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United States
Department of Defense



Efforts to Prevent Sexual Assault/Harassment
Involving DOD Contractors During Contingency
Operations

Report Documentation Page

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Acronyms and Abbreviations

AIG-IPO	Assistant Inspector General for Investigative Policy and Oversight
AOR	Area of Responsibility
CDF	Contractors Deploying With the Force
CENTCOM	U.S. Central Command
CRC	Continental United States Replacement Center
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
JCC-I/A	Joint Contracting Command – Iraq/Afghanistan
LOGCAP	Logistics Civil Augmentation Program
MEJA	Military Extraterritorial Jurisdiction Act
OEF	Operation Enduring Freedom
OIF	Operation Iraqi Freedom
SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office
TSIRT	Theater Specific Individual Requirements Training
UCMJ	Uniform Code of Military Justice
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(P&R)	Under Secretary of Defense for Personnel and Readiness



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
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April 16, 2010

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND
READINESS
CHIEF OF STAFF OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY FOR ACQUISITION,
LOGISTICS, AND TECHNOLOGY
ASSISTANT SECRETARY OF THE AIR FORCE FOR
ACQUISITION

SUBJECT: Efforts to Prevent Sexual Assault/Harassment Involving DOD Contractors During
Contingency Operations (Final Report No. D-2010-052)

We are providing this report for information and use. This audit was requested by members of Congress. We considered comments on a draft of this report in preparing the final report. The Under Secretary of Defense for Acquisition, Technology, and Logistics; Under Secretary of Defense for Personnel and Readiness, Department of the Army; Department of the Air Force; and U.S. Central Command comments conformed to the requirements of DOD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

A handwritten signature in black ink, reading "Richard B. Jolliffe", is positioned above the typed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Efforts to Prevent Sexual Assault/Harassment Involving DOD Contractors During Contingency Operations

What We Did

At the request of five members of Congress, we reviewed contracts that support Operations Enduring Freedom and Iraqi Freedom for language in clauses that address the prevention of sexual assault or harassment of or by contractor personnel. We also determined whether DOD and/or DOD contractors provided sexual assault/harassment prevention and response training to contractor employees prior to deployment.

What We Found

Of the 10 DOD contractors reviewed, 8 did not have policies or training requirements for sexual assault prevention and response. This condition occurred because contractual requirements were not established to ensure that contractors were aware of DOD's definition of sexual assault or that contractors should report sexual assault complaints to Military law enforcement during contingency operations. In addition, sexual assault prevention and response policy was not applied to contractors and contractors were not required to complete such training as part of theater-specific individual requirements training (Finding A).

The Army Deputy Chief of Staff, G-3/5/7, and Air Force contracting officers did not provide adequate oversight of contractor deployment training for sexual assault prevention and response. This condition occurred because the Kellogg, Brown, and Root Services, Inc. Continental United States Replacement Center (CRC) and Fluor Corporation CRC operations were inappropriately approved, despite the contractors' sexual assault awareness and reporting training not meeting the minimum training requirements. Further, contractor

employees were processed through pre-deployment sites without ensuring that sexual assault prevention and response training was completed (Finding B).

What We Recommend

Under Secretary of Defense for Acquisition, Technology, and Logistics develop contractual requirements to ensure that DOD contractors are aware of the DOD definition of sexual assault and require contractors to report sexual assaults to Military law enforcement.

Under Secretary of Defense for Personnel and Readiness [USD(P&R)] expand the sexual assault prevention and response policy to establish prevention, awareness, and reporting requirements and procedures specifically for DOD contractors. In addition, USD(P&R) develop guidance that ensures that combatant commanders establish mandatory sexual assault prevention and response training for DOD contractors who operate in contingency operations.

The Chief of Staff of the Army ensure that the minimum deployment training requirements, including sexual assault prevention and response training requirements, are met prior to approving DOD contractors' deployment operations and review the adequacy of contractor deployment training for sexual assault prevention and response.

Management Comments and Our Response

Management comments were responsive to all of the recommendations. Please see the Recommendations Table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics		A.1.a and A.1.b
Under Secretary of Defense for Personnel and Readiness		A.2.a and A.2.b
Chief of Staff of the Army		B.1.a and B.1.b
Assistant Secretary of the Army for Acquisition, Logistics, and Technology		A.3
Assistant Secretary of the Air Force for Acquisition		A.4 and B.2

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Introduction

Objectives

The audit objective was to determine whether contracts that support Operations Enduring Freedom and Iraqi Freedom areas of operation contain language in clauses that adequately address DOD policies regarding sexual assault/harassment of and/or by contractor personnel. We also determined whether the DOD and/or DOD contractors provided sexual assault/harassment awareness, prevention, and reporting training to DOD contractor employees prior to their deployment to Operations Enduring Freedom and Iraqi Freedom areas of operation. See Appendix A for scope and methodology.

Background

In 2005, a former Kellogg, Brown, and Root Services, Inc. (KBR) contractor employee alleged that she was sexually assaulted by other KBR employees while working on a contract at Camp Hope, Baghdad. Subsequently, the former KBR employee filed a complaint that KBR improperly managed the company's investigation into the sexual assault allegations. On January 24, 2008, 111 members of Congress requested an evaluation of DOD and DOD contractor processing of sexual assault complaints by DOD contractor employees working in Operations Enduring Freedom and Iraqi Freedom areas of operation. On April 21, 2008, Representatives Louise Slaughter, Henry Waxman, Bob Filner, Ted Poe, and Jane Harman requested that we expand the scope of the evaluation to determine what controls DOD has established for contractors in the following areas: prevention and assistance and contractor accountability. This audit was initiated in response to the April 2008 request. The results of the initial request were discussed in an evaluation report¹ issued by the Office of Investigative Policy and Oversight, DOD, Office of Inspector General. See Appendix B for the April 2008 congressional request memorandum and Appendix C for our response to congressional questions.

Sexual Harassment

The Equal Employment Opportunity Commission determined in title 29 of the Code of Federal Regulations that sexual harassment can be a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act of 1964 applies to all employers with 15 or more employees, including state, local, and Federal Government; employment agencies; and labor organizations. The Act also declares that sex discrimination is illegal and a civil offense.

Executive Order 11246, "Equal Employment Opportunity," requires that DOD contracting agencies include provisions that prohibit discrimination by DOD contractors

¹Office of Investigative Policy and Oversight, DOD, Office of Inspector General, Report No. IPO2010E001, "Evaluation of DOD Sexual Assault Response In Operations Enduring and Iraqi Freedom Areas of Operation," dated February 1, 2010.

against employees and applicants based on race, color, religion, sex, or national origin in all non-exempt contracts.

Sexual Assault Prevention and Response Initiative

On February 5, 2004, the Secretary of Defense issued a memorandum, “Department of Defense Care for Victims of Sexual Assaults,” that expressed concern with the increasing numbers of reports alleging sexual assaults involving Service members deployed to Iraq and Kuwait and directed a review of how DOD handled the treatment and care for victims of sexual assault in theater. On February 10, 2004, the Under Secretary of Defense for Personnel and Readiness [USD(P&R)] directed the Deputy Assistant Secretary of Defense for Force Health, Protection, and Readiness to establish and lead a task force to review the reporting of sexual assaults and consider the necessity of training for Service members. In April 2004, the task force issued the “Task Force Report on Care for Victims of Sexual Assault,” which found that DOD did not have a policy or program aimed at preventing sexual assault, particularly in joint combat environments. Based on the report recommendations to develop such policy, the USD(P&R) established the Sexual Assault Prevention and Response Program Office (SAPRO) as the single point of authority for sexual assault policies and oversight responsibilities, which were established in DOD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” October 6, 2005, and DOD Instruction 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006.² The Directive and Instruction provide sexual assault prevention, reporting, and response policies, implementation procedures, and oversight responsibilities exclusively for the Military Services and National Guard and Reserve.

Uniform Code of Military Justice

The Uniform Code of Military Justice (UCMJ) declares that sexual assault committed by the Armed Forces and DOD civilians and contractors accompanying Armed Forces in contingency operations is a criminal offense that is punishable by court-martial.

Review of Internal Controls

We identified that internal control weaknesses in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] and USD(P&R) existed as defined by DOD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006. The USD(AT&L) did not effectively establish the following internal controls for contract administration: provisions in DOD contracts to ensure contractors were aware of the UCMJ definition of sexual assault and that they should have reported sexual assault complaints to Military law enforcement during contingency operations. Implementing Recommendations A.1.a and A.1.b will improve DOD contract administration and potentially result in increased awareness and prevention

² DOD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” and DOD Instruction 6495.02, “Sexual Assault Prevention and Response Program Procedures,” were subsequently revised on November 7, 2008, and November 13, 2008, respectively.

of sexual assault crimes among the DOD total force.³ Additionally, the USD(P&R) did not establish the following internal controls for personnel and organization management⁴: sexual assault and prevention policy that applied to contractor employees and guidance that ensured that combatant commanders required contractor employees to complete sexual assault prevention and response training as part of the mandatory theater-specific individual requirements training prior to deployment to contingency operations. Implementing Recommendations A.2.a and A.2.b will improve USD(P&R) personnel management and the operational effectiveness of the DOD total force deployed to Operations Enduring Freedom and Iraqi Freedom areas of operation. We will provide a copy of the report to the senior official responsible for internal controls in the USD(AT&L) and USD(P&R).

³ DOD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R)), June 23, 2008, defines "DOD total force" as DOD Active and Reserve Component Military personnel, Military retired members, DOD civilian personnel, contractors, and host-nation support personnel who comprise DOD resources for implementing National Security Strategy.

⁴ DOD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006, restricts the identification of internal control weaknesses in the personnel and organization management area to DOD military and civilian personnel and excludes contractor personnel. However, since USD(P&R) develops policies, plans, and programs for total force personnel, including contractors supporting contingency operations in Iraq and Afghanistan, we determined that the personnel and organization management internal control reporting category applied.

Finding A. Sexual Harassment and Sexual Assault Policy and Training Requirements for Contractors

Although the 10 DOD contractors reviewed have policies and training requirements in place to comply with the intent of Equal Employment Opportunity laws regarding sexual harassment, the contractors did not establish similar policies and training requirements for sexual assault awareness, prevention, and reporting for DOD contractor employees. This occurred because the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] did not establish requirements in DOD contracts to ensure:

- contractors are made aware of the Uniform Code of Military Justice (UCMJ) definition of sexual assault; and
- contractor employees report sexual assault complaints to Military law enforcement during contingency operations in Iraq and Afghanistan.

In addition, the Under Secretary of Defense for Personnel and Readiness [USD(P&R)]:

- established sexual assault prevention, reporting, and response policies that excluded DOD contractors; and
- did not ensure that combatant commanders established minimum pre-deployment training requirements to include sexual assault prevention and response training for contractors who accompany U.S. Armed Forces in contingency operations.

As a result, contractor employees who were alleged victims or witnesses may not have known how to report sexual assault crimes to the appropriate Military law enforcement officials while in Operations Enduring Freedom (OEF) and Iraqi Freedom (OIF) areas of operation. Additionally, DOD contractors, a supporting component of the DOD total force, may have been unaware of the severity of sexual assault as a criminal offense under the UCMJ, thereby increasing the risk of sexual assault occurrences that threaten contractor productivity in support of DOD contingency operations.

Contractor Policies and Training

We reviewed company policies and training requirements related to sexual harassment and sexual assault for the following 10 DOD contractors that were awarded contracts supporting OEF and OIF areas of operation:

1. AECOM;
2. Environmental Chemical Corporation (ECC);
3. Fluor Corporation (Fluor);
4. ITT Corporation, Systems Division (ITT);
5. Innovative Technical Solutions, Inc.(ITSI);
6. Kellogg, Brown, and Root Services, Inc. (KBR);
7. L-3 Communications;
8. Parsons Corporation (Parsons);
9. Readiness Management Support, LC (RMS); and
10. Tetra Tech, Inc.

See Appendix A for details that discuss our methodology for selecting the sample of DOD contractors.

DOD Definitions of Sexual Harassment and Sexual Assault

In 29 Code of Federal Regulations 1604.11 (July 2006), sexual harassment is defined as:

(a) Harassment on the basis of sex is a **violation of section 703 of title VII.**⁵ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. **[Emphasis added]**

Although the Code of Federal Regulation does not define sexual assault, DOD has defined acts of sexual assault in the UCMJ. Specifically, section 920, title 10, United States Code (10 U.S.C. §920 [2008]), article 120, "Rape, sexual assault, and other sexual misconduct," states:

- (c) **Aggravated sexual assault.** Any person subject to this chapter [10 USCS 801 et seq.] who--
- (1) causes another person of any age to engage in a sexual act by--
 - (A) **threatening or placing that other person in fear** (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or
 - (B) **causing bodily harm**; or
 - (2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of--
 - (A) appraising the nature of the sexual act;
 - (B) declining participation in the sexual act; or
 - (C) communicating unwillingness to engage in the sexual act;
- is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.**
[Emphasis added]

Sexual harassment violations are different than sexual assault violations because sexual assault invokes the critical elements of threat, fear, and bodily harm that are defined in the UCMJ. Additionally, sexual harassment is not punishable with imprisonment while sexual assault actions are subject to court-martial. See Appendix E for other felony offenses of a sexual nature as defined under the UCMJ.

Sexual Harassment Awareness

We determined that all 10 DOD contractors implemented Executive Order 11246 or Title VII of the Civil Rights Act of 1964 by establishing corporate policies and training requirements for sexual harassment awareness, prevention, and reporting.

All 10 of the DOD contractors established policy in either the company code of conduct or other corporate policy that prohibited sexual harassment in the workplace and provided procedures for reporting such incidents within the companies. Additionally, all 10 DOD

⁵ Title VII refers to Title VII of the Civil Rights Act of 1964.

contractors offered sexual harassment prevention training to employees upon hiring and refresher training through online Internet modules, policy review certification, or training presentations.

Sexual Assault Awareness

We determined that 8 of 10 DOD contractors did not develop adequate policies or training requirements to promote employee awareness, prevention, and reporting of sexual assaults while deployed in support of contingency operations.

Policies

We determined that KBR and Parsons were the only two contractors that developed company policies for their employees that addressed sexual assault prevention and response, but that the KBR and Parsons policies were limited. The KBR sexual assault policy, issued in October 2007, applied to only KBR employees who supported the Logistics Civil Augmentation Program (LOGCAP) and excluded KBR employees performing work on other contracts supporting contingency operations; provided a definition of sexual assault that considered any nonconsensual sexual act or contact to be sexual assault; and established reporting procedures for its LOGCAP employees to report sexual assault crimes internally to KBR human resources representatives, employee relations representatives, its ethics hotline, or legal counsel, and did not mention local law enforcement. Parsons' workplace violence policy prohibited physical assault, which included sexual assault; however, the Parsons' policy was inadequate because it did not provide the defining elements of sexual assault. Additionally, the Parsons' policy provided internal company reporting procedures for its employees to contact Parsons supervisors, security, and emergency hotline, and did not mention local law enforcement.

