

**HOTLINE TRUTHS II: AUDIT REVEALS
INCONSISTENCIES IN DEFENSE SUBCONTRACTING**

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BEFORE THE
**SUBCOMMITTEE ON CONTRACTING AND
WORKFORCE**
OF THE
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THURSDAY, MAY 17, 2018

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:03 a.m., in Room 2360, Rayburn House Office Building, Hon. Steve Knight [chairman of the Subcommittee] presiding.

Present: Representatives Chabot, Knight, Evans, Murphy, and Lawson.

Chairman KNIGHT. Good morning. The hearing will come to order. We have a vibrant Committee here, and we are going to get going. Stephanie and I rule this place. But we will have some folks kind of come in and out. Here we go, and we are very excited about this hearing.

So, with that, I will give you a little bit of how this works, and then I will get into my statement and get Mrs. Murphy and her statement, and we will kind of get this thing rolling really quickly.

I will do it a little backwards this time. The rules are: We go down the row, and you have 5 minutes to have your opening statement. You will see the lights. They will come on, and they will be green for 4 minutes and yellow for a minute. When it goes red, just try and wrap it up at some point. And then we will kind of move quickly.

Okay. Well, Congress has long established the need to maximize opportunities for small business. I believe a vibrant small business community is essential to our national security. Many of these businesses serve our country by working with the DOD to provide necessary goods and services to our men and women in uniform. One purpose of the Small Business Act is to ensure that we maintain a strong industrial base of small contractors ready to provide cost-effective solutions and cutting-edge innovation.

Therefore, it is important that no part of the Small Business Act is ignored or undermined. Statutory provisions that are not observed can threaten the crucial benefits small businesses provide to our military.

The Subcommittee is grateful to the DOD Office of the Inspector General, or the DODIG, for its work in continuing to investigate the mismanagement of small business subcontracting require-

ments. These reports provide documented proof of agency practices that are detrimentally impacting small subcontractors.

Turning to the report at hand, the DODIG investigated small business subcontracting at two Army Contracting Command, or ACC, locations. The IG's report issued on March 19, 2018, found that the ACC has inconsistently complied with statutory requirements requiring the administration of subcontracting plans. This failure resulted in denial of \$915 million in small business subcontracting opportunities.

Putting this number in context, the IG investigated 50 contracts for this report. Extrapolate that across the entire Army procurement system and the damage to small business could be devastating. Furthermore, the IG found that the ACC may have missed opportunities to recoup liquidated damages potentially owed to the Federal Government and taxpayers up to \$82.3 million.

Perhaps most telling is the IG's finding that administering subcontracting plans is not a high priority at the ACC. This translates to less competition, higher prices, and could rob our warfighters of the newest innovation and best solutions that so often come from small businesses and startups.

I understand this devastating report is merely a snapshot of one isolated piece of our defense contracting network, but I do hope that this conversation today will spur others to action. I can tell you, in my office, we work very, very closely with aerospace, with DOD, with subcontracting, and one of the biggest issues that we have is small subcontractors kind of getting into the system or being able to work in the system. We also know that small businesses are very agile, and especially with the DOD, if there is an issue with a system that our warfighters have and there is a way that we can correct that quickly, we want to.

And I will leave with just this one story. I was out with a company just recently, and they were showing me their latest in robots that went out for bomb disposal. And they let me play with it. And they gave me the controller, and it was an Xbox controller. And I said: Is this really the controller?

And they said: No, but this works better. So we bought it for \$29.99, and this is what we use.

Now, obviously, that is probably not as good as the original controller or it doesn't hold up that well, but it did kind of get me thinking of how we can be agile and how we can move quickly, and if the warfighter or someone on the ground, whether it be a ground-pounder or someone in the air or at sea, is saying something, that we have got to be able to move quickly so that we can do those types of things.

So, with that I will now yield to Mrs. Murphy for her opening statement.

Mrs. MURPHY. Thank you, Mr. Chairman, and also thank you for holding this important hearing.

You know, small businesses continue to look for new opportunities to expand their ventures, especially by competing for contracts in the federal procurement marketplace. In fact, in fiscal year 2017, the Federal Government was involved in contracting actions worth over \$508 billion, making it one of the largest buyers of goods and services in the world.

Prime contracts are generally viewed as the most lucrative way for small businesses to participate in this marketplace. However, as contract bundling has become more prevalent, subcontracts have become more of a common entry point for small businesses to work with the Federal Government. Therefore, it is really critical that we ensure there is a level playing field for small firms as they pursue subcontracts.

During today's hearing, we will discuss the Department of Defense Inspector General's recent audit of two Army Contracting Command Centers, one in Redstone, Alabama, and the other one is Warren, Michigan.

I share Chairman Knight's concerns that the audit findings are troubling. The audit concluded that the preparation and enforcement of subcontracting plans must be improved to ensure that small businesses are not losing out on subcontracting opportunities that could be critical to strengthening their bottom line and supporting many jobs.

Subcontracting plans serve as an important accountability mechanism, ensuring that prime contractors make a good-faith effort to provide opportunities to small businesses. So it was really disappointing to learn that contracting officials at ACC-Redstone and ACC-Warren did not make certain that prime contractors provided small businesses with adequate subcontracting opportunities for 23 contracts valued at nearly \$915 million or nearly half of the contracts that the inspector general had examined.

In these cases, it seemed like there was a lack of knowledgeable contracting personnel and proper transition protocols, both of which are basic functions of a contracting office. With more than 22 million contracting actions each year, every Federal agency should make proper review of subcontracting plans a top priority. I think this is particularly important in the case of the Department of Defense, which oversees the vast majority of government contracts.

The audit also revealed that contracting officers at these ACCs lacked the proper training to successfully administer subcontracting plans. Furthermore, the IG's audit found that the ACC-Redstone and ACC-Warren may have neglected to follow up on reports showing that contractors were not meeting all of their small business goals.

Overall, small businesses seem to have been an afterthought, rather than a primary focus for these contracting offices. You know, I think encouraging more small business participation in the federal marketplace remains a priority for this Committee, and subcontracting will continue to be a vital path for small businesses to obtain government contracts.

So, today, we have an opportunity to examine what went wrong at these ACCs and how we can implement solutions to increase access to subcontracting opportunities for small businesses. I thank the witnesses for being here and look forward to your testimony as we delve into the audit findings and its recommendations.

Thank you, and I yield back.

Chairman KNIGHT. Thank you very much. Okay. We will go to introductions. I would like to formally introduce our witnesses. Our first witness is Mr. Michael Roark, the Assistant Inspector General

for Readiness and Global Operations at the DOD. He has served with the Department of Defense Office of Inspector General since June of 2000 in various staff and leadership positions. Mr. Roark testified before the Subcommittee previously in 2016 on a similar audit undertaken by the inspector general.

And we welcome you back today.

Our second witness is Mr. Tommy Marks, Director of Army Office of Small Business Programs. In this position, Mr. Marks serves as the Army's lead on small business policies, goals, and procedures, and represents the Army in interagency communications with the Small Business Administration and other Federal agencies.

And we welcome you here today, Mr. Marks.

Our last witness is Ms. Tiffany Scroggs. Ms. Scroggs is the newly appointed President of the Association of Procurement Technical Assistance Centers—that is a mouthful—having previously served as the Regional Director and Vice President. Ms. Scroggs is also the Program Manager of the Washington State Procurement Technical Assistance Center and has been a member of the Washington PTAC since 2007 when she joined as a procurement counselor. We welcome you, Ms. Scroggs, today.

Okay. Now we have the rules of the lights, and we are ready to go.

So, Mr. Roark, you are now recognized for 5 minutes for your opening comments.

STATEMENTS OF MICHAEL J. ROARK, ASSISTANT INSPECTOR GENERAL, READINESS AND GLOBAL OPERATIONS, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ALEXANDRIA, VIRGINIA; TOMMY L. MARKS, DIRECTOR, ARMY OFFICE OF SMALL BUSINESS PROGRAMS, OFFICE OF THE SECRETARY OF THE ARMY, WASHINGTON, D.C.; AND TIFFANY S. SCROGGS, PRESIDENT, ASSOCIATION OF PROCUREMENT TECHNICAL ASSISTANCE CENTERS, LACEY, WASHINGTON.

STATEMENT OF MICHAEL J. ROARK

Mr. ROARK. Good morning, Chairman Knight and Ranking Member Murphy and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss our March 2018 audit report of Army small business contracting.

During the audit, we visited two Army Contracting Command, or ACC, contracting centers, ACC-Redstone and ACC-Warren. Our audit objective was to determine whether ACC-Redstone and ACC-Warren contracting officials took appropriate actions to ensure that prime contractors met their small business subcontracting goals. We reviewed a sample of 50 contracts valued at approximately \$1.6 billion of 216 contracts valued at approximately \$7.6 billion that ACC-Redstone and ACC-Warren awarded to other than small businesses with estimated completion dates in fiscal years 2015 and 2016.

Overall, ACC-Redstone and ACC-Warren generally provided small businesses with the opportunity to compete for prime contracts. However, contracting officials did not ensure that prime con-

tractors provided small businesses with adequate subcontracting opportunities.

Specifically, ACC-Redstone and ACC-Warren contracting officials ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 27 of the 50 contracts we reviewed. However, contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for 23 contracts valued at approximately \$915 million of 50 contracts we reviewed valued at \$1.6 billion. Specifically, ACC-Redstone and ACC-Warren contracting officials awarded six contracts without a subcontracting plan or a determination that no subcontracting possibilities existed; did not monitor prime contractors' compliance with individual subcontracting plans for 11 contracts; did not determine why prime contractors with individual subcontracting plans did not meet their small business subcontracting goals for five contracts; and accepted an individual subcontracting report for one contract which may have misreported subcontracting goals.

Each of these items is required by the Federal Acquisition Regulation, or FAR, subpart 19.7. These problems occurred due to three primary causes.

First, ACC-Redstone and ACC-Warren contracting officials stated that some contracting personnel did not understand subcontracting plan requirements. For example, ACC-Redstone did not provide adequate training or procedures for administering subcontracting plans.

Second, ACC-Redstone and ACC-Warren contracting officials noted that administering subcontracting plans was often not a high priority.

Third, guidance at both commands did not address the transfer of subcontracting plan administration duties as required by the FAR when a contract is assigned to a new contracting officer.

