

April 2012

# DEFENSE ACQUISITIONS

## Further Actions Needed to Improve Accountability for DOD's Inventory of Contracted Services



G A O

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## Why GAO Did This Study

DOD relies on contractors to perform many functions, which can offer benefits for DOD. GAO's work has shown that reliance on contractors to support core missions, however, can place DOD at risk of contractors performing inherently governmental functions.

In 2008, Congress required DOD to compile and review an annual inventory of contractors working under contracts for services. The 2010 defense authorization act directed GAO to report for 3 years on these inventories. In January 2011, GAO reported on limitations to DOD's inventory approach. For this report, GAO assessed (1) DOD's progress in addressing these limitations and (2) the extent to which the military departments addressed instances of contractors performing functions identified as inherently governmental during reviews of their fiscal year 2009 inventories. GAO reviewed DOD guidance, interviewed acquisition and manpower officials, and assessed 12 instances from a nongeneralizable sample in which the Air Force and Army determined that contractors had performed inherently governmental functions.

## What GAO Recommends

GAO recommends that the military departments and components develop guidance that provides for clear lines of authority, responsibility, and accountability for conducting an inventory review and that the Army and Air Force resolve known instances of contractors performing inherently governmental functions. DOD largely agreed with GAO's recommendations.

View [GAO-12-357](#). For more information, contact John P. Hutton at (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov) or Cary B. Russell at (404) 679-1808 or [russellc@gao.gov](mailto:russellc@gao.gov).

## DEFENSE ACQUISITIONS

### Further Actions Needed to Improve Accountability for DOD's Inventory of Contracted Services

## What GAO Found

The Department of Defense (DOD) made a number of changes to improve the utility of the fiscal year 2010 inventory, such as centrally preparing contract data to provide greater consistency among DOD components and increasing the level of detail on the services provided. DOD, however, continued to rely primarily on the Federal Procurement Data System-Next Generation (FPDS-NG) for the inventory for most defense components other than the Army. As such, DOD acknowledged a number of factors that limited the utility, accuracy, and completeness of the inventory data. For example, FPDS-NG does not identify more than one type of service purchased for each contract action, provide the number of contractor full-time equivalent personnel, or identify the requiring activity. As before, the Army used its Contractor Manpower Reporting Application to compile its fiscal year 2010 inventory. This system collects data reported by contractors on services performed at the contract line item level, including information on labor hours and the function and mission performed. DOD officials noted that the Army's current process complies with legislative requirements. In January 2011, GAO recommended that DOD develop a plan with time frames and the necessary resources to facilitate its efforts to collect contractor manpower data and address other limitations in its approach to meeting inventory requirements. DOD concurred with these recommendations. In November 2011, DOD submitted to Congress a plan to collect contractor manpower data. DOD officials noted that developing a common data system to collect and house these data would be challenging given the different requirements from the military departments and components. Consequently, DOD does not expect to fully collect contractor manpower data until fiscal year 2016. DOD's plan, however, does not establish milestones or specify how it will meet the legislative requirement to identify the requiring activity and the function and missions performed by the contractor.

Military departments' required reviews of their fiscal year 2009 inventories of contracted services were incomplete. Navy headquarters officials had no assurance that their commands conducted the required reviews, and GAO found no evidence at the commands it contacted that the required reviews were conducted. Army and Air Force inventory reviews identified 1,935 and 91 instances, respectively, in which contractors were performing inherently governmental functions, though this variation may reflect differences in the departments' approaches to conducting the reviews. In 8 of the 12 Army and Air Force cases GAO reviewed, contractors continued to perform functions the military departments identified as inherently governmental. The absence of guidance that provided for clear lines of responsibility for conducting, documenting, and addressing the results of the reviews contributed to these outcomes. Further, Army officials cited difficulty in hiring DOD civilians caused by DOD's decision to freeze civilian full-time equivalents at fiscal year 2010 levels. DOD issued guidance in December 2011 that will require the military departments and components to certify that they have conducted the required reviews. The guidance, however, does not clearly establish lines of accountability and responsibility within the military departments and defense components for conducting the inventory reviews and addressing instances where contractors are identified as performing inherently governmental functions.

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## Abbreviations

AT&L	Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics
CMRA	Contractor Manpower Reporting Application
DOD	Department of Defense
FPDS-NG	Federal Procurement Data System-Next Generation
FTE	full-time equivalent
P&R	Office of the Under Secretary of Defense for Personnel and Readiness

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United States Government Accountability Office  
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April 6, 2012

### Congressional Committees

The Department of Defense (DOD), the federal government's largest purchaser of contractor-provided services, reported \$204 billion in obligations for service contracts in fiscal year 2010. DOD relies on contractors to perform functions as varied as professional and management support, information technology support, and weapon system and intelligence support. While there are benefits to using contractors to perform services for the government, our work has shown that reliance on contractors to support core missions can place the government at risk of becoming overly reliant on contractors to perform closely associated with inherently governmental functions or creating circumstances in which contractors perform functions deemed inherently governmental.<sup>1</sup> Over the past decade, our work has identified the need for DOD to obtain better data on its contracted services to enable it to make more strategic workforce decisions and ensure that it maintains appropriate control of government operations.<sup>2</sup> DOD has put a number of efforts in place to gain better insights into its acquisition of services, but its efforts have had mixed success to date.

In recent years, Congress has enacted legislation to improve the department's ability to manage its acquisitions of services; to make more strategic decisions about the right workforce mix of military, civilian, and contractor personnel; and to align resource needs better through the

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<sup>1</sup>Inherently governmental functions, as a matter of policy, are so intimately related to the public interest as to require performance by government employees and include functions that require discretion in applying government authority or value judgments in making decisions for the government. Federal Acquisition Regulation § 7.503(c) provides examples of such functions. In addition, closely associated with inherently governmental functions are those that while not inherently governmental, may approach the category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers performance under a contract. Federal Acquisition Regulation § 7.503(d) provides examples of such functions.

<sup>2</sup>See, for example, GAO, *Defense Management: DOD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*, [GAO-08-572T](#) (Washington, D.C.: Mar. 11, 2008), and *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, [GAO-07-20](#) (Washington, D.C.: Nov. 9, 2006).

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budget process to achieve that mix. For example, section 2330a of title 10 of the U.S. Code requires DOD to annually compile and review an inventory of activities performed pursuant to contracts to help provide better insights into the number of contractor full-time equivalents (FTE) providing services to the department and the functions they are performing. In addition, the inventories are to be used to identify, among other things, whether contractors were performing inherently governmental functions and to help inform workforce mix decisions. To date, DOD has submitted annual inventories to Congress for fiscal years 2007, 2008, 2009, and 2010. The fiscal year 2010 inventory was submitted on September 8, 2011.

Section 803(c) of the National Defense Authorization Act for Fiscal Year 2010 directs GAO to report for 3 years on the inventory of activities performed pursuant to contracts for services that are to be submitted by the Secretary of Defense, in 2010, 2011, and 2012, respectively.<sup>3</sup> Most recently, in January 2011 we assessed the approaches used to compile the fiscal year 2009 inventories and recommended that DOD develop a plan of action to facilitate the department's stated intent of collecting contractor manpower data and to address other limitations in its approach to meeting the statutory inventory requirements.<sup>4</sup> For example, in the absence of a single department-wide data system that could provide the data necessary to respond to the legislative reporting requirements, most DOD components, other than the Army, relied on data from the Federal Procurement Data System-Next Generation (FPDS-NG). DOD acknowledged that using FPDS-NG as the main data source for the inventories has a number of limitations. These limitations include that FPDS-NG does not provide the number of contractor FTEs performing each service, identify the requiring activity, or allow for the identification of all services being procured. In contrast, the Army used its existing process, which incorporated contractor-reported data, including direct labor hours, from its Contractor Manpower Reporting Application (CMRA). Further, we reported that the military departments differed both in their approaches to reviewing the activities performed by contractors and the extent to which they used the inventories to inform workforce decisions.

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<sup>3</sup>Pub. L. No. 111-84 (2009).

<sup>4</sup>GAO, *Defense Acquisitions: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities*, [GAO-11-192](#) (Washington, D.C.: Jan. 14, 2011).

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For example, the Army implemented a centralized approach to identify and assess the functions being performed by contractors and used such assessments to inform workforce decisions. In contrast, the Air Force and Navy used decentralized approaches that relied on major commands to review their contracted activities, but made relatively limited use of the inventories to inform their workforce decisions.

To satisfy the mandate for 2011, we assessed (1) the progress DOD has made in addressing limitations when compiling the fiscal year 2010 inventory of contracted services and in developing a strategy to obtain contractor manpower data and (2) the extent to which the military departments addressed issues with contractors performing inherently governmental functions identified during reviews of their fiscal year 2009 inventories.