Training

RMS and Fluor were the only two DOD contractors that developed and implemented sexual assault prevention and response training that classified sexual assault as a crime characterized by nonconsensual and threatening physical contact causing bodily harm, including rape. The RMS training module, implemented in June 2007, was the only sexual assault training that appropriately instructed employees to report sexual assault crimes to law enforcement authorities as well as to internal company management, human resources managers, and the RMS ethics hotline. However, the Fluor sexual assault prevention and response training, implemented in June 2009, inappropriately instructed employees to report sexual assault crimes internally to Fluor supervisors and managers.

Sexual Assault Awareness and the Uniform Code of Military Justice

DOD contractor employees in contingency operations are prosecutable under the jurisdiction of the UCMJ; however, based on our review of 10 DOD contractors' policies and procedures, we determined that the USD(AT&L) did not establish requirements in DOD contracts to ensure DOD contractors were made aware of the UCMJ definition of

sexual assault and the need to report sexual assault complaints to Military law enforcement.

UCMJ Jurisdiction

On October 17, 2006, Congress passed section 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), which amends 10 U.S.C. §802 [2008] of the UCMJ to extend military jurisdiction over contractors serving with or accompanying U.S. Armed Forces in contingency operations. On September 25, 2007, the Deputy Secretary of Defense implemented this legal mandate into working-level guidance in a memorandum, “Management of DoD Contractors Personnel Accompanying U.S. Armed Forces in Contingency Operations Outside the United States,” which authorizes combatant commanders in their respective areas of responsibility (AOR) to detain, potentially prosecute, and discipline DOD contractors suspected of committing crimes. Specifically, the Deputy Secretary of Defense stated:

DoD contractor personnel (regardless of nationality) accompanying U.S. armed forces in contingency operations are currently subject to UCMJ jurisdiction. Commanders have UCMJ authority to disarm, apprehend, and detain DoD contractors suspected of having committed a felony offense in violation of the RUF,⁶ or outside the scope of their authorized mission, and to conduct the basic UCMJ pretrial process and trial procedures currently applicable to the courts-martial of military service members. Commanders also have available to them contract and administrative remedies, and other remedies, including discipline and possible criminal prosecution.

Contractor Definition of Sexual Assault

We determined that 8 of 10 contractors reviewed did not establish an adequate corporate definition of sexual assault or promote awareness to contractor employees assigned to DOD projects in Iraq and Afghanistan. Specifically, five contractors misclassified sexual assault, a violent felony, as an act of sexual harassment, a civil offense, which is reported internally within the companies instead of externally to Military law enforcement; one contractor developed a definition that was inconsistent with DOD’s definition and established internal company reporting procedures; and the remaining two contractors did not provide any definition of sexual assault. The remaining 2 of 10 contractors developed a definition of sexual assault that was consistent with DOD’s definition, but only 1 of the 2 contractors established external reporting to Military law enforcement. See Table 1 for DOD contractor coverage of sexual assault awareness and reporting.

⁶ Rules on the Use of Force.

Table 1. DOD Contractors' Policies and Training on Sexual Assault Awareness and Prevention

<u>Description</u>	<u>AECOM</u>	<u>ECC</u>	<u>Fluor</u>	<u>ITSI</u>	<u>ITT</u>	<u>KBR</u>	<u>L-3</u>	<u>Parsons</u>	<u>RMS</u>	<u>Tetra Tech</u>	<u>Totals</u>
No definition for sexual assault **							X			X	2
Sexual assault classified as form of sexual harassment **	X	X		X	X			X*			5
Sexual assault definition <i>inconsistent</i> with the DOD definition **						X					1
Sexual assault definition <i>consistent</i> with the DOD definition			X						X		2
No external reporting procedures to Military law enforcement			X			X		X*			3
External reporting procedures to Military law enforcement									X		1
*Parsons established conflicting policy in its coverage of sexual assault. Parsons harassment policy described sexual assault as a form of sexual harassment in its business ethics code, and Parsons workplace violence policy classified sexual assault as workplace violence without actually defining sexual assault acts. Additionally, both polices required the employees to report instances to internal company management.											
**Categories represent instances when the contractor did not establish an adequate corporate definition of sexual assault and promote sexual assault awareness.											

Of the 10 contractors we reviewed, 8 contractors did not effectively promote awareness of sexual assault among their employees because DOD contracts lacked provisions that ensure contractors are made aware of the UCMJ definition of sexual assault and the seriousness of the offense. Congress extended UCMJ jurisdiction over contractors in contingency operations, thereby making it possible for contractors to be prosecuted for sexual assault violations under Military law. Therefore, the USD(AT&L) needs to ensure that contractors accompanying Armed Forces are aware of DOD's definition of sexual assault and the legal ramifications by establishing the requirement in all DOD contracts supporting contingency operations.

Sexual Assault Prevention and Response Program

The USD(P&R) established sexual assault prevention, reporting, and response policies, implementation procedures, and oversight responsibilities in DOD Directive 6495.01 and DOD Instruction 6495.02 for the Military Services and National Guard and Reserve that excluded DOD contractors. DOD Directive 6495.01 requires the Secretaries of the Military Departments to establish policies and procedures to implement the Sexual Assault Prevention and Response (SAPR) program. The Army, Navy, Air Force, and Marine Corps have complied with the SAPR directive in their most recent guidance identified below.

- On December 1, 2005, the Navy issued Secretary of the Navy Instruction 1752.4A, “Sexual Assault Prevention and Response,” to eliminate sexual assault incidents that impact Department of the Navy (DON) personnel and family members or incidents that are perpetrated by DON personnel.
- On February 5, 2008, the Marine Corps issued Marine Corps Order 1752.5A, “Sexual Assault Prevention and Response (SAPR) Program,” to eliminate sexual assaults within the Marine Corps and to assist those Marines and sailors who were affected by sexual assault while assigned to Marine Corps units.
- On March 18, 2008, the Army issued Army Regulation 600-20, “Army Command Policy,” to reinforce the Army’s commitment to eliminate incidents of sexual assault through a comprehensive policy that centers on awareness and prevention, training and education, victim advocacy, response, reporting, and accountability for violators.
- On March 28, 2008, the Air Force issued Air Force Policy Directive 36-60, “Sexual Assault Prevention and Response (SAPR) Program,” to eliminate sexual assault within the Department of the Air Force by fostering a culture of prevention, providing education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and well-being of all members.

Pursuant to the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375), October 28, 2004, each Military Department must submit an annual report on the sexual assaults involving members of the Armed Forces, including the number of sexual assaults by or against Service members. Specifically, Section 577(f) states:

(f) ANNUAL REPORT ON SEXUAL ASSAULTS.—(1) Not later than January 15 of each year, the Secretary of each military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.

(2) Each report on an Armed Force under paragraph (1) shall contain the following:

(A) The number of sexual assaults against members of the Armed Force, and the number of sexual assaults by members of the Armed Force, that were reported to military officials during the year covered by such report, and the number of the cases so reported that were substantiated.

SAPRO and the Military Departments have established policy and training requirements with the intent to eliminate sexual assault among Military Service members throughout DOD and within the respective Military Departments. According to the Congressional Research Service report, “Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis,” August 13, 2009, the DOD total force in OEF and OIF areas of operation comprises approximately an equal number of DOD contractors and Military Service members. However, DOD contractors are not required to establish policy or annually report sexual assault allegations among contractor employees.

The USD(P&R) should consider the number of sexual assault allegations among contractors that may be unreported and its impact on the DOD total force in contingency operations abroad. Additionally, the USD(P&R) should expand DOD Directive 6495.01 and DOD Instruction 6495.02 to establish prevention, awareness, and reporting requirements and procedures for contractor employees who are U.S. citizens and accompany Military forces in contingency operations. Further, the USD(P&R) should direct the Services to track and annually report sexual assault cases by or against contractor employees for incorporation into the annual DOD Sexual Assault Report to Congress in order to measure the effectiveness of the expanded SAPR guidance for contractors.

Operations Enduring Freedom and Iraqi Freedom Initiatives

The U.S. Central Command (CENTCOM) is the unified combatant command that oversees the missions and operations in the OEF and OIF areas of operation, respectively. See Appendix F for details on CENTCOM roles and responsibilities under the Secretary of Defense.

On October 14, 2008, the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417) amended the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to require the Secretary of Defense, the Secretary of State, and the Administrator of the Agency for International Development to enter into a memorandum of understanding for contracts in Iraq and Afghanistan that addresses mechanisms for contractors to report offenses under the UCMJ, such as sexual assault, and a requirement for contractors to inform their employees on where to report alleged UCMJ offenses prior to commencing work. Specifically, section 861 of Public Law 110-181, as amended, states that the memorandum of understanding shall address at a minimum:

(6) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) ...

(7) Mechanisms for ensuring that contractors are required to report offenses described in paragraph (6) that are alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(9) Development of a requirement that a contractor shall provide to all contractor personnel who will perform work on a contract in Iraq or Afghanistan, before beginning such work, information on the following:

(A) How and where to report an alleged offense described in paragraph (6)

The Joint Contracting Command – Iraq/Afghanistan (JCC-I/A) was established by CENTCOM as a subordinate command of the Multi-National Force – Iraq to provide unified contract support to the OEF and OIF areas of operation. JCC-I/A has taken steps

to establish a contract provision, which requires contractor awareness and reporting of sexual assaults. The “Joint Contracting Command – Iraq/Afghanistan Acquisition Instruction,” April 1, 2009, requires that clause 952.225-0004, “Compliance with Laws and Regulations,” be included in all DOD contracts with place of performance in Iraq and Afghanistan. The clause requires contractor employees to be made aware of all laws, regulations, policies, and orders that prohibit sexual or aggravated assault and that contractors notify Military law enforcement when employees are suspected of committing a crime. Specifically, the clause states:

(b) **Contractor employees shall particularly note all laws, regulations, policies, and orders** restricting authority to carry firearms, rules for the use of force, and **prohibiting sexual or aggravated assault**. Contractor employees are subject to General Orders Number 1, as modified from time to time, including without limitation, their prohibition on privately owned firearms, alcohol, drugs, war souvenirs, pornography and photographing detainees, human casualties or military security measures.

(f) **Contractors shall immediately notify military law enforcement and the Contracting Officer if they suspect an employee has committed an offense**. Contractors shall take any and all reasonable and necessary measures to secure the presence of an employee suspected of a serious felony offense. Contractors shall not knowingly facilitate the departure of an employee suspected of a serious felony offense or violating the Rules for the Use of Force to depart Iraq or Afghanistan without approval from the senior U.S. commander in country [**Emphasis added**].

The JCC-I/A instruction establishes contracting procedures for all contracts with performance in Iraq and Afghanistan; however, sexual assault is not a crime that is potentially isolated to only contracts supporting OEF and OIF areas of operation. The USD(AT&L) should require contracting officers to insert similar provisions for contractors and their employees to report sexual assault complaints to Military law enforcement in all DOD contracts supporting all combatant commands’ contingency operations, including CENTCOM AOR.

Deployment Training Requirements

USD(P&R) is responsible for providing guidance for CENTCOM to establish minimum theater entry training requirements, or theater-specific individual requirements training (TSIRT) for all DOD Military personnel deploying to the CENTCOM AOR for OEF and OIF. As part of the TSIRT, DOD Military personnel are required to be trained on Equal Opportunity/Prevention of Sexual Harassment and SAPR. However, CENTCOM did not ensure that contractor employees met the same TSIRT by completing SAPR training prior to deploying to the CENTCOM AOR. According to a CENTCOM Inspector General official, CENTCOM delegated the establishment of contractor training requirements to the Military Services, but the delegation was not documented in writing. Consequently, the Army, Navy, Air Force, and Marine Corps did not establish a SAPR training requirement for contractors. The Fort Benning Continental United States Replacement Center (CRC) requires non-unit Military personnel and DOD contractor attendees to complete Web-based classes and/or attend instructor-based briefings related to Equal Opportunity/Prevention of Sexual Harassment and SAPR. However, not all

DOD contractors attend the Fort Benning CRC prior to deployment. Further, DOD contracting officers did not always designate a deployment center in their contracts for contractors deploying with the force (CDF) to complete necessary training as required by DOD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” October 3, 2005, and Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7040, “Contractor Personnel Supporting a Force Deployed Outside the United States,” July 2009.

DOD Instruction

DOD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” October 3, 2005, states:

6.2.7.1. General Deployment Procedures. **All CDF shall report to the deployment center designated in the contract before deploying to a contingency operation to:** validate entry of accountability information in the joint database addressed in subparagraph 6.2.6.; be issued or validate possession of proper identification cards; receive applicable Government-furnished equipment; receive medical and dental screening including required military-specific vaccinations/immunizations (e.g., anthrax, smallpox); and **validate or complete any required training** (e.g., Geneva Conventions; law of armed conflict; general orders; standards of conduct; force protection; personnel recovery; medical; operational security; anti-terrorism; nuclear, biological and chemical protective gear; country brief and cultural awareness; and other training as appropriate). . . . **[Emphasis added]**

DFARS

DFARS clause 252.225-7040, “Contractor Personnel Supporting a Force Deployed Outside the United States,” July 2009, states:

(f) *Processing and departure points*. Deployed Contractor personnel shall—
(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause . . .

We reviewed 22 contracts that were awarded to the 10 contractors. Our review determined that nine contracts designated a deployment center; six contracts were not required to include the DFARS clause because the effective date of the DFARS clause was after contract award; and seven contracts did not designate a deployment center even though the DFARS clause was incorporated into the contract. Of the seven contracts that omitted deployment centers, six contracts were awarded by the Air Force and one contract was awarded by the Army. See Table C-1 in Appendix C for details of contracting agencies’ deployment center designation.

Air Force Contracts

According to Air Force contracting personnel, the Air Force contracting officers did not designate a deployment center in six contracts because they inappropriately delegated the deployment processing decisions and selection of deployment center to the contractor. Air Force contracting personnel also stated that, despite the inclusion of DFARS clause

252.225-7040 in the six contracts, the Air Force contracting officers did not verify the contractor employees' completion of the deployment requirements. Further, Air Force contracting personnel stated that there was not always a need to designate a deployment center in contracts because some contractor employees were in Iraq before the requirement to process through deployment centers was effective. However, Air Force contracting personnel could not verify whether the contractor employees were already in Iraq working on other contracts at the time of contract awards. Our review disclosed that ITSI was awarded two of the six Air Force contracts that did not designate a deployment center location. According to the ITSI Human Resources Director and Project Manager, ITSI employees assigned to those contracts have never attended training at the Fort Benning CRC. Instead, ITSI provided its own in-theater training that did not include sexual assault prevention training.

