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United States  
Department of Defense



Competition for Interrogation Arm  
Contracts Needs Improvement

# Report Documentation Page

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## Acronyms and Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
IA	Interrogation Arm
IDIQ	Indefinite-Delivery, Indefinite-Quantity
IED	Improvised Explosive Device
JIEDDO	Joint Improvised Explosive Device Defeat Organization
JUONS	Joint Urgent Operational Need Statement
NVESD	Night Vision and Electronic Sensors Directorate
ONS	Operational Needs Statement



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

September 19, 2011

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Competition for Interrogation Arm Contracts Needs Improvement  
(Report No. D-2011-105)

We are providing this report for review and comment. Army contracting and program officials inappropriately restricted competition in their award of four sole-source contracts valued at \$82.1 million to one source. These officials also inappropriately managed the Interrogation (IA) as a commercial item when the IA was developed uniquely for military purposes. We reviewed the Army contracts to procure the IA used on route clearance vehicles in Iraq and Afghanistan to determine whether the IA acquisition initiative was contracted and managed in accordance with Federal and Defense acquisition regulations. This report is the second in a series of reports addressing DoD contracts for countermine and improvised explosive device defeat systems used in Iraq and Afghanistan. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. The Executive Director, Army Contracting Command – Aberdeen Proving Ground, comments were partially responsive. In addition, we revised Recommendation 2.a to clarify the actions needed to ensure that there is a contract in place while the contracting officer works on obtaining the best value. Therefore, we request that the Executive Director provide additional comments on Recommendation 2.a. by October 19, 2011.

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

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

A handwritten signature in black ink, reading "Bruce A. Burton".

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





# Results in Brief: Competition for Interrogation Arm Contracts Needs Improvement

## What We Did

We reviewed the Army's efforts to procure the Interrogation Arm (IA) that is used on route clearance vehicles in Iraq and Afghanistan to determine whether the IA acquisition initiative was contracted and managed in accordance with Federal and Defense acquisition regulations.

## What We Found

Army contracting and program officials inappropriately restricted competition in their award of four sole-source contracts valued at \$82.1 million to one source. These officials also inappropriately managed the IA as a commercial item when the IA was developed uniquely for military purposes. This occurred because program officials preferred to use a specific contractor, and contracting officials did not perform due diligence in their determination that the IA was a commercial item. As a result, the Army lost the benefits of competition and may not have received the best value in its contracts to meet the need of the warfighter and protect the interest of the DoD.

## What We Recommend

We recommend that the Project Manager Close Combat Systems develop an acquisition strategy with the Army Contracting Command – Aberdeen Proving Ground to seek, promote, and sustain competition for future IA procurement. We also recommend that the Executive Director, Army Contracting Command – Aberdeen Proving Ground:

- Obtain certified cost or pricing data before awarding future delivery orders on contract W909MY-10-D-0021 or renegotiate the contract in accordance with Federal Acquisition Regulation Part 15, "Contracting by Negotiation," and

- perform a review of the contracting officers' actions relating to the determination that the IA was a commercial item and that a commercial market existed and initiate, as appropriate, administrative actions.

## Management Comments and Our Response

The Deputy for Acquisition and Systems Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) agreed with the recommendation, and his comments were responsive. The Executive Director, Army Contracting Command – Aberdeen Proving Ground, partially agreed with one recommendation but disagreed that the IA was not a commercial item. We request that the Executive Director provide additional comments by October 19, 2011. Please see the recommendations table on the back of this page.

**Figure. Interrogation Arm Mounted on a Husky Vehicle**



Source: U.S. Army Product Manager Countermine and Explosive Ordnance Disposal

## Recommendations Table

<b>Management</b>	<b>Recommendations Requiring Comment</b>	<b>No Additional Comments Required</b>
Project Manager Close Combat Systems		1
Army Contracting Command – Aberdeen Proving Ground	2.a	2.b

**Please provide comments by October 19, 2011.**

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# Introduction

## Objective

This report is the second in a series of reports addressing DoD contracts for countermine and improvised explosive device (IED) defeat systems used in Iraq and Afghanistan. The overall audit objective was to determine whether DoD procurement efforts for countermine and improvised explosive device defeat systems used in Iraq and Afghanistan were developed, awarded, and managed in accordance with Federal and Defense acquisition regulations. Specifically, we determined whether the Joint Improvised Explosive Device Defeat Organization (JIEDDO) and Army procurement efforts for the Interrogation Arm (IA) used on Husky and RG-31 vehicles in Iraq and Afghanistan were contracted and managed in accordance with Federal and Defense acquisition regulations. We did not review the IA development. We focused primarily on the Army contracting and management of the IA acquisition initiative. See Appendix A for a discussion of our scope and methodology and prior coverage related to the audit objectives.

We performed this audit pursuant to Public Law 110-181, “National Defense Authorization Act for Fiscal Year 2008,” section 842, “Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan,” January 28, 2008. Section 842 requires:

thorough audits . . . to identify potential waste, fraud, and abuse in the performance of (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

We reviewed contracts W909MY-07-C-0012, W909MY-07-C-0022, W909MY-10-C-0002, and W909MY-10-D-0021 for countermine and IED defeat devices to support route clearance<sup>1</sup> patrols in Iraq and Afghanistan.

## Background

### ***Improvised Explosive Devices***

IEDs are the most serious threat to coalition forces in Afghanistan, and as U.S. forces draw down in Iraq, IEDs still pose a significant threat in Iraq. In FY 2010, IEDs caused more than 10,200 casualties in Iraq and more than 9,100 casualties in Afghanistan. The number of IED incidents in Afghanistan has risen steadily since 2005, and has doubled from FY 2008 to FY 2010. IEDs pose a threat because insurgents in Afghanistan mainly use IEDs with simple designs and technologies made from homemade explosives and other bulk explosives that are difficult to detect.

### ***Need for Interrogation Arm Capability***

Warfighters in theater identified a need for a device that could inspect potential IEDs on the sides of roads and could be mounted on smaller route clearance vehicles. Existing route

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<sup>1</sup> Route clearance is the detection, investigation, marking and reporting, and neutralization of explosive hazards and other obstacles along a defined route to enable assured mobility for the maneuver commander. It is a combined arms operation that relies on a reconnaissance of the route to be cleared.

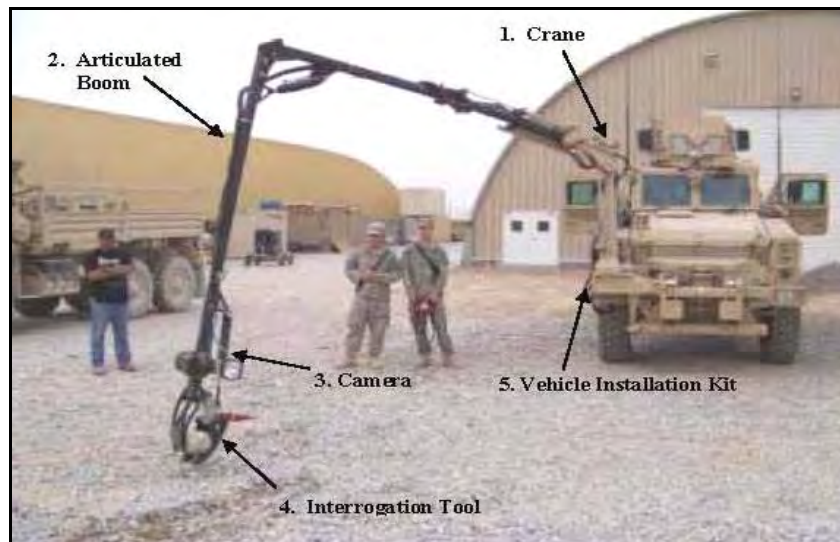
clearance teams use the Buffalo, a mine resistant ambush protected vehicle with a mechanical arm, to inspect possible IEDs at standoff distances during combat missions in theater. However, the Buffalo is a larger vehicle and route clearance teams cannot always access suspected IEDs at a standoff distance. Therefore, warfighters identified a need for a device that could inspect IEDs and could be mounted on smaller vehicles, such as the Husky and RG-31.

From March 2006 through September 2007, warfighters submitted four joint urgent operational need statements (JUONS) to the U.S. Central Command requesting IAs for use on smaller vehicles in Iraq and Afghanistan. Subsequently, warfighters submitted three Army operational needs statements (ONS), from December 2008 through January 2010, to Headquarters, Department of the Army, requesting additional IAs for use in Afghanistan. The Army Project Manager Close Combat Systems is the program office for the IA acquisition initiative and designated program management responsibilities to Product Manager Countermine and Explosive Ordnance Disposal. According to the program office, the IA acquisition initiative is not a program of record.

### ***Interrogation Arm Acquisition Initiative***

The IA is a device that provides standoff protection to warfighters while inspecting suspected IEDs during missions. Route clearance teams employ the IA on Husky and RG-31 vehicles in Iraq and Afghanistan. The main IA components are identified in the following figure on an RG-31 vehicle.

