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CONTRACTING TO FEED U.S. TROOPS IN AFGHANISTAN: HOW DID THE DEFENSE DEPARTMENT END UP IN A MULTI-BILLION DOLLAR BILLING DISPUTE?

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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CONTRACTING TO FEED U.S. TROOPS IN AFGHANISTAN: HOW DID THE DEFENSE DEPARTMENT END UP IN A MULTI–BILLION DOLLAR BILLING DISPUTE?

Wednesday, April 17, 2013,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:23 p.m. in room 2154, Rayburn House Office Building, the Honorable Jason Chaffetz [chairman of the subcommittee], presiding.

Present: Representatives Chaffetz, Mica, Duncan, Amash, Issa, Tierney, Speier, Duckworth, and Welch.

Staff Present: Alexia Ardolina, Majority Assistant Clerk; Molly Boyl, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; Linda Good, Majority Chief Clerk; Mitchell S. Kominsky, Majority Counsel; Jim Lewis, Majority Senior Policy Advisor; Mark D. Marin, Majority Director of Oversight; Laura L. Rush, Majority Deputy Chief Clerk; Scott Schmidt, Majority Deputy Director of Digital Strategy; Rebecca Watkins, Majority Deputy Director of Communications; Sang H. Yi, Majority Professional Staff Member; Jaron Bourke, Minority Director of Administration; Beverly Fraser Britton, Minority Counsel; Devon Hill, Minority Staff Assistant; Peter Kenny, Minority Counsel; Rory Sheehan, Minority New Media Press Secretary; and Carlos Uriarte, Minority Counsel.

Mr. CHAFFETZ. The committee will come to order.

I would like to begin this hearing by stating the Oversight Committee Mission Statement.

We exist to secure two fundamental principles. First, Americans have the right to know that the money Washington takes from them is well spent. Second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they are getting from the government.

We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

Welcome to today's hearing which is entitled Contracting to Feed U.S. Troops in Afghanistan: How Did the Defense Department end up in a Multi-Billion Dollar Billing Dispute?

I would like to welcome Ranking Member Cummings; Chairman Issa, who I know will be joining us; certainly Ranking Member Tierney, members of the subcommittee and the people joining us here in the audience.

Today's hearing continues the subcommittee's effort to oversee the billions spent in support of military and civilian operations in Afghanistan. In 2011, the subcommittee conducted a bipartisan investigation led by Congressman Tierney, and now Senator Flake, of the Defense Department's Host Nation Trucking contract.

The purpose of the contract was to supply our military through the use of private contractors. However, almost since its inception, allegations surfaced that the warlords of the Taliban would seek protection payments for safe passage through tribal areas. According to those familiar with the contract, the result was a potential windfall for our enemy.

The problems with the host nation trucking contract highlighted the importance of adequate contracting oversight. Proper contract administration is one of the main defenses against the waste, fraud and abuse that can potentially happen overseas, particularly as we deal with billions of dollars.

In the case of the Defense Logistics Agency, DLA, prime vendor contract with Supreme Foodservice, billions of dollars are at stake, as well as the very important mission of feeding our troops in Afghanistan. Currently, the DLA believes it has overpaid Supreme by roughly $757 million. Meanwhile, Supreme has submitted a claim against DLA for over $1.8 billion.

From the outset, the contract was modified through verbal change orders significantly altering performance requirements. The most troubling findings of the Defense Inspector General report included the excessive delays in definitizing these change orders. The IG noted that the government's contracting officer did not definitize or issue contract modifications in a timely manner, as required by federal acquisition regulations.

The IG also concluded that the government overpaid Supreme by almost $100 million in transportation costs and over $26 million for packaging materials for chilled or frozen food products.

These uncertainties in the contract were compounded by the incomplete pricing audits conducted by the Defense Contract Audit Agency. The DCAA conducted two separate audits of pricing considerations negotiated between DLA and Supreme. According to the DCAA's 2011 audit, Supreme failed to provide adequate support documentation to demonstrate the reasonableness of proposed costs.

The concerns with this prime vendor contract are ongoing and have been for some time. Despite all these concerns, the government continued to contract with Supreme and even exercised options to extend the contract. We have well established contracting procedures. If we are not going to use them, why have them?

This is a congressional hearing. It is not a court of law but we do seek to get to the bottom of these issues and to understand how the Federal Government continued to have such massive chal-

lenges in its contracting. It is a vital and necessary part of what we are doing overseas, but it certainly demands more attention.

Mr. CHAFFETZ. I would now like to recognize the distinguished Ranking Member, the gentleman from Massachusetts, Mr. Tierney, who has worked tirelessly on this issue and is passionate about it, for his opening statement.

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Schuster, thank you for joining us here today.

This hearing as the Chairman said focuses on one of the largest military contracts in Afghanistan and how it is that the Defense Department and the contractor, Supreme Foodservice, wound up in a multibillion dispute. We will hear about how the Defense Logistics Agency continued to pay Supreme billions of dollars in spite of very strong concerns at the Agency that taxpayers were being overbilled.

It took DLA six years to demand that Supreme reimburse the government for more than $750 million in what it believed were overpayments. That is an astounding amount of money. I want to put that in perspective. Overpayments alleged to Supreme are sufficient to pay for nearly 100,000 children to have access to a Head Start program.

This should dispel the notion that the Department of Defense budget is not riddled with ineffectiveness, waste, fraud and abuse. It is a budget which we all ought to take into consideration when we are dealing with our own national budget issues.

The hearing today follows a series of committee inquiries, identified in part by the Chairman, into some of the largest contingency contracts. In 2008, then Chairman Henry Waxman and the full committee examined allegations of corruption in the DLA fuel contracts in Iraq. In 2010, I led a six month investigation with then Ranking Member, Jeff Flake, of the Host Nation Trucking Contract in Afghanistan

In that investigation, we released a report entitled, Warlord Inc., that found a vast protection racket in which warlords, criminals and insurgents extorted contractors for safe passage.

Also, in 2010 I led a bipartisan investigation of DLA fuel contracts in Kurdistan, a major transit hub for Afghanistan. We issued a report entitled, Mystery at Madis, which outlined serious concerns with potential corruption and lack of oversight. Again, billions of dollars were involved in that case.

That brings us to today's hearing on the food contract in Afghanistan. The subcommittee began looking into the Subsistence Prime Vendor Contract in Afghanistan shortly after the Defense Department Inspector General issued a report in 2011 that found serious problems with the contract. At our subcommittee hearing in December 2011, then Defense Department Inspector General Gordon Heddel described this contract as "an example of just how bad it can get."

We also have a Commission on Wartime Contracting in Iraq and Afghanistan that then Congressman Jim Leach and I put into legislation. It studied the problems of the war zone spending and basically tried to look out for this food service contract in particular, singled it out as a prominent example of government mismanagement. Charles Tiefer, who is a member of that Commission, said

"Supreme has had years and years of non-competed monopoly status that the Defense Logistics Agency kept saying it would avoid."

As discussed further on in these remarks, and during the hearing, I hope, the Defense Logistics Agency even gave Supreme a bridge contract that Mr. Tiefer said was "like an employer keeping some wasteful employee on the payroll longer than necessary in order to garnish wages."

Since formally launching our investigation, the subcommittee has reviewed thousands of documents, held numerous briefings with representatives from Supreme and senior officials from the Defense Logistics Agency trying to understand what went wrong and why. This has been a bipartisan effort from the very beginning and I truly appreciate the support of Chairman Chaffetz and his staff for the investigation.

Between December 2005 and September 2011, the Defense Logistics Agency paid Supreme Food Service $5.5 billion to deliver food to our troops in Afghanistan. Remarkably during the entire time, the Defense Logistics Agency and Supreme never agreed on a final pricing for over $1.4 billion paid to deliver food to hundreds of forward operating bases throughout the country.

While Supreme was originally contracted to deliver food to just four locations in Afghanistan, that number ballooned to 68 locations even before Supreme started to perform on the contract. The number of locations eventually reached a high of 265 by early 2012. This change was more than a simple increase in the number of delivery destinations and amounted to a massive change in requirements because it dramatically increased the difficulty of reaching deliver sites and required the use of more expensive transportation such as helicopters and fixed wing aircraft.

Unfortunately, this is only where the problems began. In six months, Supreme presented a bill for $33.5 million. The bill was so large that at the time the Defense Logistics Agency was not even sure they had the funds to pay the contractor before the end of that fiscal year. When DLA finally issued a formal modification, nearly a year after the verbal change order, it realized Supreme's rates were unreasonable and agreed to only pay them 75 percent of that bill.

Over the next five years, DLA would unsuccessfully try to negotiate a fair and reasonable rate with Supreme and every time, the parties were miles apart. DLA finally exercised its discretion to set the rates for itself by unilaterally definitizing the contract. But by then, the overpayments had accumulated to a massive size. Supreme owed the government $757 million in overpayments.

Despite all of these problems, the agency failed to rebid the contract after the contract expired and decided to grant Supreme a no-bid extension of the contract that ended up lasting two more years. I will be very interested to hear from DLA why they decided to grant Supreme an extension valued at $4 billion instead of competitively rebidding the contract.

I will also be interested to hear the role that retired Army Lieutenant General Robert Dail, the former Director of the DLA, played, and is now, of course, President of the United States-based Supreme Company, and the work of then Major General Dan

Mongeon, also retired Army, does with Agility, who was a partner in part of this venture with Supreme.

There seems to be a lot more to this story. For six years, Supreme refused to provide sufficient documentation requested by Defense Department auditors and DLA contracting officers to justify their charges. The audits show that Supreme was essentially double billing the government for delivering food to the forward operating bases by charging both the original fixed distribution fee and the additional premium outbound transportation fee which appeared to already include the distribution fee.

The Defense Logistics Agency also found that Supreme spent $58 million to build and operate a warehouse in southern Afghanistan to strategically position itself for a follow-on contract and then Supreme tried to past the cost of this investment on to the United States Government.

There is more. There are separate allegations that Supreme used an affiliate in the United Arab Emirates to increase their profits on fresh fruits and vegetables as well as dairy products that were delivered to our bases in Afghanistan. If true, this would be similar to a very questionable relationship that was discovered in the Iraqi food service contract that eventually led to the indictment of PWC Agility, Mr. Mongeon's group and also a partner with Supreme in this venture.

Clearly, the public deserves to know what went so horribly wrong, but I also want to hear how we can assure that this never happens again. While the war in Afghanistan may be winding down, the United States has been involved in over 15 stabilization and reconstruction operations around the world since the end of World War II, the majority of which have been within the last 20 years.

The Commission on Wartime contracts estimates that up to $60 billion in U.S. funds were lost due to waste, fraud and abuse in Iraq and Afghanistan. I look forward to hearing from the witnesses today about what we can do to stop this hemorrhaging of taxpayer dollars.

Thank you, Mr. Chairman.

Mr. CHAFFETZ. Thank you.

We have two panels today so we will need to keep moving along but I would be happy to entertain any additional opening statements. I will first recognize the gentleman from Florida, Mr. Mica, for five minutes.

Mr. MICA. Thank you and I will try to be brief.

First, thanks for conducting this hearing and both of your ongoing efforts in this regard.

Every week on this committee hearing testimony, particularly about Afghanistan, and the rest of the Federal Government, you are appalled at the waste, fraud and abuse. We heard the Special Inspector General for Afghanistan there is $20 billion worth of aid they cannot even funnel into a corrupt country.

They also told us the problems are management of contracts and we see examples here and corruption which we also heard outlined here. This has to be one of the prime poster child for government contracts spun out of control.

First of all, I understand it went to a privately held company based in Amsterdam. I had a similar deal with local competition in another area. Some of these foreign vendors know the game better and play it better. They get the contracts and then ratchet it up. This thing has gone from a little bit to a huge bit, hundreds and hundreds of millions of dollars are now in dispute, tens of millions of dollars which is unbelievable.

First, I think we have to go back and look at what has happened here and not let it happen again and hold some folks accountable. Secondly, if we are looking for areas in which to cut waste, fraud and abuse and rip off of the taxpayer, this is the kind of contract that has to be stopped in its tracks.

I will not undermine Obama and I was appalled at what happened during the Bush Administration in political undermining on our position in Iraq, but we need to get out of Afghanistan sooner rather than later and put this whole wasteful episode behind us.

In a time of national deficits and United States economic and national security being threatened by our physical situation, this kind of stuff going on has to be brought to a halt.

Thank you. I yield.

Mr. CHAFFETZ. Thank you.

Do any other members care to make an opening statement? The gentleman from Tennessee.

Mr. DUNCAN. I will be brief.

I will just say this. Under both Republican and Democratic administrations, I have been very outspoken about this revolving door at the Pentagon. It happens in just about all departments and agencies in the Federal Government, but I think it is the worst in the Defense Department.

I read here that General Dail gave the new contractor of the year award to Supreme in 2007, retired from the Army in 2008 and four months later, he was hired as president of Supreme Group's new entity. This is shameful, this is scandalous. It is ridiculous that this kind of thing goes on so repeatedly in the Federal Government. Fiscal conservatives ought to be the most horrified about this.

Then you talk about giving no bid, multibillion dollar contracts, waste of hundreds of millions, it is sickening. It also disturbs me that we give out these wonderful contracts—all sweetheart, insider type deals given to foreign-owned companies. Supreme is a Swiss-owned company. Now they have given the new mega billion dollar, I think a $10 billion contract, to a company in Dubai. We ought to be looking for American companies, truly American companies, to do these contracts.

Thank you, Mr. Chairman.

Mr. CHAFFETZ. Thank you.

If there are no other members seeking time for an opening statement, I will now recognize our first panel.

Mr. Michael Schuster is the Managing Director of the Logistics Division for Supreme Food Service. We thank you for being here. I recognize there are others within the organization that could have been here but you are here with us today. For your presence, we are grateful and appreciate the time to go through this.

Pursuant to committee rules, all witnesses will be sworn before they testify. Please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witness responds in the affirmative.]

Mr. CHAFFETZ. Let the record reflect that the witness answered in the affirmative. You may be seated.

In order to allow time for discussion, please limit your time to five minutes but given that you are the only member on this panel, feel free to take a little extra time. We will do the same with members in this complicated topic.

Please know your entire written statement will be made a part of the record. We will now recognize you for five minutes.

WITNESS STATEMENTS

STATEMENT OF MICHAEL SCHUSTER, MANAGING DIRECTOR, LOGISTICS DIVISION, SUPREME GROUP B.V.

Mr. SCHUSTER. Good afternoon, Mr. Chairman Chaffetz, Ranking Member Tierney and distinguished members of the subcommittee.

My name is Mick Schuster. I am the Managing Director of Supreme Foodservice.

Supreme is a global supply chain company founded in 1957 that operates in approximately 20 countries around the world. One of those countries is Afghanistan where we deliver food and supplies to U.S. and NATO troops.

Our success in creating a supply chain that can reach the deepest parts of Afghanistan has been a force-multiplier for the U.S. Government and has been one of our proudest achievements. Despite operating in one of the most isolated and dangerous areas in the world, we have consistently outstanding performance exceeding contractual requirements.

As you know, the Defense Logistics Agency executed a SPV contract with Supreme in June 2005 for the delivery of food, beverages and other goods to U.S. troops in Afghanistan. Under the terms of the original contract, Supreme was responsible for making deliveries to four and only four locations in Afghanistan: Kabul, Bagram, Kandahar and Forwarding Operating Base Salerno.

Another contractor was supposed to convert Supreme's bulk deliveries into smaller ones appropriate for distribution to the numerous forwarding operating bases in Afghanistan.

Only weeks after the contract was awarded, DLA commenced dramatically expanding Supreme's responsibilities. By August 2005, DLA had directed Supreme to deliver to dozens of forward operating bases in remote regions in Afghanistan. The number of deliveries continued to increase and at the peak of the program, Supreme was delivering to over 250 different points at 120 locations throughout Afghanistan.

This required Supreme to change fundamentally the way it executes its responsibilities and to develop and operate a network of airplanes, helicopters and trucks able to reach the isolated regions of Afghanistan, a mountainous country the size of Texas but with little functioning infrastructure and extreme weather patterns.

Although DLA's original solicitation said only remnants of the Taliban were still active, Supreme had to build this network in an

active war zone. Notably, 312 of our subcontractors have lost their lives delivering food to U.S. and Coalition troops.

There has never been any dispute that the changes DLA made to Supreme's contract entitled Supreme to additional compensation. To reiterate, the government hired Supreme to deliver to four central locations in Afghanistan, not hundreds of remote ones. Supreme and DLA consequently negotiated supplemental rates for those services called premium outbound transportation or POT.

DLA insisted that Supreme offer a single set of fixed rates but would be guaranteed for the five year period of the contract, regardless of the delivery location in Afghanistan. This meant that Supreme bore all the risks of making these delivering including changes in the security environment, fuel prices, delivery locations, troop strength, and road and weather conditions.

In August 2006, after nearly a year of uncompensated POT deliveries, Supreme and DLA agreed to pricing that would become final after verification. This was a commercial item contract. Verification should have involved comparison of market prices for related services and a determination that the offered price was fair and reasonable. DLA instructed DCAA to audit Supreme as if this was a cost-plus contract, which it is not.

I would like to conclude by emphasizing two points. First, I want to emphasize Supreme's view, that the DCAA audits were fundamentally flawed. This was a commercial, fixed price contract, not a cost-plus contract.

Second, I want to emphasize that this is a purely contractual dispute which we are working to resolve with DLA through the appropriate process. Furthermore, since February 2013, DLA has withheld payment of $21.7 million per month from Supreme and to date, a payment of $303 million has been made against the $758 million under dispute.

In the meantime, Supreme remains committed to supporting our client and servicing the war fighter in Afghanistan.

Thank you, and I look forward to answering any questions you may have.

[Prepared statement of Mr. Schuster follows:]

WRITTEN TESTIMONY BY
MICHAEL SCHUSTER
MANAGING DIRECTOR, SUPREME FOODSERVICE

BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY

U.S. HOUSE OF REPRESENTATIVES

APRIL 17, 2013

Good afternoon, Mr. Chairman, Ranking member Tierney, and distinguished members of the Subcommittee. My name is Mick Schuster, and I am Managing Director of Logistics at Supreme Foodservice. Supreme is a global supply chain company founded in 1957 that operates in approximately 20 countries around the world. One of those countries is Afghanistan, where we deliver food and supplies to U.S. and NATO troops. Our success in creating a supply chain that can reach the deepest parts of Afghanistan has been a force-multiplier for the U.S. government and has been one of our proudest accomplishments. Despite operating in one of the most isolated and dangerous areas in the world, we have achieved consistently outstanding performance exceeding contractual requirements.[1]

As you know, the Defense Logistics Agency (or "DLA" for short) executed a Subsistence Prime Vendor (SPV) contract with Supreme in June 2005 for the delivery of food, beverages, and other goods to U.S. troops in Afghanistan. Under the terms of the original contract, Supreme was responsible for making deliveries to four and only four locations in Afghanistan: Kabul, Bagram, Kandahar, and Forward Operating Base Salerno. Another contractor was supposed to convert Supreme's bulk deliveries into smaller ones appropriate for distribution to the numerous forward operating bases throughout Afghanistan.