Army Contract

Despite being aware of DFARS clause 252.225-7040, Army contracting personnel stated that the Army contracting officer did not identify a CRC location in contract W52P1J-05-D-0003 because the Fort Bliss and Fort Benning CRCs were the only available CRC options at the time; therefore, the contracting officer delegated the CRC decision to the contractor based upon the availability of the CRC and urgency of the mission.

The contracting officers' decision to delegate the deployment center to the contractor did not comply with DFARS clause 252.225-7040 and DOD Instruction 3020.41. The DOD Instruction states that DOD Components shall ensure use of one of the formally designated group or individual joint or Military Department deployment centers (for example, CRC, Individual Replacement Center, Federal Deployment Center, Unit Deployment Site) or a contractor-operated theater admission processing center. The DOD Instruction provided a number of deployment options for contractors and required DOD Components to choose a deployment option. The contracting officer, as an agent for DOD, should have ensured that contractors met the minimum TSIRT by designating a deployment center for contractor employees.

The Joint Contracting Command issued the "Iraq/Afghanistan Theater Business Clearance Guide," which requires contracting officers to include mandatory DFARS clause 252.225-7040 in all contracts with place of performance in Iraq and Afghanistan. Additionally, the guide requires contracting officers to refer to the CENTCOM Contracting Web site⁷ for the most recent mandatory language before developing a solicitation and after award to ensure that the contract is compliant with current requirements. CENTCOM requires all personnel, including contractors, to report to Fort Benning, Georgia, for deployment processing. DOD contracting officers must ensure that the specific deployment center for contractor employees accompanying U.S. Armed Forces is designated in the contract language.

⁷ The CENTCOM Contracting Web site is: www2.centcom.mil/sites/contracts/Pages/Default.aspx.

On April 13, 2009, we attended the Army SAPR training briefing at Fort Benning CRC that included both contractor and Military attendees. We noted that training on SAPR reporting procedures specific to contractors was not provided to the contractor participants. The Army Judge Advocate General training facilitator acknowledged that the restricted and unrestricted reporting⁸ options were targeted exclusively to Military Service members. Consequently, contractor employees who attended the course were not informed of where to report a sexual assault crime if they become victims or witnesses. If specific reporting procedures are not established and incorporated into policy and training, deployed contractor employees will not know how and where to report sexual assault crimes.

USD(P&R) needs to develop guidance that ensures that combatant commanders, including the Commander, CENTCOM, establish SAPR training as part of the mandatory theater individual requirements training for all contractors before deployment to contingency operations.

Conclusion

According to the congressionally mandated SAPRO report, "Department of Defense FY08 Report on Sexual Assault in the Military," March 2009, "The Department continues to address the extension of SAPR policy to DOD civilians and DOD contractors, particularly in contingency operations such as Iraq and Afghanistan." The Sexual Assault Advisory Council, established by DOD Instruction 6495.02, plans to establish a working group along with the Sexual Assault Advisory Council Policy Subcommittee to address the issue of extending SAPR policy to DOD civilians, DOD contractors, and the joint environment.

DOD faces challenges in how SAPR policy will be extended to cover contractors, particularly regarding procedures for reporting. Public Law 108-375 mandates that the Secretary of Defense develop comprehensive policy for confidential (restricted) reporting of sexual assault incidents for Military personnel. However, DOD civilians and contractors do not have the restricted reporting option for sexual assault incidents; therefore, law enforcement must be notified as mandated by several state statutes for civilian reporting. The lack of SAPR policy and training for DOD contractors potentially leaves contractors vulnerable to becoming sexual assault victims or witnesses who do not know to report the crime to Military law enforcement in Iraq and Afghanistan. Further, an increase in detained contractor offenders and contractor victims may adversely affect contractor productivity, which could cause DOD operations in Iraq and Afghanistan to suffer. Therefore, DOD must facilitate the prevention of those vulnerabilities by

⁸ According to DOD Instruction 6495.02, restricted reporting allows a victim of sexual assault who is a Service member to disclose on a requested confidential basis the details of an assault to specifically identified individuals and receive medical treatment and counseling, without triggering the official investigative process. Unrestricted reporting involves the reporting of sexual assaults to the Military criminal investigative organization.

establishing SAPR policy and training requirements that ensure awareness, prevention, and reporting for the entire DOD total force, including contractors.

Recommendations, Management Comments, and Our Response

Revised Recommendation

As a result of the Under Secretary of Defense for Personnel and Readiness [USD(P&R)] comments to draft Recommendation A.2.a.2 and Department of the Army comments to draft Recommendation A.3, we revised both recommendations in the final report. Specifically, we revised Recommendation A.2.a.2 to clarify that the Military Services should be responsible for tracking and annually reporting sexual assault cases involving DOD contractors for incorporation into the report to Congress. Additionally, we revised Recommendation A.3 to clarify the recommendation's intent to ensure that contracting officers include contract language that designates a specific deployment center for contractors accompanying U.S. Armed Forces in contingency operations to attend prior to deployment.

A.1. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics develop requirements in all DOD contracts supporting contingency operations that:

- a. Ensure contractor employees accompanying U.S. Armed Forces are aware of the Uniform Code of Military Justice definition of sexual assault; and**
- b. Require DOD contractor employees supporting all combatant commands contingency operations, including the U.S. Central Command area of responsibility, to report sexual assault cases to Military law enforcement.**

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments

The Director, Defense Procurement and Acquisition Policy, Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)], agreed with the recommendations. The director stated that the USD(AT&L) will revise the Defense Federal Acquisition Regulation Supplement (DFARS) to ensure that all DOD contracts supporting contingency operations contain language that ensures that contractor employees accompanying U.S. Armed Forces are aware of Uniform Code of Military Justice (UCMJ) jurisdiction and the sexual assault definition established by the Sexual Assault Prevention and Response (SAPR) Program in DOD Instruction 6495.02. However, the director stated that the USD(AT&L) did not agree that the office exhibited an internal control weakness by not providing contractual coverage of contractor awareness and compliance with UCMJ jurisdiction. The director opined that DFARS clause 252.225-7040 specifically provided such coverage. Additionally, the director stated that the USD(AT&L) will revise the DFARS to require UCMJ offenses involving contractors to be reported to law enforcement. Further, the director issued Class Deviation 2009-00014, "Additional Requirements and Responsibilities Relating to Alleged Crimes by or Against Contractor Personnel in Iraq and Afghanistan," which

requires contractors during contingency operations in Iraq and Afghanistan to report all alleged offenses under the UCMJ and Military Extraterritorial Jurisdiction Act to the appropriate law enforcement.

Our Response

The USD(AT&L) comments were responsive and meet the intent of Recommendation A.1.a. The Director, Defense Procurement and Acquisition Policy, stated that the USD(AT&L) will revise the DFARS to heighten contractor awareness of UCMJ jurisdiction covering contractors, the SAPR program, and the sexual assault definition in DOD Instruction 6495.02. However, the sexual assault definition established in the SAPR program policy is found in DOD Directive 6495.01. Further, the SAPR program policy in DOD Directive 6495.01 and DOD Instruction 6495.02 do not apply to contractor employees. Therefore, contractor awareness of the SAPR program and its sexual assault definition will not be ensured until the USD(P&R) modifies the current SAPR policy to establish prevention, awareness, and reporting requirements that apply to contractor employees (see Recommendation A.2). In order for the USD(AT&L) to heighten SAPR program policy awareness to contractors in the DFARS, the USD(AT&L) needs to coordinate with USD(P&R) to determine if and when the SAPR policy will be modified to apply to contractor employees accompanying U.S. Armed Forces in contingency operations.

The Director, Defense Procurement and Acquisition Policy, did not agree that the USD(AT&L) did not provide contractual coverage of contractor awareness and compliance with UCMJ jurisdiction, thus exhibiting an internal control weakness. However, the report did not state that USD(AT&L) did not establish contractual requirements to ensure contractor awareness and compliance with UCMJ jurisdiction, but rather that USD(AT&L) did not ensure awareness of the UCMJ definition of sexual assault. We agree with the USD(AT&L) that DFARS clause 252.225-7040 was the control established to notify contractors that they were subject to the jurisdiction of the UCMJ, thus prosecutable under all offenses under the UCMJ including sexual assault. However, our observation that 8 of 10 DOD contractors reviewed did not have policies or training requirements for awareness, prevention, and reporting of sexual assault indicates that the USD(AT&L) internal control needs to be improved.

We considered the USD(AT&L) comments to Recommendation A.1.b responsive and they meet the intent of the recommendation. On December 14, 2009, the Director, Defense Procurement and Acquisition Policy, required Class Deviation 2009-O0014, "Class Deviation, Additional Requirements and Responsibilities Relating to Alleged Crimes by or Against Contractor Personnel in Iraq and Afghanistan," to be included in all new and existing solicitations and contracts involving performance in Iraq and Afghanistan. In addition to requiring contractors to report alleged UCMJ offenses, including sexual assault, to the appropriate investigative authorities, the deviation requires contractors to provide all contractor employees with information on how and where to report alleged crimes and resources for victim and witness protection and assistance. We commend the USD(AT&L) for its efforts in issuing the Class Deviation 2009-O0014.

U.S. Central Command Comments

Although not required to comment, the Chief of Staff agreed with the recommendations. However, the Chief of Staff suggested that the report include subsection (m) of Article 120 of the UCMJ, “wrongful sexual contact,” as an all-inclusive offense that defines sexual assault. For a full text of U.S. Central Command comments, see the Management Comments section of the report.

Our Response

We discussed the UCMJ definition of wrongful sexual contact in Appendix D of the draft report. See Appendix E in the final report.

Department of the Army Comments

Although not required to comment, the Assistant Secretary of the Army (Manpower and Reserve Affairs) stated that the recommendation to require contractor employees to report sexual assault cases to Military law enforcement would result in an increased number of sexual assault cases reported to the Army Criminal Investigative Command for investigation. Further, the Assistant Secretary of the Army stated that the report should address the funding required for the Army to hire the additional investigative and medical personnel needed to handle the increased workload that would result from contractor employees reporting sexual assaults to Army Criminal Investigative Command. For the full text of Army comments, see the Management Comments section of the report.

Our Response

As part of our audit, we reviewed laws, Federal Acquisition Regulations (FAR), DFARS, DOD Instructions, and other DOD guidance to determine whether DOD established relevant criteria and contract clauses that address contractor awareness, prevention, and reporting of sexual assault. We did not review the Army’s manpower and budget data; therefore, we defer Army manpower and budget concerns and decisions to Army management.

A.2. We recommend that the Under Secretary of Defense for Personnel and Readiness:

a. Modify DOD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” and DOD Instruction 6495.02, “Sexual Assault Prevention and Response Program Procedures,” to:

1. Establish prevention, awareness, and reporting requirements and procedures specifically for DOD contractors who are U.S. citizens and accompany the U.S. Armed Forces in contingency operations; and

2. Direct the Military Services to track and annually report alleged sexual assault cases involving DOD contractors for incorporation into the annual DOD Sexual Assault Report to Congress.

b. Establish guidance to ensure that combatant commanders require mandatory training on sexual assault prevention, reporting, and response for contractor employees prior to deployment to contingency operations.

Under Secretary of Defense for Personnel and Readiness Comments

The USD(P&R) agreed with Recommendations A.2.a.1 and A.2.b. The USD(P&R) stated that the Sexual Assault Prevention and Response Office (SAPRO) will be directed to expand the current SAPR policy in DOD Directive 6495.01 and DOD Instruction 6495.02 to include DOD contractors who are U.S. citizens and accompany U.S. Armed Forces in contingency operations outside of the continental U.S. As a result, those DOD contractors will be provided with restricted and unrestricted reporting options. Further, the USD(P&R) stated that the office will direct SAPRO to coordinate with USD(AT&L) to develop guidance on sexual assault prevention, awareness, and reporting training requirements for DOD contractors who are U.S. citizens and accompany the U.S. Armed Forces in contingency operations.

The USD(P&R) did not agree with Recommendation A.2.a.2. The USD(P&R) stated that the recommended requirement for DOD contractors to report alleged sexual assault crimes in the DOD Sexual Assault Report to Congress would undermine the USD(P&R) planned extension of the SAPR program to specific DOD contractors. Specifically, the USD(P&R) was concerned with the reliability of contractor-reported data and potential duplication of data collected and reported by both DOD contractors and the Military Services. The USD(P&R) believed that the planned expansion of the SAPR program, to include reporting options made available to specific DOD contractors, will already allow sexual assault crimes reported to Military health care providers or Military investigators to be tracked through the Defense Sexual Assault Incident Database. This database is currently under development and will provide verifiable sexual assault crime data for inclusion in the annual report to Congress.

Our Response

The USD(P&R) comments were responsive and meet the intent of Recommendations A.2.a.1 and A.2.b. We acknowledged that the draft report language for Recommendation A.2.a.2 did not adequately convey the intent of the recommendation, which was to place the responsibility of managing and reporting contractor sexual assault data with the Military Services. Therefore, we revised the recommendation to provide clarity. Based on the revision to the recommendation, we also considered the USD(P&R) comments responsive to Recommendation A.2.a.2.

U.S. Central Command Comments

Although not required to comment, the Chief of Staff agreed with the recommendations.

Department of the Army Comments

Although not required to comment, the Assistant Secretary of the Army (Manpower and Reserve Affairs) did not agree with Recommendations A.2.a.1 and A.2.a.2 as written. The Assistant Secretary noted that Recommendation A.2.a.1 is intended to establish sexual assault awareness, prevention, and reporting requirements for “DOD contractors” who are U.S. citizens, but suggested that the recommendation should be intended for “DOD contract employees.” The Assistant Secretary of the Army also stated that the recommendation should not exclude contractor employees who are not U.S. citizens. Regarding Recommendation A.2.a.2, the Assistant Secretary of the Army stated that the validity of the Military law enforcement sexual assault data would be better than contractor-reported data and that DOD would incur additional costs if the contractor is required to track and annually report sexual assault data. The Assistant Secretary of the Army stated that duplicative reporting could occur when both Military law enforcement and DOD contractors are tracking and reporting sexual assault cases involving DOD contractors. Therefore, the Assistant Secretary of the Army suggested revising the recommendation to require Military law enforcement to track sexual assault cases involving DOD contractors and annually report the data to Congress.