To assess the progress DOD has made in addressing limitations when compiling the fiscal year 2010 inventory and in developing a strategy to obtain contractor manpower data, we reviewed relevant guidance related to the inventory compilation processes used for fiscal year 2010 and interviewed officials from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L), Office of Defense Procurement and Acquisition Policy; the Office of the Under Secretary of Defense for Personnel and Readiness (P&R); and the departments of the Army, Navy, and Air Force. We also reviewed plans submitted by the military departments and defense components to obtain contractor manpower data directly from contractors.

To assess the extent to which the military departments addressed instances in which contractors were performing inherently governmental functions, we used data from the fiscal year 2009 inventory reviews, which was the most current review available at the time we began our work. To do so, we reviewed a total of 12 instances in which contractors were identified as performing inherently governmental functions. We selected two Army commands and one Air Force component based in part on the number of such instances they had identified. For the Army, we randomly selected 2 instances at the Training and Doctrine Command and 1 at the Acquisition Support Center. In addition, we reviewed 6 instances where contractors were performing the duties of Department of the Army systems coordinators. The Army's 2010 acquisition review chartered by the Secretary of the Army determined these positions to be

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inherently governmental.<sup>5</sup> The Air Force provided data to us in September 2011 that summarized the results of its inventory review process, including functions being performed by contractors that it identified as inherently governmental. From these data, we determined that the Air National Guard had the largest number of inherently governmental functions being performed by contractors, and we randomly selected 3 instances for review. We reviewed the relevant contract files and interviewed program and contracting officials responsible for the performance of these functions to determine what steps the military departments took once the review process identified the functions as inherently governmental. We did not independently assess whether the functions the military departments identified were in fact inherently governmental. While these cases illustrate the extent to which DOD took actions to resolve instances in which the military departments identified that contractors had performed inherently governmental functions, the results of our analysis are not generalizable to the more than 2,000 instances where contractors were performing inherently governmental functions, as identified by the military departments.

At the time we initiated our work, Navy headquarters officials did not have the results of their fiscal year 2009 inventory review process available and subsequently acknowledged that they were uncertain whether their commands conducted the required reviews. Consequently, we considered DOD's fiscal year 2010 in-sourcing data that were reported to Congress in September 2011. From the Navy's in-sourcing data, we selected Fleet Forces Command and Space and Naval Warfare Systems Command for further review based on the number of positions they reported as in-sourced based on contractor performance of an inherently governmental function. We did not review individual Navy contracts because Space and Naval Warfare Systems Command officials told us that it was not possible to track the positions to specific contracts. Also, we found that the commands subsequently reported that the functions were not inherently governmental and were in-sourced for other reasons, such as to provide Navy personnel career progression opportunities. A detailed description of our scope and methodology is included in appendix I.

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<sup>5</sup>*Army Strong: Equipped, Trained and Ready: Final Report of the 2010 Army Acquisition Review*, John M. McHugh, Secretary of the Army (January 2011).

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We conducted this performance audit between July 2011 and April 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

In part to improve the availability of information on and management of DOD's acquisition of services, Congress enacted section 2330a of title 10 of the U.S. Code, which required the Secretary of Defense to establish a data collection system to provide management information on each purchase of services by a military department or defense agency.<sup>6</sup> The information to be collected includes, among other things, the total dollar amount of the purchase and the extent of competition provided in making the purchase. In 2008, Congress amended section 2330a to add a requirement for the Secretary of Defense to submit an annual inventory of the activities performed pursuant to contracts for services for or on behalf of DOD during the preceding fiscal year.<sup>7</sup> The inventory is to include a number of specific data elements for each identified activity, including

- the function and missions performed by the contractor;
- the contracting organization, the component of DOD administering the contract, and the organization whose requirements are being met through contractor performance of the function;
- the funding source for the contract by appropriation and operating agency;
- the fiscal year the activity first appeared on an inventory;
- the number of full-time contractor employees (or its equivalent) paid for performance of the activity;
- a determination of whether the contract pursuant to which the activity is performed is a personal services contract; and
- a summary of the information required by section 2330a(a) of title 10 of the U.S. Code.

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<sup>6</sup>The National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, § 801(c) (2001).

<sup>7</sup>The National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-81, § 807.

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As implemented by DOD, components are to compile annual inventories of activities performed on their behalf by contractors and submit them to AT&L, which is to formally submit a consolidated DOD inventory to Congress no later than July 31. Once compiled, the inventory is to be made public and within 90 days of the date on which the inventory is submitted to Congress, the secretary of the military department or head of the defense agency responsible for activities in the inventory is to review the contracts and activities for which they are responsible and ensure that any personal services contracts in the inventory were properly entered into and are being performed appropriately; that the activities in the inventory do not include inherently governmental functions; and to the maximum extent practicable, that activities on the list do not include any functions closely associated with inherently governmental functions.<sup>8</sup>

In January 2011, Congress amended section 2330a(c) of title 10 of the U.S. Code to specify that the Under Secretaries of Defense for Personnel and Readiness; Acquisition, Technology and Logistics; and the Office of the Comptroller are responsible for issuing guidance for compiling the inventory.<sup>9</sup> Section 2330a(c) was also amended to state that DOD is to use direct labor hours and associated cost data reported by contractors as the basis for the number of contractor FTEs identified in the inventory, though it provided that DOD may use estimates where such data are not available and cannot reasonably be made available in a timely manner.

Further, in December 2011, section 936 of the National Defense Authorization Act for Fiscal Year 2012 amended section 2330a of title 10 of the U.S. Code to clarify the types of contracted services to be inventoried, including contracts for goods to the extent services are a significant component of the contract. In addition, it addressed the manner in which contractor FTEs are captured for inventory purposes. This section also directed the secretary of the military department or head of the defense agency responsible for activities in the inventory to develop a plan, including an enforcement mechanism and approval process, to

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<sup>8</sup>10 U.S.C. § 2330a(e).

<sup>9</sup>The Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, § 321.

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- provide for the use of the inventory by the military department or defense agency to aid in the development of its annual personnel authorization requests to Congress and in carrying out personnel policies;
  - ensure that the inventory is used to inform strategic workforce planning;
  - facilitate the use of the inventory for budgetary purposes; and
  - provide for appropriate consideration of the conversion of activities to performance by government employees.

Section 931 of the National Defense Authorization Act for Fiscal Year 2012 also mandated that DOD use the inventories when making determinations regarding the appropriate workforce mix necessary to perform its mission.<sup>10</sup>

In addition to the laws and guidance that govern the compilation of the inventory and the inventory review processes, Congress also added section 2463 to title 10 of the U.S. Code, which requires P&R to develop guidelines and procedures to ensure that consideration is given to using DOD civilian employees to perform functions that are currently performed by a contractor—a process generally referred to as in-sourcing—and new functions. In particular, these guidelines and procedures are to provide special consideration for, among other things, in-sourcing functions closely associated with inherently governmental functions that contractors are currently performing, or having DOD civilian employees perform new requirements that may be closely associated with inherently governmental functions. Congress required the Secretary of Defense to make use of the inventories created under section 2330a(c) of title 10 of the U.S. Code for the purpose of identifying functions that should be considered for performance by DOD civilian employees under this provision. DOD issued initial in-sourcing guidance in April 2008 and additional guidance in May 2009 to assist DOD components in implementing this legislative requirement.<sup>11</sup>

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<sup>10</sup>Pub. L. No. 112-81 (2011).

<sup>11</sup>The National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181 § 324. We recently reported on DOD's fiscal year 2010 in-sourcing efforts. See GAO, *Defense Workforce: DOD Needs to Better Oversee In-sourcing Data and Align In-sourcing Efforts with Strategic Workforce Plans*, [GAO-12-319](#) (Washington, D.C.: Feb. 9, 2012).