**Figure. Interrogation Arm Mounted on a RG-31 Vehicle**



Source: U.S. Army Product Manager Countermine and Explosive Ordnance Disposal.

1. The crane is hydraulically powered and lightweight.
2. The articulated boom is a 6-meter extension attached to the crane arm. The camera and interrogation tool are mounted on it.
3. The camera allows users to identify targets.
4. The interrogation tool is a claw that can dig, pry, and lift objects.
5. The vehicle installation kit mounts the IA onto the route clearance vehicle. The kit is unique to each vehicle variant.

## ***Interrogation Arm Development***

In August 2005, the Night Vision and Electronic Sensors Directorate (NVESD)<sup>2</sup> submitted a proposal to the U.S. Army Research, Development, and Engineering Command requesting \$500,000 through the Agile Integration, Demonstration, and Experimentation program<sup>3</sup> to develop an extendible IED detection arm prototype for the Husky Mine Detection Vehicle. According to the NVESD Neutralization Branch Chief, NVESD received \$500,000 from the Agile Integration, Demonstration, and Experimentation program to develop the IA and received an additional \$100,000 from JIEDDO to complete development. In the summer of 2006, NVESD began developing a proof-of-concept prototype of a smaller version of the Buffalo arm. Force Protection, Inc.<sup>4</sup> purchased a larger Fassi crane from FASCAN International, Inc. (FASCAN) to produce the Buffalo arm. NVESD chose to use the smaller Fassi crane to develop the proof-of-concept prototype. The Fassi crane arm is manufactured in Italy. NVESD worked with FASCAN, the U.S. distributor of the Fassi crane, to develop the IA and integrate it on RG-31 and Husky vehicles.

## ***Contracts for Interrogation Arm***

The Army Contracting Command – Aberdeen Proving Ground<sup>5</sup> (contracting office) personnel awarded 3 undefinitized contract actions (letter contracts) for 318 IAs to fulfill the urgent requests and an indefinite-delivery, indefinite-quantity (IDIQ) contract for IAs and spare parts to FASCAN. See Appendix B for additional information on IA urgent requests, funding, and contracting.

## ***Full and Open Competition***

The Federal Acquisition Regulation (FAR) establishes policies and procedures for all Executive agency acquisitions. FAR Part 6, “Competition Requirements,” contains guidance for policies and procedures to promote full and open competition. FAR 6.101, “Policy,” states that contracting officers should promote and provide for full and open competition in soliciting offers and awarding Government contracts. FAR Part 7, “Acquisition Planning,” contains additional guidance for planning and promoting competition. FAR 7.102, “Policy,” states that agencies should plan and conduct market research to promote and provide for full and open competition to ensure that the Government meets its needs in the most effective, economical, and timely manner. The FAR specifies that planning should begin as soon as the agency need is identified, and that the planner should coordinate with the contracting officer in all acquisition planning.

## ***FAR Exemption for Other Than Full and Open Competition***

The FAR allows for contracting without providing for full and open competition, but the contracting officer must cite an exemption authority and justify the basis for the exemption in

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<sup>2</sup> NVESD is a directorate of Communications-Electronic Research, Development, and Engineering Center, which is a subordinate organization to U.S. Army Research, Development, and Engineering Command. NVESD provides engineering support to Product Manger Countermine and Explosive Ordnance Disposal for developing night vision and other sensor technologies.

<sup>3</sup> The purpose of the Agile Integration, Demonstration, and Experimentation program was to fund technology acceleration efforts of selected technologies that have the potential to fill emerging capability gaps requiring immediate action.

<sup>4</sup> Force Protection, Inc. designs, manufactures, tests, delivers, and supports blast- and mine-protected vehicles. Force Protection, Inc. manufactures the Buffalo vehicle and arm.

<sup>5</sup> The contracting office was previously named CECOM Contracting Center – Washington. In 2011, the named changed to Army Contracting Command – Aberdeen Proving Ground.

writing. FAR 6.301, "Policy," states that contracting without providing for full and open competition should not be justified on the basis of a lack of advanced planning. FAR 6.302, "Circumstances Permitting Other Than Full and Open Competition," provides the exemption authorities for contracts awarded without providing for full and open competition. FAR 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements," applies when supplies or services are available from a limited number of responsible sources. FAR 6.302-2, "Unusual and Compelling Urgency," applies when the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources to solicit bids.

## **Review of Internal Controls**

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in the management of the IA initiative. Specifically, Army contracting and program officials inappropriately restricted competition when awarding sole-source contracts valued at \$82.1 million to one source. These officials also inappropriately managed the IA as a commercial item when the IA was developed uniquely for military purposes. We will provide a copy of the report to the senior officials responsible for internal controls in the Department of the Army.

# Finding. Competition Was Inappropriately Restricted When the Interrogation Arm Contracts Were Awarded

Army contracting and program officials inappropriately restricted competition when awarding four sole-source contracts valued at \$82.1 million to one source. These officials also inappropriately managed the IA as a commercial item when the IA was developed uniquely for military purposes. This occurred because program officials preferred to use a specific contractor, and contracting officials did not perform due diligence in their determination that the IA was a commercial item. As a result, the Army lost the benefits of competition and may not have received the best value in its contracts to meet the need of the warfighter and protect the interest of the DoD.

## Sole-Source Approach Used for Interrogation Arm Purchases

Army contracting and program officials inappropriately restricted competition on four sole-source contracts valued at \$82.1 million awarded to FASCAN. Contracting officials, with input from the program office, cited FAR 6.302-2, “Unusual and Compelling Urgency,” and FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements,” without adequate justification for the sole-source contracts awarded to FASCAN. The following table identifies the contracts and exemptions used to justify the sole-source awards.

**Table. FAR Exemption Used to Award Sole-Source Contracts to FASCAN**

Date Statement of Urgency Issued	Contract Number	Date of Contract Award/Value	Sole-Source Justification
January 8, 2007	W909MY-07-C-0012	February 28, 2007/ \$3.2 million	Unusual and Compelling Urgency
August 27, 2007	W909MY-07-C-0022 Basic	August 28, 2007/ \$18.9 million	Unusual and Compelling Urgency
March 2, 2008	W909MY-07-C-0022 Modification P00007	May 1, 2008/ \$0.6 million	Unusual and Compelling Urgency
November 25, 2009	W909MY-10-C-0002	December 3, 2009/ \$10.4 million	Unusual and Compelling Urgency
Not applicable	W909MY-10-D-0021	September 21, 2010/ \$49 million (contract ceiling)	Only One Responsible Source

### ***Unusual and Compelling Urgency Exemption Not Justified***

Army contracting officers, with input from the program office, cited the FAR 6.302-2 exemption for three sole-source contracts awarded to FASCAN. Program office personnel repeatedly requested to use one source for the IA procurement under the unusual and compelling urgency exemption, and the contracting officers accepted those requests without adequately justifying the basis for the sole-source decision in the contract documentation. See Appendix C for a timeline of the repeated IA procurements and elapsed time between the contracting actions.

## **Response to Urgent Needs Statements**

Program office personnel did not act with urgency once they received the funding to procure the urgent requested IAs by engaging the contracting office. JIEDDO validated<sup>6</sup> the initial urgent needs for the IA and provided the program office funding in August 2006. The NVESD Neutralization Branch Chief stated that he waited to engage the contracting office in the IA acquisition until he was confident that the prototype design would pass testing. Nearly 5 months after JIEDDO funded the urgent need, the Army Project Manager Close Combat Systems issued a memorandum for U.S. Army CECOM Life Cycle Management Command, on January 8, 2007, identifying an urgent requirement for 48 IAs. The Statement of Urgency stated that the requirement would be acquired through a sole-source letter contract to FASCAN and that a justification and approval memorandum referencing the urgency was being coordinated. According to the contracting officer, the program office personnel did not inform the contracting officer about the possibility of contracting for an additional requirement. Instead, program office personnel presented the requirement as a one-time procurement. The FAR states that contracting without providing for full and open competition should not be justified because of a lack of advance planning. By not coordinating with the contracting officials upon identifying an urgent need, program office personnel limited the amount of time the contracting officials had to execute contract planning.

The contracting officer stated that she did not get involved with the IA acquisition until the program office personnel contacted her in January 2007 with a Statement of Urgency. The

*The contracting officer did not review the JUONS. She accepted the program office's sole-source approach, as presented in the Statement of Urgency . . .*

contracting officer did not review the JUONS. She accepted the program office's sole-source approach, as presented in the Statement of Urgency, and awarded the first IA sole-source letter contract, W909MY-07-C-0012, to FASCAN in February 2007. Accordingly, the Special Advocate

for Competition approved the Justification and Approval for Other Than Full and Open Competition, April 18, 2007,<sup>7</sup> stating that FASCAN was the only source that could meet the Government's requirements and that failure to procure these items would result in increased risk to the warfighter. The justification and approval memorandum stated that market research was used to obtain competition; however, this was not a true statement because the market research was related to the development of the IA prototype. No market research was conducted to support this contract.