Our Response

Our reference to DOD contractors who are U.S. citizens in Recommendation A.2.a.1 includes all of the U.S. citizens employed by DOD contractors. Therefore, we believe that the recommendation language is adequate. Additionally, at the request of Congress, the scope of our audit only focused on U.S. citizens; therefore, we did not develop recommendations that would impact contractor employees who are not U.S. citizens. We also revised Recommendation A.2.a.2 to emphasize that the Military Services should track and report sexual assault crimes involving DOD contractors.

A.3. We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology require all Army contracting officers to ensure that a specific deployment center is designated in all contracts for contractors accompanying U.S. Armed Forces prior to deployment to contingency operations.

Department of the Army Comments

The Assistant Secretary of the Army (Manpower and Reserve Affairs) agreed with the recommendation. However, the Assistant Secretary of the Army suggested that the recommendation language be revised to be more consistent with DFARS clause 252.225-7040 and DOD Instruction 3020.41. Specifically, the Assistant Secretary of the Army suggested that the language be revised to ensure that a specific “pre-deployment training location” is designated in contracts awarded to contractors accompanying U.S. Armed Forces instead of a specific “deployment location” as stated in the draft report recommendation.

Our Response

The Army’s comments were responsive and they meet the intent of the recommendation. We recognized the Assistant Secretary of the Army’s interpretation of our use of the term

“deployment location” as the place of performance, and revised the language to clarify the original intent of the recommendation, which was for Army contracting officers to designate in all contracts a specific deployment center for contractor employees to attend prior to deployment to contingency operations.

U.S. Central Command Comments

Although not required to comment, the Chief of Staff agreed with the recommendation.

A.4. We recommend that the Assistant Secretary of the Air Force for Acquisition require all Air Force contracting officers to ensure that a specific deployment center is designated in all contracts awarded to contractors accompanying U.S. Armed Forces.

Department of the Air Force Comments

The Military Deputy, Assistant Secretary of the Air Force for Acquisition, agreed with the recommendation. The Military Deputy stated that the Deputy Assistant Secretary of the Air Force for Contracting will draft a memorandum that directs Air Force contracting officers to ensure that contractors report to deployment centers that provide sexual assault prevention and response training, thereby complying with DFARS clause 252.225-7040 and DOD Instruction 3020.41.

Our Response

The Air Force comments were responsive and the planned actions meet the intent of the recommendation.

U.S. Central Command Comments

Although not required to comment, the Chief of Staff agreed with the recommendation.

Finding B. Contractor Self-Deployment Training

The Army Deputy Chief of Staff, G-3/5/7, and Air Force contracting officers did not provide adequate oversight of the contractor deployment training for sexual assault prevention and response in support of Operations Enduring Freedom (OEF) and Iraqi Freedom (OIF) areas of operation. The contractor deployment training for sexual assault prevention and response lacked adequate oversight because the Army Deputy Chief of Staff, G-3/5/7, inappropriately approved the Kellogg, Brown, and Root Services, Inc. (KBR) Continental United States Replacement Center (CRC) and Fluor Corporation (Fluor) CRC operations. Specifically, the Deputy Chief of Staff determined that the KBR and Fluor pre-deployment training met Government standards, despite the contractors' sexual assault awareness and reporting training not meeting the minimum U.S. Central Command (CENTCOM) theater-specific individual requirement training (TSIRT) offered to DOD personnel at the Army CRC, as required by DOD Instruction 3020.41. Additionally, the Air Force contracting officers allowed contractor employees to process through Tyndall Air Force Base or other sites determined by the contractor without ensuring that sexual assault prevention and response training was completed. As a result, U.S. contractor employees deployed in-theater will continue to be at risk of becoming either victims of or witnesses to sexual assault without effective training on sexual assault prevention techniques and reporting procedures.

Guidance

DOD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," October 3, 2005, requires that a deployment center be designated in the contract for contractors to complete required training. Further, the DOD Instruction authorizes contracting officers to approve contractor-performed theater admission processing only after obtaining approval from the Military Component and ensuring that all DOD deployment center requirements are met.

6.2.7.11. Contractor-Performed Theater Admission Processing. **Contracting officers may authorize contractor-performed theater admission processing because of the number of CDF,⁹ frequency of CDF deployment, or large amounts of equipment. Contracting officers shall coordinate with and obtain approval from the appropriate Military Department or agency and ensure all requirements of the DoD deployment centers are met.** Defense contractors shall establish initial CDF accountability by entering contractor personnel data in the joint database addressed in subparagraph 6.2.6. The DoD Components shall validate CDF accountability information in the database at the JRC¹⁰ or other points as necessary. The use of contractor-performed theater admission processing does not negate the responsibility for all CDF to process through the JRC. **[Emphasis added]**

⁹ Contractors Deploying With the Force.

¹⁰ Joint Reception Center.

On June 1, 2006, the Army Training and Doctrine Command developed the Army Sexual Assault Prevention and Response Program training point of instruction. Fort Benning, Georgia, which CENTCOM approved as the CRC to process all personnel, including contractors, for deployment, implemented the training into its curriculum in FY 2007 and also satisfied the CENTCOM TSIRT. According to a Fort Benning CRC training official, contractors who attend Fort Benning CRC are required to complete instructor-based TSIRT, which includes SAPR training in order to qualify for deployment into theater.

Contractor Deployment

The Army Deputy Chief of Staff, G-3/5/7, office concluded that the KBR and Fluor CRCs met Government standards for pre-deployment training, despite the training not being commensurate with the minimum CENTCOM TSIRT. According to an Army Deputy Chief of Staff, G-3/5/7, official, the KBR and Fluor CRCs were approved for operations in order to permit them to continue to operate their facilities for deployment operations while they continued to mirror their pre-deployment training after the Fort Benning CRC courses. Since April 2007, Fort Benning, Georgia, has been the only operational DOD CRC authorized to process non-unit-related Military personnel, DOD civilians, and contractors for deployment to OEF and OIF areas of operation. The DOD mission in Iraq and Afghanistan has required as many contractor personnel as Military Service members for deployment. Contractor employees may have to wait as long as 4 weeks to attend the 1-week CRC training because of the high volume of personnel scheduled for processing. DOD Instruction 3020.41 authorizes contractor-performed theater admission processing because of the number of contractor employees, frequency of contractor deployment, or large amounts of equipment. However, the instruction also requires that contractors meet all DOD deployment center requirements.

Army Oversight

Prior to June 2008, the Army Deputy Chief of Staff, G-1, was the proponent for CRC operations. However, the Army Deputy Chief of Staff, G-1, never performed a review of KBR CRC operations, which has been operational for a minimum of 10 years. On June 27, 2008, the responsibility was transferred to the Army Deputy Chief of Staff, G-3/5/7, under a memorandum of understanding between the two offices. The Army Deputy Chief of Staff, G-3/5/7, is the authority on mobilization, training, and validation of CRC operations. In March 2009, the Army Deputy Chief of Staff G-3/5/7, developed a draft instruction for validating contractor CRCs annually; however, the guidance has not been finalized and implemented. On May 29, 2009, the Chief of the Mobilization Division within the Army Deputy Chief of Staff, G-3/5/7, approved CRC operations¹¹ for KBR and Fluor and concluded that both contractors met Government standards, despite the contractors failing to develop DOD-commensurate sexual assault prevention and response (SAPR) training for their employees to complete.

¹¹ The Army Chief of Staff, G-3/5/7, referred to the contractor CRC operations as contractor individual replacement deployment operations in the memorandum dated May 29, 2009; however, the two terms may be used interchangeably.

KBR Review

During our site visit to the KBR CRC on February 2, 2009, a KBR attorney stated that KBR did not offer SAPR training to its employees as part of its CRC training program. The KBR training program included courses on its corporate code of business conduct and sexual harassment training. On April 8, 2009, an inspection team consisting of personnel from the Army Deputy Chiefs of Staff, G-3/5/7 and G-4; Army Contracting Command; and Defense Contract Management Agency conducted a site visit to inspect the KBR CRC to ensure consistency with the Fort Benning CRC training operations. This was the first documented trip to inspect the KBR CRC, despite the CENTCOM SAPR TSIRT requirement being in place since the beginning of FY 2007. The Chief of the Actions Branch within the Army Deputy Chief of Staff, G-3/5/7, determined that the KBR CRC did not meet the Fort Benning CRC TSIRT that includes SAPR training. Despite the pre-deployment training deficiency, the Chief of the Actions Branch recommended that the Army use the KBR CRC during surge requirements as an option to process contractors from other companies to OEF and OIF areas of operation. On April 29, 2009, the Chief of the Logistics Civil Augmentation Program (LOGCAP) Contracting Branch, within the Department of the Army Rock Island Contracting Center, instructed KBR to comply with the Army Deployment Processing Center and CRC guidelines for training and all CRC-related requirements. However, on May 29, 2009, the Chief of the Mobilization Division within the Army Deputy Chief of Staff, G-3/5/7, concluded that the KBR CRC met pre-deployment training standards and recommended that the KBR CRC operations continue. A KBR attorney and project manager both maintained that KBR did not offer SAPR training, which is part of the CENTCOM TSIRT, and even requested DOD assistance in developing contractor SAPR training. Specifically, the KBR attorney stated in an e-mail, dated July 21, 2009:

I spoke to [the project manager] and he explained that the Army review was a very high level review in which the reviewer orally read out a checklist of training provided by the Army in its predeployment processing and asked [the project manager] and his team to confirm whether we provided similar training. [The project manager] does not recall what exactly the reviewer said with regards to sexual assault/harassment training **but our folks gave the reviewer the same information I previously provided to you, the Female Security Briefing and Preventing Discrimination/Harassment in the Workplace training.**

I have also been told that our CRC team and Employee Relations Group are working on putting together a sexual assault prevention training. If there are specific training materials that the military uses and that we can use as a guideline we would greatly welcome having access to them. [Emphasis added]

According to the Army Contracting Command LOGCAP Operations and Readiness Branch Chief, his office did not conduct an initial site visit prior to April 2009 because the KBR CRC had already been operational for many years and he assumed the CRC would be in compliance with most of the Fort Benning CRC requirements. Based on the pre-deployment training material reviewed during our site visit in February 2009 and KBR officials' e-mail testimony, the Chief of the Mobilization Division within the Army Deputy Chief of Staff, G-3/5/7, should not have concluded that the KBR CRC met Army pre-deployment training standards, which includes SAPR training. We believe the Chief

of Staff of the Army should require the Army Deputy Chief of Staff, G-3/5/7, to perform a detailed review of KBR CRC operations to ensure all aspects of the training, including SAPR, meet the requirements of the Fort Benning CRC training before approving the KBR CRC for operations.

KBR SAPR Training Update

In October 2009, following our audit site visit in February 2009, and the Army Deputy Chief of Staff, G-3/5/7, site visit in April 2009, KBR developed a draft SAPR training briefing, "Draft KBR LOGCAP III Sexual Assault Prevention and Response." However, KBR's SAPR training has not been finalized and implemented into the KBR CRC operations. Further, the KBR SAPR training applies to contractor employees assigned to the LOGCAP III project and excludes employees assigned to other projects that support contingency operations in OEF and OIF areas of operation.

Fluor Review

The inspection team led by the Army Deputy Chief of Staff, G-3/5/7, conducted a site visit at the Fluor CRC on April 10, 2009, to inspect contractor TSIRT for compliance with Fort Benning CRC training. Based in part on the Army Contracting Command LOGCAP Operations and Readiness Branch Chief's findings that Fluor was conducting SAPR training, the Army Deputy Chief of Staff, G-3/5/7, Mobilization Division Chief concluded that the Fluor CRC met all Government standards for deployment operations on May 29, 2009. While Fluor did offer SAPR training, the Army did not review the training for adequacy.

The Fluor SAPR training is offered to employees through an electronic presentation that cites excerpts from Army Regulation 600-20, chapter 8, "Sexual Assault Prevention and Response Program," which includes the Army's sexual assault definition and program goals. The Army definition used by Fluor states:

Sexual assault is a crime defined as intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts... "Consent" will not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, or coercion or when the victim is asleep, incapacitated, or unconscious.

Fluor SAPR training was partially consistent with Army SAPR training by providing its employees with the awareness of acts that constitute sexual assault and its legal classification as a felony offense; however, Fluor's reporting procedures were inadequate and inconsistent with the Army SAPR training. Specifically, one of Fluor's training objectives was to provide confidential reporting to Fluor supervisors and human resource representatives as the only method for reporting sexual assaults. The Army SAPR training offered at the Fort Benning CRC reinforces the Army SAPR guidance from Army Regulation 600-20, which provides Military personnel with procedures for unrestricted reporting to Military law enforcement for criminal investigation and restricted reporting to victim advocates, sexual assault response coordinators, health care

providers, and chaplains. Most state statutes require unrestricted reporting of injuries that result from criminal conduct such as sexual assault, and a few state statutes require unrestricted reporting specifically for sexual assault.¹² However, since contractor employees are living and working in Iraq and Afghanistan, Federal statutes would be more applicable, but there are no Federal statutes that address sexual assault reporting options. With the absence of Federal statutes that address how contractor employees may report a sexual assault, a sexual assault incident should, at a minimum, be reported to local law enforcement since it is a criminal offense. However, Fluor instructed its employees in Iraq and Afghanistan to report sexual assault incidents to internal company representatives and provided no additional procedures for notifying local Military law enforcement of such crimes for criminal investigation. The Army Deputy Chief of Staff, G-3/5/7, performed a review of the Fluor CRC training to ensure that the contractor was providing SAPR training, which is a CENTCOM TSIRT area. The Army Deputy Chief of Staff, G-3/5/7, should have also reviewed the actual training content for adequacy in preparing and protecting contractor employees who are members of the DOD total force in Iraq and Afghanistan.

Air Force Oversight of the Contractor Deployment Process

Of the six Air Force contracts that did not designate a deployment center location as required by DOD Instruction 3020.41, two contracts were awarded to Innovative Technical Solutions, Inc. (ITSI). The ITSI Human Resources Director and Project Manager stated that ITSI provided its own in-theater training, which did not include sexual assault prevention training. In addition, contractor employees deployed from their home cities in the United States to Iraq and Afghanistan without obtaining the benefit of receiving SAPR training at the Fort Benning CRC. Air Force contracting personnel explained that the Air Force contracting officers did not designate a deployment center for ITSI because the contracting officers delegated deployment processing and selection of deployment center to the contractor. In addition, Air Force contracting officers did not verify that the contractors satisfied the CENTCOM TSIRT.