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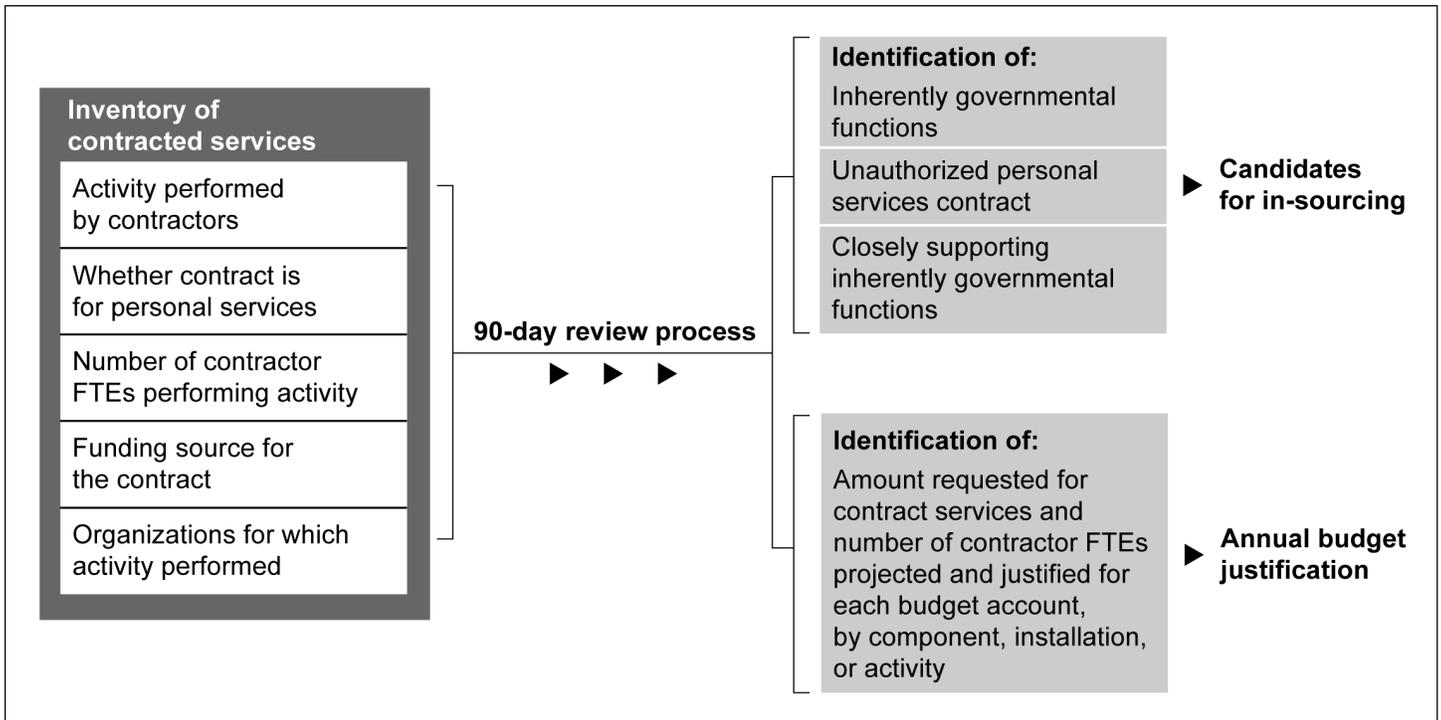
Further, the National Defense Authorization Act for Fiscal Year 2010 provided for a new section 115b in title 10 of the U.S. Code that requires DOD to annually submit to the defense committees a strategic workforce plan to shape and improve the civilian workforce. Among other requirements, the plan is to include an assessment of the appropriate mix of military, civilian, and contractor personnel capabilities. P&R is responsible for developing and implementing the strategic plan in consultation with AT&L. The act also added section 235 to title 10 of the U.S. Code, which requires the Secretary of Defense to include information in DOD's annual budget justification materials regarding the procurement of contracted services. Specifically, the legislation requires for each budget account to identify clearly and separately (1) the amount requested for the procurement of contract services for each DOD component, installation, or activity and (2) the number of contractor FTEs projected and justified for each DOD component, installation, or activity based on the inventory and associated reviews.<sup>12</sup> DOD's fiscal year 2013 budget guidance to DOD components requires the budget estimates to be informed by the fiscal year 2010 inventory for contracted services.

Collectively, these statutory requirements mandate the use of the inventory and the associated review process to help identify functions for possible conversion from contractor performance to DOD civilian performance, support the development of DOD's annual strategic workforce plan, and specify the number of contractor FTEs included in its annual budget justification materials. Figure 1 illustrates the relationship among the related statutory requirements.

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<sup>12</sup>The National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84 § 1108(a)(1) and 803 (a) (2009). We did not assess DOD's implementation of this requirement as part of this review.

**Figure 1: Relationship among the Inventory of Contracted Services, In-sourcing, and Budget Documentation Requirements**



Source: GAO analysis of 10 U.S.C. § 235, 2330a, and 2463.

## DOD Has Made Limited Progress in Addressing Limitations to Its Inventory Approach

DOD made a number of changes to improve the consistency of the fiscal year 2010 inventory, but it continued to rely primarily on data collected in FPDS-NG for the inventory for all defense components other than the Army and the TRICARE Management Activity. As such, DOD acknowledged that the factors that limited the utility, accuracy, and completeness of using FPDS-NG remained. In November 2011, DOD submitted to Congress a plan that included instructions to the military departments and DOD components to document contractor FTEs and begin the collection of contractor manpower data. DOD officials noted that developing a common data system to collect and house contractor manpower data would be challenging given the different requirements of the military departments and components. Consequently, DOD does not expect to be able to fully collect contractor-reported direct labor information until fiscal year 2016. Further, DOD has not established milestones or time frames for the development and implementation of the data system nor has it specified how it will obtain the remaining required

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data, such as identifying the requiring activity and all functions and missions performed by the contractor, to meet the legislative inventory requirements.

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### Some Refinements Were Made to the Fiscal Year 2010 Inventory, but Previously Identified Limitations with Using FPDS-NG Remain

DOD's approach to compiling its fiscal year 2010 inventory was similar to what DOD used for its fiscal year 2009 inventory. AT&L officials noted, however, that they had implemented several changes to improve the fiscal year 2010 inventory's utility. For example, AT&L did the following:

- Centrally prepared and provided each component with a list that reflected the specific categories of services that were to be included in the inventory to provide greater consistency among DOD components.<sup>13</sup> In contrast, DOD components compiled their own contract lists for the fiscal year 2009 inventories.
- Increased the detail available on the services provided by using product and service codes at the four-digit level rather than at the broader, one-digit level used in the fiscal year 2009 inventory.<sup>14</sup> For example, in the fiscal year 2009 inventory, contracts for dentistry services were reported under the broader category of medical services, which had an average cost of about \$107,000 per FTE.<sup>15</sup> In fiscal year 2010, dentistry services were reported separately from the medical services category with an average cost of \$89,000 per FTE.
- Updated labor rates to account for changes in service costs. These rates are based on costs, by product and service code, derived using fiscal year 2010 information from the Army's CMRA.

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<sup>13</sup>All categories of services identified in FPDS-NG were included in the inventory, except services related to research and development (except program management), lease of facilities and equipment, and construction.

<sup>14</sup>Product and service codes describe the products, services, and research and development purchased by the federal government. The codes indicate what was bought for each contract action in FPDS-NG. However, users of FPDS-NG are directed to enter only one product and service code for each contract action—for example, task order—into FPDS-NG and, for those instances where more than one service was provided, they are to enter the product and service codes that represent most of the value of the contract action.

<sup>15</sup>A contractor FTE is defined as a standard measure of labor that equates to 1 year of full-time work (labor hours as defined by the Office of Management and Budget Circular A-11 each year) to support a mission requirement.

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In addition, DOD components were allowed to update or revise the contract lists provided by AT&L as appropriate. For example, Air Force officials stated that for the fiscal year 2010 inventory they used their financial system to cross-walk the contractual, financial, and requiring activity information with the information that was provided by AT&L. The updated information, according to Air Force officials, allowed them to include all Air Force-funded service contracts awarded by non-DOD agencies, provided greater fidelity in the inventory and enabled the Air Force to use the inventory to inform the development of budget justification materials.

Further, AT&L in cooperation with DOD components aligned the product and service code functions to missions by organizing their spending into six portfolios developed by the Office of Defense Procurement and Acquisition Policy. AT&L officials stated that this alignment was intended to provide better organization and visibility into services being acquired and what missions they support. AT&L also sought to identify the “requiring activity” down to the major command level by using the “funding office” as a surrogate measure.<sup>16</sup> AT&L officials, however, acknowledged that the requiring activity does not always correspond to the funding office. Collectively, according to AT&L officials, the additional level of detail will provide more accurate costs associated with the services being acquired and could potentially aid in better planning and budgeting for service acquisitions.

In compiling DOD’s 2010 inventory, however, DOD officials continued to rely primarily on data collected in FPDS-NG for all defense components other than the Army and the TRICARE Management Activity. As such, DOD officials acknowledged that the factors that limited the utility, accuracy, and completeness of using FPDS-NG remained. These limitations include not being able to identify and record more than one type of service purchased for each contracting action entered into the system, not being able to capture any services performed under contracts that are predominantly for supplies, not capturing service contracts awarded on behalf of DOD by non-DOD agencies, not being able to

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<sup>16</sup>The requiring activity is the organization charged with fulfilling a mission for or on behalf of DOD, and is responsible for delivering the service to satisfy the mission, even if the effort is contracted to the private sector.