We made a total of eight recommendations to ACC-Redstone and ACC-Warren and the Deputy Assistant Secretary of the Army for Procurement to improve small business contracting procedures. Specifically, we made two recommendations to ACC-Redstone, and the command agreed with each recommendation and is in the process of taking corrective actions.

In addition, we made three recommendations to ACC-Warren, which command officials agreed with. During the audit, officials at ACC-Warren took corrective actions, and we closed two of those recommendations. ACC-Warren is now in the process of completing corrective actions on one other recommendation.

Finally, we made three recommendations to the Deputy Assistant Secretary of the Army for Procurement. The Army agreed with each of these recommendations and is in the process of taking corrective actions.

As a result, small businesses may not have received subcontract work that prime contractors for Army contracts were required by the FAR to make a good-faith effort to provide. Contracting officials did not consistently obtain subcontracting reports or follow up on reports that showed that contractors were not meeting their small business goals.

Therefore, ACC-Redstone and ACC-Warren may have missed opportunities to recoup liquidated damages up of up to \$82.3 million. This concludes my statement, and I would be happy to answer any questions you may have for me.

Chairman KNIGHT. Thank you, Mr. Roark.

And I would like to welcome to our Committee the Chairman of the full Committee, Chairman Chabot. Thank you very much.

Okay. And we will move forward to Mr. Marks. You now have 5 minutes for your opening statement.

STATEMENT OF TOMMY L. MARKS

Mr. MARKS. Good morning, Chairman Knight, Ranking Member Murphy, and distinguished members of the Subcommittee. I am Tommy Marks, the Director of the Army Small Business Programs. I first want to apologize for missing the Subcommittee's suspense to provide a written statement, which was delivered yesterday. I misinterpreted the instructions.

Secondly, thank you for this opportunity to testify before you today. I am an Army veteran and a member of the senior executive service of the Army. I have served as a Director since April 2015. Prior to that, I served as the Army's Executive Director for service contracts policy in the Army's Logistics Civil Augmentation Program, known to our soldiers as LOGCAP. I entered my 40th year of service to our Nation in January 2018 serving as a soldier, government contractor, and civil servant, with over half of that time working logistics contracting in the small business community.

From April 2017 to January 2018, the Department of Defense inspector general conducted a performance audit of contracts for small business subcontracting at the two Army Contracting Commands located in Redstone in Huntsville, Alabama, and in Warren, Michigan for the Warren Contracting Center. The inspector general determined that the inconsistencies exist with actions of contracting officials taken ensuring that prime contractors met their small business subcontracting goals. The Army concurs with all the findings and recommendations.

Recommendation No. 3 addresses the responsibilities of the Office of Small Business in coordination with the Deputy Assistant Secretary of the Army for Procurement to train contracting and small business officials on subcontracting in accordance with the Federal Acquisition Regulation part 19.7, to provide the Army Federal Acquisition Regulation supplement subpart 5119.7, to incorporate guidance on administering and transferring responsibility of subcontracting responsibility to between contracting officials, and to issue a policy alert notifying contracting and small business officials when the revision is completed.

We have started a training as of December 2017. To date, we trained 193 personnel, and we are coordinating with our commands to complete a training schedule for the remainder of fiscal year 2018. The revision is currently in staffing, which should be completed in about 60 days, and the training will also—the guidance will go out 1 June. I owe back to Mr. Roark that in writing, which will close out—hopefully will close out the recommendation.

Finally, I want the Subcommittee to know that the Army is a staunch supporter of small businesses, which is an enabler for Army readiness and a key component to our industrial base.

Chairman Knight, I also want to share that my first invitation by Congress came from your district, California 25, a small business forum with a local PTAC, a Procurement Technical Assistance Center, and the Chamber of Commerce of Santa Clarita in August of 2017.

Thank you again for the opportunity to testify, and I look forward to your questions.

Chairman KNIGHT. Thank you very much.

And, now, Ms. Scroggs, you have 5 minutes for your opening.

STATEMENT OF TIFFANY S. SCROGGS

Ms. SCROGGS. Chairman Knight, Ranking Member Murphy, and distinguished members of the Subcommittee, as well as Chairman Chabot, thank you for the opportunity to testify today. My name is Tiffany Scroggs. I am the program manager of the Washington State Procurement Technical Assistance Center and president of the Association of Procurement Technical Assistance Centers, known as APTAC. We are the professional organization of the 95 PTACs nationwide.

As you may know, the PTAC program was created by Congress in 1985 to help small businesses compete for Federal, State, and Local contracts and subcontracts. We are funded in part through a cooperative agreement with the Defense Logistics Agency. Last year, PTACs helped over 48,000 small businesses win and fulfill government contracts and subcontracts valued at over \$20 billion.

PTACs are deeply engaged with subcontracting issues. Not only do we help small businesses identify subcontracting opportunities, we are often contacted by large primes for assistance in developing their subcontracting plans and locating small businesses that can satisfy their unique requirements. My testimony today reflects input from some of the most experienced procurement professionals across the country. I am privileged to share their insights and hope that they will support your efforts to improve opportunities for our Nation's small business contractors.

We find that small businesses bring to the marketplace innovation, agility, and additional competition that results in better products and services at lower cost. This enhances our Nation's supply chain.

Furthermore, limited access to subcontracts reduces the number and capability of small business contractors that can qualify to enter the acquisition pipeline. As you know, subcontracting is the most realistic entry point for many small businesses seeking to supply to the government.

Congress and units of government can affirm that a robust small business participation in the supply chain is a priority by focusing on four elements: education, oversight, transparency, and incentives. Each of these are explored in detail in my written testimony, and today I will share insights for a few. I will conclude my remarks with additional information as to how PTACs across the country can assist in the effort.

First, education, ensuring that not only agency acquisition staff but prime contractors understand the regulations with regard to subcontracting goals, plans, and reporting. This will go a long way toward remedying situations such as those identified in the IG's report.

Related to oversight and internal controls, we believe that a primary factor in agency subcontracting failures is generally an unrealistic overreliance on under resourced contracting officers to faithfully enforce FAR subpart 19.7.

I have listed several suggested remedies in my written testimony, and among them is to increase the number of SBA procurement center representatives and commercial market representatives.

On the topic of transparency, one of the biggest barriers to small business access to subcontracts is lack of information about the opportunities. Unlike agency solicitations, which are posted on fbo.gov, there is no centralized listing for subcontracting opportunities or a mechanism for identifying connecting with potential buyers. Suggestions include establishing a public platform similar to FBO where subcontracting opportunities can be posted. While SBA's subnet could theoretically be used for these purposes, currently it lacks critical amounts of usage and is difficult to navigate.

Transparency is not only a powerful motivator for compliance, but it expands the ability of other interested parties to help support enforcement. Amongst the suggestions is to make subcontracting plan information publicly available upon award to allow small business contractors to participate in policing the compliance of prime contractors.

However you choose to implement enhancements to the subcontracting plan compliance please remember this, PTACs play an important role in supporting subcontracting. We train small businesses to be procurement ready, and we regularly work with prime contractors who come to us for help with small business outreach and subcontract plan development. Despite our active involvement with small businesses, far too few prime contractors work with PTACs, and PTACs are hampered by the same lack of transparency that limit our small business clients.

The value of PTACs as an essential bridge between small business contractors and DOD was highlighted this year earlier in a report of the advisory panel on streamlining and codifying acquisition regulations known as the section 809 panel. The 809 panel identified PTAC program as the only DOD-wide program to conduct outreach to bring small businesses into the defense market. The report recommended a number of provisions that would expand our capacity resulting in our ability to further support a prime contracts effort to connect with small businesses.

Thank you again for the opportunity to testify and for your support of the PTAC program nationwide. I hope that our input today has been helpful, and we stand ready to help the Committee any way that we can.

Chairman KNIGHT. Okay. Very good. And we will go through a round of questions and see how this works out. I appreciate the witnesses coming in today and testifying so I will kind of go through a couple questions and kind of go down the row.

Mr. Roark, give me an idea of the most impactful recommendations you made and how best we can address the deficiencies.

Mr. ROARK. In our Army report, which we issued in March of 2018, we made a total of eight recommendations. They are really broken down into three categories. The first category was determining whether liquidated damages were appropriate, and so we made a series of five recommendations to ACC-Redstone and ACC-Warren, and those really had two categories: first, working with contractors to make sure that the individual subcontracting reports were in the system so that contracting officers could make a determination about whether they met their good faith efforts, and so we had three recommendations, one for Redstone and two for ACC-Warren on that category.

Chairman KNIGHT. And I don't mean to cut you off, Mr. Roark, and I understand from your testimony, but how are we going to track this? How are we going to track that it has been done? It seems like the Army is very, very willing to accept these and to move forward and kind of correct the deficiencies, but how are we going to track these to make sure this happens?

Mr. ROARK. Well, all reports that we issue go into a follow-up process where we follow up on the recommendations to make sure that they were implemented. And so, in two of the cases, the Army ACC-Warren actually made corrective actions on the recommendations during our audit, and we were able to verify that they carried out on those actions.

For the other recommendations, other than the liquidated damages recommendations, we also had two on policies and procedures to the Army level and one on training, as Mr. Marks stated in his opening statement. And in those cases, the Army agreed, and we continue to follow up with each of the organizations over the next few months to ensure that those recommendations were implemented, and so we will continue to gather documentation and conduct interviews as necessary to verify that that was done.

Chairman KNIGHT. Okay. And, you know, this is a little bit off, but this is two places that we did the audit. Do we believe that there is a systemic problem, or do we believe that this is something that might be in other services? Or can you make that determination by your audit?

Mr. ROARK. So this audit on the Army that we just issued about 2 months ago was really the fifth that we have done in the last 3 years since 2015. So, over that time, we have done five different audits: two on the Marine Corps, one on the Air Force, and one on the Army, and then there was also another report that was more or less like a follow-up audit.

So I think that, from those five reports, you know, we have identified trends, and for example, the consistent challenges that contracting officials face is monitoring prime contractors' compliance with individual subcontracting plans and determining why prime contractors with individual subcontracting plans did not meet their small business subcontracting goals.

Chairman KNIGHT. Okay. And, Mr. Marks, give me an idea of what the priorities of the Army, is subcontracting a high priority? Is review of subcontracting in the small business, how it kind of works in with prime contractors, is this a high priority?

Mr. MARKS. Sir, I would tell you that we haven't done what we needed to do, but going forward, it is definitely going to be a priority. We focus on, as the Ranking Member stated in her statement, the prime contract side of the house we do very well. We do do subcontracts. We put in our acquisition strategies language as we build in those requirements about subcontracting, so it is a matter, from my standpoint, a matter of enforcement and compliance.