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[1] Supreme Group is a global leader in the provision of end-to-end supply chain solutions to defense, government, and commercial sector clients around the world. The company provides critical, life-sustaining services that empower clients to accomplish missions in challenging and austere environments. Supreme offers a unique breadth of capabilities—ranging from procurement, transportation and storage through to technology and full site services. Today, its legacy of proven and trusted performance in challenging environments spans more than fifty years; covering 20 nations across five continents.

Supreme has a long history of supporting international organizations and governments. Its current clients include the United Nations (UN), the North Atlantic Treaty Organization (NATO), and leading military forces including the US Department of Defense (DoD) and the UK Ministry of Defence (MoD). Over the years, the company has also partnered with many commercial clients. The Group's excellent reputation is built on the key strengths of delivering where others cannot; implementing rapid response solutions; and creating fully integrated supply chain solutions.

Only weeks after Supreme was awarded the SPV contract, DLA began dramatically expanding Supreme's responsibilities. By August 2005, DLA had directed Supreme to deliver to dozens of forward operating bases in remote regions of Afghanistan. The number of delivery locations continued to increase, and, at the peak of the program, Supreme was delivering to over 250 different points at 120 locations throughout Afghanistan. This required Supreme to change fundamentally the way it executes its responsibilities and to develop and operate a network of airplanes, helicopters, and trucks able to reach isolated regions of Afghanistan—a mountainous country the size of Texas but with little functioning infrastructure and extreme weather patterns. And although DLA's original solicitation said that only "remnants" of the Taliban were still active, Supreme had to build this network in an active war zone. Notably, 312 of our subcontractors have lost their lives delivering food to U.S. and coalition troops.

There has never been any dispute that the changes DLA made to Supreme's contract entitled Supreme to additional compensation. To reiterate, the government hired Supreme to deliver to four central locations in Afghanistan, not hundreds of remote ones. Supreme and DLA consequently negotiated supplemental rates for those services, called "premium outbound transportation" or "POT." DLA insisted that Supreme offer a single set of fixed rates that would be guaranteed for the five-year life of the contract, regardless of delivery location in Afghanistan. This meant that Supreme bore all of the risks of making these deliveries—including changes in the security environment, fuel prices, delivery locations, troop strength, and road and weather conditions.

In August 2006—after nearly a year of uncompensated POT deliveries—Supreme and DLA agreed to pricing that would become final after verification. This was a commercial item contract. Verification should have involved a comparison to market prices for related services and a determination that the offered price was "fair and reasonable." DLA instructed DCAA to audit Supreme as if this were a cost-plus contract—which it is not.

I would like to conclude by emphasizing two points:

First, I want to emphasize Supreme's view that DCAA's audits were fundamentally flawed. Operating under the incorrect assumption that this was a cost-plus contract, DCAA disallowed a significant amount of Supreme's costs. For example, it disallowed 100% of the fuel costs incurred by Supreme for POT deliveries because Supreme did not keep records in accordance with a cost type contract. This obviously does not reflect reality. There is no dispute that Supreme actually made the deliveries and incurred these costs, and, under the rules for commercial, fixed-price contracts, DCAA cannot just "disallow" them. Relying on these audits, DLA unilaterally set POT prices that we believe are unreasonable. For example, as a result of DLA's unilateral rate decision, we are now being paid *less* for POT road deliveries to forward operating bases than what we are paid to deliver to the four original sites—despite the challenges in servicing forward operating bases.

Second, I want to emphasize that there are procedures for resolving disputes between DLA and a contractor, and we are using those procedures to reach a resolution here. After the DLA contracting officer issued a final decision unilaterally changing the prices for POT services in December 2011, Supreme filed a formal appeal with the Armed Services Board of Contract

Appeals. That case is in the process of discovery and is moving forward. Despite this dispute, we continue to work closely with DLA and greatly value our relationship with them. We are confident that this dispute will be resolved in due course through the appropriate channels. In the meantime, Supreme remains committed to performing the contract at a high success level.

Thank you. I look forward to any questions you may have.

Mr. CHAFFETZ. Thank you, Mr. Schuster.

I will now recognize myself for five minutes.

When you agreed to accept this extraordinary verbal contract modification, I assume it was verbal or was it written?

Mr. SCHUSTER. Mr. Chairman, it was a verbal notice from DLA.

Mr. CHAFFETZ. Did it occur to you that there would be some sort of pricing dispute at this point?

Mr. SCHUSTER. It was our expectation that we would scope what was required and put requests for supplemental pricing into DLA.

Mr. CHAFFETZ. Given that we are so many years after the fact, we are not even close, we are talking about hundreds of millions of dollars. What went wrong? What should have happened that did not happen?

Mr. SCHUSTER. We put in proposed pricing. We just could not agree on what was fair and reasonable in the pricing. I think there were mechanisms within the contract like ADR that we should have used early on to resolve the dispute.

Mr. CHAFFETZ. Your testimony often refers to "market prices" for this contract. Can you explain how Supreme determined the market rate for premium outbound transportation in Afghanistan?

Mr. SCHUSTER. We looked at available benchmarks in the marketplace. By available benchmarks, we spoke to suppliers who were capable of providing those services. We also looked at comparable benchmarks; for example, U.S. Transcom rates, and used those to develop our pricing.

Mr. CHAFFETZ. One of the accusations is that Supreme was reluctant to provide supporting documentation. Why not provide supporting documentation? What happened to that?

Mr. SCHUSTER. In relation to the pricing, we put together fully transparent pricing models.

Mr. CHAFFETZ. My guess is they are going to disagree with you on that one.

Mr. SCHUSTER. We provided market benchmarks to substantiate our rates. That is what we believe we did.

Mr. CHAFFETZ. In your written testimony, you state that "312 of your subcontractors have been killed while delivering food to U.S. and Coalition troops." Were they all directly related to performance of this contract?

Mr. SCHUSTER. Yes, Mr. Chairman, the 312 deceased all operated on this contract. They were either truck drivers or convoy security guards that protect the convoys making the delivery.

Mr. CHAFFETZ. What was the nature and circumstances of such a high number of fatalities?

Mr. SCHUSTER. The size of the contract and the number of movements we make in terms of vehicles, helicopter or fixed wing is immense every day. It is largely insurgent attacks on truck movements.

Mr. CHAFFETZ. What sort of safety protocols were in place? It seems like an exceptionally high number. Were you in a position where you had to offer security payments? Were you also having to, as other contractors had to, offer security payments or pay off the bad guys essentially?

Mr. SCHUSTER. Mr. Chairman, we definitely did not do that. In terms of our contract, CENTCOM private security was required so we had a fully compliant CENTCOM private security program.

Mr. CHAFFETZ. I want to go over the last part of your statement. Supreme claimed that DLA owes the company $1.8 billion; they think they overpaid by three quarter of a billion. That seems like an awfully big gap. How do you account for that difference?

Mr. SCHUSTER. I go back to what I said in my statement. We see this is as a commercial contract, commercial items contract. The assessments made by DCAA have been based on a cost-plus contract. That is at the heart of the difference. In a commercial items contract, we use comparable market prices to develop fair and reasonable pricing. That is what we have done.

Mr. CHAFFETZ. When you say this was a verbal expansion, you went from four sites to 250. Did somebody just walk down and say, hey, let's add these 30. How does that work?

Mr. SCHUSTER. It does not happen like that. The contracting officer at DLA would be in contact with us and say we would like to add these additional sites to the contract. We would then go away and make an assessment of our ability to do it and what mode of transport we would select to perform that mission.

That then goes back to DLA. They then approve that site is now in the contract. A DODAC is created and then we start filling orders.

Mr. CHAFFETZ. Do you sign that, did they sign that or you just move on?

Mr. SCHUSTER. Basically, the signoff is when a DODAC, which is the delivery or the account for that site, is added. That is the green light to go.

Mr. CHAFFETZ. My time has expired. I will now recognize the gentleman from Massachusetts, Mr. Tierney, for five minutes.

Mr. TIERNEY. Thank you.

Mr. Schuster, how many United States Government contracts had Supreme won before it won the food contract in Afghanistan, contracts of the same nature?

Mr. SCHUSTER. That was our first U.S. Government contract.

Mr. TIERNEY. Your first is a contract valued at $726 million with a maximum value over five years of $4.2 billion, no experience, no prior contract, out of the box. This is the contract you got?

Mr. SCHUSTER. It was our first U.S. Government contract. We have significant past performance operating around the globe doing similar contracts for other countries, UKMD, NATO contracts.

Mr. TIERNEY. None in Afghanistan?

Mr. SCHUSTER. We have been operating in Afghanistan since January 2002.

Mr. TIERNEY. With the same nature contract as we signed in this one?

Mr. SCHUSTER. We went to Afghanistan in 2002 with the British Ministry of Defense.

Mr. TIERNEY. I am asking you was it the same type of contract you had here, delivering to forward operating bases?

Mr. SCHUSTER. Yes, it is a food supply contract to forward operating bases for British Ministry of Defense.

Mr. TIERNEY. When you made your original proposed prices for distribution and all that in July 2005 for those four locations, what did you use as the basis for determining what you were going to bid?

Mr. SCHUSTER. It was very simple. We determined the size of the infrastructure we needed in terms of warehousing, the personnel and all the operating costs to run that and then the distribution method to deliver to those four sites, which was all by road.

Mr. TIERNEY. Before that contract even started, you got notice from DLA they would like to expand it to 68 more bases?

Mr. SCHUSTER. Correct.

Mr. CHAFFETZ. What did you do then to consider what your fee should be to do that?

Mr. SCHUSTER. Again, we did an assessment of what the requirement was.

Mr. TIERNEY. Had you ever done anything like that before, go out to 68 bases similarly situated?

Mr. SCHUSTER. No, because a large number of these bases were in the east of Afghanistan, mountainous regions and hence, the requirement for rotary wing or fixed wing aircraft to support us.

Mr. TIERNEY. But you had no prior experience getting out to areas like that?

Mr. SCHUSTER. Not into the east of Afghanistan, no.

Mr. TIERNEY. Did you know anyone who did?

Mr. SCHUSTER. No.

Mr. TIERNEY. So you had no comparables on which to base your costs, you were basically estimating?

Mr. SCHUSTER. No. As I stated in my previous answer to the Chairman, we used a combination of comparable market rates, for example USTRANSCOM rates.

Mr. TIERNEY. What is the comparable market rate to a forward operating base situated like one of the 68?

Mr. SCHUSTER. U.S. Transcom publishes fixed wing and rotary wing rates, annual rates for delivery to within Afghanistan.

Mr. TIERNEY. By mile?

Mr. SCHUSTER. I am not 100 percent sure. I think it is by pound.

Mr. TIERNEY. By pound of product?

Mr. SCHUSTER. It is by price pound, gross pound.

Mr. TIERNEY. More expensive to deliver lettuce than to deliver fruit?

Mr. SCHUSTER. No, it is by pound, so it is by weight.

Mr. TIERNEY. That was one of your factors. What else did you factor in?

Mr. SCHUSTER. We took quotations from various suppliers who were operating within the country.

Mr. TIERNEY. Who were those? Were those part of the trucking contractors that had contracts with the U.S. Government or were they independents?

Mr. SCHUSTER. They were largely transport contractors we had already used on other contracts we had operated since 2002.

Mr. TIERNEY. They gave you bids for their services?

Mr. SCHUSTER. Yes.

Mr. TIERNEY. Did you have security as a component as well?

Mr. SCHUSTER. Back in 2006 or 2005, contract security was not part of it.

Mr. TIERNEY. That was not your responsibility?

Mr. SCHUSTER. No, it wasn't part of our responsibility.

Mr. TIERNEY. Who was going to secure delivery to the 68 bases? You were going to get them there and not worry about how secure it was in getting them there?

Mr. SCHUSTER. We asked for door to door delivery from the supply. It was not until 2007 that we implemented CENTCOM approved product security.

Mr. TIERNEY. Your subcontractor included security in their price?

Mr. SCHUSTER. Yes.

Mr. TIERNEY. Did you know who they hired for their security?

Mr. SCHUSTER. Yes.

Mr. TIERNEY. What types of companies did they hire to do their security?

Mr. SCHUSTER. Most of them were local Kabul-based companies. They had their own security teams.

Mr. TIERNEY. Pretty much the same outfits that were doing it for the trucking industry for the United States supplies otherwise?

Mr. SCHUSTER. I would say yes.

Mr. TIERNEY. So warlords and other people like that?

Mr. SCHUSTER. Potentially.

Mr. TIERNEY. How do you get a price value from them that you can trust?

Mr. SCHUSTER. Generally, we would put out a tender and ask for rates and then we would compare them and select based on a combination of price and capability.

Mr. TIERNEY. How did you know you weren't being extorted?

Mr. SCHUSTER. We have operated in Afghanistan since 2002, so we had some feel for the market in terms of the rates.

Mr. TIERNEY. So you have been paying similar people for that period of time?

Mr. SCHUSTER. No, I wouldn't say that. We have operated in the market and we felt we were paying a fair price for what they were asking us to do.

Mr. TIERNEY. When the contract went to a larger group of delivery sites, you didn't agree to any price in the beginning of that so you undertook going from four to 68 without having any agreement on what the pricing would be?

Mr. SCHUSTER. Correct.

Mr. TIERNEY. Is that a usual business practice for Supreme?

Mr. SCHUSTER. I have been with Supreme since 2001 and I have operated a number of contracts for the British Ministry of Defense around the world, the Balkans, Iraq and Afghanistan, typically we have lent forward, and when they asked us to do something we have gone and done it and we fixed up the contractual piece a few months later. Yes, we have done this before.

Mr. TIERNEY. Mr. Chairman, I understand we have to do other rounds so at this point I will yield and reserve.

Mr. CHAFFETZ. The gentleman yields back.

I will now recognize the Chairman of the full committee, the Representative from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman, and thank you for holding this important hearing.

We are now more than a decade into a war and when I look across at Congresswoman Speier, I think about the fact that this war started under her predecessor. Actually, the first half of this war was under her predecessor. If we are not going to get to where we can honestly conduct operations there without waste, fraud or abuse after this long, when can we?

It is time and I think that both the Chairman and the Ranking Member are doing the right thing, focusing on the fact that this pervasive problem continues, continues and continues. Whether it is us backfilling $1 billion at the Kabul Bank or contracting still costing us unconscionable amounts of numbers, or in fact, the challenges in simply not getting shot in the back by the very people we are trying to free, this has been a war that this committee has a special obligation for. I want to thank again the Chairman and the Ranking Member for your relentless support of exactly this issue.

I would yield to the Chairman if he would like the remainder of my time.

I would ask unanimous consent that my entire opening statement be placed in the record.

Mr. CHAFFETZ. Without objection, so ordered.

I thank the Chairman.

We will now recognize the gentlewoman from Illinois, Ms. Duckworth, for five minutes.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Schuster, in 2010, my understanding is you were in negotiations over what the outbound transportation rate was, trying to come to an agreement. As part of the initial response, the DCAA basically found your rates were too high and continued to negotiate. I am speaking specifically for the transportation costs such as the helicopter and fixed wing costs.

In October 2011, when DLA began a final round of negotiations, Supreme offered a new proposal, but it was interesting that less than a year from the previous offer you made, you had reduced the rate for helicopter transportation and doubled the cost for fixed wing transportation. Why would reducing the cost of helicopter transportation affect the price you would charge for fixed wing transportation?

Mr. SCHUSTER. I think at the time what DLA asked us to do was to put together a price that was to hold for five years, regardless of the number of locations, the mix of type of transport, so we had to build that into our risk assessment in terms of developing our pricing. I think at different points in time when we put together our price we were basing our rates on what was actually happening.

When we first put together our rates in 2005, we were estimating what was going to happen for the next five years. When we did the two other rate increases, I think our fixed rate costs were up significantly. We were flying to more expensive fixed wing sites, so our costs went up. Our rotary wings were going to more efficient sites and the rates came down.

Ms. DUCKWORTH. It costs significantly more to fly rotary wing than fixed wing?

Mr. SCHUSTER. It does significantly, yes.

Ms. DUCKWORTH. Yet it was the fixed wing prices you doubled in order to lower your rotary wing rates?

Mr. SCHUSTER. No, that is not correct. The cost of operating aircraft is driven by the flight hour, how long you fly. What I was saying was the profile of our fixed wing flights was now longer, so they were more expensive whereas our rotary wing was largely in the east and the cost had come down significantly.

Ms. DUCKWORTH. Let's talk a bit more about your premium outbound transportation rate. The original transportation fees in the contract only provided for delivering food, as you said, to the four original bases. You referred to this as the distribution fee. The premium outbound transportation rate was added to the contract later when it was radically expanded and was meant to apply to the distribution of food to hundreds of bases in Afghanistan.

According to the audit from DCAA in 2008, you were charging both a distribution fee and the premium outbound transportation rate to deliver food to the forward operating bases. This seems to me like a case of double billing. Did Supreme charge DLA both a distribution fee and a premium outbound transportation rate for distributing food to the FOBs?

Mr. SCHUSTER. In response to your question, when we originally requested to put in pricing for the expanded requirement, we advised DLA that the premium outbound transportation rate is supplemental or in addition to the base distribution fee. That has always been our position.

To answer your question, when the premium sites came on, we were entitled to bill for both the base and the premium.

Ms. DUCKWORTH. Even though the distribution fee was part of the POT?

Mr. SCHUSTER. The distribution fee was for deliveries to the original four sites.

Ms. DUCKWORTH. I don't quite understand how you are separating those out. My understanding is the premium outbound transportation rate included the distribution fee in that?

Mr. SCHUSTER. No, it did not. It was always in addition to the base distribution fee. The base distribution fee was to the four original sites.

Ms. DUCKWORTH. What you are saying is for the additional sites, you are not actually double charging the distribution fee for goods that were delivered?

Mr. SCHUSTER. No.

Ms. DUCKWORTH. Is it true that in March of 2010, you offered to settle with DLA over this double billing dispute?

Mr. SCHUSTER. In March of 2010, as part of our negotiating strategy, we said we would like to resolve this issue and part of that was we offered up a small percentage of the normal distribution that we would pay back to the government.

Ms. DUCKWORTH. I am out of time, Mr. Chairman.

Mr. CHAFFETZ. I thank the gentlewoman.

I will now recognize the gentleman from Florida, Mr. Mica, for five minutes.

Mr. MICA. Thank you.

I had to step out for a moment, but again, it looks like this contract ballooned from $4.2 billion over five years to over $26 billion, including a two year extension. Is that correct?

Mr. SCHUSTER. Mr. Mica, that sounds a little high. I think the total contract value to date is around $8 billion.

Mr. MICA. However, the maximum value of the contract ballooned to $26 billion is what I am told including a two year extension. There is a difference there. Again, I am getting the information from our staff but that is a wide disparity if you are saying $8 billion and it is $26 billion.