In accordance with DOD Instruction 3020.41, the Air Force contracting officer designated Tyndall Air Force Base as the deployment center for Readiness Management Support, LC (RMS) on contract FA3002-06-D-0006. While the Tyndall Air Force Base deployment process involved medical, dental, and security screenings, the deployment process did not include SAPR training. The Fort Benning CRC required contractors to complete the SAPR TSIRT. The lack of consistency in deployment training requirements can be attributed to CENTCOM not standardizing the TSIRT requirements for all contractors to ensure that SAPR training was completed prior to deployment, regardless of the contractor's deployment center location. Therefore, the Air Force contracting officer was not required to ensure that RMS employees completed SAPR training at Tyndall Air Force Base.

¹² The conclusion on state statute coverage of sexual assault reporting was taken from a SAPR Report, "Rape and Sexual Assault Reporting Requirements for Competent Adult Victims," January 11, 2007.

Air Force contracting officers need to ensure that the designated deployment centers offer the mandatory TSIRTs, including SAPR training, as required by DOD Instruction 3020.41.

Conclusion

Inadequate oversight of DOD contractors' deployment training processes in order to expedite execution of contracted work could jeopardize the DOD operations that the contractor employees support. Specifically, the Air Force contracting officers' failure to designate a deployment center contributed to ITSI employees not completing required SAPR training. Additionally, the Army officials' review and approval of the KBR and Fluor CRC operations did not ensure that the contractors had adequate SAPR training that was comparable to the requirements at Fort Benning CRC. The objective of the SAPR training offered at the Fort Benning CRC is to eliminate occurrences of sexual assault by providing attendees with information that promotes awareness, prevention, and reporting of sexual assault. While the SAPR training is tailored towards Military personnel, the Fort Benning CRC requirement that all contractor employees must complete the SAPR training adds value to the DOD total force by protecting all components of the DOD total force through awareness and prevention. When Military Components and contracting officers do not ensure that the DOD interests are protected by ensuring that contractor employees are aware of effective sexual assault prevention techniques and reporting procedures through SAPR training, the operational effectiveness of the DOD total force is potentially weakened.

Recommendations, Managements Comments, and Our Response

B.1 We recommend that the Chief of Staff of the Army require the Army Deputy Chief of Staff, G-3/5/7, to:

a. Review DOD contractor deployment operations and ensure that the minimum U.S. Central Command deployment training requirements are met before approving DOD contractor individual replacement deployment operations, as required by DOD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces"; and

b. Review the adequacy of contractor deployment training, including sexual assault prevention and response training, to ensure that the contractor training is comparable to theater-specific individual requirement training offered at the Army Continental United States Replacement Centers.

Department of the Army Comments

The Assistant Secretary of the Army (Manpower and Reserve Affairs) agreed with both of the recommendations. The Assistant Secretary indicated that the Army Deputy Chief of Staff, G-3/5/7, is reviewing the contract statement of work and training requirements to ensure compliance with the U.S. Central Command's theater-specific individual requirements training for pre-deployment. Additionally, the Assistant Secretary stated that the Army Deputy Chief of Staff, G-3/5/7, will use the U.S. Central Command's

required theater-specific training curriculum as a benchmark to measure the adequacy of the contractor pre-deployment training course curriculum.

Our Response

The Army's comments are responsive and the planned actions meet the intent of the recommendation.

U.S. Central Command Comments

Although not required to comment, the Chief of Staff agreed with the recommendations.

B.2. We recommend that the Assistant Secretary of the Air Force for Acquisition require Air Force contracting officers to ensure that designated deployment centers offer deployment training for contractors that meets all U.S. Central Command deployment requirements, such as sexual assault prevention and response training, as required by DOD Instruction 3020.41.

Department of the Air Force Comments

The Military Deputy, Assistant Secretary of the Air Force for Acquisition, agreed with the recommendation. The Military Deputy stated that the Deputy Assistant Secretary of the Air Force for Contracting will obtain a list from U.S. Central Command of deployment centers that offer sexual assault prevention and response training. Additionally, the Deputy Assistant Secretary will direct Air Force contracting officers to comply with DOD Instruction 3020.41 by establishing a requirement in the statement of work that directs contractors to attend the deployment centers that offer sexual assault prevention and response training.

Our Response

The Air Force comments are responsive and the planned actions meet the intent of the recommendation.

U.S. Central Command Comments

Although not required to comment, the Chief of Staff agreed with the recommendation.

Appendix A. Scope and Methodology

We conducted this performance audit from June 2008 through November 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of our audit, we reviewed 22 contracts awarded to 10 DOD contractors to identify the policies, procedures, and contractual requirements that address prevention of sexual assault and sexual harassment and contractor accountability. Specifically, we reviewed laws, Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulations (DFARS), DOD Instructions, Joint Contracting Command clauses, and Secretary of Defense guidance to obtain relevant criteria and contract clauses that address prevention of sexual assault and sexual harassment and contractor accountability. Additionally, we reviewed contractor training material to determine whether contractors provided their employees with sexual assault and sexual harassment awareness.

The 10 DOD contractors were selected based on the following criteria: U.S.-based companies; contracting actions awarded in FY 2006 and FY 2007; and combined FY 2006 and FY 2007 contracting actions equal to or exceeding \$250 million. The contractors reviewed were AECOM; Environmental Chemical Corporation; Fluor Corporation; ITT Corporation, Systems Division; Innovative Technical Solutions, Inc.; Kellogg, Brown, and Root Services, Inc.; L-3 Communications; Parsons Corporation; Readiness Management Support, LC; and Tetra Tech, Inc.

We selected 22 contracts awarded to 10 contractors based on the following criteria: a minimum dollar threshold of \$5 million; work place of performance in Iraq and Afghanistan; and contracts for services. The 22 contracts were awarded between FY 1997 and FY 2006. The list of contracts is shown in Table C-1 in Appendix C.

We met with personnel from the Sexual Assault Prevention and Response Office, Under Secretary of Defense for Personnel and Readiness; Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; and personnel from Army, Air Force, Marine Corps, Navy, and U.S. Army Corps of Engineers contracting commands and manpower and reserve affairs offices in July and August 2008. We performed site visits at each of the contractor locations from November 2008 through February 2009 to review contractor company policies and procedures applicable to only U.S. citizens that address sexual assault and sexual harassment awareness, prevention, and reporting. The contractor site visits were a coordinated effort with personnel from the DOD Office of Inspector General, Assistant Inspector General for Investigative Policy and Oversight, in support of their Report No. IPO2010E001, "Evaluation of DOD Sexual Assault Response In Operations Enduring and Iraqi Freedom Areas of Operation," February 1, 2010. We also visited the Fort

Benning Continental United States Replacement Center (CRC) in April 2009 to review deployment training requirements. While at the CRC, we attended the sexual assault prevention and response training course completed by Military, civilian, and contractor personnel.

Use of Computer-Processed Data

We relied upon computer-processed data through the use of Federal Procurement Data System – Next Generation and the Army Contracting Business Intelligence System to select contracts and task orders to review for contractual language that addressed sexual assault and sexual harassment specifically in the areas of prevention and assistance and contractor accountability. The Federal Procurement Data System – Next Generation is a Web-based tool for Federal agencies to report contract actions. The Army Contracting Business Intelligence System is an Army contract database used by the U.S. Army Corps of Engineers that extracts and stores all U.S. Army Corps of Engineers contract actions. We did not assess the reliability of the Federal Procurement Data System – Next Generation because it is a Government-wide system that stores contract data that the Director, Defense Procurement and Acquisition Policy, verifies and validates annually with the most recent verification and validation approved for FY 2007, which is the ending time period of our contract data. Further, we assessed the reliability of the Army Contracting Business Intelligence System by comparing the data with the source hard copy contract task orders, which resulted in minimal discrepancies. The Federal Procurement Data System – Next Generation and Army Contracting Business Intelligence System were relied upon to select contracts for review of contractual provisions relating to sexual assault and sexual harassment only; therefore, the reliability of the databases did not significantly affect our audit results.

Prior Coverage

No prior coverage has been conducted on DOD policies on sexual assault and sexual harassment regarding DOD contractors during the last 5 years.

Appendix B. Congressional Request Memorandum

Congress of the United States
Washington, DC 20515

Claude M. Kicklighter
Inspector General
Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-4704

April 21, 2008

Dear Inspector General:

Thank you for your letter informing us of the IG's evaluation of the DoD response to sexual assault in operations in Iraq and Afghanistan. While we find it encouraging that the DoD has charged the Inspector General to address our concerns, we urge you to expand the scope of the IG's effort. Additionally, we request to be involved throughout and receive regular updates of the IG's evaluation.

The affidavits filed in the case of Jamie Leigh Jones show an alarming pattern of widespread sexual assault and harassment among government contracted employees, environments that condone and support such behavior, and retaliation against victims who come forward regarding these crimes. Indeed it seems contractors prefer to sweep allegations under the rug and out of the public view because billions of dollars, taxpayer dollars, are at stake.

According to the IG's Memorandum, the scope of the evaluation is limited to policies and procedures following a sexual assault. Certainly, the case of Jamie Leigh Jones and others indicate that the aftermath of sexual assault is critical. However, we believe the severity of the situation requires a far broader investigation.

In addition to the IG's current objectives, please investigate DoD Contractors in the following areas of concern:

Prevention and Assistance

Has the DoD provided government contracted employees with sexual assault and sexual harassment training and who is providing that training? Has the DoD provided such employees – American citizens – with information regarding their rights as crime victims and available resources for dealing with the aftermath of victimization? What is the DoD doing to assist Americans living and working in Iraq that are victims of crime? Does the DoD include language in contracts requiring contractors to ensure their employees live and work in non-hostile/non-violent environments? What is the DoD's policy for mandating that such language is included in all contractor employment agreements?

Offenders

What is the DoD policy for dealing with alleged offenders? What safety mechanisms are put in place after a report of sexual assault to ensure the safety of the victim and other potential victims? Are the alleged offenders removed or suspended from their position?

Appendix B. Congressional Request Memorandum (cont'd)

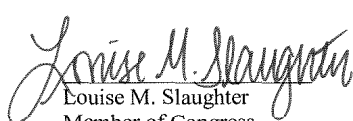
Contractor Accountability

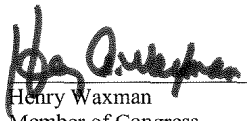
What types of control and enforcement policies does the DoD have over KBR and other grantees of DoD contracts when their employees commit violent crimes? Were there contractual repercussions for KBR following the above accusations? Are DoD contractors required to inform DoD when complaints of sexual assault and harassment are lodged against contracted employees?

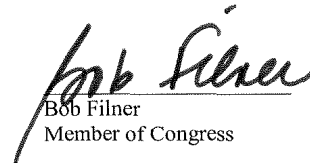
Finally, as your letter states, the IG announced an *evaluation* of DoD policy and practices to ensure sexual assaults in Operation Iraqi Freedom are properly processed. The hostile environment towards women including sexual harassment and assault among DoD contractors calls for an *investigation* by the IG. We hope that you will revise your effort accordingly.


Thank you for your consideration of our requests.

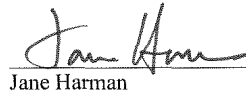
Sincerely,


Louise M. Slaughter
Member of Congress


Henry Waxman
Member of Congress


Bob Filner
Member of Congress


Ted Poe
Member of Congress


Jane Harman
Member of Congress

Cc: Department of Defense Secretary Robert Gates

Appendix C. Audit Response to Congressional Questions

On April 21, 2008, Representatives Louise Slaughter, Henry Waxman, Bob Filner, Ted Poe, and Jane Harman requested the DOD Office of Inspector General (OIG) to review DOD contractors in the areas of prevention and assistance, handling of offenders, and contractor accountability due to concerns about sexual assault and harassment allegations among Government-contracted employees. The DOD OIG, Deputy Inspector General (IG) for Auditing, collaborated with the Assistant IG for Investigative Policy and Oversight (AIG-IPO) to respond to questions that were specific to the Components' respective expertise. Audit responses are discussed below. AIG-IPO responses are discussed in Appendix D.

Congressional Question 1. “Has the DoD provided government contracted employees with sexual assault and sexual harassment training and who is providing that training?”

Response 1. Partially. The Army requires all personnel who attend the only existing Continental United States Replacement Center (CRC) at Fort Benning, Georgia, to complete theater-specific individual requirement training, which includes Sexual Assault Prevention and Response (SAPR) and Prevention of Sexual Harassment training courses developed by the Army Training and Doctrine Command. However, contractor employees attend the Army CRC only when it is written in their contracts. Contractor employees who do not attend the Fort Benning CRC do not receive DOD-instructed sexual assault and sexual harassment training. Other DOD locations such as Tyndall Air Force Base used by the Air Force and the Transatlantic Program Center used by the U.S. Army Corps of Engineers are utilized for some aspects of deployment processing; however, those deployment centers are not approved CRCs.

Based on our review of 10 DOD contractors' policies, we determined that all of the contractors provided their company versions of sexual harassment training to their employees, but only 2 of the 10 contractors (Fluor Corporation and Readiness Management Support, LC) provided sexual assault prevention training. Additionally, we identified that 2 of the 10 contractors (Kellogg, Brown, and Root Services, Inc. and Fluor Corporation) were authorized by DOD to operate their own contractor deployment training programs. DOD Instruction 3020.41 requires that the contractor deployment training programs meet DOD CRC deployment training standards, which include sexual assault prevention and response training. However, DOD has not ensured that these standards are being adequately met by the contractors (Finding B).

Congressional Question 2. “Has the DoD provided such employees – American citizens – with information regarding their rights as crime victims and available resources for dealing with the aftermath of victimization? What is the DoD doing to assist Americans living and working in Iraq that are victims of crime?”

Response 2. AIG-IPO addresses these questions in Appendix D.

Congressional Question 3. “Does the DoD include language in contracts requiring contractors to ensure their employees live and work in non-hostile/non-violent environments?”

Response 3. Yes. We identified several contract clauses and a DOD instruction that provided requirements that could contribute to contractor employees living and working in nonhostile/nonviolent work environments.

Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7040, “Contractor Personnel Supporting a Force Deployed Outside the United States,” June 2005,^{*} requires contractor personnel who accompany Armed Forces outside the U.S. to comply with U.S. laws, regulations, directives, instructions, policies, and procedures. We identified that 12 of 22 contracts contained provisional language that required contractors to comply with U.S. laws; 1 contract did not contain the clause even though it was required to be in the contract; and the remaining 9 contracts were not required to contain the clause because either the contracts were awarded before the clause was effective or the contracts were granted a DFARS deviation. See Table C-1 for details.