## **Contracting Office Continued to Award Sole-Source Contracts**

Program office personnel continued its practice of issuing Statements of Urgency to justify sole-source letter contracts to FASCAN. On August 27, 2007, the Program Executive Office Ammunition (PEO Ammunition)<sup>8</sup> issued a Statement of Urgency to the contracting office requesting 118 Husky-mounted IAs. The Statement of Urgency stated that delivery of the IAs must begin no later than September 30, 2007. The Statement of Urgency also stated that

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<sup>6</sup> Validation is the process to review and approve the requirement.

<sup>7</sup> For an urgent contract, the FAR allows the contracting officials to prepare the justification and approval memorandum after the contract award.

<sup>8</sup> PEO Ammunition is composed of three project offices. One of the project offices is the Project Manager Close Combat Systems.

no other vendor could meet the expedited timeline to manufacture, inspect, ship, and install these complex IED defeat tools for the route clearance teams. The second Statement of Urgency was issued just 7 months after the first Statement of Urgency. Subsequently, on March 2, 2008, PEO Ammunition issued the third Statement of Urgency to the contracting office for IAs. PEO Ammunition stated that delivery of these 10 RG-31-mounted IAs must begin no later than April 30, 2008. The third Statement of Urgency was issued just 6 months after the second Statement of Urgency. On November 25, 2009, PEO Ammunition issued the fourth Statement of Urgency to the contracting office for IAs, stating that delivery of the 142 IAs must begin no later than November 2009. The contracting officer awarded the contract 8 days later on December 3, 2009. In each instance, PEO Ammunition cited FAR 6.302-2 as the justification for awarding the letter contracts as sole-source, stating that only FASCAN could manufacture, inspect, and deliver IAs to satisfy the delivery schedules of the urgent requirements, and failure to execute these expedited acquisitions would increase the risk to the soldiers.

Recurring use of Statements of Urgency showed a lack of planning. According to program office personnel, they were aware of potential requirements for 57 IAs identified in JUONS CC-0087 as of August 2006. They issued the Statement of Urgency for these IAs in August 2007. The contracting officer accepted the program office's sole-source approach described in the Statements of Urgency to award contract W909MY-07-C-0022 and a modification for additional IAs. The contracting officer justified her approach in the justification and approval memoranda by stating that market research yielded no other sources and that only the FASCAN IA would meet the urgent time frames. However, the justification and approval memoranda for both contract W909MY-07-C-0022 and modification referred to the same NVESD research that was used to design and develop the IA in 2006. The NVESD representatives stated that they never conducted market research specific to the IA contracts.

The same procurement practice continued for the third letter contract, W909MY-10-C-0002. The program office personnel stated that they knew about the requirement for additional systems as early as April 2009 when they received initial funding but did not issue a Statement of Urgency to the contracting officials until November 2009. The contracting officer justified the third sole-source contract with a justification and approval memorandum on January 5, 2010. The justification and approval memorandum stated:

No additional sources were identified as a result of these efforts [market survey in June 2009 and symposiums] that could meet the Government's requirements without substantial development efforts, duplication of costs, and delivery delays. Based on this market research, the Government's technical experts determined that only FASCAN could provide the required items in time to meet the Government's urgent requirements.

The market survey referred to in the justification and approval memorandum to support contract W909MY-10-C-0002 identified several crane options but did not promote competition for the IA as a collective item. However, NVESD wanted to continue with FASCAN. The market survey stated:

**There are several cranes on the market that could potentially be modified to meet the current Interrogation Arm requirement. All would require modification and follow on testing, logistical support development and documentation prior to fielding. The currently fielded IA and associated tools represent a 4 year cooperative effort between**



**the Government and the current vendor [FASCAN] as well as an investment of approximately 26 M [million] dollars.** The result has been a system that is safe, effective and suitable for use in Iraq and Afghanistan. **Despite the availability of several potential candidate replacements for the current fielded IA, it is recommended that Fascal [sic], the current vendor, continue to be used as the sole source for future Interrogation Arms.** [emphasis added]

As previously noted, other viable crane sources existed to meet the IA requirement; however, the program office previously worked with FASCAN on the IA to accommodate a new vehicle variant. The contracting office awarded the contract in December 2009.

### ***Only One Responsible Source Exemption Not Justified***

In September 2010, the contracting officer awarded a fourth sole-source contract to FASCAN. She cited FAR 6.302-1 in the justification and approval memorandum and stated that only one responsible source will satisfy requirements because FASCAN is the exclusive U.S. distributor of the Fassi crane, as well as the spare parts for the Fassi crane. Although FASCAN is the only U.S. distributor of the Fassi crane, other vendors could manufacture the IA similar to how Force Protection uses the Fassi crane to manufacture the Buffalo arm. Therefore, being the distributor of the Fassi crane did not equate to being the only responsible source of the IA. The contracting officer also stated that this exemption was based on responses received from a sources sought notice issued in December 2009 to identify potential sources for IAs and spare parts. However, the sources sought notice did not promote competition because it limited the items sought to non-developmental<sup>9</sup> IAs. The contracting officer justified the limitation of the sources sought notice to non-developmental IAs because program office personnel did not want to assume additional risk and delay for another contractor to design and engineer an IA.

One source that responded to the sources sought notice indicated that it did not have a non-developmental item to offer but could design, engineer, and build an IA. Program office personnel determined that a developmental item was not a viable solution because it required development. Therefore, the Program Office personnel recommended that contracting officials award another sole-source contract to FASCAN. Specifically, NVESD personnel's evaluation of the responses to the sources sought notice stated:

Although they [the other contractor] demonstrated a detailed history of engineering accomplishments, they do not meet the Army's criterion of a readily available non-developmental Interrogation Arm system . . . Based on the results of the market research, only FASCAN International Inc., can meet all of the Army's performance requirements, delivery, and sustain the systems in the required schedule at a supportable cost.

The contracting officer accepted the program office's recommendation and justified the sole-source contract W909MY-10-D-0021 to FASCAN by stating in the justification and approval memorandum that FASCAN was the only source that could provide IAs and IA spare parts. The Army awarded four contracts in 3 ½ years for the IA. This shows poor planning.

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<sup>9</sup> FAR 2.101 defines a non-developmental item as any previously developed item of supply used exclusively for Government purposes or any item that requires only minor modification or modifications customarily available in the commercial marketplace to meet the requirements of the procuring department or agency.

## **Commercial Item Acquisition Strategy Used Was Not Appropriate**

Army program and contracting officials inappropriately managed the IA as a commercial item. Contracting officials did not adequately justify that the IA was a commercial item for the four contracts. A commercial item acquisition strategy was not appropriate for the IA because the IA was developed uniquely for military purposes, and no commercial market existed for the IA.

### ***Federal and Defense Commercial Item Regulations***

FAR Part 12, "Acquisition of Commercial Items," contains special requirements intended to more closely resemble those customarily used in the commercial marketplace for proper planning, solicitation, evaluation, and award of contracts for commercial items. FAR 12.102, "Applicability," states that FAR Part 12 should be used for the acquisition of supplies or services that meet the FAR 2.101 definition of commercial items. The Defense Federal Acquisition Regulation Supplement (DFARS) 212.102, "Applicability," states that when using FAR Part 12 procedures for acquisitions valued at more than \$1 million, the contracting officer should determine in writing that the acquisition meets the commercial item definition in FAR 2.101.

In addition, a commercial item classification affects price reasonableness determinations. FAR 15.403-3, "Requiring Data Other Than Certified Cost or Pricing Data," states that for a commercial item, the contracting officer is required to obtain adequate data on the price for which the same item or similar items have been sold to determine the reasonableness of its price. The FAR prohibits obtaining certified cost or pricing data for commercial items with the expectation that the competitive forces of the marketplace will establish a fair and reasonable price.

### ***IA as a Military-Unique Item***

NVESD, the program office's technical representative, worked with FASCAN to develop the IA as a military-unique item. NVESD personnel developed the IA to provide warfighters in theater with the capability to inspect suspected IEDs from smaller route clearance vehicles. A commercial market did not exist for this capability; it was developed as a military-unique item. Without a commercial marketplace established for the IA at the time of these procurements, FAR Part 12 provisions were not appropriate for use on the IA acquisition initiative. The justification and approval memorandum, dated April 18, 2007, stated that no previous procurement history existed. No market, commercial or otherwise, existed for the IA before the award of the first IA procurement contract W909MY-07-C-0012.

### ***Contracting Office Did Not Adequately Justify the IA as a Commercial Item***

The contracting officer for the first two procurements stated that she based her IA commercial item determination on input from the program office and NVESD personnel's

knowledge of the IA. In all four of the determination and findings,<sup>10</sup> the contracting officers stated that the modifications were minor modifications made to an existing crane to meet Army requirements. To qualify as a commercial item with minor modifications, FAR 2.101 states that the item needs to retain a predominance of nongovernmental functions or essential physical characteristics. Although the contracting officers included this statement in the determination and findings, they did not explain or quantify the modifications to the crane in terms of parts or pricing, or explain how the nongovernmental functions and physical characteristics had not changed.