Let me turn to Ms. Duckworth's working on some of these costs and I have some of the IG potential overpayment findings.

To go back to the basic contract in the beginning in 2005, I understand from the IG you did not incorporate the airlift requirement in the contract or document the airlift price. Is that correct? This is on fruits and vegetables, $454 million, to move them. That is half a billion dollars to move fresh fruits and vegetables from 2005 through 2010.

My question was, you did not incorporate the airlift requirements in the contract or require documenting the airlift price?

Mr. SCHUSTER. In response to your question, we have an email agreement from DLA, agreeing the rates as fair and reasonable for the inbound airlift. Those rates were then incorporated into the contract under two MODs.

Mr. MICA. Again, I am telling you what the IG found. They found that Supreme was paid approximately $454 million, almost half a billion, for airlift services for fruits and vegetables from UAE to Afghanistan during that five year period. That is what they are saying you did not do and you did not have in place an airlift requirement in the contract or document the airlift price at the very beginning, is that correct? You are saying no?

Mr. SCHUSTER. I am saying we had a rate that was agreed.

Mr. MICA. Again, that is their finding.

They also found you had an overpayment of $98.4 million for transportation costs within Afghanistan from 2005 to 2008. What is your response?

Mr. SCHUSTER. The $98 million was for minimum weights, our rate proposal for airlift stipulated a rate per pound and also a minimum weight which is a normal commercial term in the aviation industry. We bill the higher of either the billable or the minimum weight and that is what that difference is.

Mr. MICA. Another point from the IG report is $25.9 or $26 million for I guess triwall packaging costs from December 2005 to 2010, they believe that was an overpayment. What is your response?

Mr. SCHUSTER. The triwall rates associated with premium outbound transportation, we had an agreed rate for triwalls that was determined as fair and reasonable at the 100 percent rate. The IG is saying their understanding is any rate associated with premium outbound transportation should be paid at 75 percent. That is the delta between the 100 percent payment we believe we are entitled to and the 75 percent that DLA or the IG says we should have been paid.

Mr. MICA. Again, there is a huge disparity between what our committee has found and what the IG says and we are relying on them for overseeing and providing us some of the contract disparity information.

Finally, this is an Amsterdam-based company, privately-owned. Were you involved in the beginning when this contract was let? What kind of competition was there to include American vendors?

Mr. SCHUSTER. Mr. Mica, I was not involved in the contract during the acquisition phase.

Mr. MICA. Do you know of opportunities for American firms to participate and did they compete?

Mr. SCHUSTER. I don't know.

Mr. MICA. Can you get that information for the committee?

Mr. SCHUSTER. Yes, I can.

Mr. MICA. I would appreciate that.

I yield back.

Mr. CHAFFETZ. I thank the gentleman.

I now recognize the gentleman from Vermont, Mr. Welch, for five minutes.

Mr. WELCH. Thank you, Mr. Chairman, and Ranking Member. I appreciate your ongoing persistence on this.

I have a couple of questions, Mr. Schuster.

In 2009, U.S. attorney for the Northern District of Georgia indicted PWC, the subsistence prime vendor in Iraq, Kuwait and Jordan, on charges of defrauding the government. The indictment explained that Count II relates to PWC's alleged fraudulent over billing of the U.S. by having vendors use a consolidation facility and placing the consolidation costs of PWC profit into the delivered price paid by the U.S. Are you aware of those allegations against PWC?

Mr. SCHUSTER. Yes.

Mr. WELCH. In court proceedings between Supreme and PWC Agility, allegations have also emerged that Supreme engaged in some of the same dubious business practices that led the Department of Justice to indict PWC Agility for attempting to defraud the U.S. Government in Iraq.

According to documents produced to the committee, Supreme used a subsidiary in the United Arab Emirates, Jamal Ali Foods Company, JAFCO, to package and transport fruits, vegetables and dairy products into Afghanistan. My understanding from our investigation is that JAFCO is a 49 percent subsidiary of Supreme Foodservice, is that correct?

Mr. SCHUSTER. That is correct, Mr. Welch.

Mr. WELCH. According to a filing made by PWC Agility, Supreme has an even closer relationship with JAFCO than PWC Agility had with an affiliated company at the center of its alleged scheme to defraud the U.S. Government. Again reading from the file, "JAFCO purchased the local market ready items and then sold the products to Supreme at prices that included large profits for JAFCO." The filing further asserts that Supreme then invoiced DLA for the products, including the JAFCO products, in an additional fee that included a profit for Supreme.

Mr. Schuster, is there any merit to the allegation that the price of local, market ready goods being charged the government includes a profit for JAFCO?

Mr. SCHUSTER. In response to your question, I was not involved in the program when JAFCO was set up.

Mr. WELCH. I didn't ask if you were involved.

Mr. SCHUSTER. What I do know is that when the scope of the contract changed from the four original sites to the 68 additional FOBs, there was a requirement to change the way we supplied fruits and vegetables. At that time, JAFCO was set up to perform that requirement. In addition to that, for control and rather than outsourcing to a third party, we set up JAFCO and JAFCO did perform the activity of consolidation and procurement of fresh fruits and vegetables.

Mr. WELCH. I will try to translate that. It sounds like the answer is yes.

Mr. SCHUSTER. Can you repeat the question?

Mr. WELCH. Is there any merit to the allegation that the price of local market ready goods being charged to the government includes a profit to JAFCO?

Mr. SCHUSTER. I would need to get back with an answer on that. I was not directly involved at that time.

Mr. WELCH. You may not have been but it sounds like you are stonewalling because this is like Business 101. You know where your money comes from and if you can get a profit from two sources instead of one without the person paying, namely the taxpayer, and you get away with it, that is a cause of concern.

That does not happen accidentally. Is there a profit that was included for JAFCO? That is the question. Do you want to make a phone call?

Mr. SCHUSTER. No, I don't need to make a phone call. I was not involved at that time.

Mr. WELCH. It is not whether you were involved, it is your company. You are here representing your company.

Mr. Chairman, cell phone use permitted here? This is pretty outrageous. This is a big deal. It is over a billion dollars. We have had soldiers out in the field risking life and limb and we have profiteers ripping off the taxpayer and you won't give us an answer to a pretty simple question where your company knows the answer. Either you know it and won't tell us or your company sent someone who was deliberately not given the information they knew would be relevant to this hearing.

Mr. SCHUSTER. I know this issue is part of an ongoing investigation.

Mr. WELCH. Let us at least have the witness get back to us.

One last question, has JAFCO ever been the subject of a criminal investigation by the U.S. Government?

Mr. SCHUSTER. I know there is an investigation going on now by the DOJ.

Mr. WELCH. Criminal?

Mr. SCHUSTER. I don't know whether it is criminal or civil.

Mr. WELCH. Let us get the answer when you get a chance to check with people who know.

Mr. SCHUSTER. I will do that, Mr. Welch.

Mr. WELCH. I yield back.

Mr. CHAFFETZ. Thank you.

I now recognize the gentlewoman from California, Ms. Speier, for five minutes.

Ms. SPEIER. Mr. Chairman, thank you. To you and the Ranking Member, I really applaud your efforts in carrying on this investigation because it really goes to the core of what our problems are in procurement in the Department of Defense.

Mr. Schuster, thank you for being here.

I was kind of astonished by one thing you said in answer to a question by Mr. Tierney. I got the impression, correct me if I am wrong, that contracting with the United States or Britain without having a formalized contract is something you have done in the past where there wasn't pricing put in place so the actual amount of the contract was not clearly defined?

Mr. SCHUSTER. I was referring to the British Ministry of Defense contract and they have a worldwide food supply contract which has a framework agreement. If they need to deploy to someplace like Afghanistan, they give us the order to go, we go and do it but there is a framework of how that pricing will be dealt with, so there is a contract in place that deals with the pricing.

Ms. SPEIER. But there really wasn't one in the contract with the United States Department of Defense?

Mr. SCHUSTER. There was an original solicitation that was awarded. The requirement changes from four sites.

Ms. SPEIER. I know but in the original contract, there was actually a lower bidder, correct?

Mr. SCHUSTER. I cannot comment on that. I am not part of the evaluation process.

Ms. SPEIER. It just doesn't quite add up that you would go into a contract without having it fully flushed out in terms of what you were going to be paid and now there is an ongoing dispute that we are talking in terms of billions of dollars as to whether you owe the United States Government $700 million or whether we owe you over $1 billion.

Let me move on to the issue of the warehouse. My understanding is that you built a warehouse literally across the street from Camp Leatherneck?

Mr. SCHUSTER. Correct.

Ms. SPEIER. At the time when you used that facility, it was being used to provide food, not just to the United States military, but also to the British troops, is that correct?

Mr. SCHUSTER. Yes. The Helmand facility was constructed as a response to the two U.S. surges in 2010 and 2011 when there was an increased troop requirement. Therefore, there was an increased operational requirement for warehousing. We made a commercial decision to construct a facility in Helmand to support that requirement.

Ms. SPEIER. You said the company made the decision to construct that facility?

Mr. SCHUSTER. Yes.

Ms. SPEIER. You weren't forced to, you weren't asked to. It was a decision you made because it would make it closer to where the product had to be delivered, correct?

Mr. SCHUSTER. In response to your question, there was a troop surge, so there was a requirement. We have to respond to that requirement, so we have multiple options. We build warehouses in Kabul, Bagram, Helmand. We made the choice to put it in Helmand because that was where the bulk of the troops were going to be.

Ms. SPEIER. I understand that you then wanted to bill the U.S. Government $58 million for building that warehouse?

Mr. SCHUSTER. This goes back to the original heart of the matter. FOB Leatherneck is not one of the original four sites.

Ms. SPEIER. Why don't you just answer the question? Were you asking the United States to pay $58 million?

Mr. SCHUSTER. We only asked after DLA said we were not entitled to POT for FOB Leatherneck.

Ms. SPEIER. POT is what?

Mr. SCHUSTER. Premium outbound transportation.

Ms. SPEIER. You were basically going to try to make it up by charging the Federal Government $58 million?

Mr. SCHUSTER. No.

Ms. SPEIER. My understanding is that you charged the taxpayers of this country $12 million to transport food across the street. Is that correct?

Mr. SCHUSTER. No.

Ms. SPEIER. That is not correct?

Mr. SCHUSTER. In response to your question, I go back to the original contract, commercial item contract, deliveries to four sites, normal distribution fee covers the four sites. Premium outbound transportation covers the additional sites. Leatherneck was an additional site.

Ms. SPEIER. It was across the street, wasn't it?

Mr. SCHUSTER. It is across the street, yes.

Ms. SPEIER. There was a billing of $12 million to deliver goods across the street?

Mr. SCHUSTER. That was the definition of the contract that says it is a premium site.

Ms. SPEIER. Whether it cost you $12 million or not, it was a great way to soak the Federal Government, it sounds like?

Mr. SCHUSTER. No, it wasn't. As I said, in relation to the $56 million, we only pursued that after premium outbound transportation for Leatherneck was disallowed.

Ms. SPEIER. So if I can't get paid what I want, then I will just steal the other money to make up the difference, is that sort of what you are saying?

Mr. SCHUSTER. No, I am not saying that.

Ms. SPEIER. I yield back.

Mr. CHAFFETZ. The gentlewoman yields back.

Let me make sure I understand this timeline. My understanding is on June 3, 2005, is when Supreme signed the original contract. Then there was an IG report, dated March 2, 2011, with some fairly serious allegations that they overpaid the prime vendor potentially $98.4 million in transportation costs, overpaid the prime vendor approximately $25.9 million for triwall costs, paid $454.9 million to the prime vendor for airlifting fresh fruit, and it goes on.

Then knowing this IG report was out there, they did sign a Price Negotiating Memorandum No. 10, I believe it is called, that was signed December 9, 2011. Did I get the timeline right?

Mr. SCHUSTER. Not for MOD 10.

Mr. CHAFFETZ. What?

Mr. SCHUSTER. Not from Modification 10. That was in 2006.

Mr. CHAFFETZ. Maybe I have the number wrong, but this is the Price Negotiation Memorandum. It says "price analysis proposed, definitization of the UCA Modification P00010." Nevertheless, there was a price memorandum that was signed, I am happy to hand it down to you, that the DLA signed extending your contract with a maximum value, this is what I think Mr. Mica was getting at, for $26 billion, the maximum value?

Mr. SCHUSTER. They did extend that contract, yes.

Mr. CHAFFETZ. I think this is what all of us here on the dais find mystifying. The DLA evidently thinks you are doing pretty good and maybe doesn't have any other options. The Inspector General comes in and cites hundreds of millions of dollars of potential overpayments and yet, the same DLA comes in, this is why I am excited to get to the second panel, extends the food service contract by billions and billions of dollars, extends the maximum value to $26 billion.

It is only after the fact, after all this dust has settled, that now they are saying they had overpaid some $750 million. It begs more questions than it answers.

Supreme is one of the larger food service vendors around the globe. You have dealt with other governments. You talked about the British specifically. What is the United States Government doing or not doing or what should it be doing? You have perspective on how others deal with this.

Mr. SCHUSTER. Yes, I do have perspective. All contracts have terms and conditions and dispute resolution clauses. At a certain point where you know you are so far apart, those clauses should be enacted immediately.

Mr. CHAFFETZ. What is it that other governments are doing that we are not doing, what else specifically? We are not only the Oversight Committee, we are also Government Reform. If I were you, I wouldn't want to be sitting here today. You want to be awarded other contracts, your reputation is one the line. What is it that our Federal Government, after decades of war, has not figured how to do in the wartime atmosphere?

Mr. SCHUSTER. If I use my experience from other contracts, as I said there is good experience in terms of what is happening on the ground. People understand what the requirement really is. They put people on the ground who can look into that and that makes it a hell of a lot easier to understand what it is you are asking a contractor to do. If you define the requirement clearly, there are terms and conditions, there is transparency and mechanisms in the contract that allow you to negotiate.

Mr. CHAFFETZ. You didn't see that from how we did it?

Mr. SCHUSTER. It has been difficult on certain elements to negotiate.

Mr. CHAFFETZ. Something we will continue to further explore.

I now recognize the gentleman from Massachusetts, Mr. Tierney, for five minutes.

Mr. TIERNEY. Thank you.

Mr. Schuster, when I last left you, we were talking a little bit about the original contract and how it was you developed your pricing on that basis. You estimated those prices you gave me some of the categories on that. Was one of the things you put into that pricing bribes and fees of that nature?

Mr. SCHUSTER. Mr. Tierney, definitely not.

Mr. TIERNEY. Can you explain to me how in an email exchange from Michael Epps—he works for your company, correct?

Mr. SCHUSTER. He did work for our company.

Mr. TIERNEY. An email from him to Maryanne DeMayo at the DLA included documentation along that line. One of the line items is subtotal for dispatching team, overhead and other costs, cost per month $2,000, cost per day $125, comments, includes bribes and tolls.

Mr. SCHUSTER. I have not seen that document.

Mr. TIERNEY. It is a serious matter with us and consistent with the other investigations we have done. Everyone seems to know bribes are being paid, but no one seems to be doing much about it. That was the document Mr. Epps included with his email to Maryanne DeMayo on March 15, 2006.

Mr. SCHUSTER. I have no explanation for what is there.

Mr. TIERNEY. At some point in time, you are trying to resolve how you are going to pay for those additional bases and what the cost is going to be. The government asks you for backup documentation, they wanted additional information on how you came about your pricing.

Mr. SCHUSTER. Yes.

Mr. TIERNEY. Your email of August 28, 2008 to the Defense Contracting Audit Agency responding to a request they made for additional information about your original proposal, the one in 2005 we spoke about. Here is what you said, "Yes, you are correct that we don't have any of the budgetary estimating data that was used to develop the proposed prices for the June 2005 contract award for the non-forward operating base requirements."

I think part of your contention was you weren't obligated to share these but that is beside the point. They can argue that somewhere else. You went on to say you just didn't have any, that all the work you had done in trying to figure out your base price, all the things you took into consideration, you didn't have a single bit of documentation or data estimating your budget or budgetary documentation that you could share. Can that possibly be true?

Mr. SCHUSTER. It couldn't be true. We had to build our pricing from something.

Mr. TIERNEY. Why did you write to them, you are absolutely correct that we don't have any budgetary estimating data and then refuse to deliver it?

Mr. SCHUSTER. At the time, I could not find any records within the company that indicated we had that.

Mr. TIERNEY. Have you found any since?

Mr. SCHUSTER. No, I have not.

Mr. TIERNEY. It is pretty difficult to come to some resolution in a negotiation with a company that doesn't have back-up data for the basis of its original costs, right?

Mr. SCHUSTER. The original costs.

Mr. TIERNEY. Were the foundation for the additional costs.

Mr. SCHUSTER. With DCAA, it was the additional costs.

Mr. TIERNEY. You refused to provide even data you had to have, never mind the data they wanted with respect to the additional costs. You wouldn't even give them data that by your own admission you have to have when you are setting out a fee structure to budget. I think it shows some of the difficulty your company has presented to DLA over that.

In the beginning, when you were looking for this contract, the nature of which you had never had with the United States Government before, you formed some sort of association with PWC?

Mr. SCHUSTER. Yes, we did.

Mr. TIERNEY. They were hired as a consultant. Would that be a fair expression?

Mr. SCHUSTER. I was not involved in the acquisition phase but they were involved as a consultant to support us during the acquisition phase.

Mr. TIERNEY. You paid them 3.5 percent of your profit?

Mr. SCHUSTER. I am not sure. I am not privy to that. I wasn't involved in it.

Mr. TIERNEY. You were the logistics guy back then, right?

Mr. SCHUSTER. No, I wasn't involved in the contract during the acquisition phase.

Mr. TIERNEY. What was your position?

Mr. SCHUSTER. I was operating the EK MOD, worldwide fixed contract. I only came onto the SPV contract in 2006 to run the operation.

Mr. TIERNEY. It is curious that they wouldn't provide you with somebody else to help testify for the earlier part of that. Agility was in. Do you know what their function was? Were they advising Supreme on what to bid, how to bid and what to base it on?

Mr. SCHUSTER. No, I wasn't involved in the acquisition process.

Mr. TIERNEY. Were you involved with the extension of the contract in 2010?

Mr. SCHUSTER. Yes, I was involved. I was involved in the negotiations.

Mr. TIERNEY. What did you rely on PWC to do at that point in time? Were they still associated with you?

Mr. SCHUSTER. They were not associated with us. I need to get back with exact dates but I think we stopped dealing with them either in 2007 or 2008.

Mr. TIERNEY. Lieutenant General Dail is President of United States Supreme Group. What role did he play on advising how you would proceed in terms of trying to get the extension, a no bid extension?

Mr. SCHUSTER. Mr. Dowell was not involved at all in SPV.

Mr. TIERNEY. You hired a former director of the DLA as president of your company. When it came to a significant contract or an expansion of sort of a monopoly on things, you didn't ask his advice at all?

Mr. SCHUSTER. He is not involved on the SPV contract.

Mr. TIERNEY. What did you hire him for?

Mr. SCHUSTER. To develop additional business in the U.S. for us.