Federal Acquisition Regulation (FAR) clause 52.203-13, “Contractor Code of Business Ethics and Conduct,” December 2007, requires the contractor to have a written code of business ethics and conduct and an ongoing business ethics and conduct awareness program. However, none of the 22 contracts reviewed required the 10 DOD contractors to have a written code of business ethics and conduct because the requirement was not effective until after the contracts were awarded and therefore, did not apply. Additionally, FAR Subpart 3.10, “Contractor Code of Business Ethics and Conduct,” December 2007, exempted contractors performing work entirely outside of the United States from having a written code. See Table C-1 for details. In December 2008, FAR 3.10 was revised to eliminate the place of performance exemption for the inclusion of FAR 52.203-13. Additionally, in December 2008, FAR 52.203-13 was revised to require contractors to exercise due diligence to prevent and detect criminal conduct and otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

FAR 52.222-26, “Equal Opportunity,” March 2007, requires contractors to comply with Executive Order 11246, “Equal Employment Opportunity,” and prohibit discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin. Twenty-one contracts included Equal Employment Opportunity provisions that prohibited all forms of discrimination, including sexual harassment. See Table C-1 for details.

^{*} The requirement for contractors accompanying Armed Forces outside of the U.S. to comply with U.S. laws, regulations, directives, instructions, policies, and procedures originated in the June 2005 version of DFARS 252.225-7040; therefore, this version was used as the criteria to analyze the 22 sampled DOD contracts for compliance. The same requirement is still included in the July 2009 version of DFARS 252.225-7040.

FAR 52.222-27, “Affirmative Action Compliance Requirements for Construction,” February 1999, requires contractors to maintain a working environment free of harassment, intimidation, and coercion at all construction sites. This clause is restricted to only construction contracts. We determined that 12 of 22 contracts included provisions for the contractor to maintain a harassment-free environment; 1 of 22 contracts did not include the required provision; and 9 of 22 contracts were not construction contracts; therefore, the contracts were exempt from the clause. See Table C-1 for details.

DOD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” October 2005, and DFARS 252.225-7040, June 2005, require the contracting officer to designate a Military deployment center or a contractor deployment training center for the contractor to attend to ensure completion of required DOD deployment training. We determined that 9 of 22 contracts contained designated deployment centers for contractors; 7 of 22 contracts did not designate a required deployment center (6 Air Force contracts and 1 Army contract); and 6 of 22 contracts were not required to have a designated deployment center because the original requirement was not effective when the contracts were awarded. See Table C-1 for details.

U.S. Central Command (CENTCOM) includes Sexual Assault Prevention and Response and Prevention of Sexual Harassment training courses as part of the deployment training requirements for its areas of responsibility. These training courses, if completed by contractor employees, should contribute to a nonhostile/nonviolent work environment. However, based on our review of 22 sampled contracts, DOD contracting officers did not always designate a deployment center and ensure that contractor employees complete the SAPR training course (Finding B).

Congressional Question 4. “What is the DoD’s policy for mandating that such language is included in all contractor employment agreements?”

Response 4. DOD does not have any policies that mandate specific language be included in contractor employment agreements.

Congressional Question 5. “What is the DoD policy for dealing with alleged offenders?”

Response 5. AIG-IPO addresses this question in Appendix D.

Congressional Question 6. “What safety mechanisms are put in place after a report of sexual assault to ensure the safety of the victim and other potential victims? Are the alleged offenders removed or suspended from their position?”

Response 6. AIG-IPO addresses these questions in Appendix D.

Congressional Question 7. “What types of control and enforcement policies does the DoD have over KBR and other grantees of DoD contracts when their employees commit violent crimes?”

Response 7. DOD can enforce Federal and Military law under the Uniform Code of Military Justice (UCMJ). On October 17, 2006, the UCMJ (10 U.S.C. §802) extended legal jurisdiction over DOD contractor personnel serving with or accompanying Armed Forces personnel overseas in contingency operations. Further, section 920 of the UCMJ establishes sexual assault as a felony and states that any person who commits sexual assault is punishable under court-martial. We identified 4 of 22 contracts that included language that informed DOD contractors that they were subject to the UCMJ; the remaining 18 contracts did not contain UCMJ provisions because the law was not passed until after the contracts were awarded. See Table C-1 for details. Contractors have also been notified of the UCMJ applicability to contractors in DOD guidance and DFARS clauses in contracts.

On March 10, 2008, the Secretary of Defense issued a memorandum, “UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,” which provides additional guidance to commanders on the exercise of their UCMJ authority during contingency operations. Specifically, the Secretary of Defense granted commanders authority to inquire about or investigate any crime allegedly committed by any person, including contractors, that is subject to UCMJ and Military Extraterritorial Jurisdiction Act (MEJA) jurisdiction. Additionally, Military law enforcement is authorized to apprehend, detain, and arrest all persons subject to the UCMJ and MEJA.

DFARS 252.225-7040 states that any contractor personnel who commit crimes outside the United States, that if committed in the U.S. would constitute an offense punishable by imprisonment for more than 1 year, may potentially be subject to the criminal jurisdiction of the United States in accordance with the MEJA.

Congressional Question 8. Are there contractual repercussions for DOD contractors when their contractor employees commit violent crimes?

Response 8. Yes. The FAR and DFARS prescribe contractual repercussions for contractors or contractor employees who commit criminal acts. We identified 12 of 22 DOD contracts that contained language related to contractors who either commit violations of law or approve or are aware of contractor employees’ violations of law. We identified one contract that did not contain any DFARS language that addressed contractual repercussions. We identified nine contracts that were not required to include such language because either the requirement was not effective until after the contracts were awarded or the contracts were granted a DFARS deviation. See Table C-1 for details.

FAR Subpart 9.406-5, “Debarment,” October 1995, provides the Government with the option of imposing debarment or suspension as sanctions against a contractor to protect the Government’s interest when the agent of the contractor, such as an employee, engages in fraudulent, criminal, or other seriously improper conduct with the contractor’s knowledge or approval.

DFARS clause 252.225-7040 is a clause included in DOD contracts that authorizes the contracting officer to direct the contractor, at its own expense, to remove and replace any contractor personnel who jeopardizes or interferes with mission accomplishment or who fails to comply with or violate applicable requirements of the contract.

Congressional Question 9. “Are DoD contractors required to inform DoD when complaints of sexual assault and harassment are lodged against contracted employees?”

Response 9. Yes. For certain violations, public law and contractual requirements obligate contractors to report complaints against contractor employees. None of the 22 DOD contracts we reviewed included language that required contractors to report ethical violations or violent criminal complaints because the law and contract requirements were either not effective until after the contracts were awarded or were exempt from the requirement because the contracts involved work performed outside of the United States or both. See Table C-1 for details.

The National Defense Authorization Act of 2009 (Public Law 110-417), October 14, 2008, section 854, requires DOD to establish mechanisms for ensuring that contractors are required to report offenses, such as sexual assault, covered under the UCMJ or MEJA that are alleged to have been committed by or against contractor personnel to appropriate investigative authorities. On December 14, 2009, the Director, Defense Procurement and Acquisition Policy, complied with the public law mandate by issuing Class Deviation 2009-O0014. The class deviation provided DFARS clause 252.225-7997, “Additional Requirements and Responsibilities Relating to Alleged Crimes by or Against Contractor Personnel in Iraq and Afghanistan,” which is required to be included in all new and existing solicitations and contracts involving performance in Iraq and Afghanistan. DFARS clause 252.225-7997 requires contractors to report alleged offenses under the UCMJ and MEJA including sexual assault, to the appropriate investigative authorities. Further, the clause requires contractors to provide all contractor employees with information on how and where to report alleged crimes and resources for victim and witness protection and assistance.

FAR Clause 52.203-13, “Contractor Code of Business Ethics and Conduct,” December 2008, requires contractors to report offenses of certain nonviolent crimes such as fraud, conflict of interest, or bribery to the agency OIG in a timely manner. However, the scope of crimes that the clause requires to be reported does not include violent crimes such as sexual assault.

FAR Clause 52.203-14, “Display of Hotline Poster(s),” December 2007, requires contractors who performed work in the United States to establish a reporting mechanism

for ethical violations either by displaying fraud hotline posters at work sites or as part of the business ethics and conduct awareness program.

Joint Contracting Command – Iraq/Afghanistan clause 952.225-0004, “Compliance with Laws and Regulations,” March 2009, requires all contractors, with place of performance in Iraq or Afghanistan, to notify the Military law enforcement and the contracting officer immediately if they suspect an employee has committed an offense such as sexual assault or sexual harassment while in Iraq and Afghanistan. However, this clause only applies to contracts that support the CENTCOM AOR in Iraq and Afghanistan and does not apply to contracts that support the operations of other combatant commands.

Table C-1. Provisional Language Included in Contracts

Customer	Contractor	Contract Number	Compliance With All Applicable U.S. and Host Country Laws and Regulations ¹	Ensured Personnel Was Aware That They Are Subject To the Criminal Jurisdiction of the MEJA and/or UCML ²	Compliance With EEO Laws ³	Maintained a Working Environment Absent of Harassment for All Construction Contracts ⁴	Requirement to Include Code of Business Ethics ⁵	Requirement to Include a Reporting Mechanism for Ethical Violations ⁶	Requirement to Report Violent Complaints From Employees ⁷	Designated Deployment Center for Fulfillment of DOD Deployment Training Requirements ⁸	Contractual Repurcussions for Contractors When Contract Employees Commit Violent Crimes ⁹
Army (4)	AECOM	W52P1J-05-D-0004	Yes	Yes	Yes	N/A*	N/A*	N/A*	N/A*	Yes (Fort Benning)	Yes
	ITT	W52P1J-05-D-0003	Yes	Yes	Yes	N/A*	N/A*	N/A*	N/A*	No	Yes
	ITT	W91RUS-06-C-0002	Yes	N/A*	Yes	N/A*	N/A*	N/A*	N/A*	Yes (Fort Bliss)	Yes
	KBR	DAAA09-02-D-0007	Yes	Yes	Yes	Yes	N/A*	N/A*	N/A*	Yes (KBR)	Yes
Army Corps of Engineers (6)	Tetra Tech	W912DY-04-D-0011	N/A*	Yes	Yes	N/A*	N/A*	N/A*	N/A*	Yes (Fort Bliss)	N/A*
	Fluor	DACA78-03-D-0005	N/A*	N/A*	Yes	No	N/A*	N/A*	N/A*	N/A*	N/A*
	Fluor	W912ER-04-D-0004	N/A*	N/A*	Yes	Yes	N/A*	N/A*	N/A*	N/A*	N/A*
	KBR	W912ER-04-D-0005	N/A*	N/A*	Yes	Yes	N/A*	N/A*	N/A*	N/A*	N/A*
	Parsons	W912ER-05-C-0016	No	N/A*	No	N/A*	N/A*	N/A*	N/A*	Yes (Fort Bliss)	No
	Parsons	W912DY-04-D-0005	N/A*	Yes	Yes	N/A*	N/A*	N/A*	N/A*	Yes (Fort Benning)	N/A*
Air Force (9)	Tetra Tech	FA8903-04-D-8677	Yes	N/A*	Yes	Yes	N/A*	N/A*	N/A*	No	Yes
	ECC	FA8903-04-D-8672	Yes	N/A*	Yes	Yes	N/A*	N/A*	N/A*	No	Yes
	ECC	FA8903-06-D-8511	Yes	N/A*	Yes	Yes	N/A*	N/A*	N/A*	No	Yes
	Fluor	FA8903-06-D8512	Yes	Yes	Yes	Yes	N/A*	N/A*	N/A*	No	Yes
	ITSI	FA8903-04-D-8689	Yes	N/A*	Yes	Yes	N/A*	N/A*	N/A*	No	Yes
	ITSI	FA8903-06-D-8513	Yes	Yes	Yes	Yes	N/A*	N/A*	N/A*	No	Yes
	L-3	F34601-97-D-0425	N/A*	N/A*	Yes	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*
	RMS	F08637-02-D-6999	N/A*	N/A*	Yes	Yes	N/A*	N/A*	N/A*	N/A*	N/A*
	RMS	FA3002-06-D-0006	Yes	Yes	Yes	Yes	N/A*	N/A*	N/A*	Yes (Tyndall AFB**)	Yes
Navy (2)	KBR	N62470-04-D-4017	N/A*	N/A*	Yes	Yes	N/A*	N/A*	N/A*	N/A*	N/A*
	RMS	N65236-06-D-6864	Yes	Yes	Yes	N/A*	N/A*	N/A*	N/A*	Yes (Fort Benning)	Yes
JCC (1)	L-3	W912CM-05-D-0011	N/A*	N/A*	Yes	N/A*	N/A*	N/A*	N/A*	Yes (Fort Bliss)	N/A*

Contract Provision Source:¹ DFARS 252.225-7040 dated June 2005.² DFARS 252.225-7040 dated June 2006 or the Secretary of Defense memorandum dated March 10, 2008 or Title 10 Section 802 amended October 17, 2006.³ FAR 52.222-26 dated February 1999.⁴ FAR 52.222-27 dated February 1999.⁵ FAR 52.203-13 dated December 2007 which was revised in December 2008 to delete the exemption for contractors performing work outside the U.S.⁶ FAR 52.203-13 dated December 2008 or FAR 52.203-14 dated December 2007.⁷ JCC-I/A 952.225-0004 dated March 2009 or National Defense Authorization Act of 2009 dated May 12, 2008.⁸ DOD Instruction 3020.41 dated October 2005 or DFARS 252.225-7040 dated June 2005.⁹ DFARS 252.225-7040 dated June 2005 or FAR 9.406-5 dated October 1995.Acronyms:

AFB Air Force Base

ECC Environmental Chemical Corporation

ITSI Innovative Technical Solutions

KBR Kellogg Brown & Root Services Incorporated

MEJA Military Extraterritorial Jurisdiction Act

RMS Readiness Management Support

Note:

* "N/A" Identifies the contracts that were not required to include the provisional language

** Tyndall AFB is not approved as an official Conus Replacement Center.

Appendix D. Investigative Policy and Oversight Response to Congressional Questions



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

DEC 22 2009

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

SUBJECT: Evaluation of DoD Sexual Assault Response In Operations Enduring and Iraqi Freedom Areas of Operation (Report No. IPO2009E002).

This memorandum provides our input to your audit of Efforts to Prevent Sexual Assault/Harassment Involving DoD Contractors During Contingency Operations, Project Number D2008-D000CE-0221.000. Specifically, it provides our responses to congressional questions in an April 21, 2008, request asking us to expand the scope of our evaluation to determine what controls DoD has established for contractors in the following areas: prevention and assistance, and contractor accountability. The following information is provided:

Congressional Question 2. "Has the DoD provided such employees – American citizens with information regarding their rights as crime victims and available resources for dealing with the aftermath of victimization? What is the DoD doing to assist Americans living and working in Iraq that are victims of crime?"