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identify the requiring activity specifically, and not being able to determine the number of contractor FTEs used to perform each service.<sup>17</sup>

As with the fiscal year 2009 inventory, AT&L authorized the Army to continue to use its CMRA data system.<sup>18</sup> CMRA is intended to capture data directly reported by contractors on each service performed at the contract line item level, including information on the direct labor dollars, direct labor hours, total invoiced dollars, the functions and mission performed, and the Army unit on whose behalf contractors are performing the services. In instances where contractors are performing different services under the same order, or are performing services at multiple locations, they can enter additional records in CMRA to capture information associated with each type of service or each location. Under its approach, unlike the Air Force and the Navy, the Army included all categories of research and development services in its inventory and identified the services provided under contracts for goods. To report the number of contractor FTEs, the Army indicated that it divided the number of direct labor hours reported by a contractor in CMRA for each service performed by 2,088, the number of labor hours in a federal employee work year. For other data elements in its inventory, such as the funding source and contracting organization, the Army relied on the Army Contract Business Intelligence System and updates from resource managers, contracting officer's representatives, and other officials.

Overall, DOD reported that in fiscal year 2010, 23 components submitted inventories and estimated that about 623,000 contractor FTEs provided services to DOD under contracts with obligations totaling about

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<sup>17</sup>For example, in January 2011, we reported that AT&L's guidance instructed DOD components to record in the inventory the category of service with the predominant amount of dollars, although more than one category of service may be purchased under a contract action. Further, we reported that DOD and military department officials expressed concerns that the average direct labor rates and average ratios in AT&L's approach to estimate contractor FTEs did not reflect the services for which they contract, which may cause significant variations, either over- or underreporting, for specific categories of services and particular contracts. See [GAO-11-192](#).

<sup>18</sup>The TRICARE Management Activity also used an alternate approach, which collected manpower data directly from contractors, though its calculation of contractor FTEs was estimated using a census. TRICARE Management Activity officials directed each contractor associated with the fiscal year 2010 inventories to formulate a total number of direct labor FTEs, both salaried and hourly. The TRICARE Management Activity's count reflects direct labor for the prime contract, excluding subcontract labor and clinical support agreement employees.

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\$121 billion. In comparison, for fiscal year 2009, DOD reported that 22 components submitted inventories and estimated that about 767,000 contractor FTEs provided services to DOD under contracts with obligations totaling about \$155 billion. DOD officials cautioned against comparing the number of contractor FTEs for fiscal year 2009 and fiscal year 2010 given the differences in the estimating formula, the changes in reporting for the research and development category, and other factors.

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### DOD Efforts to Collect Contractor Manpower Data

Over the past year, DOD initiated efforts to collect manpower data directly from contractors. These efforts were, in part, in response to Congressional direction in section 8108 of the Fiscal Year 2011 Defense Appropriations Act, which made \$2,000,000 available to both the Air Force and the Navy for leveraging the Army's CMRA system to document contractor FTEs and meet all the requirements of section 2330a(e) and section 235 of title 10 of the U.S. Code.<sup>19</sup> It further required the military departments and DOD components to submit their plans for reporting contractor FTEs no later than June 15, 2011. DOD did not meet this deadline, but it submitted an interim response to Congress in July 2011 detailing a time frame for DOD components to complete and submit their individual plans.

In August 2011, the Navy and the Air Force submitted their plans to leverage the Army's CMRA data system. In their plans, the Navy and the Air Force indicated that they would begin developing requirements for a contractor manpower data collection system, but noted that implementation would not begin until the end of fiscal year 2012 or later. Navy and Air Force officials said they wanted to ensure that the data collection system they implemented had the necessary capability to inform other DOD workforce initiatives, such as in-sourcing, and to meet the information technology requirements set by their military departments. Subsequently, in September 2011, DOD components started submitting their plans for reporting contractor FTEs. Some DOD components noted that they would begin modifying existing and future contracts to require the collection of manpower data directly from contractors starting as early as October 2011 and that it would take about a year to modify all their existing contracts. Components also indicated that after the contracts

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<sup>19</sup>Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, § 8108.

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were modified, they would begin collecting the data by conducting manual data calls, implementing the Army's CMRA system, or using other internal processes. The Navy did not include a time frame for modifying contracts, while the Air Force estimated that it would take approximately 5 years to modify all its contracts. As of February 2012, 43 of the 44 DOD components, including the Army, Navy, and Air Force, had submitted their plans to Congress.

Subsequent to submitting these individual plans, DOD continued to revise its approach, as both P&R and AT&L officials expressed concerns about aspects of the timing and approach reflected in the components' plans. For example, P&R officials noted that the Navy's August 2011 plan to leverage the Army's system to collect manpower data directly from contractors "lacks clear and decisive actions and milestones to meet the requirement." Further, AT&L officials noted that requiring contractors to provide contractor manpower data will require approval from the Office of Management and Budget, as provided for under the Paperwork Reduction Act.<sup>20</sup>

In November 2011, DOD issued a department-wide plan intended to meet the legislative inventory requirements, including those for collecting contractor manpower data and documenting contractor FTEs. DOD plans to establish a common data system to collect and house contractor manpower data for the entire department and develop a comprehensive instruction on the development, review, and use of the contracted services inventories. To do so, the Office of the Deputy Chief Management Officer, P&R, and other stakeholders formed a working group to help develop and implement the data system and ensure that it leverages existing solutions, such as the Army's CMRA system. DOD's November 2011 plan noted that the Army currently has reporting processes and an infrastructure in place to comply with section 2330a of title 10 of the U.S. Code. The plan, however, indicates that DOD will not have a common data system in place throughout the department until fiscal year 2016. P&R officials indicated that although discussions among the working group have begun, obtaining concurrence from military departments and components on the capability of a common data system may delay implementation.

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<sup>20</sup>44 U.S.C. §§ 3501-3521. The Paperwork Reduction Act requires that agencies obtain Office of Management and Budget approval before requesting most types of information from the public.

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As part of these efforts, DOD submitted an emergency processing request to the Office of Management and Budget on the Paperwork Reduction Act on December 16, 2011. DOD officials subsequently were informed that this request would likely not be approved. Consistent with the requirements of the Paperwork Reduction Act, DOD posted a notice in the *Federal Register* on February 7, 2012, seeking public comment on its plans to begin collecting direct labor information and other data on DOD contracts. DOD indicated that after it reviews the comments received by the March 23 deadline, a number of other actions will need to be taken before DOD can begin collecting such data. DOD officials further indicated that they will need to assess the impact these events will have on the actions and timeframes identified in their November 2011 plan. The Army, which previously received approval from the Office of Management and Budget to collect certain contract data from contractors using its CMRA system, received a 3-year extension of this approval on December 15, 2011.

P&R and AT&L issued guidance on the submission and review of the fiscal year 2011 inventory on December 29, 2011. This guidance indicates that for fiscal year 2011, the Office of Defense Procurement and Acquisition Policy will provide a data set—at the four-digit product and service code level derived from FPDS-NG—to each DOD component with acquisition authority. Further, the guidance provides a different formula for DOD components to use for estimating the number of contractor FTEs paid for the performance of an activity based on the amount of direct labor hours provided by a contractor under each product and service code. Since the Navy, the Air Force, and most DOD components do not collect direct labor hours directly from contractors, the guidance indicates that DOD components may use the best available data or a variety of methodologies, singularly or in combination, to estimate direct labor hours. These methodologies include

- collecting direct labor hour information from contractors,
- collecting direct labor hours as reported by the contracting officer's representative for the service during fiscal year 2011,
- referencing the independent government cost estimate or contractor technical proposals to extrapolate hours for services provided in fiscal year 2011,
- reporting information collected from contract invoices, or
- calculating the number of contractor FTEs by using information extrapolated from the manpower data collected by the Army from its contractors.

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Under this plan, the Army will continue to use its CMRA system and other established tools and processes for preparing and submitting its inventory.

DOD officials noted that DOD intends to develop a comprehensive DOD instruction for the development, review, and use of the service contract inventories. This instruction, which DOD officials indicate will be issued to inform the fiscal year 2013 inventory, is expected to shift primary responsibility for the inventories from the acquisition community to the manpower/personnel community at each DOD component. DOD officials also indicated that the instruction will require that in compiling the inventory of contracted services, all DOD activities are expected to report all services provided in support of or to benefit a DOD component, regardless of the source of the funding or acquisition agent. Additionally, all DOD activities will include in new contracts, or task and delivery orders, the requirement to collect manpower information directly from contractors.

In our January 2011 report, we recommended that DOD develop a plan of action, including anticipated time frames and necessary resources, to facilitate the department's intent of collecting manpower data and to address other limitations in its current approach to meeting inventory requirements.<sup>21</sup> DOD concurred with our recommendations. DOD's November 2011 plan and December 2011 guidance represent steps in the right direction to meet the legislative requirements and implement our recommendation, but neither document contains milestones or time frames for the development and implementation of a common software and hardware data system to collect and house contractor manpower data. Further, while these efforts address the collection of contractor manpower data, they do not specify how DOD will obtain the remaining required data, such as identifying the requiring activity and all functions and missions performed by the contractor, to meet the legislative inventory requirements.