Chairman KNIGHT. Okay. And I appreciate you in your statement of saying that you are very willing and you have already started to implement some of these new procedures to correct these actions, and it seems like, from Mr. Roark's statement, that that is in the works and that is already happening. Some of these have already happened during the audit, so that is a good thing. Sometimes we get folks that come in here, and they just adamantly kind of keep pushing back and pushing back, and that is really not what you want to hear when you get an audit that shows deficiencies. You really want to hear a willingness to come forward and correct or else there will probably be another audit.

Mr. MARKS. Yes, sir. I totally agree with you. And based on what the Ranking Member said, it is basic contracting, really. I mean, it is a part of what any contracting officer should be doing. They love to award contracts. I mean, that is kind of the thrill, but the work really is in contract administration, and that is what this is about.

Chairman KNIGHT. And understand that we look—in this Committee, we look at the subcontracting, we look at the small business aspect because, as I said, they are very agile. They are very able to do things that maybe the primes can't or maybe the primes don't want to do just because it would cost them too much; it would be kind of outside their bandwidth at the time or something like that. So the small business can be able to go in there and look at that problem, fix that problem and move forward, and that is why it is so important, especially with the DOD, especially with the way that we have these large, ultra large contracts, and, you know, nobody really builds an airplane on their own anymore or builds a ship on their own. They have thousands of small contracting companies that help them. And so that is why we are always very, very adamant about making sure that that is a high priority and making sure that we know that and we want everyone to know that. Okay. And I am going to move to Mrs. Murphy for her first round of questions.

Mrs. MURPHY. Great. Thank you, Mr. Chairman.

Mr. Roark, your audit found that DOD may have missed opportunities to recoup liquidated damages of up to \$82.3 million. That is staggering. Why do you believe that the contracting officials neglected to follow up on reports that prime contractors were not making good faith efforts to comply with subcontracting goals when there was the potential to recoup that amount of money?

Mr. ROARK. So, in our report, we wrote several recommendations about why, you know, to correct some of those deficiencies, but, you know, I think that some of the factors that we talked about earlier are the case, as Mr. Marks said that, you know, the focus is often times on awarding contracts and not so much on the

administration side of it. And so, you know, we feel that there is a training and a guidance piece that could correct that issue.

Also, we observed a lot of high turnover among contracting officials, and so then what happens in that case is, you know, an original contracting officer may have awarded the contract, but it passes off to a second or a third contracting officer. And so sometimes there is not good transition from one contracting officer to another, which, again, we think goes back to a training and a guidance solution there.

And there is also a few other system issues with Federal Procurement Data System that could be improved, but I think that the transferring files from one to another and the—

Mrs. MURPHY. So let me just ask—

Mr. ROARK.—follow-through is kind of the two major parts.

Mrs. MURPHY. Just as a follow-up, if that is the primary role of these contracting officers, you know, approving, administering, why isn't this training already happening? Can you talk about what training they currently go through, and how do we make that fix?

Mr. ROARK. So, in our report, we tackled that exact issue. We took a look at the training that they were getting and take—we also took a look at some of the guidance that they were receiving and what we found was that often times the training that they were receiving would, you know, kind of briefly get into some of these issues, but it didn't really cover it in a sufficient detail to really, you know, cover some of the intricacies that are included in FAR 19.7.

Also, on the guidance side, oftentimes when you look at the guidance, it would refer to a specific issue just briefly, but it really didn't provide very detailed information to the contracting officer to use at a practical level to kind of determine what they should do in certain cases.

Mrs. MURPHY. Okay. Thank you.

And, Ms. Scroggs, first, let me just thank APTAC's help with our successful effort to get an amendment to last year's NDAA to provide PTACs with the clear authority to assist small businesses in getting SBIR and STTR contracts. I really appreciated that.

Ms. SCROGGS. Thank you. We are excited about that. Thank you.

Mrs. MURPHY. So my question is large prime contractors are required to submit subcontracting plans for review prior to receiving an award. If the contracting officer finds them to be inadequate, he or she can decide to pull the contract. In practice, however, how often are contracts not awarded due to inadequate subcontracting plans?

Ms. SCROGGS. That is data that I don't have. I can tell you that we get instances where the prime contractor will call us and say, "The Army told me to call you," or, most recently, it was, "I am in final negotiations on this Navy effort, and the Navy told me to call you so that we can demonstrate good-faith effort," and so it was a thin relation to your individual subcontracting plan. And a lot of times it is just potentially the prime is not set up to handle the reporting. They don't understand the FAR clause, and so they read the clause for the first time, and they are like, oh, man, this is

going to require some internal assistance. And so we brainstorm with them kind of what we see as best practices. We train them on the subpart 19.7 and help them fully understand it.

But in my limited experience, they always pass after we work with them, and they are sincere about working with us.

Mrs. MURPHY. Great. Thank you.

And I am just about out of time, so I will yield back, Mr. Chairman.

Chairman KNIGHT. Okay. Thank you very much.

Mr. Evans, you are up for your opening comments.

Mr. EVANS. Thank you, Mr. Chairman.

I would like to ask this question to the panel. If possible, can you speak to the experience of minority- and women-owned firms in dealing with subcontracting plans and if they face any unique challenges when navigating this complex process?

Ms. SCROGGS. Yes. The PTAC has a strong ethic and mandate to do specific outreach to diverse firms, including women, minority, veterans, and HUBZone firms, and we take that very seriously. One thing that we really wanted to make clear was that maximizing access to subcontracting opportunities is not the same as maximizing the dollars awarded, although that would be a result. We see that simply increasing the awards to the same set of businesses, which is kind of what happens now, it won't deliver the benefits that we are describing here today. We would like to see a prioritization of creating an open and vibrant opportunity so that the firms from many diverse backgrounds can have a true opportunity to get into the supply chain maybe for the first time or have an opportunity to compete where previously they did not.

So the prime contractors kind of fit into three categories, those that take the goals very seriously and see the benefit behind them; those that kind of do it because they are required to, and they might have limited capacity to take it more seriously than we would like them to see; and then the third group who simply doesn't care and maybe does it as an afterthought when they realize they haven't complied with their reporting.

But those firms, the minority firms, the women-owned firms, the veteran-owned firms, certainly there is opportunity with the goaling to get their foot in the door, to put forth a good capability statement, and to kind of connect with the primes that way. So, in that sense, the goals work, and the firms that are able to perform are usually able to make the case if there is a competitive opportunity in which to bid.

Mr. MARKS. Sir, what we do is we track, you know, the four socioeconomic categories for the women-owned businesses, but we do not track it broken down to that level.

Mr. EVANS. Okay.

Mr. ROARK. For our audit, we, on the Army, we focused on small businesses as a whole, and we didn't break it down into any further subcategories.

Mr. EVANS. Okay.

Ms. Scroggs, go back to you. Can you think of any examples of success for women or minority contractors, and if so, why the experience of that—particularly firms—were different?

Ms. SCROGGS. Repeat it again. Why the firms were successful?

Mr. EVANS. Yes. Can you think of any examples of success for women or minority contractors, and if so, why the experience of that particular firm was different?

Ms. SCROGGS. Certainly we have many, many examples of firms in the 8(a) program, the Small Business Development Program that the SBA monitors. We have firms that are in that program that see great benefit, and I am working with one firm now that is likely to graduate a few months early as a result of exceeding the size standard for their industry code, which is kind of the whole purpose of the program.

And so the benefits to that, of course, are really strong in terms of prime contracts, but the prime contractors also take the small business—the disadvantaged business goal pretty seriously as well, and they were able to gain appropriate past performance through the 8(a) program that made them more competitive with the other primes. So, you know, the 8(a) program is—I would put a feather in that cap as a success program certainly helping firms compete.

Mr. EVANS. Thank you, Mr. Chairman.

I yield back the balance of my time.

Chairman KNIGHT. Thank you very much.

Mr. Lawson, you are up for your questions.

Mr. LAWSON. Thanks, Mr. Chairman and Ranking Member. One of the questions I had Mr. Evans asked, and so that took care of it. And I thought it was quite interesting the way you all responded.

As I travel across this country and come in contact with small businesses all the time about subcontracting, one of the things they express a great deal is the anxiety that they have as subcontractors. When you talk to the prime, the prime blames it on the Federal Government, the paperwork, the requirements, and everything else that you can think of. So, in your opinion, what is the number of challenges that small businesses are facing when they are participating as a subcontractor with opportunities when they have all this anxiety? And just for the panel, and I don't know whether you all see a lot of this, but when we are out in the field, this is what they speak to all the time. I had a small business roundtable in Jacksonville about 3 or 4 weeks ago, and this was brought up a great deal. And so I don't know how you get to the bottom line of it, and maybe some of you all can shed some light on it.

Mr. MARKS. Sir, I would tell you that I have not heard it to the level that you have heard. We get inquiries to our office. I take capability briefs. I have open line to talk to contractors about—small business contractors about any issue that they may have so that we can help solve that. They don't have any data on what those anxieties are, but typically, in the pay arena, we get those complaints, and if we get those, we run those to ground because we know that if the prime—when we are paying the prime, they are supposed to do due diligence and pay their subcontractors. And those are some of the issues that sometimes come up, and we will hold the primes accountable.

Mr. LAWSON. Okay. And if I may, do you think some of the anxiety expressed because the relationship with the prime, those anxieties are there because they lose the contract or the prime contract will go with someone else? And the reason why I ask that question

is it appears that they don't have the bonding capacity to compete as a prime, and so they rely very heavily on the prime in order to do these contracts, but the anxiety level comes from the fact that they might even feel they do a better job than the prime, you know. And so what I am trying to say, from your experience, do you ever come in contact with any of that where the subs are much more successful than the primes, but they have to rely on the primes because the way this is set up in defense spending?

Mr. MARKS. I will tell you that that is probably a true statement. I mean, we do—in the service arena—service contracts arena, when you look at contracts that are awarded, a number of teams that are put together really with like prime and small businesses to do the work. A lot of times a small business, as you stated, don't have—they don't have the capacity to compete on their own in order to win the contracts. So I will tell you a number of them that I talked to, they would prefer to subcontract versus being a prime contractor because of our red tape, as they say, you know, a lot of stuff to do business with the Department of Defense, with the Federal Government, period, so.

Mr. LAWSON. And before my time runs out, Mr. Roark, what can you all do to try to help alleviate those kinds of concerns?