The contracting officers did not adequately justify the IA as a commercial item in the four

*The contracting officers did not adequately justify the IA as a commercial item in the four determination and findings.*

determination and findings. For all four IA commercial item determination and findings, contracting officers cited FAR 2.101(1)(i), “Definitions-Commercial Item,” as justification for considering the IA as a commercial item and stated

that the cranes, crane extensions, cameras, and associated spare parts were generally sold to the public. FAR 2.101(1)(i) defines a commercial item as:

Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and has been sold, leased, or licensed to the general public . . .

The IA is composed of several components, some of which are commercial items; however, the IA as a collective item does not meet the commercial item definition. Contracting officers did not obtain evidence to prove that the IA system had been sold to the general public or nongovernmental entities and did not determine whether there was a commercial market for the IA system. FAR 2.101(4) states that:

any combination of items meeting the commercial item requirements that are of a **type customarily combined and sold in combination to the general public**. [emphasis added]

Solely combining commercial items into one system is not sufficient to meet the commercial item definition; the combination of items must be common and sold to the general public. However, there is no commercial market for the IA system. NVESD personnel worked exclusively with FASCAN to develop the IA, and the IA system was not produced until January 2007.

Additionally, the contracting officers’ justification for considering the IA as a commercial item stated that modifications made to the cranes were minor and did not significantly alter the nongovernmental function or essential physical characteristics of the item. FAR 2.101(3)(ii), “Commercial Item,” states:

Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor

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<sup>10</sup> FAR subpart 1.7, “Determination and Findings,” states that a determination and findings is a form of written approval that an authorized official is required by statute or regulation to prepare as a prerequisite to taking certain contract actions. The determination is a conclusion or decision supported by the findings. The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

The determination and findings refers to minor modification of the crane, not the IA as a collective item. Program office personnel stated that transforming the crane into an IA system required extensive work. According to NVESD personnel, the Army invested \$600,000 to develop the first IA and continued performing upgrades on subsequent contracts. The Fassi crane was fitted with an interrogation tool, an articulated boom, a camera, and lights. In addition, the IA requires a mounting kit specific to the military vehicle it is attached to. Furthermore, according to the program office project lead, the integration of the IA on military vehicles was not a simple, bolt-on solution. The contracting officer's inappropriate determination that the IA was a commercial item impacted the acquisition strategy used to procure the IA.

## **Program Office Personnel's Preference for a Specific Contractor**

Program office personnel preferred to use a specific contractor to procure the IA. Specifically, the program office cited FASCAN in contract documentation to support sole-source contracts and identified FASCAN as the only source without performing adequate market research. They included brand names in the statements of work specific to FASCAN's IA and continued to request FASCAN as the desired vendor while not taking action to promote competition for future IA requirements.

### ***IA Contract Documentation Specified FASCAN***

The program office specified FASCAN in contract documentation to support the IA sole-source contracts. The program office issued four Statements of Urgency to support the sole-source letter contracts to FASCAN. In each of these Statements of Urgency, the program office identified FASCAN as the only source that could meet the Government's requirements without additional integration, testing, or safety confirmation. The contracting officers used information provided by the program office to issue five justification and approval memoranda that determined only FASCAN could meet the Government's requirements for IAs. All of the five justification and approval memoranda stated that the Government had invested time and money in FASCAN and that working with another source would duplicate efforts. In addition, the justification and approval memoranda specified duplication of costs ranging from \$500,000 to \$1.2 million and additional delays between 6 months to 18 months to develop, produce, and test a different IA system. For approximately 3 years, the program office requested FASCAN as the vendor for the IA while program office personnel continued to work exclusively with FASCAN on IA development. As a result, the program office demonstrated a preference for FASCAN as the contractor for the IA.

### ***Adequate Market Research Not Conducted***

Program office personnel identified FASCAN as the only source that could meet the warfighter's requirement without performing adequate market research. The FAR requires agencies to conduct market research before developing new requirements documents.

NVESD representatives stated that NVESD personnel did not conduct market research to support the first three IA contracts. Rather, NVESD personnel searched the internet and attended industry conferences to find components to build a proof-of-concept prototype. The NVESD Neutralization Branch Chief stated that he provided a summary of those informal research efforts to the contracting and program offices; however, those officials did not request that he conduct any further market research. In a subsequent discussion with program office personnel and contracting officers, they clarified that when NVESD representatives stated that they did not conduct market research for the IA contracts, they meant that a formal sources sought notice was not issued through the Federal Business Opportunities page. In addition, the contracting officer stated that the program office had already determined that FASCAN was the only source for the IA and, because of the urgency of the acquisition, she did not require formal market research; instead, she relied on NVESD research. The market research NVESD conducted was not in support of the IA contracts; instead, it identified components for the IA prototype.

In June 2009, before the third IA contract W909MY-10-C-0002 was awarded, NVESD personnel conducted a market survey to identify sources of commercially available cranes that could be modified into an IA. NVESD concluded that there were several cranes on the market that could be modified to meet the current IA requirement. However, NVESD determined that the other cranes would require modification, testing, logistical support development, and documentation before fielding. As a result, NVESD recommended that FASCAN be used for future IA procurements despite the availability of several potential candidate replacements for currently fielded IAs.

In December 2009, the contracting officer issued a sources sought notice to inform industry of the IA requirement to support the IDIQ contract W909MY-10-D-0021. The sources sought notice restricted the IA requirement to a non-developmental item. Two sources responded to the notice, FASCAN and another engineering firm. NVESD representatives disqualified the engineering firm because its solution required development; however, NVESD spent the previous 3 years working with FASCAN to develop the IA. In limiting the sources to non-developmental items, program office personnel and contracting officials circumvented the requirement to promote full and open competition. Therefore, the contracting office should obtain certified cost or pricing data from FASCAN before awarding future delivery orders on contract W909MY-10-D-0021 or renegotiate the contract in accordance with FAR Part 15, "Contracting by Negotiation."

### ***Brand Names Specified***

FAR 11.105, "Items Peculiar to One Manufacturer," states that brand names should be used only if the brand is essential to the Government's requirements and market research indicates other companies' similar products do not meet or cannot be modified to meet agency's needs. Program office personnel consistently used brand names in their statements of work describing the Interrogation Arm; however, they did not always have market research to support this distinction.

### ***Program Office Did Not Consider Future IA Requirements***

Program office personnel did not develop an acquisition strategy promoting competition to plan for future IA requirements. According to the contracting officer, the program office personnel presented the first three IA requirements as urgent, one-time buys. The program

office did not have an acquisition strategy until December 2007. The acquisition strategy did not include a contract approach to promote competition for IA procurements or anticipate future requirements, despite stating that the IA is part of the route clearance family of systems. Program office personnel should have included the contracting officers when developing their acquisition strategy. They also should have informed the contracting officers of the potential for future IA requirements to ensure that the contracting officers obtained the benefits of competition over the course of the IA acquisition. The program manager should have developed an acquisition strategy that promoted competition. Without promoting competition, FASCAN became the only available source of the IA. Therefore, for future IA procurements, the program office in coordination with the contracting office should develop an acquisition strategy that will seek, promote, and sustain competition.

## **No Due Diligence in IA Commercial Item Determination**

Contracting officers did not exercise due diligence when making their determination that the

*Furthermore, contracting officers did not obtain prior sales information sufficient to support IA price reasonableness determinations.*

IA was a commercial item. They procured the IA using a commercial item strategy without considering whether the IA was truly commercial in nature and whether a commercial marketplace existed to generate favorable pricing.

Furthermore, contracting officers did not obtain prior sales information sufficient to support IA price reasonableness determinations.

In making the determination that the IA was a commercial item, contracting officers relied on program office personnel's description of the IA. Specifically, the contracting officers stated that based on their discussions with program officials, they determined the IA was a commercial item because the modifications to the Fassi crane were minor. However, contracting officers did not evaluate the minor modifications that were made to the crane and other commercial components in terms of pricing. Establishing the extent of modifications to IA commercial components is important for justifying the item under the FAR definition of a modified commercial item and for collecting the correct type of information required by FAR to determine a fair and reasonable price.<sup>11</sup> When a proper commercial item determination is not made, it impacts the price reasonableness determination.

According to the FAR Part 10, "Market Research," and the Under Secretary of Defense for Acquisition, Technology, and Logistics Commercial Item Handbook, November 2001; market research and analysis provide the basis as to whether the Government's requirements for an acquisition can be met by a commercial item. Contracting officers did not conduct their own market research to determine whether a commercial sales history existed for the IA or whether the IA was sold to the general public. Instead, they accepted research that NVESD personnel conducted during the IA prototype development. This research did not satisfy FAR market research requirements. The Army Federal Acquisition Regulation Supplement 5110, "Market Research," states that requirements personnel and contracting officers must work together as a team to gather market data needed to make decisions.