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<sup>21</sup>[GAO-11-192](#).

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## Reviews of the Fiscal Year 2009 Inventories Were Incomplete and Did Not Fully Address Issues with Contractors Performing Inherently Governmental Functions

Military departments' required reviews of their fiscal year 2009 inventories were incomplete. Navy headquarters officials had no assurance that their commands conducted the required reviews, and we found no evidence at the Navy commands we contacted that the required reviews were conducted. Army and Air Force reviews of their contracted services identified 2,026 instances in which contractors were performing inherently governmental functions. We found that contractors continued to perform functions that were identified as inherently governmental in 8 of the 12 Army and Air Force cases we reviewed. In some of these cases, the Army took steps in response to the inventory review process, such as transferring responsibility to military personnel. In contrast, we also found that some contractors continued to perform inherently governmental functions. For example, Army officials cited difficulty in hiring DOD civilians caused by DOD's decision to freeze civilian FTE levels at the fiscal year 2010 level as hindering their ability to resolve instances identified during the inventory review process. Moreover, contracting and program officials were unaware that the inventory review process had identified functions under their contracts as inherently governmental. The absence of guidance that provided for clear lines of responsibility and accountability for conducting, documenting, and addressing the results of the reviews contributed to these outcomes.

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## Military Departments' Reviews of the Fiscal Year 2009 Inventories Were Incomplete

The military departments' reviews of the fiscal year 2009 inventories were incomplete as the Navy did not conduct a review. The Army and Air Force identified 1,935 and 91 instances, respectively, in which contractors were performing inherently governmental functions. The variation in the number of cases reported by the Army and the Air Force may reflect differences in their approaches to conducting the inventory reviews. Table 1 summarizes the number of inherently governmental functions identified by the military departments through their fiscal year 2009 inventory reviews.

**Table 1: Fiscal Year 2009 Spending on Services and Number of Instances and Types of Functions Where Contractors Were Identified by Military Departments to Be Performing Inherently Governmental Functions**

Dollars in billions

<b>Military department</b>	<b>Fiscal year 2009 spending on services</b>	<b>Number of instances of contractors performing inherently governmental functions</b>	<b>Examples of inherently governmental functions being performed by contractors</b>
Army	\$43.0 <sup>a</sup>	1,935	<ul style="list-style-type: none"> <li>• Engineering and technical services</li> <li>• Program management</li> <li>• Professional, administrative, and management support services</li> </ul>
Air Force	\$33.1	91 <sup>b</sup>	
Navy	\$39.9	Did not conduct an inventory review	N/A

Sources: DOD June 2010 summary report to Congress on the fiscal year 2009 service contract inventory and GAO analysis of Army, Air Force, and Navy data.

<sup>a</sup>Army data reflect invoiced dollar amounts reported in CMRA rather than obligations reported in FPDS-NG.

<sup>b</sup>The Air Force's fiscal year 2009 inventory review included service contracts with obligations through the end of August 2010.

The Navy issued guidance in September 2010 requiring its commands to conduct a fiscal year 2009 inventory review. The commands were to provide a letter within 45 days that certified that they had completed a review, identified the number of contracts with inherently governmental functions, and provided a corrective action plan. We found no evidence at the commands we contacted that the required reviews were conducted. For example, Fleet Forces Command officials were not aware of a required inventory review and did not recall guidance being issued. Similarly, officials from the Navy's Space and Naval Warfare Systems Command stated that they did not recall receiving guidance from Navy headquarters to conduct a review of the fiscal year 2009 inventory. Navy headquarters officials did not follow up to ensure that the required reviews

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were completed and acknowledged that they could not verify whether Navy commands completed the fiscal year 2009 inventory review.<sup>22</sup>

The Army used a centralized approach that included a headquarters-level review of all functions performed by contractors. The Army, for its headquarters-level review, established the Panel for Documentation of Contractors, which consists of officials from the Office of the Assistant Secretary of the Army for Manpower and Reserve Affairs along with headquarters officials from the acquisition and manpower planning communities. Army guidance directs the commands to provide data to the panel, including descriptions of the functions being performed by contractors, the organizational unit for which each function is performed, and an assessment of whether those functions are inherently governmental. The panel reviews information provided by the commands and makes an independent determination to assess whether the functions are inherently governmental. According to panel officials, function descriptions do not always provide insight into the day-to-day activities of contractors, sometimes making it difficult to accurately distinguish inherently governmental functions from those that are closely associated with inherently governmental functions. In instances where there was a difference of opinion on the appropriate assessment of a function, however, panel and command officials reported that they engaged in further discussion in order to reach agreement.

Additionally, the Army's final 2010 acquisition review chartered by the Secretary of the Army identified the Army's systems coordinator function as inherently governmental.<sup>23</sup> The systems coordinator responsibilities include representing program managers at the Pentagon, acting as a liaison with Congress, preparing principal staff officers for systems reviews, writing background papers for military staff, and representing

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<sup>22</sup>DOD's September 2011 in-sourcing report to Congress noted that the two Navy commands in our review had in-sourced almost 500 positions to address concerns that contractors were performing inherently governmental functions. In February 2012, we reported that some of the commands, including those we reviewed, made errors in reporting in-sourcing data. For example, 348 of 354 new in-sourcing authorizations by the Navy's Fleet Forces Command were categorized as inherently governmental when they should have been categorized as exempt from private sector performance for continuity of infrastructure operations. See [GAO-12-319](#). Command officials told us that regardless of the appropriate categorization of the in-sourcing decisions, they did not use the inventories to inform their decisions.

<sup>23</sup>*Army Strong: Equipped, Trained, and Ready.*

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system program managers on integrated product teams. We found that the panel reviewed 19 of the 26 instances identified by the Army during the 2009 inventory review where contractors were performing the systems coordinator function. An Army manpower official stated that the panel process did not identify the remaining 7 instances.

In contrast, we found that the Air Force used a decentralized inventory review approach, which delegated primary responsibility for the review of its inventory to its major commands and components. In January 2010, the Secretary of the Air Force issued guidance instructing its major commands and components to conduct an initial review of its fiscal years 2008 and 2009 inventories of contracted services. According to an Air Force inventory official, a headquarters review of the initial information submitted by the commands found that approximately 40 percent of the fiscal year 2009 contracts included for review did not contain adequate responses to the required review elements. Because of challenges experienced during the initial review, the Secretary of the Air Force issued additional guidance in October 2010 requiring major commands to complete the review of fiscal year 2009 service contracts that may have been missed. To do so, the Air Force headquarters-level acquisition office provided each major command and component with a spreadsheet to review that contained its portion of the department's service contracts from the beginning of fiscal year 2009 through August 2010. This guidance instructed the organizations to determine, among other things, whether the activity performed under the contract was an inherently governmental function. In addition to the inventory review, however, this effort was to help implement the Secretary of Defense's direction to reduce service support contractors, and inform budget justification initiatives as they pertained to contractor employees.

As a result of this process, the Air Force identified 91 instances of contractors performing inherently governmental functions, the majority of those instances for work performed for the Air National Guard and the Air Force Space Command. Financial management and contracting officials responsible for conducting the reviews at the Air National Guard and Air Force Space Command, however, cited concerns with the accuracy and completeness of the inventory review data. For example, at the Air National Guard, the inventory review efforts were conducted by individuals within the financial management office. During the course of the inventory reviews, however, at least one staff member responsible for the inventory review had left the organization. When we spoke to an Air National Guard official in December 2011, she noted that when she received the spreadsheet from Air Force headquarters, 37 functions on

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the list were already identified as inherently governmental. Air Force officials, however, provided us with documentation to indicate that other individuals within the Air National Guard had made the determinations in earlier reviews of the inventory data, but these determinations were not communicated to the official. Further, officials at both commands stated that the time Air Force headquarters allowed for the review was not sufficient to review each contract and make an informed determination.

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**Army and Air Force Did Not Ensure That Functions They Identified as Inherently Governmental Were Resolved**

By reviewing their inventories of contracted services, the Departments of the Army and Air Force identified instances in which contractors were performing inherently governmental functions, but the departments did not ensure that corrective actions were fully implemented. Several options are available to DOD when contractors are in fact performing such functions, including modifying the statement of work to ensure that the work performed is not inherently governmental, assigning responsibility for that work to government personnel, or divesting or discontinuing the work. In 8 of the 12 cases we reviewed at the Army and the Air Force, however, contractors continued to perform functions that the military departments had identified as inherently governmental during the fiscal year 2009 inventory reviews (see table 2).