Mr. ROARK. I think that, you know, one of the benefits that has come out of our series of audits has been taking a look across the services to determine whether prime contractors are being held accountable for living up to their subcontractor goals that they said that they would do at the time of award. And I think that it is important to review whether contracting officers and contracting officials are actually following up on that throughout the contract to see if they are actually meeting the goals that they said that they would. So I think that, looking across the services, to ensure that the primes are being held accountable and that contracting officials are reviewing their progress is important.

Mr. LAWSON. Okay. Thank you.

Mr. Chairman, could I have one more shot at it?

Chairman KNIGHT. Yes.

Mr. LAWSON. How often do you all evaluate the prime contractors? Is it done on a yearly basis? A quarterly basis? How often is it done? Can anybody speak to that? And if I am not clear, what I mean is, how are they performing in conjunction with their subcontractors?

Mr. MARKS. So I think, as the audit showed, we are not doing what we should be doing. When we establish those subcontracting goals with a prime contractor and they put that on the table, and what we are not doing well today is really compliance because we have already got the verbiage in our regulations.

You have talked about liquidated damages. You are supposed to develop that before the contract award. The two of us know what that is, and as this audit shows, that is not being done. So, until we really enforce, and I think we have the tools, it is holding folks accountable, and you have got to do the enforcement and hold them accountable.

Mr. LAWSON. Okay.

Mr. Chairman, I yield back.

Chairman KNIGHT. Thank you. And just a couple follow-ups.

Ms. Scroggs, have you noticed any difference in military versus civilian agency adherence to Small Business Act subcontracting requirements?

Ms. SCROGGS. No. We find that the IG's findings related to the Army are consistent across all agencies, regardless of military or civilian.

Chairman KNIGHT. So, you know, obviously, that is a problem for us. We are very much about subcontracting small business being able to work in the system, to be able to do some of those things in the system that we just don't see primes stepping up and doing or primes not wanting to do. So I know I have repeated myself a couple times on this, but it is pretty important.

So, Mr. Marks and Mr. Roark, we are going to ask one thing of you. In the next 4 to 6 months, we want a follow-up to this Committee on how things are going from the adherence of the recommendations and, Mr. Marks, on what you are doing to make these deficiencies not there anymore, how you are correcting them, what is going on, what is the new policies, the new procedures. And I am a very kind of put a point on it. That is November 17, is 6 months. If you come back earlier, you get credit in the Committee. There you go. So we would like to have that, and we would like to have a good relationship with the Committee that we are working on the things that we think are very important, we think that the community thinks are very important. And that is how it happens with a good working relationship. So, if we can commit to that, then we are good to go.

Are there any further questions from the Committee? Okay. I think we have done our work, and this Committee—let's see. I always end before I am supposed to say what I am saying. Okay. I ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered. And this hearing is now adjourned.
[Whereupon, at 10:51 a.m., the Subcommittee was adjourned.]

APPENDIX



INSPECTOR GENERAL
U.S. Department of Defense

Statement of Michael J. Roark

**Assistant Inspector General for
Readiness and Global Operations
Department of Defense Office of Inspector General
for a hearing on**

**"Hotline Truths II:
Audit Reveals Inconsistencies in Defense
Subcontracting"**

**Before the
Subcommittee on Contracting and Workforce
Committee on Small Business
U.S. House of Representatives
May 17, 2018**

Good morning Chairman Knight, Ranking Member Murphy, and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss our audit of Army small business contracting.

March 2018 Audit Report on Army Small Business Contracting

During the audit on Army small business contracting, we visited two Army Contracting Command (ACC) contracting centers. ACC-Redstone supports the development, acquisition, and fielding of aviation and missile systems. ACC-Warren supports the development, acquisition, and fielding of soldier and ground systems.

Our audit objective was to determine whether ACC-Redstone and ACC-Warren contracting officials took appropriate actions to ensure that prime contractors met their small business subcontracting goals. For this audit, we reviewed a sample of 50 contracts (valued at approximately \$1.6 billion) of 216 contracts (valued at approximately \$7.6 billion) that ACC-Redstone and ACC-Warren awarded to other than small businesses with estimated completion dates in Fiscal Years 2015 and 2016.

Overall, ACC-Redstone and ACC-Warren generally provided small businesses with the opportunity to compete for prime contracts; however, contracting officials did not ensure that prime contractors provided small businesses adequate subcontracting opportunities. We made a total of 8 recommendations to the Army to address the deficiencies identified during the audit.

Small Businesses Subcontracting Opportunities for Army Contracts

ACC-Redstone and ACC-Warren contracting officials ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 27 (valued at \$693.5

million) of 50 contracts reviewed (valued at \$1.6 billion) with estimated completion dates in FYs 2015 or 2016.

However, ACC-Redstone and ACC-Warren contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for 23 (valued at \$914.8 million) of 50 contracts (valued at \$1.6 billion). Specifically, ACC-Redstone and ACC-Warren contracting officials:

- awarded 6 contracts, valued at \$330.7 million, without a subcontracting plan or a determination that no subcontracting possibilities existed;
- did not monitor prime contractors' compliance with individual subcontracting plans for 11 contracts, valued at \$480.3 million;
- did not determine why prime contractors with individual subcontracting plans did not meet their small business subcontracting goals for 5 contracts, valued at \$81.6 million; and
- accepted an Individual Subcontracting Report for one contract, valued at \$22.1 million, which may have misreported subcontracting awards.

Each of these items are required by the Federal Acquisition Regulation (FAR) Subpart 19.7.

These problems occurred because of three primary causes. First, ACC-Redstone and ACC-Warren contracting officials stated that some contracting personnel did not understand subcontracting plan requirements. For example, ACC-Redstone did not provide adequate training or procedures on administering subcontracting plans. Second, ACC-Redstone and ACC-Warren contracting officials noted that administering contracting plans was not a high priority. Third, subcontracting plan administration guidance at both locations did not address the transfer of subcontracting plan administration duties required by the FAR when a contract is assigned to

a new contracting officer. For example, the Army FAR Supplement (AFARS) did not address the transfer of subcontracting plan administration duties.¹

Status of Army Recommendations

The report made 8 recommendations to ACC-Redstone, ACC-Warren, and the Deputy Assistant Secretary of the Army for Procurement to improve small business contracting procedures. Specifically, we recommended that ACC-Redstone ensure individual subcontracting reports are entered into the Electronic Subcontracting Reporting System for seven contracts, and determine whether liquidated damages can be imposed against the contractors. We also recommended that ACC-Redstone determine whether the contractors for two contracts made a good-faith effort to meet their subcontracting goals, and if not, whether liquidated damages may be imposed against the contractor. ACC-Redstone agreed with each recommendation and is in the process of taking corrective actions.

In addition, the report recommended that ACC-Warren ensure that individual subcontracting reports are entered into the Electronic Subcontracting Reporting System for three contracts, and determine whether liquidated damages may be imposed against the contractors. We recommended that ACC-Warren determine whether the contractors for three contracts made a good-faith effort to meet the subcontracting goals in their plans, and if not, whether liquidated damages can be imposed against the contractors. We also recommended that ACC-Warren require one contractor to submit a corrected individual subcontracting report in the Electronic Subcontracting Reporting System, and determine whether liquidated damages may be imposed against the contractor if a good-faith effort was not made to meet subcontracting goals.

¹ AFARS Subpart 5119.7.

ACC-Warren agreed with each recommendation and is in the process of completing corrective actions.

Finally, the report recommended that the Deputy Assistant Secretary of the Army for Procurement train contracting officers on FAR 19.7 responsibilities for approving and administering subcontracting plans. We also recommended that the Army revise the AFARS, and alert contracting officials, regarding procedures for transferring subcontracting plan administration duties when a contract is transferred from one contracting officer to another.²

ACC-Redstone and ACC-Warren May Have Missed Opportunities to Recoup Liquidated Damages

As a result, small businesses may not have received subcontract work that prime contractors for Army contracts were required by the FAR to make a good-faith effort to provide. Contracting officials did not obtain subcontracting reports and did not follow-up on reports that showed that contractors were not meeting their small business goals. Therefore, ACC-Redstone and ACC-Warren may have missed opportunities to recoup liquidated damages of up to \$82.3 million. We made recommendations to ACC-Redstone, ACC-Warren, and the Deputy Assistant of the Army for Procurement to improve procedures for administering subcontracting plans submitted by prime contractors.

Results of Series of Five Audits on DoD Small Business Subcontracting

The subject of today's hearing is our March 2018 audit report on Army small business contracting, however, this is only our most recent report on this subject. We issued a total of five

² AFARS Subpart 5119.7.

reports on Marine Corps, Air Force, and Army small business subcontracting from 2015 to 2018. We initiated the audits on DoD small business contracting based on a hotline complaint alleging that two Marine Corps contracting commands did not ensure small businesses were awarded a sufficient number of contracts and did not hold large prime contractors accountable for meeting small business subcontracting goals. Specifically, we conducted two audits of Marine Corps contracting commands (Marine Corps Installations National Capital Region-Regional Contracting Office and Marine Corps Systems Command); a follow-up audit to determine whether Marine Corps Installations National Capital Region-Regional Contracting Office implemented our recommendations; an audit on two Air Force contracting commands, and an audit on two Army contracting commands.

In these five reports, we identified that contracting officials had consistent challenges monitoring prime contractors' compliance with individual subcontracting plans, and determining why prime contractors with individual subcontract plans did not meet their small business subcontracting goals.

These challenges existed because training and guidance provided to contracting officials were not adequate, and administering subcontracting plans was often not a high priority. Shortfalls also commonly existed with high turnover rates among contracting personnel negatively impacting transferring duties to administer subcontracting plans from one contracting official to another. Contracting officers also did not consistently enter data correctly into the Federal Procurement Data System-Next Generation that allowed contracting officials to monitor compliance with small business subcontracting plans or enable contractors to submit individual subcontracting reports in the Electronic Subcontracting Reporting System. This concludes my statement and I would be happy to answer any questions you have.