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<sup>11</sup> FAR 15.403-1, "Prohibition on Obtaining Certified Cost or Pricing Data," includes a provision for modified commercial items that states [minor] modifications of a commercial item are not exempt from the requirement for submission of certified cost or pricing data...if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data [\$700,000] or 5 percent of the total price of the contract at the time of contract award.

Contracting officers did not obtain any market data when making the IA commercial item determination. Specifically, contracting officers stated that they did not look for a pricing history of the IA because FASCAN was the only source of the IA. Contracting officers should have sought to obtain IA pricing information from FASCAN's nongovernmental customers to determine whether a commercial market existed for the IA. Because the contracting officers did not use due diligence to determine that the IA was a commercial item or ensure that a commercial market existed, the Executive Director, Army Contracting Command-Aberdeen Proving Ground, should review the contracting officers' actions and, if appropriate, take administrative actions.

When the contracting officers were classifying the IA as a commercial item, they were required by FAR 15.403-3, "Requiring Data Other Than Certified Cost or Pricing Data," to conduct a price analysis to determine whether the price was fair and reasonable. DFARS Procedures, Guidance, and Information provides additional guidance and states that when cost or pricing data are not required, contracting officers must obtain "information other than cost or pricing data" or whatever information is necessary to determine the reasonableness of the price. It further states that the contracting officer must determine whether the prior sales information is sufficient for determining that prices are fair and reasonable. Specifically, DFARS states that sales data must be comparable to the quantities of the product proposed. It states that if the sales information is not sufficient, additional information must be obtained, including cost information, if necessary.

Contracting officers collected information from FASCAN in the form of quotes, invoices, or price lists to support IA price reasonableness determinations for the IA as a commercial item. The contracting officers stated that they obtained information from FASCAN because there were no alternate sources to gain information other than cost or pricing data on the IA because FASCAN was the only source. Despite recognizing that the IA was composed of commercial items, contracting officers never established what components of the IA were sold to the general public. Contracting officers stated they did not research the sales of the commercial components of the IA from Government schedules or sources other than the contractor to understand the commercial market and establish price histories of these items. Instead, they relied on FASCAN's submitted information to establish a price. Having other sources of information would have strengthened the Army's position for negotiating a fair and reasonable price.

## **Conclusion**

When the Army awarded multiple sole-source IA contracts to the same contractor without promoting competition and inappropriately procured the IA as a commercial item, it lost the benefits of competition and relinquished its ability to ensure a fair and reasonable price.

As cited in the Director of Defense Procurement and Policy Memorandum, "Competition in Department of Defense Acquisition," September 14, 2009, competition is the cornerstone of our acquisition process, and the benefits are well established. The President's Memorandum on Government Contracting, March 4, 2009, reinforces the importance of striving for an open and competitive process as an overriding obligation to American taxpayers and of the need to place greater emphasis on achieving competition in our procurements. According to the President's memorandum, competition reduces the risk that taxpayer funds are spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well-designed to

serve the needs of the Federal Government or the interests of the American taxpayer. Because the Army procured the IA without providing for full and open competition, the Army may not have received the best value in its contracts to meet the needs of the warfighter and protect the interests of the DoD.

Because the IA is not a commercial item, it would have been prudent for contracting officers to gather sufficient cost or pricing data for subsequent IA procurements to ensure that the Army received a fair and reasonable price. When the contracting officers determined that the IA was a commercial item, they relinquished the Army's right to obtain certified cost or pricing data. Without certified cost or pricing data, contracting officials were at a disadvantage when negotiating a fair and reasonable price.

Contracting officers only relied on cost or pricing data from FASCAN in the form of Web site information, invoices, and contractor-submitted price lists to negotiate a fair and reasonable price for the IA. Contracting officers also used a Defense Contract Audit Agency audit conducted on the first IA contract W909MY-07-C-0012 to determine price reasonableness for the second, third, and fourth IA contracts without obtaining additional Defense Contract Audit Agency assistance. Before definitizing the IA letter contracts, contracting officers did not obtain quantity discounts nor did they obtain updated cost information for the work performed to include actual costs incurred. FASCAN completed at least 50 percent of the IA systems before each of the letter contracts was definitized.

Although program office personnel did not act with urgency on receiving the validated urgent needs statements by engaging the contracting office, we do not believe an accountability recommendation for the program office would be useful. Recommendation 1 calls for the program office to work with the contracting office to achieve competition on future IA acquisitions. In addition, the project lead engineer who worked on the IA contracts is no longer with the program.

## **Management Comments on the Finding and Our Response**

### ***Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments***

The Deputy for Acquisition and Systems Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology), responded for Project Manager Close Combat Systems. The Deputy for Acquisition and Systems Management stated that the Army agreed that the practice of issuing multiple Statements of Urgency was suboptimal but that the approach was based primarily on when the Army received the JUONS and ONS from the warfighter, not from a lack of advanced planning.

### ***Our Response***

We recognize that the first Statement of Urgency was for the first two JUONS. The two JUONS were issued in March and April of 2006 and required 72 IAs. JIEDDO validated the initial urgent needs statement and provided funding to the program office in August 2006. It was nearly 5 months after JIEDDO funded the urgent need that the program office notified contracting officials of the requirement. Waiting to engage contracting officials limited the



time available to execute contract planning. Although according to program office personnel they knew that additional IAs may be needed, they continued to use Statements of Urgency as a means of obtaining additional IAs sole source from a preferred contractor. There was no realistic effort made to foster competition in the acquisition of IAs.

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

### ***Revised Recommendation***

As a result of Army comments to recommendations in a draft of this report, we revised draft Recommendation 2.a to clarify the actions needed to ensure that there is a contract in place to obtain the IAs that are crucial to the route clearance mission while the contracting officer works on obtaining the best value.

**1. We recommend that the Project Manager Close Combat Systems develop an acquisition strategy with the Army Contracting Command – Aberdeen Proving Ground to seek, promote, and sustain competition for future Interrogation Arm procurement.**

### ***Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments***

The Deputy for Acquisition and Systems Management agreed and stated that the Product Manager Countermine and Explosive Ordnance Disposal Division that reports to the Project Manager Close Combat Systems always strives to seek, promote, and sustain competition for all products that it manages. He stated that for any future IA procurements, the program office would seek to use competitive procurements in accordance with FAR Part 6, “Competition Requirements,” while balancing this with the urgency, magnitude of the requirement, and the system’s fielding, installation, and training. He further stated that, at this time, there was no known future IA procurement requirement.

### ***Our Response***

The Deputy for Acquisition and Systems Management comments are responsive. No further comments are required.

### ***Army Contracting Command Comments***

Although not required to comment, the Executive Director, Army Contracting Command – Aberdeen Proving Ground, stated that the Product Manager Countermine and Explosive Ordnance Disposal Division was working with Product Manager Assured Mobility Systems to develop a program of record for the IA requirement to include the development of a long-term acquisition strategy. He stated that in the event that this action is transitioned to Product Manager Assured Mobility Systems, the Army Contracting Command - Warren, (not Army Contracting Command – Aberdeen Proving Ground) would perform subsequent contract actions. The Executive Director also stated that if Army Contracting Command – Aberdeen Proving Ground was the contracting agent for the IA program of record, the acquisition strategy would be full and open competition, in accordance with FAR Part 12.

## ***Our Response***

The contracting agency responsible for the IA program of record should ensure that the acquisition strategy is full and open competition in accordance with FAR Part 15. The use of FAR Part 12 provisions is not appropriate for use on the IA acquisition initiative because the IA is not a commercial item. If the contracting agency uses FAR Part 12, the contracting officer will not be able to obtain certified cost or pricing data. Without certified cost or pricing data, the contracting officials are at a disadvantage when negotiating a fair and reasonable price.

### **2. We recommend that the Executive Director, Army Contracting Command – Aberdeen Proving Ground:**

**a. Obtain certified cost or pricing data before awarding future delivery orders on contract W909MY-10-D-0021 or renegotiate the contract in accordance with Federal Acquisition Regulation Part 15, “Contracting by Negotiation.”**

### ***Army Contracting Command Comments***

The Executive Director, Army Contracting Command – Aberdeen Proving Ground disagreed and stated that the contract was properly awarded as a commercial item pursuant to FAR Part 12. The Executive Director also stated that a detailed price analysis; which included the analysis of prior prices, current contractor price lists, vendor quotes, and independent internet searches; was used to negotiate fair and reasonable prices on this IDIQ contract. He stated that the IAs are crucial to the route clearance mission and the disposition of life-threatening IEDs in both Iraq and Afghanistan, and must be sustained and maintained to ensure mission success. In addition, the Executive Director stated that it is imperative that a contract vehicle be available to support urgent ONS/JUONS requirements as they are validated and funded. He stated that because contract W909MY-10-0-0021 was properly awarded and fair and reasonable prices were negotiated, the contract should continue as a vehicle to rapidly fulfill and sustain this critical wartime capability.