**Table 2: Status of Inherently Governmental Functions Reviewed**

Military department/command	Contract number/task order	Function description	Inherently governmental functions still performed by contractors at the time of our review?	
			Yes	No
<b>Army</b>				
Acquisition Support Center	W15P7T-06-D-E402/0007	Systems coordinator	√	
Acquisition Support Center	W15P7T-06-D-E402/0060	Systems coordinator	√	
Acquisition Support Center	W15P7T-06-D-E406/0014 <sup>a</sup>	Systems coordinator	√	
Acquisition Support Center	W15P7T-06-D-E406/0014 <sup>a</sup>	Systems coordinator		√
Acquisition Support Center	W15QKN-06-C-0234	Engineering support	√	
Acquisition Support Center	W31P4Q-05-A-0024/0036	Systems coordinator	√	
Acquisition Support Center	W91260-09-D-0003/1035	Systems coordinator		√
Training and Doctrine Command	W911S0-09-P-0090	Information technology project manager	√	
Training and Doctrine Command	W912SU-04-P-0067	Warehouse supervisor		√
<b>Air Force</b>				
Air National Guard	W912JB-09-D-4000/4005	Administrative support	√	
Air National Guard	W9133L-06-C-0009	Financial services		√
Air National Guard	W9133L-06-C-0011	Financial services	√	

Source: GAO analysis of Army and Air Force data.

<sup>a</sup>This task order contained two systems coordinator functions.

In 4 cases, contractors are no longer performing the functions that had been identified as inherently governmental. In 3 of these cases, according to officials, the Army took steps in response to the inventory review process, including ensuring that the work was performed by government personnel. In the fourth case, contracting and program officials were not aware that this function had been identified as inherently governmental during the review process, but noted that the function had already been in-sourced by the time they became aware of the determination.

- In 2 instances where contractors were performing the Department of the Army systems coordinator function under task orders, program officials reported that the Army transferred responsibilities for these functions to military personnel. In one of these cases, a contracting official noted that he had initially limited the period of performance on the task order to a 1-year base period with 6-month options because of concern at the time of award that this function was, at the very least, closely associated with inherently governmental functions and

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because he was aware that the Army wanted to convert this function to a civilian position. A military officer replaced the contractor on October 31, 2011, when the first 6-month option expired.

- In another case involving a \$2.1 million warehouse support contract at Army's Training and Doctrine Command, a command official clarified that the function performed by the contractor was not inherently governmental. She further explained that she believes the performance of this service was identified as such by the Panel for Documentation of Contractors because the function description included the term "warehouse supervisor". The command official responsible for tracking resolutions determined that the function in question involved a contractor supervising his own employees not other government employees. She reported that it took 2 years working with panel officials to reach agreement and revise the panel's determination.
- The remaining case involved a contractor providing analytical support for planning, programming, and budgeting matters under a \$470,000 contract at the Air Force's Air National Guard. In this case, we interviewed a program official and a contracting official in November 2011 and December 2011, respectively, to determine if they were aware that the inventory review process had identified functions under this contract as inherently governmental. They stated that they were not aware of this determination, but noted that the contract had expired in September 2010. The program official further noted that Air National Guard had in-sourced all functions previously performed under this contract.

In 8 of the cases we reviewed, however, contractors were still performing inherently governmental functions, as identified during the inventory review process, at the time of our review, for a variety of reasons. For example:

- In 4 instances where it had been determined that contractors had been performing the Department of the Army systems coordinator function, contractor employees continued to perform these duties. According to an Acquisition Support Center official, in June 2011 the command requested authorization to replace the contractor employees with military personnel. He noted, however, that the command had not received authorization at the time of our review. He explained, the alternative is to in-source the function and fill the positions with civilian personnel. A function, however, may now only be in-sourced if the Secretary of the Army personally approves it. In

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February 2011, the Secretary of the Army suspended all approved in-sourcing actions that had not yet been completed and instituted a new in-sourcing request and approval process. The command official reported that preparing the in-sourcing package, which includes a concept plan, a workload and funding profile analysis, a business case, and a contractor inventory review, is a lengthy process, but acknowledged that the command had not submitted this package as of January 2012.

- In 2 other cases—1 at the Army’s Acquisition Support Center and 1 at the Air Force’s Air National Guard—contracting and program officials were unaware that the inventory review process had identified functions under their contracts as inherently governmental. One case involved a \$1.1 million contract at Acquisition Support Center for engineering support in which the contractor employee provided technical expertise and coordination with program office staff, other military departments, Congress, and private companies, among other duties. The other case involved a \$409,000 Air National Guard contract for financial analytical support. In both cases, program officials stated that even though the original contracts had expired, contractors continued to perform the same functions under subsequent contracts.
- In another case at the Air National Guard, the inventory review process identified a function under a \$120,000 task order to provide advice and advocacy on Air National Guard positions and programs to the Air Staff and other Air Force major commands as inherently governmental. In this case, the Director of the Contracting Division, with responsibility for this task order, stated that she first became aware that the function was identified as inherently governmental in October 2010 but disagreed with the determination. She was not aware of any process in the Air Force or Air National Guard to resolve the disagreement. When the task order expired in May 2011, she renewed the function under a separate task order.
- In the remaining case, involving a \$6.1 million information technology support contract at Army Training and Doctrine Command’s Defense Language Institute, a “project manager” function had been identified as inherently governmental. A command official noted that the contractor employee was no longer performing the function because the contract had expired in March 2010. When we reviewed contract documents, however, we found that the contract had been extended to March 2011. Further, the Defense Language Institute had entered into a memorandum of agreement with the Naval Postgraduate

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School to provide the same technology support services. According to a program official, a contractor employee is still performing the same function under a Navy contract.

In addition to our case studies, Army Manpower and Reserve Affairs officials acknowledged that they are aware of at least 1 instance, included in the Panel for Documentation of Contractors review process, in which contractors continue to perform functions that the Army identified as inherently governmental. In this case, 47 contractors, including 2 investigators, make up the entirety of a police force at U.S. Army Kwajalein Atoll in the Marshall Islands. These contractors perform all duties expected from a police force, including patrolling, issuing citations, making arrests, and investigating misdemeanors. According to Manpower and Reserve Affairs officials, command officials disagreed with the determination, but on February 22, 2010, the Army Deputy General Counsel for Operations and Personnel issued a legal opinion that concluded that certain functions performed by the contractors were inherently governmental and could not be performed by a contractor. According to Manpower and Reserve Affairs officials, contractors continue to perform these inherently governmental functions. They also noted that DOD's decision to freeze civilian FTEs at fiscal year 2010 levels is an impediment to resolving the performance of these inherently governmental functions by contractors.

To address compliance issues with the inventory review and provide additional guidance on the process, the Acting Under Secretaries of Defense for Acquisition, Technology, and Logistics and Personnel and Readiness, jointly issued guidance for the fiscal year 2011 inventory review on December 29, 2011. The guidance specifies that military departments and defense components must review at a minimum 50 percent of all contracts, task orders, delivery orders, or interagency acquisition agreements listed in the military departments' and defense components' inventories for a given fiscal year. While conducting the reviews of contracts, the guidance states that the military departments and defense components should also review how the contracts are performed and administered, as well as the organizational environment in which they are being performed. After a review is complete, the military departments and defense components will now be required to certify that they have completed a review and submit a letter to P&R with the following information:

- an explanation of the methodology used to conduct the review and criteria for selection of contracts to review;

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- the results of the review, including identifying any inherently governmental functions, closely associated with inherently governmental functions, or unauthorized personal services contracts;
  - a plan for divesting or realigning functions for contracts that were identified as inherently governmental; and
  - an explanation of the steps taken to ensure appropriate government control and oversight for functions that were identified as closely associated with inherently governmental.

The guidance, however, does not clearly establish lines of accountability and responsibility within the military departments and defense components for conducting the inventory reviews and addressing instances where contractors are identified as performing inherently governmental functions.

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## Conclusions

Congress has mandated that DOD use the inventory of contracted services and the associated review process to help DOD ensure that contractors are performing work that is appropriate, to support development of DOD's annual strategic workforce plan, and to specify the number of contractor FTEs included in DOD's annual budget justification materials. As such, it is essential that the inventories contain comprehensive, accurate, and actionable data for each service performed.

DOD, with the exception of the Army, has much further to go in addressing the requirements for compiling and reviewing the inventories of contracted services. DOD made incremental improvements to its process to address some of the previously identified limitations when it compiled its fiscal year 2010 inventory, but it has not resolved the fundamental issue of how to collect the required data to meet the legislative inventory requirements, including manpower data directly from contractors. DOD took a significant step in November 2011 to identify objectives for collecting contractor manpower data from contractors, but DOD indicates that implementation will not be complete until 2016. Given the potential value and importance of compiling a complete and accurate inventory, it would benefit DOD to move more expeditiously. DOD's plan, however, does not specify time frames or milestones to measure its progress toward developing an enterprisewide data system to collect contractor manpower data, even though it acknowledged that reaching agreement on that approach would be challenging. We therefore reiterate our prior recommendation that DOD's plans include milestones and time frames to gauge progress in meeting the inventory requirements.