Mr. TIERNEY. But nothing to do with the DLA contracts?

Mr. SCHUSTER. No, as I understand it, I am not sure what the term is, but he is not allowed to be involved in this contract.

Mr. TIERNEY. He is well beyond that two year period, right?

Mr. SCHUSTER. Yes, he is.

Mr. TIERNEY. So he would be able to be involved?

Mr. SCHUSTER. No, he wasn't involved in the contract extension. I negotiated that with two other people.

Mr. TIERNEY. I yield.

Mr. CHAFFETZ. You yield back. We are going to recognize the gentleman from Vermont, Mr. Welch, again.

Mr. WELCH. Thank you, Mr. Chairman.

In the DCAA audit published on August 29, 2011, the auditors raised concerns about significant unallowable costs included in Supreme's proposal. They also found due to lack of records provided to the auditors, they had no way of knowing the extent to which Supreme was including unallowable costs in trying to pass along these costs to the government. There is a failure to provide the documentation that is necessary to make a review and it begins the hassle.

One thing we do know is that Supreme tried to get DLA to pay for over $3 million in legal and tax advice. Specifically, the report found, "We obtained and reviewed engagement letters provided to support legal costs proposed for Debevoise, Plimpton, LLP and Constantine Cannon, LLP."

According to the engagement letter with Debevoise, Supreme engaged Debevoise as counsel in connection with an investigation being conducted by the Defense Criminal Investigative Service and possibly the U.S. Department of Justice which may help to give us an answer to that last question you had a hard time with.

Is it true that Supreme tried to bill the government, i.e., the taxpayers, for legal fees in connection with a criminal investigation?

Mr. SCHUSTER. Mr. Welch, the answer to that is no and I will explain. This contract is a commercial item contract, FAR Part 12 contract, not a FAR Part 31 cost contract. We have extensive records that meet IFRS international standards. We provided all the documents that we had to DCAA. They were just not in the format that a FAR Part 31 contract requires because it is not a FAR Part 31 contract.

Mr. WELCH. What you are stating is that there was no effort to include in bills submitted to the taxpayer payment for legal costs incurred in the engagement with Debevoise for representation on tax and criminal investigation matters? Is that your testimony?

Mr. SCHUSTER. What I am saying is that we provided our commercially available accounting records which do not segregate costs into a FAR Part 31 contract.

Mr. WELCH. That is the point. There were no records.

Mr. SCHUSTER. There are records.

Mr. WELCH. Let me ask my question again. Is it your testimony that Supreme did not attempt to include in their bills to the U.S.

taxpayer costs associated with engaging legal representation for representation on tax in criminal investigation matters?

Mr. SCHUSTER. No. We did not attempt.

Mr. WELCH. Did Supreme hire legal counsel to defend it against a criminal investigation into the operations of its subsidiary in the United Arab Emirates, the Jamal Ali Food Companies or JAFCO?

Mr. SCHUSTER. Yes, we did.

Mr. WELCH. Mr. Chairman, in connection with this testimony, I would offer Defense Contract Audit Agency audit into the record.

Mr. CHAFFETZ. Without objection, so ordered.

Mr. WELCH. I yield back.

Mr. CHAFFETZ. The gentleman yields.

I will now recognize the gentlewoman from Illinois, Ms. Duckworth, for five minutes.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Schuster, I would like to go back to the cost of flying helicopters and airplanes. In 2005, Supreme submitted a pricing proposal for the POT for the DLA contract. The response from the DLA contracting officer was the proposed charge Supreme wanted to charge for helicopter transportation was over 300 times the going cost at the time that DLA was paying for helicopter transportation.

As I said before, in October 2011 in the final found of negotiations, DLA said somehow the price of helicopter transport had dropped so significantly that the price of fixed wing transport had increased significantly. How do you drop the cost of helicopter transportation by 300 percent?

Mr. SCHUSTER. I am not aware of the document related to the 300 percent and I am not aware that DLA provided us the detail of that so that we could do a comparable against the rates we had.

Ms. DUCKWORTH. In 2011, you did, as part of the ongoing negotiation, double the rate for fixed wing aircraft. You lowered the rate for helicopter transportation but doubled the fixed wing craft transportation. You said this was because the aircraft were going into more difficult places than helicopters were going to and that was more expensive?

Mr. SCHUSTER. Not more difficult, they were now flying further. Their missions were further, therefore, more costly.

Ms. DUCKWORTH. More costly than helicopters?

Mr. SCHUSTER. They are not directly comparable. Both rates are per pound but the way we are billed is per flight hour.

Ms. DUCKWORTH. I am a helicopter pilot. I don't know if you know this. I flew Black Hawks. I can tell you that the helicopters can fly across the length of Afghanistan just as well as the fixed wing can and it is cheaper to fly fixed wing.

My difficulty with this is that it seems to me you are doing with the helicopter and fixed wing contract exactly what you are doing with the price of delivering goods across the street to FOB Leatherneck. You couldn't get the U.S. Government to pay for you to move things across the street, so you are going to try to charge us for the warehouse. You can't get us to pay you for this exorbitant rate for helicopter transportation, so you are just going to increase or double the price for fixed wing aircraft.

I want to go back to the premium outbound transportation rates. You said that at no point did Supreme charge both the distribution fee and the premium outbound transportation rate to deliver to the FOBs or the original four bases?

Mr. SCHUSTER. I said that any delivery to a FOB location incurs the premium outbound transportation rate and the normal distribution fee.

Ms. DUCKWORTH. The premium outbound transportation rate does not include the distribution fee?

Mr. SCHUSTER. No.

Ms. DUCKWORTH. That is interesting because the Defense Contract Audit Agency report in 2008, are you familiar with that report?

Mr. SCHUSTER. Yes.

Ms. DUCKWORTH. In that report, they found that the premium outbound transportation rate included the distribution fee, so by charging both the distribution fee and the POT you were double billing the U.S. Government for that distribution fee. Do you agree or not?

Mr. SCHUSTER. No, I disagree with DCAA's position.

Ms. DUCKWORTH. I yield back my time, Mr. Chairman.

Mr. CHAFFETZ. At this point, we are going to thank our witness for your attendance. Mr. Schuster, would you agree to respond to other additional questions we might have for this panel?

Mr. SCHUSTER. Yes.

Mr. CHAFFETZ. We appreciate it.

Ms. Chairman may I just ask a follow up question? The gentlewoman from California?

Ms. SPEIER. Thank you, Mr. Chairman. I will be brief.

Can you tell me how many other military retirees from the United States military you have hired besides General Dail?

Mr. SCHUSTER. I don't know that off the top of my head.

Ms. SPEIER. Is it two, five, ten?

Mr. SCHUSTER. There might be three or four.

Ms. SPEIER. Are they generals typically?

Mr. SCHUSTER. No.

Ms. SPEIER. One general and who else?

Mr. SCHUSTER. I think there are a couple of colonels maybe.

Ms. SPEIER. All engaged with DLA?

Mr. SCHUSTER. No. They are involved in a number of our contracts.

Ms. SPEIER. How about British representatives?

Mr. SCHUSTER. We have an office in the UK and we have maybe two former British commissioned officers on our team.

Ms. SPEIER. General Dail was hired four months after he retired and he is precluded, based on your testimony, from negotiating for a period of two years, so you hire him to do what, again?

Mr. SCHUSTER. He is responsible for the Supreme USA office or company. He is responsible for business development of military and non-military contracts.

Ms. SPEIER. How many contracts has he been able to develop for you?

Mr. SCHUSTER. I don't know that off the top of my head. I would have to get back with that?

Ms. SPEIER. Would you please find out and report that to the committee?

Mr. SCHUSTER. Sure.

Ms. SPEIER. These are contracts you want to develop in the United States for activities in the United States or in foreign destinations?

Mr. SCHUSTER. They can be anywhere in the world, global contracts, anywhere in the world.

Ms. SPEIER. He could have been negotiating a separate contract in Afghanistan unrelated to this one?

Mr. SCHUSTER. Not that I am aware of.

Ms. SPEIER. You are going to provide the committee the contracts he was negotiating or the rainmaking he was attempting on your behalf here in the United States?

Mr. SCHUSTER. I will provide a list of the opportunities that they have pursued.

Ms. SPEIER. And ones that resulted in contracts?

Mr. SCHUSTER. Yes.

Ms. SPEIER. Thank you. I yield.

Mr. CHAFFETZ. The gentlewoman yields.

We thank you, Mr. Schuster, for your time and participation here today.

We will now take a brief recess as we reset for the next panel.

[Recess.]

Mr. CHAFFETZ. The committee will come to order.

We will now recognize the second panel. Mr. Daniel Blair is the Deputy Inspector General for Auditing, Department of Defense; Mr. Matthew Beebe is the Deputy Senior Acquisition Executive, Defense Logistics Agency; Mr. William Kenny is the Acquisition Executive, for Troop Support, Defense Logistics Agency; and Mr. Gary Shifton is Chief, OCONUS Division, Defense Logistics Agency.

Pursuant to committee rules, all witnesses will be sworn before they testify. Being that you are already standing, please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. CHAFFETZ. Let the record reflect that all witnesses answered in the affirmative. You may be seated.

In order to allow time for a candid discussion, and give or take we would ask that you limit your testimony to five minutes. It is my understanding Mr. Blair and Mr. Beebe will be offering opening statements and Mr. Beebe, you are representing the thoughts and perspective of Mr. Kenny and Mr. Shifton as well, is that correct?

Mr. BEEBE. Yes, sir.

Mr. CHAFFETZ. Thank you. We will have the two opening statements and then go to questions. Mr. Blair, we will recognize you now for five minutes.

STATEMENT OF DANIEL BLAIR

Mr. BLAIR. Chairman Chaffetz, Ranking Member Tierney and distinguished members of the subcommittee, good afternoon and thank you for the opportunity to appear before you today to discuss

our completed and ongoing audits of the Supreme Prime Vendor Subsistence Contract in Afghanistan. I would also like to thank you for your continued interest in oversight in this area.

Today, I will highlight some of the problems we identified during our initial audit. I will describe DLA's actions to address some of our recommendations. I will identify additional opportunities to improve contract administration and discuss some lessons learned.

In December 2005, DLA awarded a five year, $762 million contract to Supreme Foodservice to provide food and other non-food distribution to four locations in Afghanistan. Over the next few years, this contract expanded significantly through verbal change orders to cover additional locations.

By May 2010, DLA had paid Supreme about $3 billion, including $1.6 billion for food and water and $1.4 billion for transportation and storage costs.

Our initial audit of DLA's contract oversight efforts identified significant potential overpayments and contract administration flaws. For example, DLA potentially overpaid the contractor about $124 million in transportation and triwall costs. DLA also paid nearly $455 million to airlift food into Afghanistan without incorporating this requirement into the contract and without documenting whether the airlift price was fair and reasonable.

Further, DLA failed to validate whether nearly $104 million of triwall costs were accurate or chargeable to the contract. Finally, DLA did not develop a quality assurance plan and detailed procedures to monitor the contractor's performance and verify that invoices being paid were accurate.

During our follow-up audit, we noted that DLA had taken some corrective action to address these problems. Because this report is not yet final, it would not be appropriate to discuss these actions in detail. However, I would like to broadly describe some of DLA's efforts.

For example, DLA unilaterally definitized the price they would pay Supreme to airlift food into Afghanistan in December 2011. This was six years after the verbal change order went into effect. In addition, DLA is seeking a $756 million refund from the contractor and has also developed a quality assurance plan.

However, we also identified additional areas where DLA could further strengthen its contract oversight efforts and help the Department collect overpayments. For example, DLA could expand its efforts to develop adequate documentation supporting its conclusion that the Department is paying fair and reasonable prices. They could also take additional actions to obtain critical information from contractors and develop strategies to recover overpayments.

After careful reviewing DLA's actions on this contract, several lessons learned become apparent and today I would like to highlight four.

First, DLA should definitize contracts within the appropriate period of time, which is generally 180 days if possible. Although verbal change orders are permissible, these actions should be incorporated timely into the contract and should be used on a limited basis.

Second, when using provisional rates, do not pay more than the agreed upon amounts. Paying more than provisional rates may re-

sult in escalating costs and the Department may experience difficulty recouping these overpayments. In addition, it is important to determine that the Department is paying fair and reasonable prices for the goods and services it receives.

Third, unilateral contracting officer determinations should be used sooner to protect the government's interest in the contract and begin collection efforts sooner.

Finally, develop and implement a quality assurance plan and detailed procedures to monitor the contractor's performance and verify the accuracy of payments. Had DLA taken this important step, they would have prevented many of the overpayments from being made in the first place.

In closing, I would like to thank the subcommittee for inviting me to testify today. It is clear that our audit efforts and related recommendations to collect overpayments are having an impact on the Department. We are encouraged by the actions and efforts of DLA senior leadership, especially those efforts to collect the amounts owed to the Department.

However, to be truly effective, these corrective actions should be applied more broadly as appropriate to other DLA contracts rather than just fixing the problems we identify. Given the fiscal challenges the country is facing, every reasonable effort should be taken to save valuable funds and put them to their best possible use.

This concludes my statement and I would be happy to answer any questions you have for me.

[Prepared statement of Mr. Blair follows:]

April 17, 2013

Expected Release

2:00 p.m.

Statement of
Mr. Daniel R. Blair
Deputy Inspector General for Auditing
Department of Defense Inspector General

before the

Subcommittee on National Security
Committee on Oversight and Government Reform

on

"Contracting to Feed U.S. Troops in Afghanistan:
How did the Defense Department End Up in
a Multi-Billion Dollar Billing Dispute?"

Chairman Chaffetz, Ranking Member Tierney, and distinguished members of the Subcommittee: Good afternoon and thank you for the opportunity to appear before you to discuss Department of Defense Inspector General (DoD IG) completed and ongoing audits of the Subsistence Prime Vendor Contract in Afghanistan. On behalf of the DoD IG, I would like to thank this Subcommittee for its continued interest and oversight in this area. Taking corrective action to address Inspector General recommendations is essential to good government and the effective stewardship of the taxpayer's dollars. Additionally, identifying and implementing lessons learned is essential to minimizing the risks of repeating mistakes of the past.

Today I will highlight problems identified during our initial audit,[1] Defense Logistics Agency (DLA) actions taken to address the report recommendations, additional opportunities to improve contract administration, and lessons learned that could be applied by DLA to future contracts.

BACKGROUND ON THE INITIAL AUDIT AND THE PRIME VENDOR CONTRACT

DoD IG's overall focus of the audit was to evaluate the DLA's contract administration of Supreme Foodservices GmbH,[2] the prime vendor (PV)[3] for food and nonfood products for our warfighters in Afghanistan. Specifically, the audit reviewed whether the assignment of contracting officer's representatives (CORs) and execution of the Quality Assurance Surveillance Plan (QASP) and procedures were effective for assessing contractor costs and performance.

DLA has the overall responsibility for procuring, managing, and distributing subsistence products throughout the supply chain. In addition, DLA provides worldwide dining hall support to authorized customers, to include providing contract administration for these facilities.

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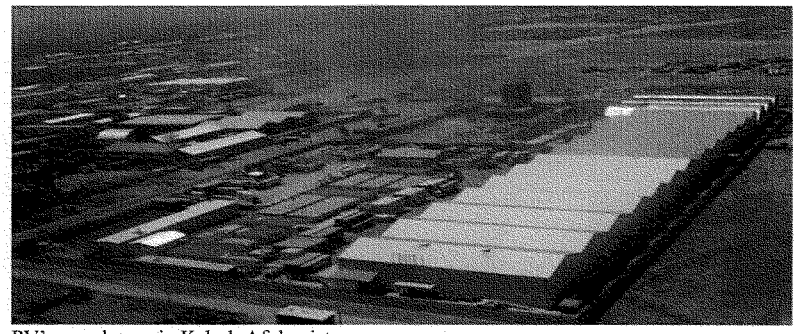
[1] DoD IG Report No. D-2011-047, "Improvements Needed in Contract Administration of the Subsistence Prime Vendor Contract for Afghanistan," March 2, 2011

[2] The contractor's headquarters are located in Ziegelbruecke, Switzerland.

[3] PV is generally a single commercial contractor that serves as the major provider of products and services to various Federal customers within a geographical region or zone.

Supreme Foodservice GmbH was awarded a 60-month prime vendor contract, starting December 3, 2005. This was a fixed-price, indefinite-quantity contract and was initially valued at approximately $726.2 million.[4] At the time the contract was awarded, the PV was required to provide food and nonfood distribution support to four activities in Afghanistan—Bagram, Kabul, Salerno, and Kandahar.



PV's warehouse in Kabul, Afghanistan

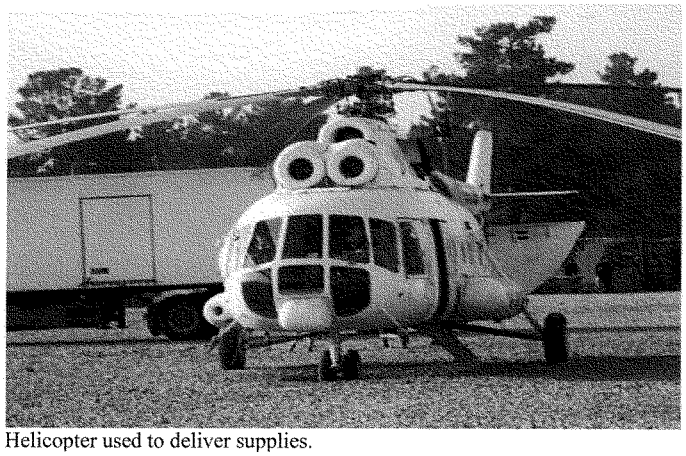
On August 26, 2005, the contracting officer issued a verbal change order, rather than a formal contract modification, for the PV to provide the same food and distribution support to 68 additional activities throughout Afghanistan. According to DLA, security concerns within the warzone and the lack of developed roads in Afghanistan prevented the PV from always using ground transportation to service the additional activities. Consequently, the contracting officer also verbally authorized the PV to use a combination of fixed-wing aircraft, helicopters, and ground transportation. This verbal authorization remained undefinitized for 1 year until the contracting officer modified the contract in August 2006.[5] Although verbal change orders are permissible, the Defense Federal Acquisition Regulation Supplement requires that undefinitized contract actions

[4] An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period.

[5] Definitization is the process where certain aspects of a contract that have not yet been finalized such as specific terms, specifications, or prices are formally agreed upon and included in the contract.

be definitized within 180 days of the contract modification. While there are exceptions allowing heads of agencies to waive the 180-day requirement if necessary to support contingency operations, as of April 2010, subsistence contracting officials had not requested a waiver.

Fixed-wing aircraft used to deliver supplies.



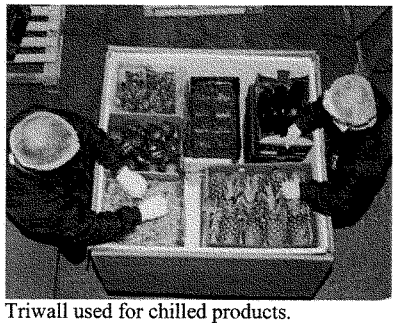
Helicopter used to deliver supplies.