## ***Our Response***

The Executive Director, Army Contracting Command – Aberdeen Proving Ground, comments are nonresponsive. We understand that the IA is composed of several components, some of which are commercial items; however, the IA as a collective item did not meet the commercial item definition. NVESD representatives worked with FASCAN to develop the IA as a military-unique item; therefore, a commercial market did not exist for this capability. Also, the contracting officers did not conduct their own market research to determine whether a commercial sales history existed for the IA or whether the IA was sold to the general public. Without a commercial marketplace established for the IA at the time of these procurements, FAR Part 12 provisions did not apply to the IA acquisition initiative. In addition, the contracting officers relied solely on cost or pricing data from FASCAN in the form of Web site information, invoices, and contractor-submitted price lists to negotiate a fair and reasonable price for the IA. The contracting officers did not obtain independent pricing data or data that the contractor certified was current, accurate, and complete. Therefore, we revised the recommendation and request that the Executive Director, provide additional comments in response to the final report.

**b. Perform a review of the contracting officers' actions relating to the determination that the Interrogation Arm was a commercial item and that a commercial market existed and initiate, as appropriate, administrative actions.**

### ***Army Contracting Command Comments***

The Executive Director, Army Contracting Command – Aberdeen Proving Ground, agreed and conducted two reviews, one by the Army Contracting Command – Aberdeen Proving Ground, Belvoir Division Chief (formerly CECOM Contracting Center-Washington), and one by the Army Contracting Command – Aberdeen Proving Ground Commerciality Advocate. The Executive Director stated that as a result of the reviews, it was determined that the contracting officers made reasonable determinations that the IA was a commercial item; therefore, no administrative action against the contracting officers was warranted. However, the Executive Director stated that the written documentation supporting the determination was inadequate and should have provided additional details to support that determination. The Executive Director stated that the Army Contracting Command – Aberdeen Proving Ground would review commercial item determination policies and procedures and issue supplemental guidance no later than July 15, 2011.

On July 14, 2011, the Principal Assistant Responsible for Contracts issued Acquisition Instruction 11-50, “Commerciality Determination,” that provides supplemental guidance on documenting a commercial item determination and emphasizes the importance of reviewing the commercial item determination documentation as part of the peer review process. The Instruction has a template that the contracting officers must use to prepare the Commerciality Determination. The template requires that specific information be included when determining whether an acquisition meets the FAR 2.101 definition of a commercial item. The Commerciality Determination will be reviewed for commercial acquisitions undergoing a peer review. If the determination and finding does not contain sufficient detail to determine whether the acquisition meets the FAR 2.101 definition of commercial items, it will not be approved.

### ***Our Response***

Although we disagree with the determination that the IA was a commercial item, the Executive Director’s comments are responsive. No further comments are required.

# **Appendix A. Scope and Methodology**

We conducted this performance audit from January 2010 through June 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

We determined whether DoD procurement efforts for countermine and IED defeat systems used in Iraq and Afghanistan were managed in accordance with Federal and Defense acquisition regulations. To achieve the audit objective, we judgmentally selected Army countermine and IED defeat systems contracts based on contract status, system description, and dollar value. We selected the IA contracts to audit. The Army awarded four IA contracts between 2007 and 2010. This report addresses the Army contracting and management of four IA contracts.

## **Documentation and Information Reviewed**

To accomplish the audit objective, we reviewed Federal, DoD, and Army acquisition guidance. We also reviewed IA program documentation from September 2005 through September 2010, including joint urgent operational need statements; contract files for contracts W909MY-07-C-0012, W909MY-07-C-0022, W909MY-10-C-0002, and W909MY-10-D-0021; test reports; and funding actions. In addition, we reviewed the information other than cost or pricing data, such as invoices, quotes, and purchase orders associated with the FASCAN's proposals for contracts W909MY-07-C-0022, W909MY-10-C-0002, and W909MY-10-D-0021 to determine whether the prices were fair and reasonable. We met with representatives from the following organizations and contractors: JIEDDO; U.S. Army Materiel Command; U.S. Army Research, Development, and Engineering Command; U.S. Army Communications-Electronics Research, Development, and Engineering Center, Night Vision and Electronic Sensors Directorate; Army Contracting Command – Aberdeen Proving Ground; Program Executive Office Ammunition; Project Manager Close Combat Systems; Product Manager Countermine and Explosive Ordnance Disposal; Defense Contract Management Agency - Baltimore; FASCAN; and ManTech International Corporation. In addition, we interviewed personnel from the 30th Heavy Brigade Combat Team, 3rd Combat Engineer Battalion, 951st Engineer Company, 4th Engineer Battalion, and the 1st Brigade Combat Team of the 1st Cavalry Division to obtain their feedback on using the IA in theater.

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

We used event histories and program documentation obtained from the U.S. Central Command Requirements Integration Management database. We did not perform a data reliability assessment of the computer-processed data because the data were used only to obtain background information on the IA and not to support our finding, conclusions, or recommendations. Therefore, using the computer-processed data from the event histories and program documentation did not affect the reliability of the audit.

## **Use of Technical Assistance**

We obtained assistance from the Quantitative Methods and Analysis Division of the Office of Inspector General. The Quantitative Methods and Analysis Division selected a random sample of parts from other than cost or pricing data that the contracting office obtained from FASCAN for contracts W909MY-07-C-0022, W909MY-10-C-0002, and W909MY-10-D-0021.

## **Prior Coverage**

During the last 5 years, the Government Accountability Office and the DoD Inspector General (IG) have issued six reports discussing JIEDDO and IED initiatives. Unrestricted Government Accountability Office reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

### **GAO**

GAO Report No. GAO-10-660, “Warfighter Support: Actions Needed to Improve the Joint Improvised Explosive Device Defeat Organization’s System of Internal Control,” July 1, 2010

GAO Report No. GAO-10-460, “Warfighter Support: Improvements to DoD’s Urgent Needs Processes Would Enhance Oversight and Expedite Efforts to Meet Critical Warfighter Needs,” April 30, 2010

GAO Testimony No. GAO-10-186T, “Warfighter Support: Challenges Confronting DoD’s Ability to Coordinate and Oversee Its Counter-Improvised Explosive Devices Efforts,” October 29, 2009

GAO Report No. GAO-10-95, “Warfighter Support: Actions Needed to Improve Visibility and Coordination of DoD’s Counter-Improvised Explosive Device Efforts,” October 29, 2009

GAO Report No. GAO-08-342, “More Transparency Needed over the Financial and Human Capital Operations of the Joint Improvised Explosive Device Defeat Organization,” March 6, 2008

### **DoD IG**

DoD IG Report No. D-2010-032, “DoD Countermine and Improvised Explosive Device Defeat Systems Contracts - Husky Mounted Detection System,” December 31, 2009

## **Appendix B. Interrogation Arm Urgent Requests, Funding, and Contracting**

Warfighters in theater submitted four JUONS and three Army ONS for IAs to support their route clearance missions in Iraq and Afghanistan. To address the urgent requests, the Army Contracting Command – Aberdeen Proving Ground contracting officers awarded 3 letter contracts and modified one of them to procure a total of 318 IAs. They also awarded a 3-year IDIQ contract, which procured an additional 46 IAs as of March 2011 (see the following table).

### Interrogation Arm Urgent Requests and Contracting Efforts

IA Urgent Requests			IA Contracting Actions				
Warfighter Submitted Date	Quantity Requested	Theater	Contract Date	Contract Number	Quantity Procured	Contract Amount (in millions)	Funding Source
March 2006 JUONS CC-0069	9	Afghanistan	February 2007	W909MY-07-C-0012	48 <sup>2</sup>	\$ 3.2	JIEDDO/REF <sup>3</sup>
April 2006 JUONS CC-0087 <sup>1</sup>	6	Iraq					
April 2006 JUONS CC-0087 <sup>1</sup>	57	Iraq	August 2007	W909MY-07-C-0022	118 <sup>4</sup>	18.9	JIEDDO
June 2007 JUONS CC-0220	56	Iraq					
September 2007 JUONS CC-0266	10	Afghanistan	May 2008	W909MY-07-C-0022 Modification P00007	10	.6	JIEDDO
December 2008 ONS 09-7246	64	Afghanistan	December 2009	W909MY-10-C-0002	142	10.4	Army
April 2009 ONS 09-8996	78	Afghanistan					
January 2010 ONS 10-10920	X <sup>5</sup>	Afghanistan	September 2010	W909MY-10-D-0021 <sup>6</sup>	46	49.0	Army
<b>Totals</b>					<b>364</b>	<b>\$82.1</b>	

Notes:

<sup>1</sup> The April 2006 JUONS requested 63 IAs; however, according to the Product Manager, Product Manager Countermine and Explosive Ordnance Disposal, those systems were procured in 2 separate actions.

<sup>2</sup> The “Quantity Requested” and the “Quantity Procured” do not match because 33 spare IAs were procured.