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The Army and Air Force conducted inventory reviews, but the wide variation in the number of instances of contractors performing inherently governmental functions raises the question as to how much of the variation is due to the different approaches used to conduct the reviews. Further, the Navy was unable to provide assurance that it actually conducted the statutorily required review of its fiscal year 2009 inventory. This underscores the need for greater accountability and management attention. The absence of guidance, at all levels, providing clear lines of responsibility for conducting, documenting, and addressing issues identified during the fiscal year 2009 inventory review process contributed to instances in which contractors continued to perform functions identified as being inherently governmental in 8 of the 12 Army and Air Force cases we reviewed. Army officials also cited challenges with DOD's decision to freeze civilian FTEs at fiscal year 2010 levels and the in-sourcing process as complicating their efforts to resolve issues identified during their inventory reviews, including those instances at Kwajalein Atoll. Such challenges, however, do not justify the continued use of contractors to perform inherently governmental functions, in several cases more than a year after the issue was initially identified. DOD's December 2011 guidance will require the military departments and defense components to certify that they have conducted the required reviews, but the guidance does not clearly establish lines of accountability and responsibility within the military departments and defense components for doing so. DOD's experience in conducting the fiscal year 2009 review demonstrates the importance of guidance that provides for clear lines of authority, responsibility, and accountability if DOD is to use the inventories to help identify and mitigate the risks posed by using contractors to perform certain functions.

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## Recommendations for Executive Action

To address these issues we are making the following three recommendations:

To improve the execution and utility of the inventory review process, we recommend that the Secretary of Defense ensure that the military departments and defense components issue guidance to their commands that provides clear lines of authority, responsibility, and accountability for conducting an inventory review and resolving instances where functions being performed by contractors are identified as inherently governmental functions.

To ensure that the six instances we reviewed in which the Army identified that contractors were still performing functions it deemed inherently

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governmental, as well as those at Kwajalein Atoll, have been properly resolved, we recommend that the Secretary of the Army review these functions, determine the status of actions to resolve the issues, and, as appropriate, take necessary corrective actions.

To ensure that the two instances we reviewed where contractors were still performing functions the Air Force had previously identified as inherently governmental are properly resolved, we recommend that the Secretary of the Air Force review these functions, determine the status of actions to resolve the issues, and, as appropriate, take necessary corrective actions.

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## Agency Comments and Our Evaluation

DOD provided us with written comments on a draft of this report, stating that it largely agreed with our recommendations and is committed to continue to improve its accounting for contracts for services. More specifically, DOD agreed with two recommendations and partially concurred with one recommendation. DOD's written response is reprinted in appendix II. DOD also provided technical comments, which were incorporated as appropriate.

DOD concurred with our recommendations to address instances we reviewed in which the Army and Air Force identified that contractors were still performing functions deemed inherently governmental. DOD noted that it will work with the Army and Air Force to ensure corrective actions, as appropriate and necessary, are taken.

DOD partially concurred with our recommendation that the Secretary of Defense ensure that the military departments and defense components issue guidance to their commands that provides for clear lines of authority, responsibility, and accountability for conducting an inventory review, and for resolving instances where functions being performed by contractors are identified as inherently governmental. DOD agreed it was imperative for the components to do so, but noted that its December 2011 guidance, while not prescribing individual management practices, requires component heads to certify completion of and results from the reviews. Further, DOD noted that as defense components vary in size and mission, the need for individual components to have organization-specific guidance should not be mandated but rather determined by each component head.

Our recommendation does not intend that DOD prescribe individual component management practices or mandate organization-specific

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guidance. We agree that each component should institute guidance that fits its mission and needs and that the precise nature of each component's guidance may vary in scope and detail. Our work found, however, that the absence of guidance at the military department-level that provides for clear lines of authority, responsibility and accountability contributed to the shortcomings and challenges encountered during the military departments' review of their fiscal year 2009 inventories. Given these results, we continue to believe that it would be prudent for DOD to obtain sufficient assurance that the military departments' and components' guidance covers the areas—including those enumerated above—that provide the foundation for conducting a meaningful review. DOD's December 2011 guidance, while a step in the right direction, does not provide such assurances.

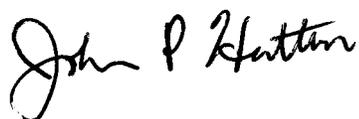
DOD also noted in its comments that the Office of Management and Budget had indicated via e-mail that it would disapprove DOD's request for an emergency waiver to the Paperwork Reduction Act. Consequently, consistent with the requirements of the Paperwork Reduction Act, DOD posted a notice in the *Federal Register* in February 2012 seeking public comment on its plans to begin collecting direct labor information and other data on DOD contracts. DOD indicated that after it reviews the comments received by the March 23 deadline, a number of other actions will need to be taken before DOD can begin collecting such data. As a result, DOD officials told us they will need to assess the impact these events will have on the actions DOD identified in its November 2011 plan and, as such, will not be able to develop additional milestones until this is done. We modified the text in the report to reflect this updated information.

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We are sending copies of this report to the Secretary of Defense, Secretary of the Air Force, Secretary of the Army, and interested congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact us at (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov) or (404) 679-1808 or [russellc@gao.gov](mailto:russellc@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix III.



John P. Hutton  
Director, Acquisition and Sourcing Management



Cary B. Russell  
Acting Director, Defense Capabilities and Management

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*List of Committees*

The Honorable Carl Levin  
Chairman

The Honorable John McCain  
Ranking Member  
Committee on Armed Services  
United States Senate

The Honorable Howard P. McKeon  
Chairman

The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
House of Representatives

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# Appendix I: Scope and Methodology

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Section 803(c) of the National Defense Authorization Act for Fiscal Year 2010 directs GAO to report for 3 years on the inventory of activities performed pursuant to contracts for services that are to be submitted by the Secretary of Defense, in 2010, 2011, and 2012, respectively.<sup>1</sup> To satisfy the mandate for 2011, we assessed (1) the progress the Department of Defense (DOD) has made in addressing limitations in its approach when compiling the fiscal year 2010 inventories on contracted services and in developing a strategy to obtain manpower data and (2) the extent to which the military departments addressed issues with contractors performing inherently governmental functions identified during reviews of their fiscal year 2009 inventories. As the military departments accounted for 83 percent of the reported obligations on service contracts and 92 percent of the reported number of contractor full-time equivalents (FTE) in the fiscal year 2009 inventories, we focused our efforts on the Army, Navy, and Air Force.

To assess the progress DOD has made in addressing limitations in its previous approach when compiling the service contract inventories, we reviewed relevant guidance related to the inventory compilation processes and interviewed cognizant officials from the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L), Office of Defense Procurement and Acquisition Policy; the Office of the Under Secretary of Defense for Personnel and Readiness; and the departments of the Army, Navy, and Air Force. We assessed changes made at the department level between the approaches for fiscal year 2009 and fiscal year 2010, but we did not assess the extent to which the change in approach affected the estimated number of contractor FTEs reported in the inventories. For the fiscal year 2010 inventory, AT&L continued to rely on data from the Federal Procurement Data System-Next Generation (FPDS-NG) for most defense components other than the Army and the TRICARE Management Activity. As with the fiscal year 2009 inventory, the Army continued to use its Contractor Manpower Reporting Application (CMRA) that reports manpower data collected directly from its contractors. We reviewed Army guidance, interviewed officials responsible for the inventory compilation, and reviewed our prior work to describe the Army's inventory compilation process. We did not independently assess the accuracy or reliability of the underlying data supporting the Army's, Navy's, or Air Force's fiscal year 2010 inventory.

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<sup>1</sup>Pub. L. No. 111-84, § 803 (c) (2009).

Our January 2011 report, however, identified limitations associated with using FPDS-NG data as the basis for the inventory.<sup>2</sup> As such, we reviewed our prior work to identify these limitations and discussed with AT&L officials what steps, if any, they had taken to address these limitations.

To assess DOD's progress in developing a strategy to obtain manpower data, we reviewed DOD's efforts to respond to congressional direction reflected in section 8108 of the 2011 Defense Appropriations Act, which required the Navy and the Air Force to submit plans to leverage the Army's CMRA system and the military departments and components to submit plans to Congress for reporting contractor FTEs no later than June 15, 2011. We reviewed and assessed the 43 plans submitted by the military departments and defense components as of February 2012 as well as DOD's November 2011 plan, which included instructions to the military departments and DOD components to document contractor FTEs and begin the collection of manpower data. We interviewed officials from AT&L's Office of Defense Procurement and Acquisition Policy, and the Office of the Under Secretary of Defense for Personnel and Readiness to obtain their views on the department's plans to collect contractor manpower data.

