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Testimony

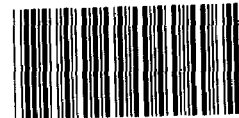
Before the Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
U.S. Senate

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U.S. ARMY AND MARINE
CORPS

Allegation of Contracting
Irregularities and Conflicts of
Interest

Statement for the Record by
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Office of Special Investigations



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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today, at your request, to discuss the results of our investigation, which you initiated, into allegations of contracting irregularities and conflicts of interests involving a U.S. Army directorate and a Marine Corps contracting office. Today, we will briefly discuss our investigative findings. We have referred this information to the Defense Criminal Investigative Service and the U.S. Army's Criminal Investigation Command for further investigation.

Our investigation focused on an allegation that the Army abused the contract "offloading" process and, as a result, circumvented the Competition in Contracting Act (CICA) of 1984. Contract "offloads"--or contracts executed under the Economy Act, in this case with the Marine Corps--are task orders or contracts for the purchase of goods or services for one organizational unit that are issued under a contract held by another unit within the same agency or another agency. In addition, we investigated the lack of program management controls and oversight by contracting and program officials, including both Army and Marine Corps officials, and the alleged conflicts of interests of several key Army officials.

The allegations involved a Computer Sciences Corporation (CSC) contract with the Marine Corps Logistics Base in Albany, Georgia. The contract, which was awarded in 1986, was a 3-year, \$8-million time-and-materials contract for work that was performed primarily for the Army Training Support Center at Fort Eustis, Virginia. The contract was being managed by the Marine Corps Logistics Base for the Army under an interservice support agreement.

Although this contract expired in September 1989, the period of performance was extended to September 1992, in part, to permit completion of task orders issued under the contract by the Army's Collective Training, Instrumentation and Engagement Systems (CTIES) Directorate. By March 1993--3.5 years after the contract had expired--38 task orders, plus numerous subtasks, had been issued under the CSC/Marine Corps Logistics Base (CSC/MCLB) contract. This amounted to a total cost of over \$32.9 million--\$24.9 million more than originally planned--and performance was continuing. Our investigation focused on Task Order 32 that had an initial ceiling price of \$134,000 but, after its 24 amendments, resulted in total costs of over \$16.5 million. In particular, we investigated Task Order 32/Subtask 16 that the CTIES Directorate generated to perform work for the Army's Joint Readiness Training Center (JRTC). The cost of Task Order 32/Subtask 16 was over \$11.5 million. The total cost of the JRTC project, which included an additional operations and maintenance contract for \$5.5 million, was over \$17 million.

The CTIES Directorate, using the contract offload process to add a task outside the scope of an expired Marine Corps Logistics Base

contract, acquired a computer system that should have been obtained through competitive procedures. Neither the Army nor the Marine Corps performed a cost analysis before the task was added, and thus the government had no assurance that it had obtained a fair price for the work. We discovered that appropriated funds were used for purposes other than that for which they were intended, and both military entities violated Federal Acquisition Regulations that set forth requirements for contracting officers and their representatives and the purchase of automated data-processing equipment. These problems were made possible by the lack of oversight for the contract taskings and a failure of either agency to assume responsibility for oversight of the offloaded tasks. We also found conflicts of interest between two U.S. Army civilian employees and the contractor.

COMPETITION IN CONTRACTING ACT AND POOR CONTRACT OVERSIGHT

CICA, in general, requires federal agencies to use a competitive procedure when procuring goods and services so as to protect the government's best interests. No agency is to contract for supplies and services from another agency to avoid full and open competition, although agencies may place orders on another agency's contract when, among other factors, it is in the best interest of the government. In this case, CTIES placed orders under an existing contract with another federal entity for items that were (1) outside that contract's scope, (2) in amounts exceeding the contract maximum, and (3) after the contract had expired. Thus, it was able to develop and build an automated data-processing system that it would otherwise have had to obtain using competitive procurement procedures. CTIES was also able to direct work to a specific contractor.

In addition, serious questions arose concerning the appropriate use of Army funds to support these offloaded tasks, but CTIES ignored or circumvented the corrective measures needed to address the questions.

The contract offloading process here was particularly vulnerable to abuse because neither CTIES nor the Marine Corps Logistics Base fully accepted the contracting responsibilities set forth in the Federal Acquisition Regulations.¹ In the situation we

¹The Department of Defense's (DOD) Office of the Inspector General has previously identified material internal-control weaknesses involving interagency agreements, including "Contracting Through Interagency Agreements With the Library of Congress," No. 90-034, Feb. 9, 1990; "DOD Hotline Allegation of Irregularities in DOD Contractual Arrangements With the Department of Energy," No. 90-085, June 19, 1990; and "Quick-Reaction Report on DOD Procurements Through the Tennessee Valley Authority," No. 92-069, Apr. 3, 1992.