As of September 2009, the PV's responsibility to provide food and distribution support had grown to over 150 activities or locations within Afghanistan. Between June 2005 and May 31, 2010, DLA Troop Support personnel paid the PV about $3 billion, including $1.6 billion for food and water and $1.4 billion for nonfood items, such as transportation and storage costs. When the contract was scheduled to end in December 2010, DLA extended it for an additional 2 years.

PRIME VENDOR CONTRACT ADMINISTRATION NEEDED IMPROVEMENT

On March 2, 2011, the DoD IG reported that DLA contracting officials did not provide sufficient oversight of the PV contract, valued at more than $3 billion. This occurred because the contracting officer did not appropriately definitize transportation rates as required by Defense Federal Acquisition Regulation Supplement 217.74, or issue contract modifications, as required by the Federal Acquisition Regulation. Specifically, the contracting officer did not establish permanent transportation rates for over 5 years and did not document that higher reimbursement rates for triwalls were fair and reasonable.[6] In addition, the contracting officer did not develop a QASP and written procedures to monitor the PV's costs and performance. As a result, DLA Troop Support personnel:

- overpaid the PV potentially $98.4 million in transportation costs;
- overpaid the PV approximately $25.9 million for triwalls;
- paid $454.9 million to the PV for airlifting fresh fruit and vegetables without incorporating the airlift requirement in the contract and without documenting whether the airlift price of $3.74 per pound was fair and reasonable; and


Triwall used for chilled products.

[6] Triwalls are three-layered corrugated boxes used for packaging and shipping chilled or frozen food products.

- did not validate whether $103.6 million in triwall costs was accurate and chargeable to the contract.

Some examples of where DLA's oversight was not effective follow:

- The contracting officer did not establish permanent transportation rates in a timely manner. In fact, the verbal change order issued by the contracting officer on August 26, 2005, to provide food distribution support to 68 additional activities was not formally incorporated into the contract until 6 years later in December 2011.

- DLA paid the contractor 100 percent of the triwall rates rather than 75 percent as stated in the contract. DLA and the PV agreed that from July 2006 forward, DLA would reimburse the PV monthly at 75 percent of the rates, pending the definitization of the final rates.

- The contracting officer did not issue a contract modification requiring fresh fruits and vegetables to be airlifted to Afghanistan. In addition, the rate for airlift transportation was not incorporated into the contract, and there was no documentation demonstrating how the contracting officer determined the rates were fair and reasonable.

- The contracting officer did not develop a QASP to monitor vendor performance because contracting officials believed that a generic contract management plan was the QASP. However, this plan only provided a general framework for administering overseas PV subsistence contracts and did not provide specific instructions needed to effectively administer the PV contract for Afghanistan. For example, the plan did not identify the:

- work requiring surveillance;
- method of surveillance;
- technical requirements, or the specifications for inspections and testing.

- Contracting officials did not effectively review the quantities of triwalls billed by the PV and did not independently verify that the number of triwalls billed was correct because customers at forward operating bases were not required to note the quantity of triwalls received.

- The contracting officer did not have detailed written procedures for validating the PV's transportation invoices.

Without a detailed QASP and the appropriate written procedures for reviewing invoices, the CORs lacked important tools to assess the PV's work, determine if the Department was actually receiving the goods and services in accordance with the contract terms, and prevent overpayments before they were made. If there had been a QASP in place during the course of this contract, as required by the Federal Acquisition Regulation, the likelihood of overpayments could have been reduced.

The DoD Office of the Inspector General recommended that the Commander, DLA Troop Support, direct responsible officials to:

- determine fair and reasonable prices for transportation and triwalls and use those prices to definitize the August 2005 verbal change order;

- recover triwall overpayments ($25.9 million as of May 28, 2010);

- request assistance from Defense Contract Audit Agency in determining a fair and reasonable price for airlift requirements from Sharjah, United Arab Emirates, and use the results to determine and document fair and reasonable airlift requirements;

- compute and recover overpayments for transportation and triwall costs;

- develop a QASP; and

- perform a review of the individuals involved in administering the PV contract and initiate appropriate corrective action warranted by the review.

The Acting Commander, DLA Troop Support anticipated that all recommendations would be fully implemented no later than December 31, 2011.

ACTIONS TAKEN BY DLA ADDRESSED SOME OF THE REPORT RECOMMENDATIONS

Based on the anticipated implementation of corrective actions to address the deficiencies identified in initial report, the DoD IG audit team began a follow-up audit to assess the actions taken by DLA. The team reviewed whether DLA Troop Support implemented the recommendations made to address the problems and risks identified during the prior audit, and whether DLA corrective actions addressed the problems. The team recently completed this audit and issued the draft report to DLA on March 29, 2013. DLA is currently reviewing the findings and preparing their response to the report. Because this report is not yet final, it would be inappropriate to describe the findings in detail. However, in general, the audit team noted that DLA officials have taken corrective actions to address some of the recommendations, and there are some areas where additional actions by DLA will result in improved contractor administration and oversight and potentially recover additional funds owed to the Department.

DLA'S COLLECTION EFFORTS AND OTHER ACTIONS TAKEN

Because the contractor and DLA were unable to agree on a contract price to definitize transportation rates in Afghanistan, the contracting officer unilaterally definitized the prices. The contracting officer also signed and issued a final decision, debt determination, and demand for payment letter to the contractor on December 9, 2011. In summary, the DLA stated that the PV owes the Department approximately $756 million for overpayments of premium transportation fees incurred from December 12, 2005, to September 30, 2011. However, the PV did not voluntarily repay the debt. Instead, the PV filed a claim with the Armed Services Board of Contract Appeals, and according to a DLA Troop Support official, the case is scheduled for late April 2014.

In addition to taking collection actions and finalizing the transportation rates, we noted that DLA appeared to have taken other corrective actions including developing and implementing a QASP. DLA officials reviewed the actions of the contracting officers and determined that no action was necessary because the contracting officers acted within the scope of their authority.

IMPACT OF ONGOING LITIGATION

There were some recommendations where we could not address DLA's corrective actions because of ongoing litigation. Specifically, we did not validate DLA's analysis or review the accuracy of data supporting their determination that the contractor had been overpaid approximately $756 million. Therefore, we did not evaluate whether DLA had taken appropriate action regarding:

- re-determining fair and reasonable prices for premium transportation services,
- calculating and recovering overpayments for premium transportation, and
- refunding premium transportation overpayments to the Army.

ADDITIONAL OPPORTUNITIES TO IMPROVE CONTRACT ADMINISTRATION EXIST

During the follow-up audit, the team identified additional actions DLA could take to address some of the problems and risks previously reported. These additional actions should strengthen contract administration and oversight, as well as help ensure the Department recoups overpayments. Because the report is not yet final, it would not be appropriate to discuss the areas in detail; however, there are additional efforts DLA should take regarding:

- obtaining and maintaining adequate documentation to support price reasonableness,
- taking additional actions to obtain critical information from contractors, and
- developing strategies to recover overpayments.

LESSONS LEARNED FOR FUTURE CONTRACTS

Some of the problems encountered in the Subsistence PV Contract for Afghanistan contract were highlighted in our updated report on contingency contracting.[7] This report provides a useful tool to senior DoD officials to help prevent many contracting problems. During the initial and follow-up audits of the Subsistence PV Contract for Afghanistan, several important lessons learned regarding contract administration and oversight were identified. Specifically:

- **Definitize contracts within the appropriate amount of time.** Although verbal change orders and other undefinitized contracting actions are permissible, these actions should be incorporated timely into the contract and should be used in limited instances. During periods when these actions remain undefinitized, contract costs and performance risks transfer from the contractor to the Government. Undefinitized contract actions for supplies and services can result in

[7] DoD IG Report No. D-2012-134, "Contingency Contracting: A Framework for Reform 2012 Update," September 18, 2012

a contractor not providing goods and services appropriately and at prices deemed acceptable to the Department. Therefore, it is critical that verbal change orders be incorporated as soon as possible into the contract through formal contract modifications to protect the Department's operational and financial interests.

- **When using provisional rates, verify their reasonableness until the final rates are definitized.** Without a definitized contract, responsible officials should exercise due diligence by verifying the reasonableness of provisional rates and not paying more than these provisional rates. Paying more than actual costs incurred, as evidenced in this contract, may result in costs escalating out of control, and the Department experiencing difficulty recouping overpayments.

- **Ensure adequate documentation is obtained and maintained.** For large and complex acquisitions, such as the Subsistence PV Contract, it is critical that responsible officials document key aspects of the contracting process, as required by laws and regulations, and maintain this documentation as appropriate. This documentation not only provides valuable complete background information, it also serves as a basis for informed decisions at each step in the acquisition process; supporting actions taken; providing information for reviews and investigations; and furnishing essential facts in the event of litigation or congressional inquiries.

- **Use unilateral contracting officer determinations sooner.** Generally, Government contracts contain clauses that permit the contracting officer to make unilateral changes, in designated areas, within the general scope of the contract. A unilateral modification is a contract modification signed only by the contracting officer. Unilateral modifications can be used to make administrative changes and to issue change orders and termination notices. If the Government and the contractor cannot reach an agreement, the contracting officer should consider a

unilateral change (if allowed and warranted). By taking these actions sooner, the Department will be better equipped to collect or offset future payments to the contractor.

- **Prepare and execute a QASP in a timely manner.** Government quality controls, to include developing and implementing a QASP, are not only required but provide a valuable oversight tool that helps ensure the Department actually receives the goods and services it pays for. Surveillance, especially with a large, complex contract like the subsistence PV, is necessary to ensure that the supplies or services conform to contract requirements.

- **Develop and implement specific procedures to verify the accuracy of invoices prior to making payments.** Detailed written procedures help CORs accurately assess contractor invoices and approve only those costs allowable under the terms of the contract. The contracting officer had not developed written procedures to ensure that the cost of triwalls delivered by road to non-forward operating bases was excluded from invoices. In addition, the CORs' review of some transportation invoices was incomplete or inaccurate because they did not include minimum order weights as part of the validation. Had written procedures been established for reviewing invoices, the CORs may have prevented some of the overpayments.

- **Minimize turnover in key positions (for example, contract officer).** Turnover of acquisition professionals can adversely impact the quality and continuity of business. New contracting officers may be at a disadvantage because they are unfamiliar with key aspects of complex contracts and take additional time to establish the appropriate level of contact between the Government and the contractor. With each change in a key position, documentation, issues being tracked, and recollection of key decisions and directions may be lost in the

transition. In the end, the best interest of the Government may suffer because of the turnover in key officials.

CONCLUSION

Our completed and ongoing audits of the Subsistence Prime Vendor Contract in Afghanistan have had a significant impact by prompting DLA to initiate appropriate corrective action for overpayments and by improving contract administration by the Department. We are encouraged by efforts DLA senior leadership has taken to address some of the critical problems we identified, especially efforts to collect the significant amount of overpayments made on this contract. However, to be truly effective, these corrective actions must be applied, as appropriate, across DLA's other contract activities rather than fixing only the problems we identify. The DoD IG will continue to follow up on key recommendations made throughout the Department. Given the fiscal challenges the country is facing, every reasonable effort must be taken to conserve valuable funds and put them to their best possible use.

Mr. CHAFFETZ. Thank you, Mr. Blair.

We will now recognize Mr. Beebe for five minutes.

STATEMENT OF MATTHEW BEEBE

Mr. BEEBE. Good afternoon, Mr. Chairman, Ranking Member Tierney and distinguished members of the subcommittee.

I am Matt Beebe, Deputy Director of Acquisition for the Defense Logistics Agency. I am delivering the opening statement today on behalf of DLA. We appreciate the opportunity to appear here today to discuss DLA's award to Supreme Foodservice for the Subsistence Prime Vendor Afghanistan Contract.

As the Department of Defense's only combat logistics support agency, DLA's primary mission is to support American soldiers, sailors, airmen and Marines. DLA provides virtually every consumable item our military forces require, including food, fuel, medical supplies, uniform items and weapon systems repair parts.

As the Deputy Director for DLA Acquisition, I am responsible for the DLA's acquisition program. With me today is Mr. Bill Kenny, the DLA Troop Support Acquisition Executive, and Mr. Gary Shifton, the DLA Troop Support Subsistence Supply Operations Division Chief.

In 2004, DLA received a directive from the Army to provide subsistence support to service members deployed to Operation Enduring Freedom. DLA issued a fully competitive solicitation in October 2004 and awarded the contract to Supreme Foodservice in June 2005. The contract provides full service food and non-food distribution support in Afghanistan and expires in December 2013.

As awarded, the contract was written to use ground transportation for delivery to four sites in Afghanistan. Requirements there quickly changed with the military setting up many more forward operating bases than initially planned. Two months after contract award, DLA Troop Support issued a verbal change order to Supreme to support a significant increase in forward operating bases using a combination of ground, fixed wing aircraft and helicopters to make deliveries. This is referred to as premium outbound transportation.

In December 2005, Supreme submitted proposed premium outbound transportation rates. These proposed rates represent the main area of disagreement between DLA and Supreme. In June 2006, after performing on the contract for six months, Supreme billed DLA for premium outbound transportation using those proposed rates.

That same month, DLA requested an audit from the Defense Contract Audit Agency to determine whether Supreme's rates were fair and reasonable. DLA also issued a contract modification to establish that Supreme would be reimbursed monthly at 75 percent of the existing rate.

DCAA audits conducted in 2008 and 2011 were unable to confirm the reasonableness of Supreme's in-theater transportation rates. In August 2010, during contract negotiations, DLA Troop Support issued a contract modification to further reduce the payment rate from 75 percent to approximately 50 percent.

After unsuccessful negotiations and following completion of the 2011 audit, DLA unilaterally definitized the prices for premium

outbound transportation. As a result, the contracting officer determined Supreme owed the government $756.9 million and sent a final decision letter to Supreme in December 2011.

Supreme has appealed this decision to the Armed Services Board of Contract Appeals. As of March 31, 2013, DLA has received approximately $283 million and continues to collect more than $21 million per month.

Throughout the Supreme contract, DLA has ensured continuous subsistence support to the military forces in Afghanistan. We acknowledge the issues associated with the DOD Inspector General's 2011 audit and have worked diligently to address these findings. We understand DLA must achieve both unwavering warfighter support and through contract management. We take very seriously our obligation to the American taxpayer and our stewardship responsibilities.

We look forward to answering your questions.

[Prepared statement of Mr. Beebe follows:]

Defense Logistics Agency
Hearing before the
House of Representatives Committee on Oversight and Government Reform
Subcommittee on National Security
April 17, 2013

Good afternoon, Mr. Chairman, Ranking Member Tierney, and distinguished members of the Subcommittee. I am Matthew Beebe, Deputy Director of Acquisition at the Defense Logistics Agency (DLA). I am responsible to the Acquisition Director for the development, application, and oversight of DLA acquisition policy, plans, programs, systems, and operations for our agency's acquisition program. In fiscal year 2012, DLA generated $44 billion in sales and revenue while managing over 5.2 million items needed by our military services. With me is Mr. William Kenny, the DLA Troop Support Acquisition Executive, and Mr. Gary Shifton, the DLA Troop Support Subsistence Supplier Operations Division Chief.

I appreciate the opportunity to discuss the Subsistence Prime Vendor-Afghanistan contract awarded by DLA to Supreme Foodservice.

The DLA mission is to provide superior logistics support to America's warfighters. In accomplishing its worldwide mission, DLA uses six field activities, including DLA Troop Support, to buy, store and distribute food, fuel, uniform apparel, construction items and equipment, pharmaceuticals, medical and surgical products and equipment, and weapons systems repair parts to the military services.

DLA is committed to meeting our customers' expectations, decreasing material and operating costs to maximize savings, reducing inventory to appropriate levels, and achieving audit readiness to ensure accountability.

In 2004, DLA received the directive from the U.S. Army to provide food support to service members deployed for Operation Enduring Freedom. DLA issued a fully competitive solicitation in October 2004, and awarded the contract in June 2005 to Supreme Foodservice. This contract provides a full line of food and non-food products to service members in Afghanistan and, as extended, will expire in December 2013. Relevant information concerning the contract follows:

- The initial award of the contract on December 3, 2005, had a base period of 18 months with two 12-month and one 18-month options for extension, ending on December 12, 2010.
- On December 13, 2010, DLA extended the contract without competition pursuant to a Justification and Approval document, because Supreme was the only source able to provide the required support within the required timeframe. The extension was for one 12-month base period and two six-month option periods, beginning December 13, 2010, and ending December 12, 2012.
- On June 22, 2012, DLA issued a follow-on interim contract to Supreme for the period from December 13, 2012, to December 12, 2013, also because Supreme was the only source able to provide the required support within the specified timeframe.

- DLA used the two contract extensions to prepare the solicitation for the follow-on contract competition and to incorporate lessons learned from its experience with the Supreme contract and other contracts supporting OCONUS, as well as feedback from industry. The new solicitation was issued on April 26, 2011, as a full and open competition. The extensions also allowed sufficient time for comprehensive evaluation of the very complex technical proposals received from the offerors for the follow-on procurement, and for conducting negotiations with the offerors. Finally, the extensions were needed to provide time for transition following award of the new contract, and to provide uninterrupted support to U.S. and coalition military forces in Afghanistan during the anticipated litigation over the contract award, which did occur and is ongoing.

The 2005 contract award called for delivery to four sites in Afghanistan – Bagram, Kabul, Salerno, and Kandahar, using ground transportation for deliveries. Following that award, requirements in Afghanistan quickly increased, with the military planning to set up significantly more camps and forward operating bases than initially planned. In August 2005, two months after the contract award, DLA Troop Support officials issued an oral change order to Supreme to support additional activities throughout the theater, using a combination of ground transportation, fixed-wing aircraft and helicopters. This combination of transportation is generally referred to as "premium outbound transportation," and was necessary because many of the additional ordering

activities were operating in remote, mountainous regions, which presented significant transportation challenges. Supreme began preparation for contract performance during this period.

In December 2005, when Supreme assumed full performance on the contract, they submitted proposed premium outbound transportation rates to DLA. After performing on the contract for six months, in June 2006, Supreme billed DLA for premium outbound transportation using Supreme's proposed rates. In order to ensure Supreme's rates were fair and reasonable, in August 2006, DLA requested an initial audit by the Defense Contract Audit Agency (DCAA). Also in August 2006, DLA issued contract modification number 10 to formalize the oral change order that increased the number of supported sites. Modification number 10 included provisional payment rates, explicitly stated to be subject to audit. In October 2006, contract modification number 12 established that DLA Troop Support would reimburse Supreme monthly at 75 percent of the rates in modification 10, pending the results of a DCAA review. The DCAA conducted two separate audits, one in 2008 and another in 2011, using updated sets of proposals from Supreme received by DLA as part of our ongoing negotiations. The DCAA audits were unable to confirm the reasonableness of the in-theater transportation rates proposed by Supreme, either because of lack of support by actual transportation costs or because of Supreme's lack of documentation to support its rates.

