SDDC Surface Deployment and Distribution Command
USTRANSCOM U.S. Transportation Command
VPC Vehicle Processing Center

Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

The Whistleblower Protection Enhancement Act of 2012 requires the Inspector General to designate a Whistleblower Protection Ombudsman to educate agency employees about prohibitions on retaliation, and rights and remedies against retaliation for protected disclosures. The designated ombudsman is the DoD Hotline Director. For more information on your rights and remedies against retaliation, visit www.dodig.mil/programs/whistleblower.

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