Response 2. The Victim and Witness Protection Act of 1982, 42 U.S.C., §10607, sets forth specific protections and services for victims and witnesses of crime. The statute requires the head of each department or agency engaged in detecting, investigating, or prosecuting crime to designate by name and office title the person(s) responsible for identifying victims and performing required services at each stage of a criminal case. The statute also requires responsible officials, at the earliest opportunity possible without interfering with an investigation, to inform victims about their rights to services, and to provide the name, title, business address, and telephone number where the victims may request the services. Among other things, the responsible officials are required to (1) inform victims about public and private programs that are available to provide counseling, treatment, and other support, (2) arrange for a victim to receive reasonable protection from a suspected offender (or person acting in concert with or at the behest of the suspected offender), and (3) inform victims about specific services available to them during investigation and prosecution; court proceedings; and after trial.

DoD implemented these requirements in the Victim and Witness Assistance Program (VWAP), DoD Directive 1030.1, "Victim and Witness Assistance," November 23, 1994, and DoD Instruction (DoDI) 1030.2, "Victim and Witness Assistance Procedures," December 23, 1994. The implementing policies:

- require each DoD component to designate a "Component Responsible Official" (CRO) for VWAP coordination, implementation and management;

Appendix D. Investigative Policy and Oversight Response to Congressional Questions (cont'd)

- require each DoD component to designate a Local Responsible Official (LRO) to ensure installation-level systems for (1) providing information on available benefits and services, and (2) assisting victims in obtaining the benefits and services;
- permit installation commanders to delegate, in writing, LRO duties and responsibilities to the Staff Judge Advocate;
- require a Victim and Witness Assistance Council, to the extent practicable, at each significant military installation, to ensure an interdisciplinary approach to providing services to victims and witnesses;
- require each DoD component to establish oversight procedures to ensure an integrated support system capable of providing required services; and
- require initial notifications to victims and witnesses on Department of Defense (DD) Form 2701, "Initial Information for Victims and Witnesses of a Crime" – law enforcement officers (police officers and criminal investigators) are generally responsible for initial victim and witness notifications.

To further assist crime victims, the Military Criminal Investigative Offices have established procedures whereby criminal investigators issue DD Form 2701, "Initial Information for Victims and Witnesses of a Crime," to all victims. This form advises them of their rights as a victim, explains the Victim Witness Assistance Program to them, provides relevant information, such as the name of the investigator; and persons to contact for information on other assistance available, prosecution, compensation for medical and other expenses, and contact telephone numbers.

Congressional Question 5. "What is the DoD policy for dealing with alleged offenders?"

Response 5. DoD policy with respect to military offenders, whether the alleged criminal acts are committed stateside or abroad, is governed by longstanding regulations and the Uniformed Code of Military Justice (UCMJ). Investigations of civilian offenders are somewhat more involved, as they must be coordinated with, or referred to, non-DoD investigative organizations and to civilian prosecutors either in the U.S. or in foreign jurisdictions.

Since the Military Extraterritorial Jurisdiction Act (MEJA) was passed in 2000, civilians accompanying U.S. forces in foreign countries may be prosecuted in U.S. courts. Under MEJA, federal jurisdiction exists over felony offenses committed outside the U.S. by civilian personnel of any federal agency or provisional authority whose employment relates to supporting the DoD mission. Implementing guidance under this Act is included in DoD Instruction 5525.11, "Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members," and military department regulations.

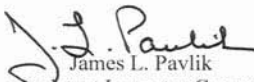
Appendix D. Investigative Policy and Oversight Response to Congressional Questions (cont'd)

Also, on March 10, 2008, the Secretary of Defense published policy giving commanders UCMJ jurisdiction over persons accompanying U.S. armed forces in the field at times of declared war or contingency operations.¹ Commanders have UCMJ authority to disarm, apprehend, and detain DoD civilians suspected of violating of U.S. federal laws, and to conduct pretrial process and trial procedures under the UCMJ. Commanders may also use administrative remedies, including discipline.

Congressional Question 6. “What safety mechanisms are put in place after a report of sexual assault to ensure the safety of the victim and other potential victims? Are the alleged offenders removed or suspended from their position?”

Response 6. Local commanders are responsible for taking the necessary actions to ensure victim safety. DoD Instruction 6495.02, Enclosure 5, Attachment E5.A1. “The Commander’s Sexual Assault Checklist,” provides guidance to assist commanders once a sexual assault is reported. The first item on the checklist, directs the commander to ensure the safety of the complainant; determine if the accused is still nearby, and determine if the complainant needs or desires protection. The use of the checklist has the primary objective of ensuring a balance between the complainant’s right to feel secure, and the alleged offender’s right to due process. Action taken regarding complainant safety and offender status is left to commanders’ discretion based on each individual sexual assault complaint.

For additional questions on this memorandum or our report, please contact [REDACTED]. You may also contact [REDACTED].


James L. Pavlik
Assistant Inspector General
for Investigative Policy and Oversight

¹ Memorandum dated March 10, 2008, Subject: UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations.

Appendix E. Definitions of Other Sexual Offenses Under the Uniform Code of Military Justice

In addition to the definition of sexual assault discussed in Finding A, the Uniform Code of Military Justice (UCMJ), section 920, title 10, United States Code (10 U.S.C. §920 [2008]), article 120, “Rape, sexual assault, and other sexual misconduct,” defines rape, aggravated sexual contact, abusive sexual contact, and wrongful sexual contact as other felony offenses of a sexual nature that are punishable by court-martial.

- (a) **Rape.** Any person subject to this chapter [10 USCS §§ 801 et seq.] who causes another person of any age to engage in a sexual act by—
- (1) using force against that other person;
 - (2) causing grievous bodily harm to any person;
 - (3) threatening or placing that other person in fear that any person will be subjected to death grievous bodily harm, or kidnaping [sic];
 - (4) rendering another person unconscious; or
 - (5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct;
- is guilty of rape and shall be punished as a court-martial may direct.

.

- (e) **Aggravated sexual contact.** Any person subject to this chapter [10 USCS §§ 801 et seq.] who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

.

- (h) **Abusive sexual contact.** Any person subject to this chapter [10 USCS §§ 801 et seq.] who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

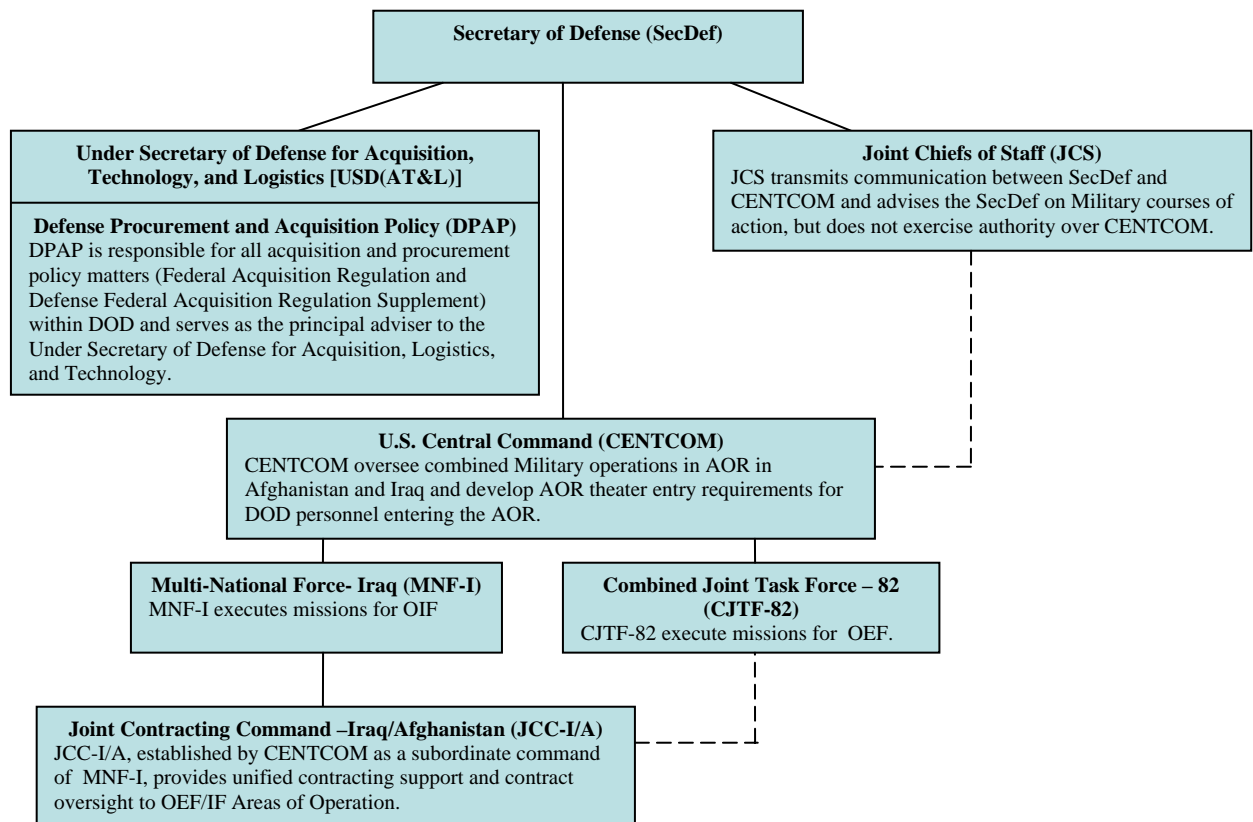
.

- (m) **Wrongful sexual contact.** Any person subject to this chapter [10 USCS §§ 801 et seq.] who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person’s permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

Appendix F. Operations Enduring Freedom and Iraqi Freedom Command Structure

The U.S. Central Command (CENTCOM) is a unified combatant command with a mission that “promotes cooperation among nations, responds to crises, and deters or defeats state and nonstate aggression, and supports development and, when necessary reconstruction in order to establish the conditions for regional security, stability, and prosperity.” CENTCOM carries out its mission throughout its area of responsibility (AOR) of 20 countries across the East Africa, Middle East, and Southwest Asia regions, which include Afghanistan and Iraq. As a result of the joint resolution approved in Public Law 107-40, “Authorization for the Use of Military Force,” and Public Law 107-243, “Authorization for Use of Military Force Against Iraq Resolution of 2002,” CENTCOM initiated Operations Enduring Freedom (OEF) and Iraqi Freedom (OIF), respectively. See Figure E-1 for an illustration of the command structure for OEF and OIF areas of operation.

Figure E-1. Operations Enduring Freedom and Iraqi Freedom Command Structure.



Under Secretary of Defense for Acquisition, Technology, and Logistics Comments



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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

FEB -2 2010

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL AND DIRECTOR,
DEFENSE FINANCIAL AUDITING SERVICE, DoDIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS [REDACTED]

2/12/10

SUBJECT: Response to DoDIG Draft Report on Efforts to Prevent Sexual
Assault/Harassment Involving DOD Contractors During Contingency
Operations (Project No. D2008-D000CE-0221.000)

As requested, I am providing responses to the general content and
recommendations contained in the subject report.

Recommendation A1a:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) develop requirements in all DOD contracts supporting contingency operations that ensure contractor employees accompanying U.S. Armed Forces are aware of the Uniform Code of Military Justice definition of sexual assault.

Response:

Concur. We agree that increasing the visibility of sex offenses punishable under the Uniform Code of Military Justice (UCMJ) is appropriate. Additionally, we believe that increasing the visibility and awareness of the Sexual Assault Prevention and Response Program and the definition of sexual assault applicable to the Program, as defined in DoDI 6495.02, is appropriate as well.

Recommendation A1b:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics require DOD contractor employees supporting all combatant commands contingency operations, including the U.S. Central Command area of responsibility, to report sexual assault cases to Military law enforcement.

Response:

Concur. USD(AT&L) will revise the DFARS to require the reporting to law enforcement of UCMJ offenses committed by contractors during contingency operations. By doing so, the associated SAPR requirements for addressing a sexual assault offense, as defined in DODI 6495.02, will be included in that reporting requirement and will be integrated into all DOD contracts supporting contingency operations.

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Findings on Internal Control Weaknesses in Contract Administration:

Weakness: Lack of Provisions in DOD contracts to ensure contractors are aware of the UCMJ definition of sexual assault.

We do not agree that AT&L failed to provide contractual coverage on awareness and compliance with UCMJ jurisdiction for offenses committed under the UCMJ. As prescribed at Defense Federal Acquisition Regulation Supplement (DFARS) 225.7402-5(a), DFARS clause 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Outside the United States, requires that the contractor shall ensure its personnel authorized to accompany the U.S. Armed Forces deployed outside of the United States are familiar with and comply with U.S. laws, regulations, directives, instructions, policies and procedures. Further, the clause requires the contractor to notify all personnel, who are not a host country national or ordinary resident of the country, that in time of declared war or a contingency operation, these personnel are subject to the jurisdiction of the UCMJ. Based on this language, U.S. contractors and their personnel accompanying U.S. forces are already held responsible for knowing they are subject to the UCMJ.

USD(AT&L) will revise the DFARS, as necessary, to ensure all DOD contracts supporting contingency operations contain language to ensure that contractor employees accompanying U.S. Armed Forces are fully aware of UCMJ jurisdiction and the definition of sexual assault contained in the SAPR Program and DODI 6495.02.

Weakness: Lack of Provisions in DOD contracts to ensure contractors report sexual assault complaints to Military law enforcement during contingency operations.

We agree that that the lack of a DFARS requirement for contractors to report sexual assault complaints to Military Law enforcement during contingency operations constitutes an internal control deficiency within contract administration. As discussed in our response to A.1.b above, USD(AT&L) will include in the DFARS update a requirement for contractors to report all UCMJ offenses to appropriate law enforcement officials, to include sexual assault offenses. For Iraq and Afghanistan, Class Deviation 2009-00014, "Additional Contractor Requirements and Responsibilities Relating to Alleged Crimes by or Against Contractor Personnel in Iraq and Afghanistan" requires contractors to report to the appropriate investigative authorities any alleged offenses under the UCMJ or the Military Extraterritorial Jurisdiction Act, which would include sexual assault offenses.