In August 2010, during continued negotiations, DLA issued contract modification number 76 to further reduce the actual payment rate for premium

outbound transportation to approximately 50 percent of Supreme's proposed rates.

During contract performance, DLA and Supreme repeatedly attempted to negotiate final rates. After negotiation attempts were unsuccessful and following completion of the second DCAA audit, DLA unilaterally definitized the premium outbound transportation rates in December 2011 based upon information collected, including Supreme's actual costs to the extent known by DLA.

Also during this time period, in February 2011, a Department of Defense Inspector General's (DoD IG) report identified several recommendations for DLA Troop Support related to administration of the Supreme contract. As the result of existing contract administration efforts and the Inspector General's recommendations, DLA took the following actions:

- We definitized the premium outbound transportation rates using data from an audit conducted by the DCAA in August 2011. The rates were also informed by DLA technical analysis on the reasonableness of flight times and fuel consumption in calculating fixed rates per pound for fixed wing, rotary wing, and ground premium transportation.
- The contracting officer determined that Supreme owed the government $756.9 million, and sent a final decision letter to Supreme on December 9, 2011. Supreme has appealed this decision to the Armed Services Board of Contract Appeals.
- In March 2012, DLA began withholding $21.767 million per month from Supreme via an administrative offset against contract payments. As of

March 31, 2013, DLA has recouped $282,976,694 of the money we determined we are owed, and we will continue to use the monthly administrative offset through the Defense Finance and Accounting Service. On February 25, 2013, Supreme submitted a claim against DLA for $1.802 billion, asserting it is entitled to be paid its requested rates for premium outbound transportation. That claim is under review.

- DLA also issued contract modifications confirming the rates paid for airlift for fresh fruits and vegetables and triwall from the UAE, based on the contracting officer's determination that the rates were fair and reasonable. The contracting officer determined that DLA made no overpayments for the airlift price of the fresh fruits and vegetables and the related triwall costs, and these were therefore not included in the claim against Supreme.
- Lastly, DLA strengthened its contract oversight requirements including by formalizing a quality assurance surveillance plan. We improved government-furnished material accountability by authorizing an increase in the number of contracting officer representatives at the contractor's facilities in Afghanistan; there are currently three CORs located in Afghanistan. DLA also created additional contract oversight at the local level, regionally, and at DLA Headquarters.

Mr. Chairman, we have not only recognized the areas that needed to be corrected in terms of contract administration with our Supreme contract for

Subsistence in Afghanistan, but we also have put measures in place to ensure overpayments and delays in agreement of terms do not occur in the future.

For instance, DLA implemented a new procurement strategy with the new five-and-a-half year Subsistence Prime Vendor-Afghanistan contract, competitively awarded in June 2012. In this new contract, transportation costs are included in fixed distribution fees, ensuring the fees are already built into the pricing. Competition for award of the contract helps to ensure that the fees are reasonable.

Implementation of the new contract, awarded to Anham, has been delayed due to a series of Government Accountability Office (GAO) protests and filings by Supreme with the Court of Federal Claims. Part of that process included a requirement that we re-evaluate certain factors in the proposals, and resulted in a new award decision that affirmed the award to Anham in December 2012. On March 27, 2013, the GAO denied Supreme's protest of the December 2012 award decision. On April 5, 2013, Supreme filed an action in the Court of Federal Claims protesting the December 2012 award decision. That case is pending.

Through the Supreme contract, DLA has ensured continuous food support to military forces in Afghanistan since the contract began eight years ago. At the height of operations, we provided food for more than 260 different forward operating bases, dining facilities, and storage facilities throughout Afghanistan, which translates into approximately 435 million meals. Prior to entering the drawdown phase, the DLA Troop Support Subsistence supply chain annually

exceeded over 10,000 40-foot container equivalents or 265 million pounds per year. Including bottled water, it was customary for our prime vendor to move over 700 thousand commercial cases of product per week.

DLA acknowledges the issues associated with the DOD IG's 2011 findings and has worked diligently to correct them, while continuing to provide subsistence support to our brave men and women serving in Afghanistan. The issues with this contract largely arose from an effort to keep pace with a rapidly changing operational environment. However, we understand DLA must achieve both unwavering warfighter support and thorough contract management.

DLA worked to protect the Government's interests by including provisions for audit of Supreme's proposed rates in the contract modifications implementing the changes, and two audits ultimately determined that Supreme was overpaid. DLA is now recouping the amount owed by Supreme through monthly administrative offsets against contract payments being made under the current extension contract. DLA has also implemented measures to ensure these kinds of issues will not be repeated.

We take much pride in accomplishing our mission as America's combat logistic support agency. On behalf of myself, Mr. Kenny and Mr. Shifton, I thank you for the opportunity to discuss the Subsistence Prime Vendor contract to support service members in Afghanistan.

We are happy to answer any of your questions.

Mr. CHAFFETZ. Thank you.

I will now recognize myself for five minutes.

Mr. Beebe, was there any dispute about the quality of the product or the actual food they were delivering? Was there any dispute about any of that?

Mr. BEEBE. No, there was not.

Mr. CHAFFETZ. Is it fair to characterize the only question, problems or challenges you saw were purely contracting questions?

Mr. BEEBE. Related to rates, yes, sir.

Mr. CHAFFETZ. Does Supreme still offer food services in Afghanistan to this day?

Mr. BEEBE. They are still our provider of food in Afghanistan.

Mr. CHAFFETZ. You have a situation where you sign a contract and, you can qualify this, literally in two months after that contract signed, you have to renegotiate, things are changing rapidly?

Mr. BEEBE. Yes, sir. The original contract was not negotiated; it was a competitively bid contract. Yes, we then had to enter into a situation where requirements changed.

Mr. CHAFFETZ. Were they the low bid contract?

Mr. BEEBE. Let me defer to Mr. Shifton.

Mr. CHAFFETZ. Mr. Shifton, were they the low bid contractor?

Mr. SHIFTON. My recollection is they were not the low bid contractor. They had the best technical proposal. We used a tradeoff process for award. They had a technically superior proposal to their competitor, Seven Seas.

Mr. CHAFFETZ. There was only one other bidder?

Mr. SHIFTON. Yes.

Mr. CHAFFETZ. You are two months into this contract, you issue verbal orders and then you start getting into a spat or dispute about what are the rates? This is not five bucks; we are talking about an awful lot of money. Why was this a verbal agreement?

Mr. BEEBE. The primary priority was to ensure we had uninterrupted food service to the warfighter in Afghanistan. That was our primary responsibility while ensuring that we take proper actions within the contract management.

Mr. CHAFFETZ. You are moving ahead, you have this dispute that is hundreds of millions of dollars and yet you went ahead and extended their contract by billions. Why is that? Mr. Kenny?

Mr. KENNY. As Mr. Beebe indicated, our primary focus of the subsistence contracting team was to maintain that exceptional level of service to the men and women serving in Afghanistan. The use of unpriced actions, sole source contracts, verbal change orders is highly unusual, rarely used in the contracting process. We discourage its use. In fact, we have no unpriced contracting actions currently at the Troop Support Center.

In this case, a decision was made because of the dynamics and requirements of the warfighter that we needed to take some unusual action. The reason we extended that contract on one and several occasions was we were attempting to put together an acquisition strategy and an acquisition plan that encompassed not only the lessons learned over the last three or four years of dealing with Supreme but struck that balance between effectiveness and efficiency.

We developed and refined that strategy over a period of time. We did that with changing requirements, numbers of troops, troop surge, troop drawdown, where we are going to have the issues associated with fraud that we saw with PWC. We incorporated things like the Code of Business Ethics into the new solicitation.

Mr. CHAFFETZ. It is not like we just went to war for the first time. We spent an awful lot of time in Iraq and we have been in Afghanistan ten plus years. That wasn't part of the original thing, a Code of Ethics?

Mr. KENNY. Sir, there were a lot of lessons learned that came out of the PWC investigation.

Mr. CHAFFETZ. My concern is I wonder if we actually learned any of those lessons. That is the thing. I struggle with why so late in the process this happens. I just do not understand. You say these lessons are learned, you say sole bids are an exception, you say we don't generally do verbal adjustments. That is not my experience. That is not my perspective. It scares me that you think that.

Mr. KENNY. I can only speak for the Troop Support, with all due respect, what we learned from the PWC Justice investigations. We then enhanced our training for our work force and the provisions within our contracts.

Mr. CHAFFETZ. Were you short of personnel? Did you not have enough people? What was the problem?

Mr. KENNY. From my perspective, the contract management efforts we applied to this did not keep pace with the changes we were seeing in our requirements. We have made significant changes to that since that time.

Mr. CHAFFETZ. Mr. Blair, I want to give you an opportunity to share some comments or perspective on this discussion we are having right here.

Mr. BLAIR. One of the things that I alluded to in my statement was another report we issued last year, our contingency contracting report, an update report. We found some of the same issues that we see here in the Supreme contract are the same issues we find quite often in our audits. It really relates to contract oversight and inadequate contract oversight. It relates to inadequate invoice reviews. Those are the top two areas highlighted in this report.

I do think that had that level of oversight been in effect from day one when this contract started and had it kept pace with the contract, I think DLA would not be in the position it is in at this point. That is a critical part of basic oversight for a contract, especially a contract of this complexity and this magnitude.

Mr. CHAFFETZ. Thank you. Again, we do not seem to learn these lessons.

I now recognize the gentleman from Massachusetts, Mr. Tierney, for five minutes

Mr. TIERNEY. Mr. Shifton, where is Ms. DeMayo?

Mr. SHIFTON. My understanding is Ms. DeMayo works out of an office in Virginia.

Mr. TIERNEY. She is no longer doing the same responsibilities she had at the outset?

Mr. SHIFTON. I am sorry, I misspoke. You said Ms. DeMayo? Ms. DeMayo is working in our Medical Directorate at Troop Support.

Mr. TIERNEY. Was she responsible for the original contract or were you?

Mr. SHIFTON. She was the contracting officer. I was her supervisor.

Mr. TIERNEY. Tell me how it is that you have an original contract that I assume dealt with terms, scope, price and cost, right?

Mr. SHIFTON. That is correct.

Mr. TIERNEY. You approved all that?

Mr. SHIFTON. Yes, I had oversight of all that.

Mr. TIERNEY. That contract called for Supreme to document all the work and bills they submitted to you?

Mr. SHIFTON. There are two parts to this. The first part is the award made to Supreme was a FAR Part 12 competitive award. The second part of this is the premium outbound transportation.

Mr. TIERNEY. I am dealing with the original contract, four bases. You set your price, you set your scope, you set the terms on all of that. Did anywhere in that contract say when you submit a bill, we also want to see all the back-up documentation for how it is you got to negotiate this price?

Mr. SHIFTON. Not really. It was a competitive acquisition, so we were doing price analysis against the bidders.

Mr. TIERNEY. You had two bidders and you decided to go with the one with no experience?

Mr. SHIFTON. No. We went with the one that actually had the better technical experience than the other.

Mr. TIERNEY. What did the other one have? What is technical experience?

Mr. SHIFTON. They actually were operating in Afghanistan and had experience moving product inside Afghanistan. The other had a template to do that type of work but had not performed it inside Afghanistan.

Mr. TIERNEY. Mr. Schuster testified they had been doing exactly the same work they were doing here. It was an approximation of the same type of work?

Mr. SHIFTON. That is fair, yes.

Mr. TIERNEY. At some point you decided before the contract even starts that you now have to jump this up to 68 additional bases. You were informed by someone else you had to do it, right?

Mr. SHIFTON. Right. Typically, once the contract is awarded, almost immediately thereafter we host a post-award conference where the customer, in this case, the Army, comes and Troop Support and the vendor meet. There is also a ramp-up period to this contract. One of the reasons why this decision was made back in August, a couple months after the contract was awarded, is we had to eliminate a supply chain to the Army and their distribution support and make a decision that Supreme would have to adjust for that in their supply chain. That is why we had to make that type of decision back in August so we would not have two duplicate supply chains moving into Afghanistan.

Mr. TIERNEY. You are telling me that you couldn't let Supreme do the four bases and have the Army continue to do the remaining bases?

Mr. SHIFTON. Right. The Army support of those bases primarily came out of two what they call Class I yards or subsistence yards,

one at Bagram, one at Kandahar. Routinely, by the time the product from those yards got to the forward operating locations, there was spoilage. The Army had a lot of problems at that time storing subsistence type products and getting them out to forward locations. They came to us to see if it was viable to support those in our contract.

Mr. TIERNEY. What additional documentation did you require of Supreme to determine they were qualified to do the 68 additional bases?

Mr. SHIFTON. I can't say it was so much probably documentation other than Supreme acknowledged they could do the support.

Mr. TIERNEY. They gave you their word? Is that the way you generally do contracting business, 68 additional bases and billions of dollars, they give you their word, we can do it, don't worry?

Mr. SHIFTON. No, it is not and we formalized subsequent to that. In 2006, we developed what is called a delivery support plan request for every single location in Afghanistan.

Mr. TIERNEY. How late in 2006 was that?

Mr. SHIFTON. It was in the later part.

Mr. TIERNEY. A year into the contract and the extended part of the contract? In 2005, when you asked them to do the additional 68 bases and then more, what did they tell you they were going to charge you for it.

Mr. SHIFTON. At that time, the decision was made that what they were going to charge us for would be subject to audit.

Mr. TIERNEY. So nothing. They just said we will do it, we will get an audit and we will do it later?

Mr. BEEBE. Right.

Mr. TIERNEY. And that was fine with you?

Mr. SHIFTON. Again, at the time there was a limit to the amount of information we had in this type of support in Afghanistan. To answer your question, we accepted it, again, with the conditions that it would be subject to audit.

Mr. TIERNEY. Why didn't you immediately ask for an audit of the fair and reasonableness right at that time in 2005?

Mr. SHIFTON. Because at that point, we did not have any actuals that would be supportable by an audit.

Mr. TIERNEY. So you were going to go for several months just winging it and hoping it all comes in to something reasonable. In the middle of 2006, you get whacked with a $33.5 million bill that puts the hair on your head straight up, right?

Mr. SHIFTON. Again, yes.

Mr. TIERNEY. Who was telling you that you had to do this? Mr. Kenny, are you approving all this?

Mr. KENNY. Sir, I did not personally approve that.

Mr. TIERNEY. Mr. Shifton is out there and he is the closest one to the line here next to Ms. DeMayo who is not with us today for whatever reason, so he has to make some hard decisions. Somebody is telling him he has to get these 68 bases served and he has to take some other company's word for it without having any documentation and the estimates based on anything in particular. It has to be coming from your office, right?

Mr. KENNY. Sir, if I may, my review of the documents of the sequence of events, yes, that verbal change order did take place. It

was followed by a modification, I believe it was Modification 10 that the Chairman identified.

Mr. TIERNEY. What was the date of that? Late 2006?

Mr. KENNY. That is correct.

Mr. TIERNEY. That is my point. The point is you are a year into this thing, you have taken a flyer for a year as to what is going to be the price of this thing and no way of establishing what it is, taking their word they are going to be able to perform the contract and we will all get to a price later on. Mr. Blair, how should that have been handled?

Mr. BLAIR. According to the regulations, it should have been done within 180 days, if possible.

Mr. TIERNEY. Do you think it was possible?

Mr. BLAIR. That would be speculation on my part.

Mr. TIERNEY. You have reviewed it, you are the Inspector General. You made a recommendation it should have been done within 180 days. Did you think it was possible?

Mr. BLAIR. I think there are efforts that could have been taken to be more aggressive.

Mr. TIERNEY. What would those efforts be?

Mr. BLAIR. I have kind of a simplistic view since I am not an attorney when it comes to contracting actions. In my view, if you withhold payment on current or future amounts, if you issue a demand letter or a cure notice, you are starting to leverage and take more aggressive action rather than waiting a year.

Mr. TIERNEY. You are going to pull the plug on me? I will take it up later.

Mr. CHAFFETZ. We will now recognize the gentleman from Vermont.

Mr. WELCH. Thank you very much.

First of all, gentlemen, thank you for your service. I have some appreciation of how tough it is. We have the troops out there and they have to get the water and the bullets. It is tough. We have a bad system when this kind of stuff happens but I do appreciate your service.

In June 2010, five years after the performance started, the contracting officer finally realized that DLA was never going to be able to negotiate fair and reasonable rates with Supreme and recommended unilaterally definitizing the contract. The price negotiating memorandum stated the contracting officer believes an agreement will never be reached and therefore, premium outbound transportation should be unilaterally definitized.

Mr. Shifton, were you involved in the contracting officer's decision to recommend that unilateral act in June 2010?

Mr. SHIFTON. Yes.

Mr. WELCH. Did you concur with his recommendation?

Mr. SHIFTON. Yes.

Mr. WELCH. But on July 9, 2010, the Integrity and Pricing Division notified the contracting officer that it disagreed with the recommendation and instead recommended that the contracting officer request a new DCAA audit through August 2010. To the best of your knowledge, why was that recommendation that was made and you agreed with to definitize the contract in June 2010 overturned?

Mr. SHIFTON. It was decided the data to definitize in June 2010 was primarily based on events that happened during 2006 and 2007 and part of 2008. It was decided it would be more advantageous to us and the contracting officer to have more actual data of events that happened, more flight information, more pounds transported, more fixed wing of product moved, to have more recent and relevant data to come up with a decision. Because the conditions on the ground had changed so much and the volumes were so much higher, they thought it was in our best interest to seek another audit.

Mr. WELCH. That is interesting. When you say in our best interest, was it in our best interest in terms of getting a fair price or was it in our best interest in terms of no readily available alternative to get to our troops what they needed and we just had to bite the bullet and get shafted for a few years more?

Mr. SHIFTON. No, I think it was a combination decision at the time. Recognizing not getting shafted, we reduced the rate down to 50 percent versus the 75 percent. It was a determination that for us to be in our best position, in our best negotiation position, to have a new audit based on the most recent data.

Mr. WELCH. At that time when the original recommendation was made, it was $682 million, a lot of money, but when DLA finally definitized the contract in December 2011, the overpayment had swelled to $757 million, an extra $75 million hit on the taxpayer. Mr. Beebe, Mr. Kenny, what are your views on that? Do you think we made the right decision?

I understand it is a tough decision and a lot of competing things you have to do, but somehow, some way, it seems these contractors get away with larceny.

Mr. KENNY. Sir, my prospective on this matter, we have heard about the contract being awarded was a FAR Part 12 contract. I think it is important to note to the committee that the contract modification that authorized premium authorized POT, premium transportation, was using the authority of FAR Part 31. FAR Part 31 required Supreme to be subject to an audit and to provide the necessary documentation to support those premium authorized rates.

As we have heard before, there were significant delays in obtaining that information, that supporting documentation which would allow the contracting officer to make a fair and reasonable determination.