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RECORD VERSION

STATEMENT BY

MR. TOMMY L. MARKS
DIRECTOR FOR ARMY SMALL BUSINESS

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
COMMITTEE ON SMALL BUSINESS

ON
AUDIT REVEALS INCONSISTENCIES IN DEFENSE SUBCONTRACTING

SECOND SESSION, 115TH CONGRESS
MAY 17, 2018

NOT FOR PUBLICATION UNTIL RELEASED BY THE
COMMITTEE ON SMALL BUSINESS

Chairman Knight, Ranking Member Murphy, distinguish Members of the House Small Business Committee on Contacting and Workforce. The Army is a staunch supporter of Small Business. Small Business is a "Readiness Enabler" in support of the Army's mission and the industrial base. Small Business goals that support the Secretary of the Army's priorities of Readiness, Modernization and Reform are; to ensure mission requirements in support of readiness and the industrial base through small business utilization; to increase innovation through Small Business Innovation Research and Small Technology Transfer Research Programs (SBIR/STTR) in support of the Army's modernization priorities and to advocate for changes in policy to reduce barriers to entry for small businesses.

Across the last three fiscal years, Headquarters, Department of the Army, Office of Small Business Programs (HQDA OSBP) has led the Department of Defense (DoD) and federal government agencies in small business contracting —averaging \$18.7B per year. It is an achievement firmly based on our ability to connect with the small business community at its most basic level: listening and responding. Communication is essential to OSBP's goals as directed actions by 15 U.S.C. 644 (k). Our mission is to be the premier advocacy organization committed to maximizing small business utilization in support mission requirements.

The Army's priorities of readiness, modernization, and reform begin with supporting small businesses in each socioeconomic category. HQDA OSBP continues to focus on modernization and readiness, which is essential to efficiency, and reform. In coordination with the Deputy Assistant Secretary for Research and Technology (DASA R&T) and Army Commands (ACOM), OSBP is committed to educating small businesses and institutions through SBIR/STTR programs. In doing so, the SBIR/STTR program yielded over \$5.6M in awards for fiscal year 2017.

As a policy office, OSBP is vital to the procurement process. The ability to recognize opportunities for small businesses to do business with the Army begins with engagement. OSBP has instituted a multi-channel communication plan via traditional

and social media focused on readiness, modernization, efficiency, Soldiers and their families. Our story is about more than what we buy; the story begins by connecting with the small business community at the highest level. It is a story of the Army's mission in tandem with the small business community to support the Warfighter. It is providing clarity of the procurement process and supporting the execution thereof. It is safety, innovation and the security of a Nation in the face of existential threats.

Commitment to Small Business Utilization

A review of the statistics revealed that the Department of Defense (DoD) awarded \$59.4B in prime contract dollars to small business firms, during the period October 1, 2016 through September 30, 2017. In FY 2017, DoD's total Small Business eligible dollars was \$264B. The three major services of the DoD (Air Force, Army, and Navy) accounted for \$208B which is approximately 78% of DoD's total Small Business eligible dollars.

The Army awarded more dollars (\$18.7B) to Small Businesses. The prime small business goal was 26%, which the Army exceeded goal by achieving 28.74%. As it relates to each socioeconomic category, the Army accomplished the following: The small disadvantaged business goal was 11% with a reported achievement of 13.1%; service-disabled veteran-owned business goal was 3.5% with an achievement of 4.3%; the Historically Underutilized Business-Zone goal was 3% —achieving 2.3%; and women-owned small business goal was 4.8% with an achievement of 5.6%. On the whole, the Army met four of the five statutory goals for fiscal year 2017.

Senior Leader Involvement in Maximizing Small Business Participation

The Army's Senior Leadership is wholly committed to maximizing Small Business participation. During FY17, the Secretary of the Army championed the Army's Small Business program by providing guidance and direction to the field: to include small business participation in mission support. The inclusion of small business in the Army's

acquisition plans for operational execution of mission requirements and contract support is vital. The Army Acquisition Executive (AAE) designated the deputy of each program executive office or program manager as the small business point of contact to support command small business specialist. Additionally, the AAE chairs the acquisition systems review board, which includes the Director of OSBP, Deputy Assistant Secretary of the Army (Procurement), the Heads of Contracting Activities, Army Principal Staff, and Senior Operational Commanders to ensure small business equities are appropriately considered.

The Army's Senior Commanders have demonstrated their commitment to the Small Business Program by instituting policies focused on achieved and newly assigned program goals. For example, the Commanding General of the Army Material Command requires his subordinate commanders to develop five objectives and performance measures for small businesses. These metrics support the commands' priorities of Strategic Readiness, Future Force, Soldiers, and People.

In FY17, the Commanding General of the US Army Corp of Engineers (USACE), encouraged his commanders to continue to maximize small business opportunities and to educate their colleagues on the impact and value of small firms for USACE and the nation.

As a result of the Army's senior leadership's commitment and involvement, over the last five years, the Army has sustained its small business performance excellence and established effective market research consistently. Due to this focus and commitment, the Army has continued to meet or exceed the DoD assigned goals for the fifth consecutive year—and finish as DoD's number one Small Business performer.

Small Business Outreach

In October 2017, OSPB held its fifth annual Small Business Seminar. The seminar was headlined by Army Senior Leadership, which included the Under Secretary of the Army and Army Chief Information Officer speaking to the importance of Small Business to the

Army's mission and the industrial base and shared the Army's vision on information management, cyber and the critical need for innovative companies to assist in filling critical mission gaps. Furthermore, the Small Business Seminar and Matchmaking event focused on the following:

- Ensuring the small business community is up to date on new guidelines, processes, and regulations
- Offering the small business community the opportunity to network with federal agency and DoD Primes and other government organizations

Similarly, The United States Army Corps of Engineers (USACE) partnered with the Colorado Procurement Technical Assistance Center (PTAC) for a Virtual Industry Day. This event offered an alternative to the traditional brick and mortar format. The Virtual Industry Day provided an overview of three specific acquisitions for base operations services—including ground maintenance, custodial services and waste removal at multiple sites throughout the United States Army Reserve 88th Regional Support Command. These services will cover 19 states.

The event—including all presentations—was broadcast live to 32 participating PTACs. The Virtual Industry Day had 225 attendees: 97% were small businesses, and 3% were large businesses.

Over 2500 attendees from a dozen federal agencies—including large and small businesses—convened at the Army Corps of Engineers at The Society of American Military Engineers (SAME) Small Business Conference. The SAME Small Business Conference gathers industry leaders from many professions like engineering, construction, architecture—along with federal agencies, and the Department of Defense to showcase best practices, share effective strategies and network around small business opportunities. These events demonstrated the Army's commitment to educating and informing the Small Business community about the numerous opportunities the Army makes available for them each year.

Mr. Chairman and distinguished Members of this Subcommittee, I sincerely appreciate your steadfast and strong support for small business which is a "Readiness Enabler" in support of the outstanding men and women in uniform, our Army Civilians, and their Families.

Testimony of

**Tiffany Scroggs, President
Association of Procurement Technical
Assistance Centers (APTAC)**

**To the U.S. House of Representatives Committee on Small Business
Subcommittee on Contracting and the Workforce
*"Hotline Truths II: Audit Reveals Inconsistencies in Defense Subcontracting"***

May 17, 2018

Chairman Knight, Ranking Member Murphy and distinguished Members of the Subcommittee, thank you for this opportunity to testify on the results of the recent report from the U.S. Department of Defense's Office of the Inspector General review of small business subcontracting practices at Army Contracting Command (ACC) Redstone and ACC Warren.

My name is Tiffany Scroggs. I am Program Manager of the Washington State Procurement Technical Assistance Center (PTAC) and President of the Association of Procurement Technical Assistance Centers – APTAC – which is the professional organization of the 95 PTACs nationwide.

As you may know, the Procurement Technical Assistance Program – and hence the PTACs – was created by Congress in 1985 to help small businesses compete for federal, state and local government contracts. PTACs are funded and administered through the Defense Logistics Agency and are supported by state or local governments, educational institutions, and non-profits which provide a funding match. Our purpose is to assist local small businesses at little or no cost by preparing them to become capable government contractors, on the belief that a broad and strong base of small business suppliers provides the highest quality and best value to government agencies while creating a strong and vibrant economic base for our communities. Last year alone, PTACs helped over 48,000 small businesses win and fulfill government contracts and subcontracts valued at nearly \$20 billion.

Mr. Chairman, Ranking Member Murphy, I want to express my thanks and appreciation to each of you for your support of the PTAP. In addition to our work helping small business secure prime contracts, PTACs are deeply engaged with subcontracting issues. Not only do we help small businesses identify subcontracting opportunities, and generally become responsible, "procurement ready" subcontractors, we are often contacted by large primes for assistance with developing subcontracting plans and locating small business vendors with the specific capabilities needed to meet their requirements. Every day, we witness our clients confronting the challenges of the subcontracting environment. My testimony today reflects input from some of our most experienced procurement professionals across the country. I am privileged to share their insights in the hope they will support your efforts to improve opportunities for our nation's small business contractors.

The IG's findings are consistent with PTACs' experience across all agencies and buying activities. We often find that contracting officers and prime contractors alike fall into one of three categories. First, the extremely diligent, second, the well-intentioned (but who do not devote sufficient resources to small

business subcontracting), and third, those who simply don't pay attention to what happens at the subcontracting level.

In the broader context of government acquisitions, expanding access to small business subcontracting opportunities is often not treated as a priority at any level – not by buying offices, not by agency leadership, and not by policy; as a consequence, it is not a priority for prime contractors either. But it should be.

It should be because the value that small businesses bring – the innovation, the agility, and the additional competition that results in better products and services at lower costs – are just as applicable to subcontracting as prime contracts. When we fail to establish and support practices that allow small businesses maximum opportunity for subcontracting, our nation's supply chain suffers. The products and services delivered solely under large, prime contracts (which represent an increasing share of government purchases) simply do not reflect the potential benefits that cutting-edge small businesses have to offer. Bottom line, our warfighters – actually everyone involved in or touched by government activities – are denied the rich contributions that small businesses can make.

Denied access to subcontracts limits the number and capability of small business contractors that can qualify to enter the acquisition pipeline. Subcontracting is the most realistic entry point for many small businesses seeking to supply the Government. Subcontracts usually involve responsibility for a smaller sub-elements of work and, thus, are easier to fulfill and represent less risk. Subcontracting is also a way for a small business to establish a "Government track record" of performance; having a positive past performance record is an important consideration on the part of government decision-makers when awarding contracts. Failing to maximize access to subcontracting opportunities results in fewer capable suppliers in the government marketplace.

I want to emphasize this: Maximizing access to subcontracting opportunities is not the same as maximizing subcontracting dollars awarded to small businesses, although that would be one result. Simply increasing awards to the same discreet set of small businesses – which often happens now – will not deliver the benefits I describe. We need to prioritize creating an open, vibrant environment that not only maximizes subcontracting opportunities but allows the greatest possible number of small businesses to compete for them.