To assess the extent to which the military departments addressed instances in which contractors were performing inherently governmental functions, we used data from the fiscal year 2009 inventory reviews, which was the most current review available at the time we began our work. To do so, we reviewed a total of 12 instances in which contractors were identified as performing inherently governmental functions. We selected two Army commands and one Air Force component based in part on the number of such instances they had identified. For the Army, we randomly selected 3 instances from the Army's inventory review data at the Training and Doctrine Command and 3 instances at the Acquisition Support Center. These data included determinations made by the Army's Panel for the Documentation of Contractors, which identified the functions as being inherently governmental, closely associated with inherently governmental, or unauthorized personal services, as well as the commands' determination of how each function was resolved. For the 6

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<sup>2</sup>GAO, *Defense Acquisitions: Further Action Needed to Better Implement Requirements for Conducting Inventory of Service Contract Activities*, [GAO-11-192](#) (Washington, D.C.: Jan. 14, 2011).

Army cases we randomly selected, we reviewed the inventory review data and interviewed officials responsible for the fiscal year 2009 inventory review process. We subsequently eliminated 3 of the instances we randomly selected because they were identified as closely associated with inherently governmental functions or unauthorized personal services. In addition, we reviewed 6 instances where contractors were performing the duties of Department of the Army systems coordinators. Army's 2010 acquisition review chartered by the Secretary of the Army determined that these positions were inherently governmental.<sup>3</sup> For each of these cases, we reviewed the contract files and interviewed program and contracting officials responsible for these contracts to determine the extent to which DOD took action to resolve instances of contractors performing inherently governmental functions.

The Air Force provided data to us in September 2011 that summarized the results of its fiscal year 2009 inventory review process, including functions being performed by contractors that it identified as inherently governmental. Pursuant to the Secretary of the Air Force's October 2010 guidance, the inventory review was to include all contracts from the beginning of fiscal year 2009 through August 2010. From these data, we determined that the Air National Guard had the largest number of instances in which the review process identified contractors as performing inherently governmental functions, and randomly selected 3 instances the Air Force had identified as including inherently governmental functions at the Air National Guard. We also interviewed officials from the Air National Guard and the Air Force Space Command about their inventory review process. In November 2011, Air Force officials provided us a revised data set that excluded contracts awarded from October 2009 through August 2010, including the contracts at the Air National Guard. Since these contracts were reviewed as part of the Air Force's fiscal year 2009 inventory review process as directed by the Secretary of the Air Force and included functions identified as inherently governmental, we included them in our review.

At the time we initiated our work, Navy headquarters officials did not have the results of their fiscal year 2009 inventory review process available and subsequently acknowledged that they were uncertain whether their commands conducted the required reviews. Consequently, we

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<sup>3</sup>*Army Strong: Equipped, Trained and Ready: Final Report of the 2010 Army Acquisition Review*, John M. McHugh, Secretary of the Army (January 2011).

considered DOD's fiscal year 2010 in-sourcing data that were reported to Congress in September 2011. From the Navy's in-sourcing data, we selected Fleet Forces Command and Space and Naval Warfare Systems Command for further review based on the number of positions they reported as in-sourced based on contractor performance of an inherently governmental function. We also contacted Naval Sea Systems Command, the largest of five Navy systems commands, to discuss whether the command had conducted an inventory review but were informed that the command had not done so. We did not review individual Navy contracts because Space and Naval Warfare Systems command officials stated that it was not possible to track the positions to specific contracts. Also, we found that the commands subsequently reported that the functions were not inherently governmental and were in-sourced for other reasons, such as to provide Navy personnel career progression opportunities.

For the 12 cases we included in our review, we compared the information that the Army and Air Force provided regarding the contracts they reviewed with information in the contract files and found the data sufficiently reliable for the purposes of our work. We did not, however, independently assess whether the functions the military departments identified were in fact inherently governmental. Further, the results of our analysis are not generalizable to all instances where contractors were performing inherently governmental functions identified by the military departments.

We conducted this performance audit between July 2011 and April 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Comments from the Department of Defense



PERSONNEL AND  
READINESS

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WASHINGTON, DC 20301-4000

Mr. John Hutton  
Director, Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Hutton:

This is the Department of Defense (DoD) response to the GAO draft report 12-357, "Defense Acquisitions: Further Actions Needed to Improve Accountability for DoD's Inventory of Contracted Services, February 23, 2012 (GAO Code 121008)".

The Department appreciates the opportunity to review and comment on this draft report. The Department largely agrees with the GAO recommendations, and is committed, from the highest levels of leadership and throughout the entire enterprise, to continue to improve its accounting for contracts for services. The Department has also received acknowledgement from the Departments of the Air Force, Army and Navy that they will take GAO's recommended steps to improve their inventories.

As noted in the report, the Department issued a plan in November 2011 to improve its inventory processes and meet the revised legislative requirements of sections 235 and 2330a of title 10, added by the fiscal year 2011 National Defense Authorization Act – including the requirement for the collection of "direct labor hours and associated cost data collected from contractors..." This plan included short- and long-term actions necessary to meet this requirement, including adopting Army best practices and modifying databases used to identify the requiring activity, functions and missions performed by the contractor, but was contingent on approval of an emergency waiver to the Paperwork Reduction Act (PRA). The Department is unable to establish additional milestones or further specify how it will improve its inventory processes until this waiver is granted.

In early December, the Department submitted a request for an emergency waiver to the Office of Management and Budget (OMB). In mid-December, OMB granted the Army's request to renew its PRA waiver, based on the use of the Contractor Manpower Reporting Application and associated processes. In late December, OMB forwarded concerns raised by the Professional Services Council with the Department's planned collection methodologies and estimation of public burden (which were based on the Army's processes and experience for the past five years). OMB indicated via email that the Department's request would be disapproved in late January, so in early

February, the Department posted a second Federal Register notice, to begin the standard 60 day PRA comment period. That comment period ends March 23. Before additional milestones can be estimated, the Department will adjudicate any comments received from this comment period, post responses for another 30 day Federal Register notice period, and await OMB findings of these actions.

**RECOMMENDATION 1:** The GAO recommends, to improve the execution and utility of the inventory review process, that the Secretary of Defense ensure that the military departments and defense components issue guidance to their commands that provides clear lines of authority, responsibility, and accountability for conducting an inventory review and resolving instances where functions being performed by contractors are identified as inherently governmental functions.

**DoD RESPONSE:** The Department partially concurs with this recommendation. In December 2011, the Department issued "Guidance for Submission and Review of the FY2011 Inventory of Contracts for Services," including specific steps for each Component to complete a review of their respective inventories. The Department agrees that it is imperative that each organization provide clear lines of authority, responsibility, and accountability for conducting an inventory review, and for resolving instances where functions being performed by contractors are identified as inherently governmental functions. However, because the 44 individual Components that this guidance applies to vary in size and mission, the need for individual Components to have organization specific-guidance should not be mandated but rather determined by each Component head. The guidance issued by the Department, while not prescribing individual Component management practices, requires Component heads to certify, in writing, completion of the review and delineate the results in accordance with all applicable title 10 provisions.

**RECOMMENDATION 2:** The GAO recommends to ensure that the six instances we reviewed in which the Army identified that contractors were still performing functions it deemed inherently governmental, as well as those at Kwajalein Atoll, have been properly resolved, we recommend that the Secretary of the Army review these functions, determine the status of actions to resolve the issues, and, as appropriate, take necessary corrective actions.

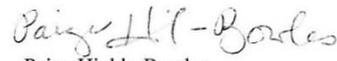
**DoD RESPONSE:** The Department concurs with this recommendation and will work with the Army to ensure corrective actions, as appropriate and necessary, are taken.

**RECOMMENDATION 3:** To ensure that the two instances we reviewed where contractors were still performing functions the Air Force had previously identified as inherently governmental are properly resolved, we recommend that the Secretary of the Air Force review these functions, determine the status of actions to resolve the issues, and, as appropriate, take necessary corrective actions.

**DoD RESPONSE:** The Department concurs with this recommendation and will work with the Air Force to ensure corrective actions, as appropriate and necessary, are taken.

Should you have any questions, please contact my primary action officer, Ms. Amy Parker, Associate Director of Total Force Programming and Execution, at 703-697-1735, or at [amy.parker@osd.mil](mailto:amy.parker@osd.mil).

Sincerely,



Paige Hinkle-Bowles  
Deputy Assistant Secretary  
Civilian Personnel Policy

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# Appendix III: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

John P. Hutton, (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov)

Cary B. Russell, (404) 679-1808 or [russellc@gao.gov](mailto:russellc@gao.gov)

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## Staff Acknowledgments

In addition to the contacts named above, Timothy DiNapoli, Acting Director; MacKenzie Cooper; Julia Kennon; John Krump; Angie Nichols-Friedman; and Guisseli Reyes-Turnell made key contributions to this report.

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