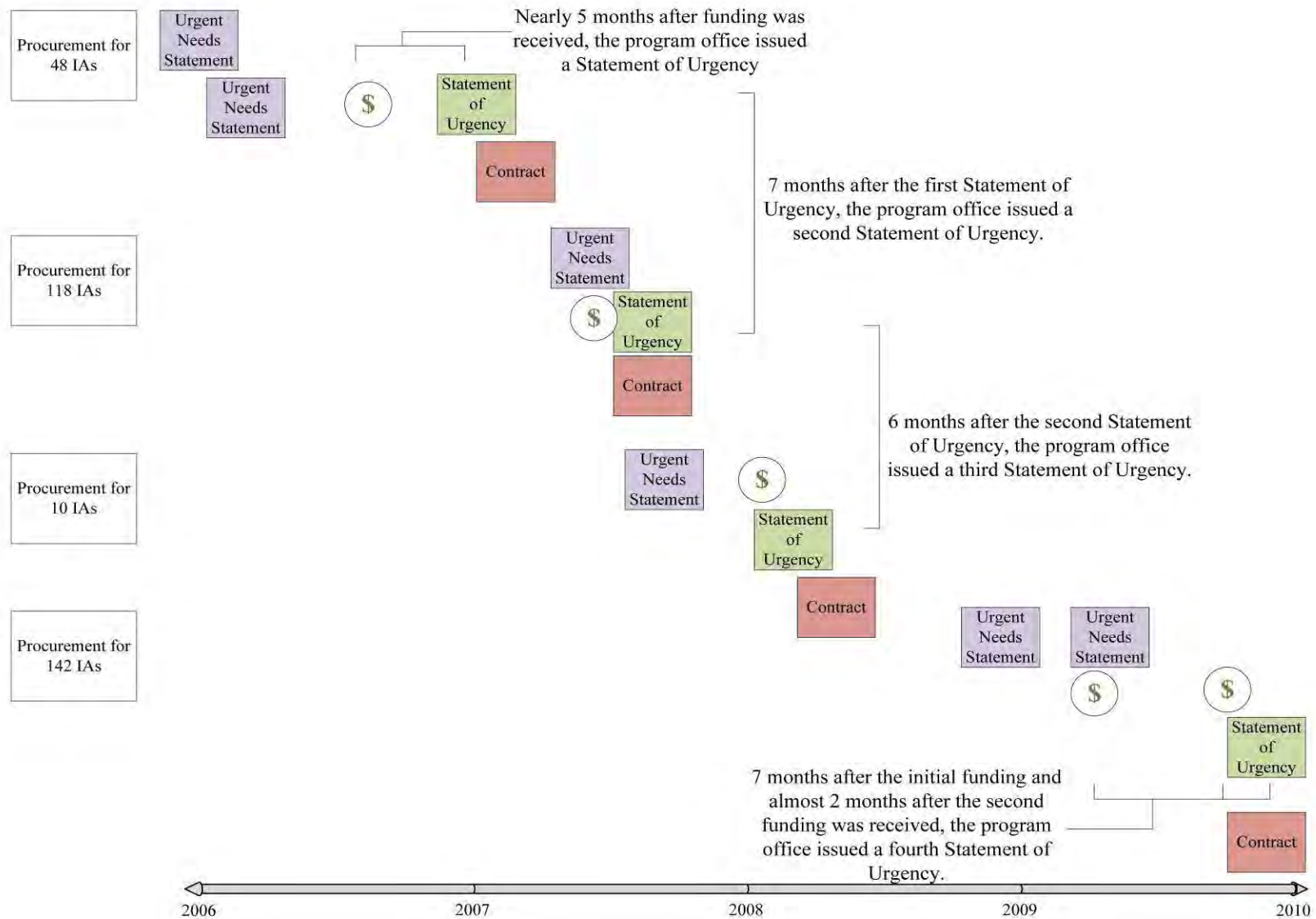
<sup>3</sup> According to the Deputy Comptroller, JIEDDO, in 2006 when this funding transaction occurred, JIEDDO was a new organization and did not have its own appropriation account. As a result, JIEDDO approved the release of funds, and the Rapid Equipping Force (REF) issued the funding.

<sup>4</sup> The quantity procured does not coincide with the quantity requested because an additional five IAs were procured for training purposes.

<sup>5</sup> The total quantity requested is classified.

<sup>6</sup> Contract W909MY-10-D-0021 was a 3-year IDIQ contract with a \$49 million ceiling. As of March 2011, the contracting office awarded 2 delivery orders on this contract to procure 46 IA systems, spares, and repair parts.

# Appendix C. Timeline of IA Procurements





# **Glossary**

## ***Family of Systems***

A family of systems is a set of systems that provides similar capabilities through different approaches to achieve similar or complementary effects.

## ***Federal Business Opportunities***

Federal Business Opportunities is known as FedBizOpps and is the single Government point-of-entry for Federal Government procurement opportunities over \$25,000. Government buyers are able to publicize their business opportunities by posting information directly to the FedBizOpps Web site.

## ***Improvised Explosive Device***

An improvised explosive device is a device that is placed or fabricated in an improvised manner using destructive, lethal, noxious, pyrotechnic, or incendiary chemicals. It is normally devised from nonmilitary components. It is designed to destroy, incapacitate, harass, or distract.

## ***Joint Urgent Operational Need***

A joint urgent operational need is an urgent operational need identified by a combatant commander involved in an ongoing named operation. The main purpose of a joint urgent operational need is to identify and subsequently gain Joint Staff validation and resourcing of a solution, usually within days or weeks, to meet a specific high-priority combatant commander need. A joint urgent operational need should not involve the development of a new technology or capability; however, the acceleration of an advanced concept technology demonstration or minor modification of an existing system to adapt to a new or similar mission is within the scope of the joint urgent operational need validation and resourcing process.

## ***Letter Contract***

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. The FAR explains that a letter contract may be used when the Government's interests demand that the contractor be given a binding commitment so that work can start immediately, and negotiation of a definitive contract is not possible in sufficient time to meet the requirement.

## ***Market Research***

Market research is a process for gathering data on product characteristics, suppliers' capabilities, and the business practices that surround them, plus an analysis of that data to make acquisition decisions.

## ***Operational Needs Statement***

Operational needs statements are used to document the urgent need for a nonstandard and or unprogrammed capability to correct a deficiency or improve a capability that enhances mission accomplishment. The operational needs statement provides an opportunity for the

operational commander; outside the acquisition, combat development, and training development communities; to initiate the capability determination process.

### ***Program of Record***

A program of record is an acquisition program recorded in the current Future Years Defense program or as updated from the last Future Years Defense program by approved program documents. Program documents included the acquisition program baseline, acquisition strategy, or selected acquisition report.

### ***Prototype***

A prototype is an original or model on which a later system or item is formed or based. Early prototypes may be built and evaluated during the technology development or later in the engineering and manufacturing development phase. Also, the early prototype could be the result of a joint capability technology demonstration or advanced technology demonstration and tested before a low-rate initial production decision. Selected prototyping may continue after a low-rate initial production decision, as required, to identify and resolve specific design or manufacturing risks, or in support of evolutionary acquisition

### ***Sources Sought Notice***

A sources sought notice is a synopsis posted by a Government agency that states it is seeking possible sources for a project. It is not a solicitation for work, nor is it a request for proposals.

### ***Undefinitized Contract Action***

An undefinitized contract action is any contract action in which the terms, specifications, or price are not agreed upon before performance begins. An example of an undefinitized contract action is a letter contract in which prices are not definitized until negotiation.

# Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) Comments



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

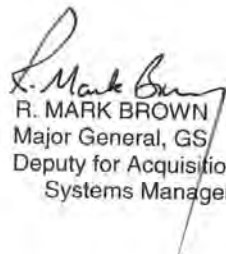
JUL 13 2011

SAAL-SMA

MEMORANDUM FOR Department of Defense Inspector General

SUBJECT: Response to the Draft Department of Defense Inspector General Improving Competition for Interrogation Arms (IA) Contracts (Project No. D2010-D000AE-0139.000) dated 3 June 2011.