Congress and units of Government can affirm that robust small business participation in the supply chain is a priority by focusing on four elements: Education, Oversight, Transparency and Incentives. Each of these are explored in the following comments. I conclude with additional information as to how the PTAC can assist in the effort.

Education

Sufficient and ongoing training for agency contracting staff and primes: Ensuring that not only agency acquisition staff, but prime contractor contract managers and small business liaison officers (SBLs) understand 1) the regulations with regard to subcontracting goals, plans, and reporting, 2) the resources available to support meeting these requirements, and 3) the underlying importance of robust subcontracting to the agency mission would go a long way toward remedying situations such as those identified in DODIG-2018-086. As a result of heavy turnover within contracting offices, Contracting Officers are sometimes less familiar with the FAR or DFARS than businesses (even small businesses) that interact with them. Suggestions include:

- Developing high quality training modules for Contracting Officers that cover not only the specifics of FAR 19.7, but how to evaluate subcontracting plans (including claims that there are no subcontracting opportunities—or no small subs that can do the work—for a particular requirement) and how to monitor compliance.
- Developing high quality training modules for prime contractors on the requirements of FAR 19.7, on proper reporting and the use of eSRS (the electronic subcontract reporting system), on the small business programs generally – including the benefits that working with a wide diversity of small businesses can bring to their product – and on strategies/methods for identifying capable small business subcontractors (market research).
- Institutionalizing referral of prime contractors to their local PTAC for assistance with subcontracting plan development and compliance, locating capable subcontractors, or general small business outreach.

Oversight & Internal Controls

Sufficient resources for subcontracting plan oversight and compliance activities: We believe a primary factor in agency subcontracting failures generally is an unrealistic overreliance on contracting officers to faithfully enforce FAR Subpart 19.7 with insufficient support and resources to do so. Suggested remedies include:

- Increasing the number of SBA Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) government-wide to expand their ability to oversee and advocate for small business participation in large procurements.
- Ensuring that agency Small Business Offices are adequately staffed to engage with, educate, and support their buying activities, including empowering them to review subcontracting plans and oversee monitoring of subcontracting compliance.
- Requiring government Contracting Officer Representatives (CORs) to conduct subcontracting plan compliance reviews, consistent with their performance of on-site labor law compliance interviews.
- Developing technology tools to support monitoring of subcontracting plan compliance. The current necessity for busy Contracting Officers to proactively and manually monitor subcontracting compliance creates an administrative burden that may be a major factor in their failure to do so. Strategic modification and integration of eSRS, FSRS, and other contracting data systems could provide to contracting officers and CMRs automated notices of failures to comply with eSRS reporting requirements, allowing officials to take immediate action with the contractor to spur compliance.
- Create a Subcontractor Ombudsman resource empowered to facilitate remedy for subcontractors subject to mistreatment by their primes and/or to bring offending practices to the attention of the primary Contracting Officer for consideration with regard to subcontracting plan compliance and/or past performance.

Internal Controls: In the final analysis, the extent to which subcontracting opportunities are maximized in federal procurements depends upon Contracting Chain of Command commitment to ensuring that their activities carry out FAR Subpart 19.7, including actively investigating claims that subcontracting opportunities are not available is certain requirements. Should the Subcommittee wish to strengthen

processes to control for efforts to circumvent FAR 19.7, one of our members put forward the following suggestions:

- Just like Contracting Officers are required to post a Justification and Approval (J&A) whenever they intend to award a sole source contract based upon one of the seven FAR 6.3 exceptions to full and open completion, Contracting Officers should be required to post their market research results when they have made a determination that there are no subcontracting plan opportunities under an anticipated award to a large defense contractor that meets the current threshold requirement for a subcontracting plan.
- Include a new SAM Exception that depicts a large business that has not met its previous small business subcontracting plan requirements over the last three years.
 - Require any contracting activity's Contracting Officer to make a determinations and findings (D&F) that must be approved at least one level above the Contracting Officer if that activity wants to issue a prime contract to any contractor that has a "Small Business Subcontract Plan Exception" listed in SAM.
 - Before a contracting activity can award a contract to a large defense contractor that has a SAM "Small Business Subcontract Plan Exception", the Contracting Officer shall require the large business to submit and negotiate an Individual Subcontract Plan and the contractor shall provide a certification that it will meet those small business subcontract plan requirements versus just making a good faith effort.

Transparency

Maximize transparency with regard to subcontracting opportunities. One of the biggest barriers to small business access to subcontracts is lack of information about opportunities. Unlike agency solicitations, which are posted on FBO.gov and perhaps even included in agency forecasts, there is no centralized listing of subcontracting opportunities or mechanism for identifying and connecting with potential buyers. Many large primes have established online "supplier portals" through which aspiring subcontractors can register, but these often serve as gatekeepers, preventing small businesses from connecting with users/decision makers to explore their potential for becoming a subcontractor/supplier. It is also common for primes to work with the same small businesses over and over, rather than competing new opportunities or re-competing continuing requirements. Suggestions include:

- Establishing a public platform (similar to FBO.gov; perhaps funded via some kind of Industrial Funding Fee) to which subcontracting opportunities can be posted. While SBA's SUBnet could theoretically be used for this purpose, at present it is in poor technological condition and is not up to date, with the latest list posted dated 2016.
- Encourage that all subcontracting plans be publicly posted (on a platform such as above), to include information on subcontract opportunities available with detailed information about where the solicitation can be accessed and the due date for response.
- Encourage/require large prime contractors to post a current and detailed acquisition forecast of upcoming subcontract opportunities, including when they are going to re-compete existing subcontract opportunities.
- Require SBLOs, Subcontract Plan Managers, and/or Small Business Mentor-Protégé Program Managers to register their contact information and areas of responsibility in a centralized,

searchable online database. One suggestion is to create new POC headings in SAM for these purposes. DoD OSBP maintains and publishes a list of SBLO personnel, but is not resourced sufficiently to keep the list current or complete. Critical (and required) information is not included in the list, particularly information that delineates the “area of responsibility” of the listed individuals. Frequently, the list is populated with individuals who are retired, deceased or who have never been engaged with small business subcontracting.

Maximize transparency with regard to compliance. Transparency is not only a powerful motivator for compliance, it expands the ability of other interested parties to support enforcement. Suggestions include:

- Make subcontracting plan information publicly available upon prime contract award to allow small business subcontractors themselves, who have arguably the most powerful interest in effective subcontracting programs, to participate in policing the compliance of primes.
- Make subcontractors privy to the content of their prime’s subcontracting reports to allow them to validate that the achievements are true and correct.
- Require a new Federal System for Award Management (SAM) certification that requires a large business to certify that it has complied with all small business subcontract plan requirements.
- Require each federal agency to publish a semi-annual report of all contractors that failed to meet their small business subcontracting plan requirements and indicate whether the agency imposed liquidated damages, to include agency rationale if no liquidated damages were imposed. Falsified reports of small business participation should be pursued under the False Claims Act.

Incentives

Creating incentives to encourage greater small business subcontracting: Creating an environment that rewards robust subcontracting may be more effective at expanding subcontracting opportunities than one that focuses on penalties. Some suggestions from our members include:

- Provide formal, professional recognition for Contracting Officers – and prime contractors – that meet or exceed small business contracting and subcontracting goals.
- Tie a prime contractor’s subcontracting plan compliance to their past performance record.
- Provide monetary incentives for awarding subcontracts to qualified targeted small business concerns (i.e., establish Incentive Programs similar to the current DoD Indian Incentive Program).
- Provide a price preference to large prime contractors that meet or exceed their negotiated small business plan goals. To reduce the administrative burden associated with such a program, the SBA could be required to issue an annual goaling report on all large prime contractors that were required to file subcontracting plans during the report year. Those large prime contractors that meet or exceeded their subcontract plan goals for the year would be afforded a ten percent price preference over large business offerors that did not meet their subcontract plan goals during the report period. The price preference could go on indefinitely if the prime continued to meet or exceed their annual subcontract plan goals in subsequent years. This approach would not require additional direct budget outlays, however SBA would most likely need additional resources to implement the program. The subcontract plan goaling reports should be posted publicly on SBA’s website.

PTACs' Role

PTACs play an important role in supporting subcontracting. Not only do we train small businesses with regard to regulations, certifications, marketing, bidding, contract administration and issues specific to subcontracting (like flow down provisions, back-bonding, and the potential for payment delays), we regularly work with prime contractors who come to us for help with small business outreach and subcontracting plan development. Some of our activities in this regard include:

- broadcasting "Opportunity Alerts" regarding subcontract opportunities or RFIs,
- supporting Industry Days and other prime contractor outreach activities,
- sponsoring Matchmaker events, allowing prime contractors and agency contracting officers the opportunity to connect with many small business owners, and
- working one-on-one with SBLOs and prime contractor personnel with regard to developing subcontracting plans.

Despite PTACs' active involvement with small businesses, far too few prime contractors work with PTACs, and PTACs are hampered by the same lack of transparency and access to information that limit our small business clients. We could deliver much greater benefit across the board if more prime contractors would contact and utilize us, and there was greater transparency with regard to current and upcoming subcontracting opportunities.

The value of the PTACs as an essential bridge between small business contractors and DoD was highlighted earlier this year in the Report of the Advisory Panel on Streamlining and Codifying Acquisitions Regulations (Section 809 panel) created in the FY2016, FY2017, and FY2018 National Defense Authorization Acts to find ways to streamline and improve the defense acquisition process.

The 809 Panel identified the PTAP as the only DoD-wide program or system designed to conduct outreach to bring small businesses into the defense market and noted that PTACs can help address the need for greater and more effective communication with small businesses seeking entry into the defense market, recommending a number of provisions that would expand funding available for individual PTACs and the PTAP overall. Just last week, the House Armed Services Committee Chairman's Mark echoed this sentiment in the FY2019 National Defense Authorization Act, which includes an authorization of \$50 million for the PTAP (up from \$38.5 million in FY18) and directs the Secretary of Defense to conduct enhanced outreach under the Procurement Technical Assistance Program to enable and promote activities to provide coordinated outreach to small business concerns through the PTAP

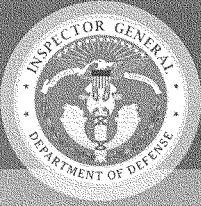
While these measures focus largely on DoD contracting – the same principles hold true for PTAC support for small business contractors across all agencies.