Comment:

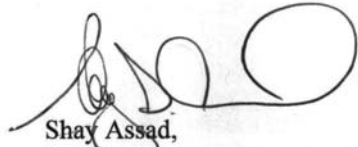
The distinct awareness requirement regarding UCMJ jurisdiction and the SAPR Program definition of applicable sexual assault offenses, as defined in DODI 6495.02, should be made clear throughout the draft report in order to eliminate confusion between the two

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and conflicting references (as further explained in the proposed response to Recommendation A1b).

Please contact [REDACTED] if additional information is required or questions arise.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

Shay Assad,
Director, Defense Procurement
and Acquisition Policy

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Under Secretary of Defense for Personnel and Readiness Comments



PERSONNEL AND
READINESS

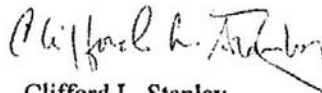
UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MAR 17 2010

MEMORANDUM FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: IG Report, Project No. D2008-D000CE-0221.000, "Efforts to Prevent
Sexual Assault/Harassment Involving DoD Contractors During Contingency
Operations," dated November 6, 2009

This is the Department of Defense (DoD) response to the IG Report, Project No.
D2008-D000CE-0221.000, "Efforts to Prevent Sexual Assault/Harassment Involving
DoD Contractors during Contingency Operations," dated November 6, 2009. It is
submitted for your information.


Clifford L. Stanley

Attachments:
As stated



IG DRAFT REPORT, PROJECT NO. D2008-D000CE-0221.000,

“EFFORTS TO PREVENT SEXUAL ASSAULT/HARASSMENT INVOLVING DoD
CONTRACTORS DURING CONTINGENCY OPERATIONS,”
DATED NOVEMBER 6, 2009

THE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS’
RESPONSE TO THE IG RECOMMENDATIONS

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION A.2.a.1:

- A.2. We recommend that the Under Secretary of Defense for Personnel and Readiness:
- a. Modify DoD Directive 6495.01 , "Sexual Assault Prevention and Response (SAPR) Program," and DoD Instruction 6495.02, "Sexual Assault Prevention and Response Program Procedures," to:
 1. Establish prevention, awareness, and reporting requirements and procedures specifically for DoD contractors who are U.S. citizens and accompany the U.S. Armed Forces in contingency operations; and

USD(P&R) RESPONSE:

Concur and comment: USD(P&R) agrees with this recommendation and will direct SAPRO to expand the current policy to encompass DoD contractors, who are U.S. citizens and accompany the U.S. Armed Forces in contingency operations OCONUS, thus providing them two reporting options (Restricted and Unrestricted), and emergent medical services to the extent authorized by DoDI 3020.40. It is further recommended that DEPSECDEF amend the definition for resuscitative care to include sexual assault. The USD(P&R) will direct SAPRO to, in coordination with AT&L, provide guidance on core training requirements for prevention and awareness training for DoD contractors, who are U.S. citizens and accompany the U.S. Armed Forces in contingency operations OCONUS.

RECOMMENDATION A.2.a.2:

- A.2. We recommend that the Under Secretary of Defense for Personnel and Readiness:

Revised

a. Modify DoD Directive 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," and DoD Instruction 6495.02, "Sexual Assault Prevention and Response Program Procedures," to:

2. Direct the Military Services to require contractors to track and annually report alleged sexual assault cases involving DoD contractors for incorporation into the annual DoD Sexual Assault Report to Congress.

USD(P&R) RESPONSE:

Non-Concur: The requirement to have contractors report alleged sexual assault crimes for incorporation into the annual DoD Sexual Assault Report to Congress could undermine the reporting options available under the Sexual Assault Prevention and Response Program once the SAPR program is extended to contractors in contingency operations. To the extent there is a requirement to have contractors report alleged sexual assaults, such reporting should be made through channels outside the Sexual Assault Prevention and Response Program and such reports should not be included in the SAPR annual report. Additionally, USD(P&R) has concerns about the reliability of the data that would be provided by multiple contract organizations for inclusion in the annual report to Congress. SAPRO should not be held responsible or accountable for data provided by contractors because it has no way of independently validating the data. There are also concerns of potential duplication of data collection and reporting, with sexual assaults reported to military databases through the military treatment facilities and military criminal investigative offices. When the Department, consistent with the IG recommendation, extends the SAPR policy to contractors, the same SAPR reporting options will be made available to the contractors, to the extent feasible.

Additionally, the Military Services would be able to track and annually report sexual assault information collected pursuant to SAPR policy. Finally, the Sexual Assault Incident Database (DSAID), currently under development, will contain data specific to sexual assaults reported by victims of sexual assault, to include contractor employees, both CONUS and OCONUS, who use the existing SAPR reporting structure. This process would provide verifiable data obtained through existing DoD sexual assault prevention and response mechanisms for inclusion in the annual report.

RECOMMENDATION A.2.b.:

A.2. We recommend that the Under Secretary of Defense for Personnel and Readiness:

b. Establish guidance to ensure that combatant commanders require mandatory training on sexual assault prevention, reporting, and response for contractor employees prior to deployment to contingency operations.

USD(P&R) RESPONSE:

Concur and Comment: This training will only target DoD contractors, who are U.S. citizens and accompany the U.S. Armed Forces in contingency operations OCONUS, thus paralleling the class of individuals for whom the SAPR Policy is expanded (per Recommendation A.2.a.1). The USD(P&R) will direct SAPRO to provide guidance on

core training requirements for prevention and awareness training to include reporting options for sexual assaults and services available to sexual assault victims.

Department of the Army Comments



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

FEB 02 2010

SAMR-DL

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Efforts to Prevent Sexual Assault/Harassment Involving DoD Contractors During Contingency Operations (Project No. D2008-D000ce-0221.000)

1. Reference draft report and memorandum dated November 6, 2009, subject as above.
2. I found the DoDIG Draft Report informative and thank the IG team for its diligence in addressing this challenging issue. The Army is committed to eliminating incidents of sexual assault through its comprehensive policy that centers on awareness and prevention, training and education, victim advocacy, response, reporting, and accountability.
3. I am providing a consolidated response incorporating comments of the Army Secretariat. The Army concurs with the proposed recommendations subject to incorporation of the attached comments.
4. Please feel free to contact my office should you have any questions. We look forward to the release of your report.

A handwritten signature in black ink, appearing to read "Tom Lamont", is positioned above the typed name.

Thomas R. Lamont
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Encl

ARMY COMMENTS
EFFORTS TO PREVENT SEXUAL ASSAULT/HARASSMENT INVOLVING DOD
CONTRACTORS DURING CONTINGENCY OPERATIONS

Issue	Effect	Resolution
<p>Recommendation A.1: The draft report notes that there are approximately as many contractors in theater as there are Soldiers. If the DoDIG recommendations are adopted, the number of sexual assaults reported to CID for investigation could double in theater, assuming the rate of sexual assaults among contractors is about the same as that being experience among Soldiers.</p>	<p>It is estimated that another 10 criminal investigation agents would be needed to handle the increased workload. There could be corresponding increased workload by certain other categories of personnel involved in sexual assault prevention and response (such as medical personnel to conduct evidence-collecting examinations, etc.).</p>	<p>Recommend the topic of funding of hiring of increased manpower to offset the increased workload be addressed within the report.</p>
<p>Recommendation A.2.1: The recommendation provides for establishment of prevention, awareness, and reporting requirements for "DOD contractors" who are U.S. citizens.</p>	<p>1. It is contract employees who are U.S. citizens, not contractors</p> <p>2. Contract employees who are not U.S. citizens, but who are also not host nation citizens are excluded from this requirement.</p>	<p>Recommend clarifying that the procedures apply to DOD contract employees.</p> <p>Recommend clarifying what category of contract employees we are targeting. This provision should not apply only to U.S. citizens.</p>
<p>Recommendation A.3: Recommendation to require all Army contracting officers to designate a specific deployment location in all contracts awarded with DFARS Clause 252.225-7040.</p>	<p>Neither the DFARS clause nor DoDI 3020.41 requires a specific deployment location to be identified in contracts. Often, logistics services contracts are awarded prior to military operations, like the Logistics Civil Augmentation Program contracts for example, with no known place of performance. Until specific task orders or delivery orders are awarded, place of performance will be unknown, and even then may still be unclear.</p> <p>The policy and regulation cited by the DoDIG require a specific location for pre-deployment training, not country of performance. The</p>	<p>1. Propose the recommendation be re-stated to require all contracts to identify a specific pre-deployment training location.</p> <p>2. For contracts awarded after commencement of military operations, when a contractor deployment processing center has been established, as a true for Operations Enduring and Iraqi Freedom, the Army concurs that a specific location for pre-deployment training must be identified.</p> <p>3. For contracts awarded in advance of military operations, the Army recommends that the specific location for pre-deployment</p>

Revised

ARMY COMMENTS
EFFORTS TO PREVENT SEXUAL ASSAULT/HARASSMENT INVOLVING DOD
CONTRACTORS DURING CONTINGENCY OPERATIONS

	Synchronized Pre-deployment and Operational Tracker (SPOT) already provide the level of contractor accountability required by DoDI 3020.41 if properly used. Additionally, if the place of performance is a single country, the Federal Procurement Data System - Next Generation already records the place of performance.	training be identified either in the task order or notice to proceed.
Recommendation A.2.a.2: Recommends directing the Military Services to require contractors to track and annually report alleged sexual assault cases involving DoD contractors for incorporation in the report to Congress	If we require reporting to military law enforcement, military law enforcement will have the best statistics. Contractor employees may or may not make a report to their employer. A related problem is that if reporting comes from both sources (military law enforcement and contractors), there may be double counting.	Recommend that statistics be compiled from Military law enforcement officials who have the most accurate statistics. This also reduces cost to the Government because we are not imposing a requirement on the contractor for which we will be billed. If contractor reporting remains a recommendation; recommend the contractor provide quarterly and annual report to the Services for inclusion in DoD required quarterly and annual reports to Congress. This allows earlier identification and correction of any potential problems.
Recommendation B.1.a.: Recommendation to require the Army DCS, G3/5/7 to review DOD contractor deployment operations and ensure minimum U.S. Central Command (CENTCOM) deployment training requirements are met before	CONCUR	The Army DCS G-3/5/7 is currently in the process of reviewing the Contractor Statement of Work (SOW) and training requirement to ensure compliance with the CENTCOM's T-SIRT requirements for pre-deployment training.

Revised

ARMY COMMENTS
EFFORTS TO PREVENT SEXUAL ASSAULT/HARASSMENT INVOLVING DOD
CONTRACTORS DURING CONTINGENCY OPERATIONS

<p>approving DOD contractor individual replacement deployment operations, as required by DOD Instruction 3020.41.</p>		
<p>Recommendation B.1.b.: Recommendation to require the Army DCS, G3/5/7 to review the adequacy of contractor deployment training, including sexual assault prevention and response training, to ensure that the contractor training is comparable to theater specific individual requirement training offered at the Army Continental United States Replacement Centers.</p>	<p>CONCUR</p>	<p>The Army Deputy Chief of Staff G-3/5/7 is currently in the process of reviewing the SOW and training requirements to ensure compliance with the CENTCOM's T-SIRT requirements for pre-deployment training. Upon completion, the DCS G-3/5/7 will begin inspecting the adequacy of the training given and the comparability to theater specific training requirements as recommended.</p>

Department of the Air Force Comments



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

DEC 23 2009

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ATTN: ACQUISITION AND PROGRAM MANAGEMENT

SUBJECT: Efforts to Prevent Sexual Assault/Harassment Involving DOD Contractors During
Contingency Operations (Project No. D2008-D000CE-0221.000)

This is in response to your memorandum requesting that the Assistant Secretary of the Air Force for Acquisition provide comments on the subject draft report dated November 6, 2009. The Air Force appreciates the opportunity to offer comments and recognizes the efforts of the DoDIG in its analysis and report preparation. We reviewed the report, and our responses to recommendations A.4. and B.2 for the Assistant Secretary of the Air Force for Acquisition are found below.

DOD IG Recommendation A.4. We recommend the Assistant Secretary of the Air Force for Acquisition require all contracting officers to ensure that a specific deployment location is designated in all contracts awarded to contractors accompanying the U.S. Armed Forces.

Air Force Response: Concur with comment; the Deputy Assistant Secretary for Contracting (SAF/AQC) will draft a memo to all Contracting Officers directing them to comply with DFARS 252.225-7040 and DOD Instruction 3020.41, specifically ensuring Contractors report to deployment centers that provide Sexual Assault training.

DOD IG Recommendation B.2. We recommend that the Assistant Secretary of the Air Force for Acquisition require Air Force Contracting Officers to ensure that designated deployment locations offer deployment training for contractors that meets all U.S. Central Command Deployment requirements, such as sexual assault prevention and response training, as required by DOD Instruction 3020.41.

Air Force Response: Concur with comment; SAF/AQC will obtain a list of approved Deployment Centers from HQ CENTCOM and direct Contracting Officers comply with DOD Instruction 3020.41 by including in the requirement (statement of work) directing contractors to deployment centers that offer Sexual Assault Training.

Questions your staff may have concerning the responses to recommendations A.4. and B.2 may be directed to [REDACTED]


MARK D. SHACKELFORD, Lt Gen, USAF
Military Deputy, Office of the Assistant Secretary
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U.S. Central Command Comments



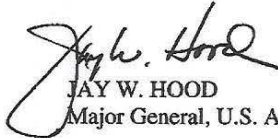
UNITED STATES CENTRAL COMMAND
OFFICE OF THE CHIEF OF STAFF
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4 December 2009

FOR: DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DODIG)

SUBJECT: Review of DODIG Draft Report-Efforts to Prevent Sexual
Assault/Harassment Involving DOD Contractors during Contingency
Operations- (D2008-D000CE-0221.000)

1. Thank you for the opportunity to review the DODIG draft report.
2. USCENTCOM concurs with the report and provides one technical comment from our legal staff for DODIG consideration. On page 5 of the report "sexual assault" is defined in terms of the punitive article within the UCMJ listed at Art. 120(c), aggravated sexual assault. In reality, this is only one form of sexual assault listed among many sexual assault offenses contained in Art. 120. In fact, aggravated sexual assault requires a "sexual act" defined in Art. 120 in terms of genital penetration by a penis, hand, finger or object. A better all inclusive offense that defines sexual assault is located at subsection (m) of Article 120, wrongful sexual contact. This offense is complete when there is any sexual contact (with a broader definition than a sexual act) without the other person's permission. This would include such things as touching of breasts, groin or buttocks. The definition could note that other offenses, such as rape, aggravated sexual assault, and aggravated sexual contact, are also forms of sexual assault.
3. The Point of Contact is [REDACTED]


JAY W. HOOD
Major General, U.S. Army



Inspector General Department of Defense