1. Report Recommendation #1: "We recommend that the Project Manager Close Combat Systems develop an acquisition strategy with the CECOM Contracting Center-Washington to seek, promote, and sustain competition for future IA procurement."
2. Army response: Concur. The Product Manager (PM), Countermine and Explosive Ordnance Disposal under Project Manager, Close Combat Systems always strives to seek, promote, and sustain competition for all products that it manages. Specific to any future IA procurement, we will continue to seek to utilize competitive procurements in accordance with the Federal Acquisition Regulations Part 6, "Competition Requirements" while balancing this with the urgency, magnitude of the requirement, and the system's fielding, installation, and training throughput. Exemptions for other than Full and Open Competition will be pursued only when the specifics of the Warfighter requirements forces us to do so and only as a last resort. At this time, there are no known future procurement requirements.
3. In addition, in several places the draft report is critical of the PM's use of multiple statements of urgency. The Army agrees with the concerns noted in the draft report that such a practice is suboptimal. However, it is important to note for the record that this approach was based primarily on the timing of the Joint Urgent Operational Needs Statements and Operational Needs Statements that the Department received from the Warfighters for this important item, as opposed to a lack of advanced planning.
4. The point of contact is [REDACTED]

  
R. MARK BROWN  
Major General, GS  
Deputy for Acquisition and  
Systems Management

# U.S. Army Contracting Command Comments



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
4400 MARTIN ROAD  
REDSTONE ARSENAL, AL 35898-5000

AMCIR


JUL 5 2011

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN: [REDACTED]  
[REDACTED] Room 300, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Command Reply to Draft Report: Improving Competition for Interrogation Arm  
Contracts (Project Number: D2010-D000AE-0139.000) (D1020)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject report and the response provided by the U.S. Army Contracting Command (ACC). AMC endorses the enclosed response from ACC.
2. The AMC point of contact is [REDACTED]

Encl

  
JOHN B. NERGER  
Executive Deputy to the  
Commanding General



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY CONTRACTING COMMAND  
3334A WELLS ROAD  
REDSTONE ARSENAL, AL 36898

JUN 28 2011

AMSCC-IR

MEMORANDUM FOR [REDACTED] Director, Internal Review and Audit Compliance  
Office, Headquarters, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA  
22060

SUBJECT: Improving Competition for Interrogation Arm Contracts (Project No. D2010-  
D000AE-0139.000) (D1020)

1. Reference memorandum and draft report, Department of Defense Inspector General,  
3 June 2011, subject: same as above.
2. After reviewing the referenced documents, the Army Contracting Command (ACC) response  
is enclosed.
3. There are two changes needed in the report:
  - a. Correct the name of the contracting center to reflect its current name: Army Contracting  
Command-Aberdeen Proving Ground (ACC-APG).
  - b. Address recommendation #2 to the Executive Director, Army Contracting Command –  
Aberdeen Proving Ground.
4. The ACC point of contact is [REDACTED]

Encl

JEFFREY P. PARSONS  
Executive Director

Revised, Page 3

Revised, Page 17



DEPARTMENT OF THE ARMY  
U.S. ARMY CONTRACTING COMMAND-ABERDEEN PROVING GROUND  
ABERDEEN PROVING GROUND, MARYLAND 21010-5401

CCCE-CQK

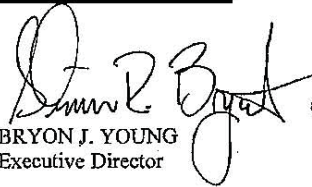
24 June 2011

MEMORANDUM FOR Department Of Defense Inspector General Agency, ATTN: Susan J. Lippolis, 400 Army Navy Drive, Arlington, Virginia, 22202-4704

SUBJECT: Improving Competition for Interrogation Arm Contracts (Project No. D2010-D000AE-0139.000)

1. Command comments on the subject draft report are enclosed.
2. Point of contact is [REDACTED]

Encl

  
BRYON J. YOUNG  
Executive Director

**ARMY CONTRACTING COMMAND (ACC)  
ABERDEEN PROVING GROUND (APG)  
REPLY TO DODIG DRAFT INSPECTION RESULT:**

**Report No. D2010-D000AE-0139.000**

**Background** DoD Inspector General (DODIG) conducted a review from January 2010 through June 2011 of the Army's efforts to procure the Interrogation Arm (IA) used on route clearance vehicles in Iraq and Afghanistan to determine whether the IA acquisition initiative was contracted and managed in accordance with Federal and Defense acquisition regulations. The following contracts were reviewed: W909MY-07-C-0012, W909MY-07-C-0022, W909MY-10-C-0002, and W909MY-10-D-0021.

The DODIG concluded that the Army awarded multiple sole-source IA contracts to the same contractor without promoting competition and inappropriately procured the IA as a commercial item, it lost the benefits of competition and relinquished its ability to ensure a fair and reasonable price.

**RECOMMENDATIONS FOR THE EXECUTIVE DIRECTOR, ACC-APG**

**DRAFT REPORT RECOMMENDATION 1** We recommend that the Project Manager Close Combat Systems develop an acquisition strategy with the CECOM Contracting Center-Washington to seek, promote, and sustain completion for future Interrogation Arm procurement.

**COMMAND COMMENTS AND ACTION TAKEN**

This finding will be fully addressed by the Program Manager Close Combat Systems. However, Product Manager Countermine & EOD Systems (PM CM&EOD) is presently working with Product Manager Assured Mobility Systems (PM AMS) to develop a program of record for the IA requirement which would include the development of a long-term acquisition strategy. In the event that this action is transitioned to PM AMS the subsequent contract action would be performed by ACC-Warren, not ACC-APG. Should ACC-APG be the contracting agent the IA program of record, the acquisition strategy will be Full and Open Competition in accordance with FAR Part 12.

**DRAFT REPORT RECOMMENDATION 2:** We recommend that the Chief, CECOM Contracting Center-Washington:

- a. Discontinue awarding delivery orders on contract W909MY-10-D-0021 and procure future Interrogation Arms using full and open competition in accordance with Federal Acquisition Regulation Part 15, "Contracting by

Revised  
Recommendation,  
Page 17

Negotiation,” or negotiate a sole-source contract after obtaining certified cost and pricing data.

- b. Perform a review of the contracting officers actions relating to the determination that the Interrogation Arm was commercial item and that commercial market existed and initiate, as appropriate administrative action,

#### **COMMAND COMMENTS AND ACTION TAKEN**

Partially concurs with the DODIG recommendations. Specifically, we non-concur with the DODIG position and uphold that the Contracting Officers’ determinations, that the IA is a commercial item, was proper. However, we concur that the written documentation supporting that determination was inadequate and should have provided additional details to support that determination. Furthermore, we believe that contract W909MY-10-D-0021 was properly awarded pursuant to FAR Part 12 and the contract performance should continue. The specific responses to the DoDIG recommendations follow.

- a. The underlying premise of the audit findings is the presumption that the IA is not a commercial item. As a result of this conclusion, the DoDIG believes that contract W909MY-10-D-0021 should have been awarded pursuant to FAR Part 15. We non-concur with this opinion and believe that the contract was properly awarded as a commercial item pursuant to FAR Part 12. Furthermore, the detailed price analysis which included the analysis of prior prices, current contractor price lists, vendor quotes and independent internet searches resulted in the negotiation of fair and reasonable prices that formed the basis for the IDIQ contract. These systems are crucial to the route clearance mission and the disposition of life-threatening IEDs in both Iraq and Afghanistan, and must be sustained and maintained to ensure mission success. In addition, it is imperative that a contract vehicle be available to support urgent ONS/JUONS requirements as they are validated and funded. As contract W909MY-10-D-0021 was properly awarded and fair and reasonable prices were negotiated the contract should continue as a vehicle to rapidly fulfill and sustain this critical war-time capability.
- b. As recommended by the DODIG, the ACC-APG, Belvoir Division Chief (formerly CECOM Contracting Center-Washington) directed a review of the Contracting Officers’ determinations that the IA was a commercial item.

The independent review was conducted by a Belvoir Division Branch Chief previously not involved in the acquisition. She concluded that the Commercial Item Determinations were based on an understanding gained from discussions with the Night Vision Electronic Sensors Directorate technical experts as to the functioning capabilities of the modifications made to the Fassi M-10A.12 Micro Crane to meet the Army’s requirements. Based



on that information, the determination was made that the modifications made to the cranes were minor in nature and did not significantly alter the nongovernmental function or essential physical characteristics of the item.

The Federal Acquisition Regulation (FAR) definition of minor modifications states that the modifications can be of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly *“alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification compared and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.”*

The commercial item determinations were based on the understanding that the modifications did not significantly alter the nongovernmental function or essential physical characteristics of the crane arm. With respect to the mounting kit, the understanding gained from technical experts was that an integration kit would be required to mount the Fassi crane on any commercial or governmental vehicle.

The independent review concluded that each of the commercial item determinations were reviewed in accordance with the existing review and approval procedures. Additionally, prior to award, other documents that included reference to the commerciality of the Interrogation Arm (Justification & Approval, Pre-Negotiation Memorandum, Post Negotiation Memorandum and award documents) were reviewed by the appropriate officials – legal advisor, Competition Advocate, Group and Sector Chiefs.

In addition, Monday June 20<sup>th</sup> 2011 the CECOM C4ISR Competition Advocate, in her capacity as the Commerciality Advocate, reviewed the facts within the contracting file and disagreed with the DoDIG findings. Specifically, the Commerciality Advocate found the determination of the Contracting Officer to be sound in accordance with FAR 2.101 and in accordance with Commercial Item Handbook Modified Items.

As a result of these reviews, it was determined that the Contracting Officers made reasonable determinations that the Interrogation Arm is a commercial item. Consequently, no administrative action against the Contracting Officers is warranted. However, we do believe that the written documentation supporting that determination was inadequate and should have provided additional details to support that determination.

As corrective action we propose to review the policies and procedures and issue supplemental guidance no later than July 15, 2011, relative to Commercial Item Determinations and to make changes as necessary to ensure that the Contracting Officers decisions are fully supported and documented.







# Inspector General Department of Defense