Mr. WELCH. One question I do have, it is tough, you have a lot of things going on but when you have three years of data and you are up to $600 million to $700 million, I am wondering at what point do you want to pull the plug and put the burden on them to come forward as opposed to the burden on us where we have to let it happen for another two years when the evidence we have, if past is prologue, it will just make it worse. That is kind of a tough call to me but I would like to put the burden on the bad guys.

Mr. BEEBE. Yes, sir. If I may, I am not going to question the immediate decision that Mr. Shifton and then contracting officer made; it may have been the correct immediate decision to Mr. Blair's comments. Overall, the process was taking too long. There is more we probably should have done to apply leverage to the con-

tractor to work with DCAA to come to another means of a conclusion.

Mr. WELCH. One final question. How much of a problem is it that some of the people you are dealing with at Supreme are former high ranking Defense Department officials? Does that, as a practical matter, make it tougher?

Mr. KENNY. I will just give you my perspective. I have heard the name of General Dale. I know who he is. I know General Mungen. I served under each of those individuals. I have not had any personal contact since they took off their uniforms, any correspondence, any emails, any phone calls or any involvement in either of these contracts with either of those gentlemen.

Mr. TIERNEY. Would the gentleman yield?

Would it be fair to surmise that they know just how messed up the process is at DLA and they would be advising their client, just go for it, because these guys aren't going to set a price. They are going to keep paying you, we are going to appeal, go on and on and on and they know just how the process works. They didn't hire these guys to sit around and play dominoes.

Is that a fair assessment of the kind of advice of someone who had been in those positions, that one was the operating manager and the other was director of the whole DLA, that they would be able to give that kind of advice to a company like Supreme as to how to go about dealing with a contract like this. Whether or not they negotiated this particular contract, they could certainly tell them how the process works or does not work.

Mr. KENNY. I am not sure what their roles and responsibilities are. I am aware that neither of them has an acquisition background. Whether they were able to advise the Supreme organization on how to navigate these waters, I could not comment.

Mr. BEEBE. I might also add, and I am not going to speculate on what they might have been advising their employers or employees, but the circumstances surrounding this particular issue is not the norm of DLA, so if they were advising based on the norm at DLA, it would not be consistent with the findings in this particular case.

Mr. CHAFFETZ. I thank the gentleman.

I now recognize the gentlewoman from Illinois for a generous five minutes.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Blair, according to your office, DLA spent $455 million in transportation costs for local market ready products through May 2010 for, according to the IG report, services that were not included in the contract and were based on rates that may not be fair and reasonable. Did DLA ever provide documentation to show the contracting officer how they determined the rates to be fair and reasonable?

Mr. BLAIR. The documentation that we received was very sketchy. In short, no adequate documentation was provided.

Ms. DUCKWORTH. By DLA?

Mr. BLAIR. Correct.

Ms. DUCKWORTH. Mr. Shifton, can you answer why that would have happened, why there would not have been proper documentation?

Mr. SHIFTON. The documentation we provided was based on a price analysis that we performed. We used USTRANSCOM's not to exceed rates. We think we have a good foundation that the work we did is acceptable FAR practice and acceptable price analysis work.

We used different contract rates that had actual bills against them and that is what we used to support our documentation.

Ms. DUCKWORTH. Was that contract with Public Warehousing Company, Agility? Is that the contract you used?

Mr. SHIFTON. That is part of the price analysis but not the entire part of the analysis.

Ms. DUCKWORTH. Are they not subsequently being investigated or were they subsequently indicted?

Mr. SHIFTON. That is correct. Again, PWC, in terms of their contract, had very little airlift connected to their contract. We used a significant amount of USTRANSCOM tenders prior to the Supreme contract moving fresh fruits and vegetables from the United Arab Emirates to Afghanistan.

The difference with the Supreme price and the Transcom tender price is the Supreme price is based on per pound, there is 20 pounds of carrots, whereas the USTRANSCOM price is a gross weight, pounds and the weight of the shipping container or pallet.

Ms. DUCKWORTH. If that is the case and if that contract has been indicted, why are you using them even partially as a basis for determining whether or not the rates are fair and reasonable under the Supreme contract?

Mr. SHIFTON. If my recollection serves me correctly, we used the information back in the 2005 time frame whereas the indictment of PWC happened far after that. We used information from PWC significantly prior to the indictment. Again, a significant part of our price analysis is based on the USTRANSCOM rates.

Ms. DUCKWORTH. Do you disagree with Mr. Blair in his assessment that DLA did not provide adequate documentation to show how the rates to be fair and reasonable?

Mr. SHIFTON. We concurred with the report. I think it goes back to Modification 10 was a poorly executed modification and just did not offer clarity.

Ms. DUCKWORTH. You agree that you did not provide adequate documentation?

Mr. SHIFTON. Yes, we concurred with the finding.

Ms. DUCKWORTH. Are you satisfied now that throughout the performance of their contract, DLA has paid fair and reasonable rates for those local market ready products?

Mr. SHIFTON. Yes, I am.

Ms. DUCKWORTH. Mr. Blair, do you agree with that?

Mr. BLAIR. We have not yet seen the additional documentation to really hone in on those rates. I really cannot comment on that at this point.

Ms. DUCKWORTH. Mr. Blair, during the last hearing we heard about allegations that Supreme was using a subsidiary of United Arab Emirates, the Jamal Ali Food Company, JAFCO, to seek additional profit from the government. Basically, they were billing the government, getting their profit and also a profit to their own sub-

sidiary. Has your office looked into these allegations against Supreme?

Mr. BLAIR. No, we have not.

Ms. DUCKWORTH. You are sure you have not looked into them at all, there is no investigation underway?

Mr. BLAIR. I know there is an investigation; I don't know the scope of the investigation. Since I am from Audit, it would not be a part of our effort.

Ms. DUCKWORTH. I will ask this question of both Mr. Blair and Mr. Shifton. In the previous panel, Mr. Schuster stated that at no time did Supreme charge DLA both a DOT fee as well as a distribution fee for delivery of goods to the FOBs. Would you agree with him on that?

Mr. SHIFTON. No, we do not. Part of the $756 million being collected includes that for which we disagree with Mr. Schuster.

Ms. DUCKWORTH. Mr. Blair?

Mr. BLAIR. The scope of our work did not really focus on the detailed billings. That was really subject to the audit work by DCAA. We focused more on the oversight efforts of DLA, so we didn't really get into that level of detail and to determine whether there was double billing or excessive billing.

Ms. DUCKWORTH.

Mr. SHIFTON. If I could clarify, just the portion of that $756 million, that credit you speak of, that overcharge, is $177 million we are collecting from Supreme.

Ms. DUCKWORTH. Thank you, Mr. Shifton.

I am out of time, Mr. Chairman.

Mr. CHAFFETZ. I recognize myself and I will recognize Mr. Tierney. We will probably be calling votes but if there are additional questions, we will try to entertain those.

Who is responsible? At the end of the day, my worry is blame everybody, nobody is held responsible. This is from March 2, 2011, the audit. It said, "The subsistence contracting officials at the DLA Troop Support did not provide sufficient oversight to contracting costs and performance, the contracting officer did not adhere to certain provisions of the Federal Acquisition Regulation, and the DOD supplement or develop a quality assurance surveillance plan and written procedures to monitor contract costs and performance."

Who is responsible? Who did not do all of those things because other than that, it went great. We overpaid everyone agrees by hundreds of millions of dollars. Who is responsible for that happening or not happening?

Mr. KENNY. I will attempt to answer your question.

Mr. CHAFFETZ. I will give you an A plus for being brave enough to answer that question.

Mr. KENNY. We put together a team at Troop Support in conjunction with our DLA headquarters. We took a very thorough look at the circumstances and events surrounding the award and execution of this contract.

We looked at what corrections needed to be made, what improvement and where we were challenged. As a result of that evaluation, two major themes came out of the report. One was we needed to make adjustments to our processes to accommodate where we have a contingency operation with rapidly changing requirements.

Our vehicles at the time were not flexible enough, were not agile enough to be able to accommodate the needs of the warfighter. That was number one.

Two, we needed to do a better job in training and enhancing our education process for all our contracting professionals, whether in the area of contract documentation, the area of contract pricing, the need for additional contracting officer reps in-country.

As a result of those recommendations and as a result of that review, we felt the need was not so much a disciplinary action or a personnel action, but a need to enhance our processes and improve the education and training of our workforce to able to deal with these types of situations in the future.

Mr. CHAFFETZ. We had been at war for ten plus years between Iraq and Afghanistan. It is hard to find what went right with this. There was nobody fired, nobody dismissed, nobody was disciplined at all, is that what you are telling me? Is that the reality?

Mr. KENNY. To answer your question, that is correct. The improvements I mentioned as far as processes, tools, making sure our folks had the IT tools to be able to monitor contract performance, having more individuals in-country and providing the necessary training so these documentation and pricing issues, if encountered in the future, we would know how to deal with them.

Now we have much broader knowledge on the right business models—how to price this. One of our major problems was we had to price this in a sole source environment with a company like Supreme. In the follow-on contracts, we brought competition into the process which is always a major goal of the acquisition process.

Mr. CHAFFETZ. When you re-upped with Supreme, you did not bid that out.

Mr. KENNY. We did extend the contract with Supreme.

Mr. CHAFFETZ. One of the conclusions was that you were going to have bids and you didn't take any bids.

Mr. KENNY. For the extensions, when we were building our acquisition strategy and our acquisition plan.

Mr. CHAFFETZ. Your acquisition strategy has just come at a time when we actually are not even going to be there. That was back in 2006, right? When you originally started to expand, you were weeks into the contract, how to expand it. It gets to be March 2, 2011, the IG comes out and says look at all these problems. Nine months later, nine months and seven days later, you sign a no-bid extension worth tens of billions of dollars.

How do you look me in the face and say one of our conclusions was we have to take more bids and you didn't take anymore bids?

Mr. KENNY. At the time of the extensions when the justifications and approvals were being processed, at that same time, we were looking at the technical proposals received as a result of the solicitation that was issued. We received six proposals and conducted negotiations over that period of time.

Part of the time necessary for those bridges, we wanted those bridges to come to an end, believe me sir part of the time required was to do the competitive process and select a new contractor to replace Supreme.

Mr. CHAFFETZ. Did you?

Mr. KENNY. Yes, sir.

Mr. CHAFFETZ. You just told me that Supreme is still offering food services in Afghanistan.

Mr. KENNY. Supreme is still providing the support. They will be providing support until December 2013. One of the additional reasons that those contracts had to be extended was we have significant litigation.

Mr. CHAFFETZ. We have a time crunch. Let me recognize the gentleman from Massachusetts.

Mr. TIERNEY. Thank you.

We have a bill that comes in the middle of 2006 for $33.5 million and the contracting officer is asked why they are asking for $33.5 million which was an unauthorized commitment. Her answer was, I am a contracting officer with an unlimited warrant and I requested that the vendor do the work.

One of your people, Chris Cofield, says this is so big, it is beyond my comprehension. Obviously, this is an unusual circumstance everyone was dealing with.

When we inquire further what was going on from Ms. DeMayo, she said she didn't get any support that she needed at the upper levels. "I spoke to quite a few individuals in policy and pricing and received much conflicting direction. No one was really eager to advise how I should proceed. I got a whole lot of let me say this about that, but don't quote me for anything. I did my best to get some attention but in the December-January period, when I needed it most, I wasn't able to attract a whole lot."

Were you the person, Mr. Shifton, who was telling her, let me say this about that but don't quote me on anything?

Mr. SHIFTON. No, sir.

Mr. TIERNEY. Did you give her advice to go forward or not go forward?

Mr. KENNY. Yes.

Mr. TIERNEY. So she was wrong on that, she was getting all the support she could possibly need?

Mr. SHIFTON. No, sir. I am not saying that there wasn't frustration on her part of not getting more direction from other elements within Troop Support.

Mr. TIERNEY. Who would she go to? Could she go to you, you would go to Mr. Kenny, Mr. Kenny would go to Mr. Beebe, is that the way it runs?

Mr. SHIFTON. Typically for an action such as this, she would be reaching out to our support offices that give her advice in terms of contract policy and legal policy.

Mr. TIERNEY. Have you taken action against any of them for leaving her out there on the limb, a contracting officer makes a decision to modify a contract verbally for $817 million, possibly as much as $2.46 billion, with an email? Have you taken any of them to task and said that is not the way you treat somebody, that is not the situation you put them in?

Mr. SHIFTON. It has been several years since that time. I am sure there was frustration on my part as well. I think Mr. Kenny was trying to explain and if you want to consider a weakness on my part, there was just too much focus on the operations at the time and supporting the warfighter and not enough focus at the time on dotting the Is and crossing the Ts.

Mr. TIERNEY. But you had systems in place. All you had to do was run the systems, that is why they are there. Mr. Blair says there were requirements there if you had just tended to business, you would have asked for the proper documentation, you would have been monitoring these things as they went along, and you would not have waited more than 180 days to get it done.

In fact, the first time that you modified and went to 75 percent, why didn't you go to 50 percent then?

Mr. SHIFTON. There is DFARs guidance. The proposal became subject to audit and we thought they had a qualifying proposal which allowed 75 percent.

Mr. TIERNEY. Based on what? You had no documentation, you had no comparables of any note. You presented this is what they want to get paid and said I will give you 75 percent because I am not going to give you 100 percent because we had questions here but you haven't given enough documentation to ascertain the answer to the question.

Mr. SHIFTON. I am not disagreeing with you. We used, to the best of our ability, the guidance offered through DFARs.

Mr. BEEBE. If I may add one point.

Mr. TIERNEY. Were you involved in this at all, Mr. Beebe? Did people come up to you to ask you particular questions about this contract?

Mr. BEEBE. At the time, I was not with DLA.

Mr. TIERNEY. I don't want to be rude to you but I appreciate you want to step in and help out your guys but I am trying to get to the basis of what happened then, so please excuse me on that.

Now you have an extension coming up, a $4 billion extension, you have 24 bids. How many bids did you get for the extension in 2010?

Mr. KENNY. The acquisition that we awarded this past June 2012 which went to ANHAM, six parties submitted offers, four of which were responsible bids.

Mr. TIERNEY. At one point in time, somebody indicated the reason they had to give a sole source, no bid contract was there wouldn't be any other responsible parties out there, but there were at least four, right?

Mr. SHIFTON. But what we did was we sought through industry with a request for information as part of the market research, this acquisition, to get industry's feedback. To support Afghanistan and the numbers, the infrastructure required equates to at least 90,000 pallet positions, a warehouse that has cold storage capability for almost 50,000–60,000 of those pallets. You just don't have that type of infrastructure in Afghanistan.

We wanted to give industry a chance to give feedback, to partner and then have a plan to be able to meet the requirements of our solicitation.

Mr. TIERNEY. One of the things that makes this even worse is this company went in there and by the nature of the contract, they had you by the nape of the neck because of all the things you just said. Once they were in, they got a foothold to run this out and you didn't set the price, they were home free because they had things you couldn't replicate fast enough to give them the boot and get them out of there, right?

Mr. SHIFTON. I don't disagree with your analogy, except I would again say the contracting officer, we were taking action. Again, we reduced to the 75 percent down to 50 percent.

Mr. TIERNEY. Late. That would have been nice if you had done that originally, you could have saved a whole boat of money. How are we going to get the rest of the money back?

Mr. KENNY. Maybe I can answer that for you. Our intentions are to continue to collect the $21 million per month until the end of the performance period of the Supreme contract.

Mr. TIERNEY. You have a contract now with an unsettled price, you argue what the price should be but based on what you are willing to pay, you are going to cut back $21 million on that and count that as savings. You could find out you overpaid them by that $21 million too in which case, you got nothing back, right?

Mr. KENNY. We believe that the fair and reasonable determination definitizing those provisional rates, we feel that was a correct determination by the contracting officer. We would intend to collect the balance.

Mr. TIERNEY. You have no documentation. Were you here to hear what Mr. Tiefer from the Wartime Commission had to say? It is like an employer keeping some wasteful employee on the payroll longer than necessary in order to garnish the wages. It smacks of that. You are keeping them around and you are going to garnish their wages by paying them less than the contract but nobody knows what the contract price is, so you don't know whether you are charging them $21 million less, $10 million less or too much. We are all still out here in this gray neverland, right?

Mr. SHIFTON. Again, the basis of the rates we took unilateral action on, much of that is supported by the DCAA audit. The rates are what the government has determined to be fair and reasonable at this time. That is what Supreme is being paid and that is the credit we are collecting back.

Mr. TIERNEY. Mr. Beebe, how is it you let this whole thing unravel or were you not there at the time?

Mr. BEEBE. I personally wasn't but I certainly will speak for DLA.

Mr. TIERNEY. You don't need to. You weren't there. Mr. Kenny, you were there through this whole enterprise?

Mr. KENNY. I was there from September 2010 on.

Mr. TIERNEY. You weren't there. Mr. Shifton, you are the only one left holding the bag?

Mr. SHIFTON. Yes, sir.

Mr. TIERNEY. I understand the position you are in, you have made that clear. I get a sense of where Ms. DeMayo is. I would like to know where the people are who were in Mr. Kenny's position and Mr. Beebe's position in terms of carrying out the rules and regulations and seeing what you and Ms. DeMayo did. Hopefully Mr. Blair's work is going to result in going forward and giving us a template so we don't end up in this situation again.

Thank you all for your testimony.

Mr. CHAFFETZ. Thank the gentleman.

I will recognize the gentlewoman from Illinois very briefly as we have a vote on the floor.

Ms. DUCKWORTH. Thank you, Mr. Chairman. This will be very brief.

Mr. Shifton, the contracting officer for all this who is not here today, not only was this person not disciplined in any way according to your testimony, what kind of evaluation did you give this person over the years she supervised this contract?

Mr. SHIFTON. I am sure I gave her a very high rating.

Ms. DUCKWORTH. You gave her a very high rating?

Mr. SHIFTON. Yes, I did.

Ms. DUCKWORTH. Did you give her a bonus in those years?

Mr. SHIFTON. Yes, she annually received a monetary bonus.

Ms. DUCKWORTH. A bonus for good work right?

Mr. SHIFTON. Correct.

Ms. DUCKWORTH. Mr. Kenny, how long have you been with DLA, since 2010?

Mr. KENNY. I assumed the role of the Acquisition Executive for DLA Troop Support in September 2010.

Ms. DUCKWORTH. 2010. When the original contract expired December 2010, instead of rebidding the contract, DLA granted Supreme the non-competitive extension through December 2012 and in June 2012, DLA granted Supreme another sole source extension lasting from December 2012 to December 2013. You were there for that period?

Mr. KENNY. Yes.

Ms. DUCKWORTH. Did you give Mr. Shifton an excellent rating or a high rating in his performance?

Mr. KENNY. I am not the rating official for Mr. Shifton.

Ms. DUCKWORTH. Did you receive a high performance rating, Mr. Shifton during this period?

Mr. SHIFTON. Yes.

Ms. DUCKWORTH. Did you receive bonuses all these years this has been going on, during this period?

Mr. SHIFTON. Yes, I did.