Thank you again for the opportunity to testify and for your support of the PTAP. APTAC members are privileged to be able to support our Government – and our small businesses – by helping to bring small business capabilities to the service of our country. We are always seeking ways to expand our reach and support small businesses more effectively, and we are gratified by this Committee's commitment to maximizing small business participation in the government marketplace. I hope that our input today has been helpful, and we stand ready to support the Committee's work in any way that we can.

Thank you.

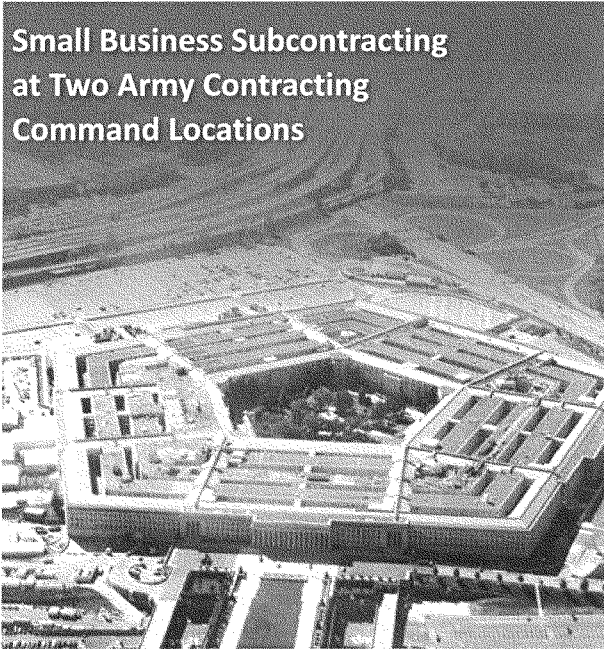
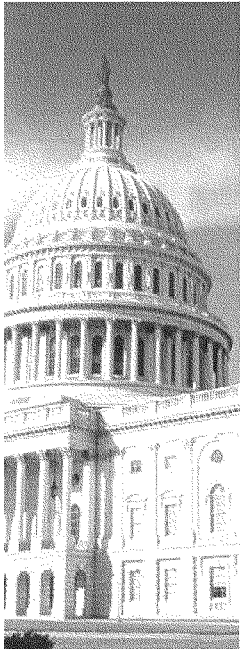
Report No. OODIG-2018-382

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INSPECTOR GENERAL
U.S. Department of Defense

MARCH 19, 2018



**Small Business Subcontracting
at Two Army Contracting
Command Locations**

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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mandatory disclosure under the Freedom of Information Act.

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INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

Mission

Our mission is to provide independent, relevant, and timely oversight of the Department of Defense that supports the warfighter; promotes accountability, integrity, and efficiency; advises the Secretary of Defense and Congress; and informs the public.

Vision

Our vision is to be a model oversight organization in the Federal Government by leading change, speaking truth, and promoting excellence—a diverse organization, working together as one professional team, recognized as leaders in our field.



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Results in Brief

Small Business Subcontracting at Two Army Contracting Command Locations

March 19, 2018

Objective

We determined whether Army Contracting Command (ACC)-Redstone and ACC-Warren contracting officials took appropriate actions to ensure prime contractors met their small business subcontracting goals. We reviewed a nonstatistical sample of 50 contracts with estimated completion dates in FYs 2015 or 2016 and 30 contracts awarded in FY 2016. This audit is the fourth and last in a series of our audits on DoD small business contracting.

Finding

ACC-Redstone and ACC-Warren contracting officials ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 27 of 50 contracts we reviewed, valued at \$693.5 million and \$1.6 billion, respectively.

However, ACC-Redstone and ACC-Warren contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for the remaining 23 contracts, valued at \$914.8 million. Specifically, ACC-Redstone and ACC-Warren contracting officials:

- awarded six contracts, valued at \$330.7 million, without a subcontracting plan or a contracting officer's determination that no subcontracting possibilities existed;
- did not monitor prime contractors' compliance with subcontracting plans for 11 contracts, valued at \$480.3 million;

Finding (cont'd)

- did not determine why prime contractors with individual subcontracting plans did not meet their small business subcontracting goals for five contracts, valued at \$81.6 million; and
- accepted an individual subcontracting report for one contract, valued at \$22.1 million, that may have misreported subcontract awards.

ACC-Redstone and ACC-Warren contracting officials stated that this occurred because contracting officials did not understand subcontracting plan requirements and because administering subcontracting plans was not a high priority. In addition, ACC-Redstone and ACC-Warren had high turnover among their contracting staffs, and subcontracting plan administration guidance at both locations did not address the transfer of duties from one contracting officer to another. Also, ACC-Redstone contracting management did not provide adequate training or standard operating procedures on requirements for administering subcontracting plans.

As a result, small businesses may have been denied subcontracting opportunities that prime contractors were required to make a good-faith effort to provide. ACC-Redstone and ACC-Warren contracting officials did not obtain subcontracting reports, did not follow up on reports that showed contractors were not meeting their small business goals, and did not determine whether prime contractors made good-faith efforts to comply with negotiated subcontracting goals. Therefore, ACC-Redstone and ACC-Warren may have missed opportunities to recoup liquidated damages (the amount paid by a contractor that fails to make a good-faith effort to comply with its subcontracting plan) of up to \$82.3 million.

Recommendations

We recommend that the ACC-Redstone and ACC-Warren Executive Directors determine whether the contractor made a good-faith effort to meet its subcontracting goals for 16 contracts and assess liquidated damages, as appropriate.

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We also recommend that the Deputy Assistant Secretary of the Army for Procurement, in coordination with the Director, Army Office of Small Business Programs:

- train contracting officials on Federal Acquisition Regulation Subpart 19.7 responsibilities for administering subcontracting plans,
- revise Army Federal Acquisition Regulation Supplement Subpart 5119.7 to incorporate guidance on administering subcontracting plans and procedures for transferring subcontracting plan administration duties when a contract is transferred from one contracting officer to another, and
- issue a policy alert to notify contracting officials of the revision to Army Federal Acquisition Regulation Supplement Subpart 5119.7 incorporating guidance on administering subcontracting plans and procedures for transferring subcontracting plan administration duties when a contract is transferred from one contracting officer to another.

Management Actions Taken

The Executive Directors agreed with our recommendations and took corrective action for some of the contracts. ACC-Redstone and ACC-Warren contracting officials determined that the contractors met, exceeded, were on pace to meet, or made a good-faith effort to meet their small business subcontracting goals for 9 of 16 contracts.

Management Comments and Our Response

The ACC Deputy to the Commanding General, responding for the ACC-Redstone and ACC-Warren Executive Directors, agreed with the recommendations. Specifically, ACC-Redstone and ACC-Warren will determine whether the contractor made a good-faith effort to meet its subcontracting goals for the remaining seven contracts. Therefore, the recommendations are resolved but remain open. We will close the recommendations once we verify that ACC-Redstone and ACC-Warren completed their good-faith effort determinations and assessed liquidated damages, as appropriate.

The Army Office of Small Business Programs Director, responding for the Deputy Assistant Secretary of the Army for Procurement, agreed with the recommendations. The Army Office of Small Business Programs implemented training and is developing a schedule to train contracting officials and small business professionals. In addition, the Army Office of Small Business Programs, in coordination with the Deputy Assistant Secretary of the Army (Procurement), is drafting the revised language for incorporation into the Army Federal Acquisition Regulation Supplement and the policy alert to notify all contracting officials and small business professionals of the revision to the Army Federal Acquisition Regulation Supplement Subpart. Therefore, the recommendations are resolved but remain open. We will close the recommendations once we verify that the training has been provided and the policy change and alert have been issued.

Please see the Recommendations Table on the next page for the status of the recommendations.

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~~FOR OFFICIAL USE ONLY~~**Recommendations Table**

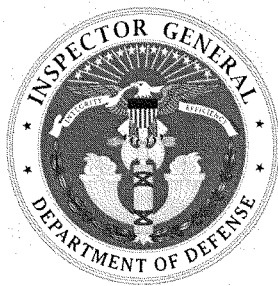
Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Director, Army Office of Small Business Programs	None	3.a, 3.b., 3.c	None
Executive Director, Army Contracting Command–Redstone	None	1.a, 1.b	None
Executive Director, Army Contracting Command–Warren	None	2.c	2.a, 2.b

Note: The following categories are used to describe agency management's comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

March 19, 2018

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL
MANAGEMENT AND COMPTROLLER)

SUBJECT: Small Business Subcontracting at Two Army Contracting Command Locations
(Report No. DODIG-2018-086)

We are providing this report for review and comment on the recommendations and the report's public release. We conducted this audit in accordance with generally accepted government auditing standards.

We considered management comments on a draft of this report when preparing the final report. Comments from the Army Contracting Command and the Army Office of Small Business Programs conformed to the requirements of DoD Instruction 7650.03; therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9187 (DSN 664-9187).

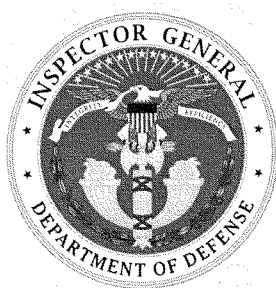
A handwritten signature in black ink, appearing to read "Michael J. Roark".

Michael J. Roark
Assistant Inspector General
Readiness and Global Operations

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Introduction

Objective

We determined whether Army Contracting Command (ACC)-Redstone and ACC-Warren contracting officials took appropriate actions to ensure that prime contractors met their small business subcontracting goals. This audit is the fourth and last in a series of audits on DoD small business contracting. See Appendix A for scope, methodology, and prior audit coverage.

Background

Army Contracting Command

The Army Contracting Command (ACC) is a major subordinate command of the Army Materiel Command. ACC performs contracting work for the Army and consists of two subordinate commands and six contracting centers responsible for installation and expeditionary services. We visited two ACC contracting centers located in Redstone, Alabama, and Warren, Michigan. ACC-Redstone supports the development, acquisition, and fielding of aviation and missile systems. ACC-Warren supports the development, acquisition, and fielding of soldier and ground systems.

Small Business Subcontracting

Contracts over \$700,000, awarded to an other than small business must have a small business subcontracting plan if there are subcontracting opportunities so that small businesses can get work on larger contracts.¹ There are three types of subcontracting plans.