(continued...)

investigated, the Marine Corps Logistics Base relied upon representations made by the CTIES officials concerning contract scope and Army funding of the task orders. The Marine Corps contracting office failed to question tasks that were outside the scope of the contract, tasks that extended the contract beyond its intended term and cost, and the types of funds expended on the project. Instead, the office relied upon the Army to review and approve the requested actions.

By comparison, Army contracting officials reviewed the initial CTIES offload request and approved it without substantiating that the contract met Army requirements. The subsequent lack of management controls and oversight resulted in the following incidents of abuse:

- The 1986 contract expired on September 30, 1989, but the period of performance was extended by amendment to September 30, 1992, to allow completion of ongoing tasks. Although the amendment clearly noted that "no new task orders" were to be assigned to the contract, the Marine Corps Logistics Base continued to accept new taskings from the CTIES Directorate.
- The CTIES Directorate requested--and obtained--an amendment to Task Order 32 to allow the "implementation," or installation, of a system. This contract modification was outside the scope of the contract, which was a contract for support services, not for systems acquisition. When asked why they modified the contract and allowed the systems acquisition task to be issued, Marine Corps contracting officials admitted to us that they had never read the contract and did not know if the task was outside the contract's scope.
- Neither the Marine Corps Contracting Officer nor the CTIES Contracting Officer's Technical Representative (COTR) maintained property books on the items purchased by the contractor. No accounting was kept of the different types of Army funds spent on labor for installation of the system, software development, or hardware purchases--even though federal appropriations require different funding for different types of work performed. Operations and Maintenance, Army (OMA) funds, which were unavailable to pay for installation costs, were improperly spent, in violation of 31 U.S.C. section 1301, which requires appropriations to be spent only on the objects for which they are appropriated.

¹(...continued)

While these reports deal with offloading contracts outside DOD, our investigation is the first to deal with DOD's offloading of contracts to agencies within itself.

- Military Interdepartmental Purchase Requests, which are used to transfer money from one military agency to another, indicate that the CTIES funding office transferred funds for hardware purchases only days before the end of the federal fiscal year. Army officials told the CTIES Directorate to ensure that a contractual obligation on behalf of CTIES was incurred before the end of the fiscal year. Two days before the end of the fiscal year, the Marine Corps Logistics Base modified Task Order 32, authorizing CSC to purchase hardware and software in support of Subtask 16. However, the Marine Corps Logistics Base prohibited CSC from purchasing the equipment until authorized by the Contracting Officer. The Contracting Officer did not receive the authority to authorize the purchase until October 1990. CSC did not receive the authority to purchase the equipment until November 13, 1990--6 weeks after the fiscal year had ended.
- CSC modified government-furnished software for the government at government expense, yet the Marine Corps Contracting Officer signed a license agreement giving CSC the proprietary interests in the software. The government must now pay a license fee to the contractor to use it. In addition, it appears that many of these modifications had previously been made and paid for by the government. Although several Army advisors on the project questioned why the government was paying for something they believed the government already owned, the contractor was allowed to continue working on the project and, eventually, obtained the rights to the software.
- An internal CTIES review performed in 1991 by the Combined Arms Command, revealed many of the problems noted above. Yet, officials of the Command failed to take remedial actions.

CONFLICTS OF INTERESTS

Procurements without competition and adequate oversight are vulnerable to fraud and abuse, especially where conflicts of interest occur. We found two conflict-of-interest problems connected with this contract. Specifically,

- The COTR was responsible for day-to-day oversight of the project. Her duties included preparing contract statements of work and task orders, certifying Independent Government Cost Estimates, and reviewing CSC's monthly labor charges. Her husband, a retired Army Lieutenant Colonel, sought employment with and was hired by CSC while she worked on the project. This violated federal conflict-of-interest laws pertaining to acts affecting a personal financial interest (18 U.S.C. section 208).

Further, a former U.S. Army officer, assigned to the CTIES Directorate under the COTR's supervision, admitted to us that

he had "padded" travel and other costs on what was supposed to be an independent government cost estimate on work by CSC. He stated that the COTR had directed him to add the costs, even though they more than doubled the actual cost of the work.

- The Chief of the Army Budget Office used by CTIES certified, issued, and directed funds for the JRTC project. CSC employed her husband, a retired Army Lieutenant Colonel, during the task order performance. This violated federal conflict-of-interest laws pertaining to acts affecting a personal financial interest (18 U.S.C. section 208).²

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We briefed Department of Defense Office of the Inspector General and program officials for both the Army and the Marine Corps and provided them a copy of our draft testimony to enable them to comment on our findings at today's hearing.

This concludes our statement for the record.

²In August 1992, almost 3 years after CSC employed her husband, the Chief of the Budget Office requested a legal opinion from the Acting Staff Judge Advocate, U.S. Army Transportation Center, Fort Eustis, on her potential conflict of interest. The legal opinion, issued in October 1992, stated that, by certifying the funds on the CSC/MCLB contract, she had participated "personally and substantially in contracting actions" and that this was a conflict of interest.



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