Ms. DUCKWORTH. Do you think that both you and this contracting officer, who have now led DLA into this situation where you are almost $1 billion in overpayment, do you think that type of performance warrants high ratings and bonuses, yes or no?

Mr. SHIFTON. Yes, I gave Maryanne an award but again her job is much more comprehensive than this area.

Ms. DUCKWORTH. It is almost $1 billion. This is what boggles the mind for me. I rated people in the Federal Government myself. I rated soldiers. In the civilian sector, if you went out and blew almost $1 billion of your company's money, you would be fired. You, at the very least, would be demoted. You certainly wouldn't be given an excellent rating and a bonus. This is what you have done with this contractor year after year and you yourself have been compensated. No wonder the problem continues. I don't see anybody suffering the consequences.

I am sorry, Mr. Chairman. I yield back.

Mr. CHAFFETZ. Don't apologize, I concur. I appreciate your passion on this issue. I share it.

Gentlemen, we appreciate your testimony here today. We have a vote on the Floor. We will continue to pursue this. We appreciate

your responsiveness in responding to further questions and inquiries that we have. We thank you.

The committee stands adjourned.

[Whereupon, at 4:42 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Opening Statement of Jason Chaffetz, Chairman
Subcommittee on National Security
"Contracting to Feed U.S. Troops in Afghanistan: How did the Defense Department end up in a Multi-Billion Dollar Billing Dispute?"
April 17, 2013

Good morning and welcome to today's hearing: "Contracting to Feed U.S. Troops in Afghanistan: How did the Defense Department end up in a Multi-Billion Dollar Billing Dispute?"

I would like to welcome the Ranking Member Cummings, Ranking Member Tierney, Members of the Subcommittee, and members of the audience.

Today's hearing continues the Subcommittee's efforts to oversee the billions spent in support of military and civilian operations in Afghanistan.

In 2011, this Subcommittee conducted a bi-partisan investigation of the Defense Department's Host Nation Trucking contract led by Congressman Tierney and now-Senator Flake. The purpose of the contract was to supply our military through the use of private contractors. However – almost since its inception – allegations surfaced that warlords and the Taliban would seek "protection payments" for safe passage through tribal areas. According to those familiar with the contract, the result was a potential windfall for our enemy.

The problems with the Host Nation Trucking contract highlighted the importance of adequate contracting oversight. Proper contract administration is a one of the main defenses against waste, fraud, and abuse.

In the case of the Defense Logistics Agency's (DLA) prime vendor contract with Supreme Foodservice, billions of dollars are at stake, as well as the very important mission of feeding our troops in Afghanistan. Currently, the DLA believes it has overpaid Supreme by $757 million. Meanwhile, Supreme has submitted a claim against DLA for over $1.8 billion.

From the outset, this contract was modified through verbal change orders – significantly altering performance requirements. The most troubling findings of a Defense Department Inspector General (IG) report included the excessive delays in definitizing these change orders. The IG noted that the government's contracting officer did not definitize or issue contract modifications in a timely manner, as required by federal acquisition regulations.

The IG also concluded that the government overpaid Supreme by almost $100 million in transportation costs and over $26 million for packaging materials for chilled or frozen food products.

These uncertainties in the contract were compounded by incomplete pricing audits conducted by the Defense Contract Audit Agency (DCAA). The DCAA conducted two separate audits of pricing considerations negotiated between DLA and Supreme. According to the DCAA's 2011 audit, Supreme failed to provide adequate supporting documentation to demonstrate the reasonableness of proposed costs.

The concerns with this prime vendor contract are ongoing and have been for some time. Despite all of these concerns, the government continued to contract with Supreme and even exercised options to extend the contract.

We have well established contracting procedures. If we are not going to use them – why have them?

I will now recognize Ranking Member Tierney for his opening statement.

"For House Oversight and Government Reform Committee Use Only"

Defense Contract Audit Agency

United States
Department of Defense

August 29, 2011

Independent Audit on Parts of Price Adjustment Proposal Submitted by Supreme Foodservice GmbH Related to Premium Outbound Transportation Effort to Forward Operating Bases in Afghanistan

AUDIT REPORT NO. 2191-2011M17200001

RESTRICTIONS:

1. The contents of this audit report should not be released or disclosed, other than to those persons whose official duties require access in accordance with DoD 5200.1-R, Information Security, January 1997, Appendix 3, paragraph AP3.2.3. This document may contain information exempt from mandatory disclosure under the Freedom of Information Act. Exemption 4, of the Freedom of Information Act, which addresses proprietary information, may apply.

   It is not practical to identify during the conduct of the audit those elements of the data which are proprietary. Proprietary determinations should be made in the event of an external request for access. Unauthorized disclosure of proprietary information violates 18 U.S.C. 1905 and, if the information is contractor bid or proposal or source selection information, 41 U.S.C. 423. Any person who unlawfully discloses such information is subject to penalties such as fines, imprisonment, and/or removal from office or employment.

2. Under the provisions of Title 32, Code of Federal Regulations, Part 290.7(b), DCAA will refer any Freedom of Information Act requests for audit reports received to the cognizant contracting agency for determination as to releasability and a direct response to the requestor.

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b. Basis of Contractor's Costs:

The fuel costs are based on a stated rate charged for the month by a related division, Supreme Fuels Division. The proposed costs are based on costs recorded in the general ledger for FYs 2007 – 2010.

c. Audit Evaluation:

We evaluated the fuel costs as discussed in Schedule B-2, Note 2, page 42. Supreme's failure to provide the requested and/or adequate supporting documentation has prevented us from evaluating the proposed fuel costs for compliance with FAR 31. 205-26, Material Costs. Because of the Denial of Access to Records the proposed costs are questioned in their entirety.

It should be noted that the unaudited Account 51003, Security also contains fuel costs. However, due to the DLA Troop Support imposed time constraint, we were not able to quantify the amount of fuel costs included in Account 51003. Refer to the Scope of Audit, Limitation No. 14 Lack of Adequate Time paragraph on page 12.

Because we have questioned the proposed fuel costs in their entirety, the methodology applied by Supreme to allocate the fuel costs to the modes of delivery as well as the exchange rates used to convert Euro to USD have no impact on our audit results. However, should DLA Troop Support allow a portion of the proposed and questioned fuel costs, it should be noted that we have not examined and therefore offer no opinion on the reasonableness of Supreme's allocation methodology or exchange rates. Refer to the following paragraphs included in the Scope of Audit section for further details: (i) Limitation No. 10 Methodology to Split Allocated Overheads Between FOB and NFOB paragraph on page 10, (ii) Limitation No. 11 Methodology to Split Allocated Overhead FOB Costs Between Modes of Delivery paragraph on page 11, and (iii) Limitation No. 12 Exchange Rates paragraph on page 11.

7. Account 53201 - Legal and Tax Advice

a. Summary of Conclusions:

We question the Legal and Tax Advice costs examined in the amount of $3,039,278 in their entirety based on (i) FAR 31.205-47, Costs Related to Legal and Other Proceedings, and (ii) Supreme's withdrawal of proposed legal costs related to the following three legal firms: Debevoise & Plimpton LLP (DPL); Maclay Murray & Spens LLP (MMS); and DLA Piper Middle East LLP (DLA). Supreme's failure to comply with the FAR 31 cost principles is discussed in the Scope of Audit, Limitation No. 7 Noncompliances with FAR Part 31 paragraph on page 7.

Due to the DLA Troop Support imposed time constraint, we did not examine proposed Legal and Tax Advice costs of $404,826. As a result, we do not express an opinion on whether these unaudited proposed legal costs are based on FAR Part 31 criteria. Refer to the Scope of

Audit, Limitation No. 14 Lack of Adequate Time paragraph on page 12 for further details. In addition, refer to the Results of Audit, Note 3 to the Statement of Amounts Proposed, Examined, Not Examined, and Audit Results, Allocated Overheads paragraph on page 17 for further details on the unaudited Allocated Overheads.

As discussed in Exhibit E Note 1 on page 71, Supreme did not separately account for the FOB and NFOB costs in its ledgers. As a result, we evaluated the total costs in the account to include the FOB and NFOB costs. We then applied Supreme's allocation method in order to determine the applicable proposed, examined, not examined, and questioned amounts for the FOB portion. However, due to the DLA Troop Support imposed time constraint, we did not evaluate the reasonableness of Supreme's allocation methodology. Further, due to the DLA Troop Support imposed time constraint, we did not evaluate the reasonableness of the proposed exchange rates used to convert Euro to USD. Consequently, our audit results are impacted to the extent that had we been granted sufficient time to evaluate Supreme's allocation methodology and the exchange rates, our questioned costs would have differed. Refer to the following paragraphs included in the Scope of Audit section for further details: (i) Limitation No. 10 Methodology to Split Allocated Overheads Between FOB and NFOB paragraph on page 10, (ii) Limitation No. 11 Methodology to Split Allocated Overhead FOB Costs Between Modes of Delivery paragraph on page 11, and (iii) Limitation No. 12 Exchange Rates paragraph on page 11.

b. Basis of Contractor's Cost:

Proposed costs are based on costs recorded in the general ledger for FYs 2008 – 2010 and are supported by third party invoices.

c. Audit Evaluation:

We obtained and reviewed engagement letters provided to support legal costs proposed for Debevoise & Plimpton LLP (DPL) and Constantine Cannon LLP (CCL). According to the DPL engagement letter, Supreme engaged DPL as counsel "... in connection with an investigation being conducted by the Defense Criminal Investigative Service and possibly the U.S. Department of Justice." According to the CCL engagement letter, Supreme Group B.V. and related Supreme entities engaged CCL for the following:

- Supreme Group B.V. and related Supreme entities including Supreme Foodservice GmbH & Co. KG, Supreme Foodservice AG and Supreme GmbH retained CCL for the arbitration filed against Supreme by Public Warehousing Company and Professional Contract Administration, Inc. "... for alleged breach of an October 2004 Services Agreement and a related June 2006 Side Agreement."
- Supreme Group B.V. retained CCL "... to represent ... Supreme Fuels Trading FZE in connection with its case against Harry Sargeant, International Oil Trading Company, and others" for "... conduct of Mr. Sargeant and his partners and

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business ventures – in violation of the RICO Act, Sherman Act, and various state laws ..."

During our examination, Supreme confirmed in a letter dated July 27, 2011 that it opted not to propose costs related to the following legal firms:

Legal Firm Name	Amount Proposed
DPL	$ 964,971
Maclay Murray & Spens LLP (MMS)	$ 15,500
DLA Piper Middle East LLP (DLA)	$ 1,520

As a result, we question the costs associated with DPL, MMS, and DLA based on Supreme's decision to no longer propose these legal costs.

As described above, the proposed CCL costs relate to arbitration for an alleged breach by Supreme of a services agreement and a side agreement. We discussed the status of arbitration with Supreme and were informed that the arbitration is still ongoing. We compared the purpose for the legal services being provided to the allowability criteria contained in FAR 31.205-47, Costs Related to Legal and Other Proceedings. Based on that comparison we determined that the proposed CCL costs are unallowable based on FAR 31.205-47. FAR 31.205-47 Paragraph (f)(i) states the following types of costs are unallowable unless the costs are incurred as a result of compliance with contract terms or written instruction from the contracting officer:

> ... costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either – an agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest ...

In addition, FAR 31.205-47 Paragraph (b)(4) states that costs involved with resolution of proceedings by compromise (in this case arbitration) that could have resulted in a monetary penalty are unallowable. Although the arbitration is ongoing, the potential exists that Supreme may be fined a penalty. FAR 31.205-47 Paragraph (g) requires that costs that may be unallowable under Paragraph (b) are to be segregated and accounted for separately. However, Supreme has accumulated the legal costs with all other legal costs. Further, FAR 31.205-47 Paragraph (g) goes on to state that:

> During the pendency of any proceeding covered by paragraph (b) ... of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable

costs, plus interest, if the costs are subsequently determined to be unallowable.

Based on the above FAR 31.205-47 criteria, we question the proposed $2,057,287 related to CCL in their entirety. Supreme's failure to comply with the FAR 31 cost principles is discussed in the Scope of Audit, Limitation No. 7 Noncompliances with FAR Part 31 paragraph on page 7.

Due to the significance of the questioned cost, we expanded the scope of our review to 100 percent of the proposed legal cost totaling $3,444,104. However, due to the Limitation No. 14 Lack of Adequate Time paragraph on page 12, we did not examine the remaining legal costs totaling $404,826 and therefore we do not express an opinion on whether the remaining proposed costs are based on FAR Part 31 criteria.

Due to the DLA Troop Support imposed time constraint, we did not evaluate the reasonableness of the methodology applied by Supreme to allocate the Legal and Tax Advice costs to the modes of delivery as well as the exchange rates used to convert Euro to USD. Consequently, our audit results are impacted to the extent that had we been granted sufficient time to evaluate Supreme's allocation methodology and the exchange rates, our questioned costs would have differed. . Refer to the following paragraphs included in the Scope of Audit section for further details: (i) Limitation No. 10 Methodology to Split Allocated Overheads Between FOB and NFOB paragraph on page 10, (ii) Limitation No. 11 Methodology to Split Allocated Overhead FOB Costs Between Modes of Delivery paragraph on page 11, and (iii) Limitation No. 12 Exchange Rates paragraph on page 11.

8. Account 53400 - Bad Debts

a. Summary of Conclusions:

We question the proposed Bad Debts cost of $466,316 in its entirety based on FAR 31.205-3, Bad Debts. FAR 31.205-3, Bad Debts, states, "Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable." Supreme's failure to comply with the FAR 31 cost principles is discussed in the Scope of Audit, Limitation No. 7 Noncompliances with FAR Part 31 paragraph on page 7.

b. Basis of Contractor's Cost:

The proposed Bad Debt costs are based on 100 percent of outstanding debts in excess of 365 days as recorded in Supreme's general ledger for FYs 2007 - 2008.

KIRKLAND & ELLIS LLP
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June 21, 2013

Via Hand Delivery

CONFIDENTIAL TREATMENT REQUESTED

The Honorable Jason Chaffetz
Chairman
U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense, and Foreign Operations

The Honorable John F. Tierney
Ranking Member
U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense, and Foreign Operations

2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: *Follow-up Questions from April 17, 2013 Hearing*

Dear Chairman Chaffetz and Ranking Member Tierney:

On behalf of Mick Schuster, I write in response to several follow-up questions from members of the Committee during the Committee's April 17, 2013 hearing concerning Supreme Foodservice GmbH's ("Supreme") award and performance of the Department of Defense's Subsistence Prime Vendor ("SPV") contract in Afghanistan. We appreciate your providing Supreme with the opportunity to add its perspective to your review of this matter.

1. *Rep. John Mica: Were there opportunities for American firms to participate in the competition for [the] Subsistence Prime Vendor contract that was awarded to Supreme Foodservice? If so, did such American firms compete?*

The Defense Logistics Agency competed Solicitation SPM300-04-R-0323 for Subsistence Prime Vendor in several zones, including Afghanistan, on a full and open, unrestricted basis. The Solicitation was advertised on U.S. Government public web sites, and competition was open to all eligible companies, including Supreme. Supreme Group is proud to

have been founded in 1957 by a former U.S. Army foodservice soldier, and Supreme Group B.V. is majority owned by U.S. citizens. Supreme has a long tradition of supplying U.S. troops, and has achieved an outstanding record of success in delivering goods in Afghanistan in the middle of an active military combat engagement, including to dangerous, remote, and inaccessible sites, at the cost of the lives of hundreds of subcontractors. Supreme was not involved in internal DLA decisions regarding which firms would be allowed to compete for the SPV contract.

2. *Ranking Member John Tierney: What services did the company f/k/a Public Warehousing Company ("PWC") provide to Supreme Foodservice in connection with the Subsistence Prime Vendor contract?*

Supreme retained PWC as a consultant in 2004, prior to being awarded the SPV contract. At that time, PWC operated as the prime vendor supplying food and related supplies to troops in Iraq, Kuwait, and Jordan. Supreme's contract with PWC contemplated that PWC would provide assistance with Supreme's bid to win the SPV contract, and, in the event Supreme was successful, would provide consulting and technical assistance during Supreme's performance of the contract.

3. *Ranking Member John Tierney: When did Supreme Foodservice terminate, void, or cancel its agreement with the firm f/k/a Public Warehousing Company?*

Supreme terminated its agreement with PWC in or around March 2008.

4. *Rep. Peter Welch: Has the price of local market ready ("LMR") goods ever included a profit for the Supreme Group subsidiary, Jamal Ahli Foods Co. ("JAFCO")?*

JAFCO was created after DLA significantly expanded the scope of the SPV contract only weeks after it was awarded, requiring Supreme to deliver to remote forward operating bases in addition to the four central locations contemplated by the original contract. JAFCO was part of the logistics solution for the expanded scope, and was entitled to charge an amount reflecting its costs and profit for performing services necessitated by that expansion. The government confirmed that this was appropriate when it awarded Supreme a follow-on contract in 2010 that included JAFCO's costs and profit in the pricing.

5. *Rep. Peter Welch: Has Supreme Foodservice or JAFCO ever been the subject of a criminal investigation by the U.S. Government (if yes, then please state the date first notified, jurisdiction, and knowledge of current disposition)?*

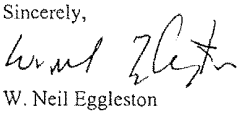
Supreme was contacted by the Defense Criminal Investigation Service in the Spring of 2009. Supreme has been cooperating with the Department of Justice since that time.

6. *Representative Jackie Speier: What business or contracts have former DLA Director Lieutenant General Robert Dail developed for Supreme Group or any of its subsidiaries since joining Supreme?*

General Dail served as President of Supreme Group, USA from 2009-2013, based in Reston, Virginia. In that capacity, he was responsible for developing work that diversified Supreme into new areas of logistics services. Specifically, he led the Group into subcontract work for multiple Prime contractors of the US Army's LOGCAP efforts in Afghanistan. Further, he led the company in creating a transportation business unit that successfully supported the USTRANSCOM's Northern Distribution Network in the Baltics; the transportation and storage of Army and Air Force Exchange Service materiel in Afghanistan; and the commercial support of fuel supply at the Guam International Airport. In 2013, he became the Chief Commercial Officer of Supreme Group, taking on the additional international duties of Strategic Planning, Corporate Communications, Business Development, and oversight of regional offices in London, Reston, and Singapore for Supreme Group.

General Dail was not the Director of the Defense Logistics Agency when it awarded Supreme its base contract or its subsequent extension "bridge contracts." He was not employed by Supreme Group when it was awarded the base contract. While he was employed by Supreme when the Defense Logistics Agency extended the SPV contract with Supreme, he was not involved in the negotiations for this award and has not been involved in its day-to-day administration. In all respects, General Dail has been careful to abide by ethics advice provided to him by DLA counsel as he departed that agency, and private counsel since joining the Supreme Group. Both the Supreme Group and General Dail appreciate the importance of abiding by the highest standards of ethics in order to protect the U.S. Government, the company, and General Dail from even the appearance of impropriety.

Sincerely,



W. Neil Eggleston

NE /vmw

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