- **Individual Subcontracting Plan.** This type of plan covers the entire contract period, applies to a specific contract, and has goals that are based on the contractor's planned subcontracting efforts. A contractor may also develop a "master subcontracting plan," which is a template that includes all the information required for an individual plan except subcontracting goals. A master plan may be incorporated into an individual subcontracting plan, but a master plan cannot itself serve as a subcontracting plan for a contract.²
- **Commercial Subcontracting Plan.** This type of plan covers a contractor's fiscal year and applies to the entire production of commercial items sold by the contractor.³ It applies to all Government contracts in effect during

¹ Federal Acquisition Regulation (FAR) Part 19, "Small Business Programs," Subpart 19.7, "The Small Business Subcontracting Program," 19.702, "Statutory Requirements." The threshold changed from \$650,000 to \$700,000, effective October 1, 2015.

² FAR Part 19, "Small Business Programs," Subpart 19.7, "The Small Business Subcontracting Program," 19.701, "Definitions," and 19.704, "Subcontracting Plan Requirements."

³ FAR 19.701.

the contractor's fiscal year. The contracting officer who approves the plan administers the plan.⁴

- **Comprehensive Subcontracting Plan.** This type of plan is similar to a commercial subcontracting plan in that it applies to all of the contractor's DoD contracts in effect during the Government fiscal year. A comprehensive plan is administered by the Defense Contract Management Agency.⁵

Electronic Subcontracting Reporting System

The Electronic Subcontracting Reporting System (eSRS) is a Government-wide, web-based system used by Federal contractors to report subcontracting program information. Contractors are required to enter their subcontracting accomplishments for Federal contracts into the eSRS rather than provide them to the contracting officer. However, before a contractor can enter a subcontracting report into the eSRS, the contracting officer must correctly code the contract with the proper type of subcontracting plan in the Federal Procurement Data System-Next Generation (FPDS-NG) to indicate that a subcontracting plan was required.⁶ When the contractor enters a subcontracting report into the eSRS, the report includes the e-mail address of the contracting officer responsible for administering the plan. The contracting officer then receives an e-mail notification that the contractor has submitted a report. If the contractor enters the e-mail address incorrectly, or the e-mail address is for the wrong contracting officer or for a contracting officer no longer with the organization, then the current contracting officer does not receive a notification that the contractor has submitted a report.

Contracts Reviewed

We used the FPDS-NG to identify the universe of Army contracts. According to the FPDS-NG, the Army awarded 1,336 contracts, valued at \$24.9 billion, with estimated completion dates in FYs 2015 or 2016, to other than small businesses.⁷ We selected three contracting offices to audit: two ACC-Redstone contracting offices and one ACC-Warren contracting office, based on the number of contracts awarded and the dollar value of contracts. The two ACC-Redstone contracting offices awarded 121 contracts, valued at \$5.4 billion, and the ACC-Warren contracting office awarded 95 contracts, valued at \$2.2 billion.

⁴ FAR 19.704.

⁵ Defense Federal Acquisition Regulation Supplement, Part 252, "Solicitation Provisions and Contract Clauses," Clause 252.219-7004, "Small Business Subcontracting Plan (Test Program)."

⁶ The FPDS-NG is a web-based tool that contracting personnel use to report contract actions.

⁷ For this audit, we limited our universe to definitive contracts, indefinite-delivery indefinite-quantity contracts, and purchase orders performed within the United States. In addition, we limited our universe to contracts awarded during FY 2010 through 2015.

We nonstatistically selected 50 contracts, valued at \$1.6 billion, with estimated completion dates in FYs 2015 or 2016 to determine whether contracting officials ensured prime contractors provided small businesses with adequate subcontracting opportunities.⁸ We selected 30 contracts, valued at \$1.3 billion, awarded by ACC-Redstone and 20 contracts, valued at \$318.0 million, awarded by ACC-Warren. We selected the highest dollar value contracts because these contracts could have a high risk of non-compliance with Federal Acquisition Regulation (FAR) Subpart 19.7, "The Small Business Subcontracting Program." Specifically, we selected contracts that:

- required a small business subcontracting plan, but had no reports in the eSRS;
- contained reports in the eSRS that showed the contractor did not meet its small business subcontracting percentage goals; and
- did not require a subcontracting plan.

See Appendix B for a summary of the 50 contracts we reviewed.

In addition, we nonstatistically selected 30 contracts, valued at \$4.3 billion, awarded in FY 2016 to determine whether the contracts had an approved subcontracting plan or a determination that no subcontracting possibilities existed. We selected 20 contracts, valued at \$2.8 billion, awarded by ACC-Redstone and 10 contracts, valued at \$1.5 billion, awarded by ACC-Warren. We selected the highest-dollar value contracts from each contracting office. See Appendix C for a summary of the 30 contracts we reviewed.

Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls.⁹ We identified internal control weaknesses in ACC-Redstone and ACC-Warren contracting officials' compliance with requirements for awarding and administering contracts that require subcontracting plans. Specifically, ACC-Redstone and ACC-Warren contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for 23 of 50 contracts with estimated completion dates in FYs 2015 or 2016. We will provide a copy of the final report to the senior official responsible for internal controls in the Department of the Army.

⁸ When contracts are completed, contracting officials can determine whether the contractor met its small business subcontracting goals and, if not, whether the contractor made a good-faith effort to meet the goals. If the contractor did not make a good-faith effort to meet its goals, then contracting officials can assess liquidated damages.

⁹ DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013.

Finding

ACC-Redstone and ACC-Warren Did Not Consistently Ensure Subcontracting Opportunities Were Provided for Small Business

ACC-Redstone and ACC-Warren contracting officials ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 27 of 50 contracts, valued at \$693.5 million and \$1.6 billion respectively, with estimated completion dates in FYs 2015 or 2016. However, ACC-Redstone and ACC-Warren contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for the remaining 23 contracts, valued at \$914.8 million. Specifically, ACC-Redstone and ACC-Warren contracting officials:

- awarded six contracts, valued at \$330.7 million, without a subcontracting plan or a determination that no subcontracting possibilities existed;
- did not monitor prime contractors' compliance with subcontracting plans for 11 contracts, valued at \$480.3 million;
- did not determine why prime contractors with individual subcontracting plans did not meet their small business subcontracting goals for five contracts, valued at \$81.6 million; and
- accepted an individual subcontracting report (ISR) for one contract, valued at \$22.1 million, that may have misreported subcontract awards.

ACC-Redstone and ACC-Warren contracting officials stated that this occurred because contracting officials did not understand subcontracting plan requirements and because administering subcontracting plans was not a high priority. In addition, ACC-Redstone and ACC-Warren had high turnover among their contracting staffs, and subcontracting plan administration guidance at both locations did not address the transfer of duties from one contracting officer to another. Also, ACC-Redstone contracting management did not provide adequate training or standard operating procedures on requirements for administering subcontracting plans.

As a result, small businesses may have been denied subcontracting opportunities that prime contractors were required to make a good-faith effort to provide.¹⁰ In addition, ACC-Redstone and ACC-Warren contracting officials did not determine whether prime contractors made good-faith efforts to comply with negotiated

¹⁰ According to FAR 19.702(b)(1), small businesses are not required to provide small business subcontracting plans. Therefore, we reviewed only prime contractors that were other than small businesses.

subcontracting goals on 17 contracts and whether up to \$82.3 million in potential liquidated damages should be assessed.¹¹ For nine contracts, ACC-Redstone and ACC-Warren contracting officials determined that prime contractors met their small business subcontracting goals or made a good-faith effort to comply with negotiated subcontracting goals; therefore, no liquidated damages are due.¹²

The Army Ensured Small Businesses Had Adequate Subcontracting Opportunities for 27 Contracts

ACC-Redstone and ACC-Warren contracting officials ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 27 of 50 contracts, valued at \$693.5 million and \$1.6 billion respectively, with estimated completion dates in FYs 2015 or 2016. Specifically, ACC-Redstone and ACC-Warren contracting officials:

ACC contracting officials ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 27 contracts.

- verified that prime contractors met their small business subcontracting goals or made a good faith effort for three contracts, valued at \$258.6 million, with individual subcontracting plans;¹³
- awarded 11 contracts, valued at \$253.5 million, with approved comprehensive subcontracting plans;¹⁴
- awarded three contracts, valued at \$17.7 million, with commercial subcontracting plans approved by other contracting offices;¹⁵ and
- awarded nine contracts, valued at \$148.8 million, that did not require subcontracting plans.¹⁶

In addition, an ACC-Warren contracting official rejected an ISR for one contract, valued at \$14.9 million. On the rejected ISR, the contracting official noted that the contractor may have inappropriately included indirect costs in its subcontracting awards.

¹¹ FAR 19.705-7 states that when a contractor does not make a good-faith effort to comply with a subcontracting plan, the contractor will pay liquidated damages equal to the amount by which the contractor failed to achieve its subcontracting goals.

¹² ACC-Redstone contracting officials awarded three contracts, and ACC-Warren contracting officials awarded six contracts.

¹³ ACC-Redstone contracting officials awarded one contract, and ACC-Warren contracting officials awarded two contracts.

¹⁴ ACC-Redstone contracting officials awarded nine contracts, and ACC-Warren contracting officials awarded two contracts.

¹⁵ ACC-Redstone contracting officials awarded one contract, and ACC-Warren contracting officials awarded two contracts.

¹⁶ ACC-Redstone contracting officials awarded six contracts, and ACC-Warren contracting officials awarded three contracts. Contract W56HZV-12-C-0286.

Contracting Officials Verified That Prime Contractors Met Their Small Business Subcontracting Goals or Made a Good-Faith Effort to Meet the Goals for Three Contracts

(FOUO) ACC-Redstone and ACC-Warren contracting officials verified that prime contractors met their small business subcontracting goals or made a good-faith effort to meet the goals for three contracts, valued at \$258.6 million, with individual subcontracting plans. For example, ACC-Warren contracting officials awarded a contract for \$110.5 million, which included an individual subcontracting plan.¹⁷ The plan stated that the contractor intended to subcontract [REDACTED] to small businesses ([REDACTED] percent of total planned subcontracting dollars of [REDACTED]).¹⁸ The contractor submitted an ISR, which stated that the contractor subcontracted a total of [REDACTED] million to small businesses during performance of the contract. Although this only represented [REDACTED] percent of actual subcontracting dollars, the contractor exceeded the [REDACTED] million small business subcontracting goal by [REDACTED] million.

Contracting Officials Awarded 11 Contracts With Approved Comprehensive Subcontracting Plans

ACC-Redstone and ACC-Warren contracting officials awarded 11 contracts, valued at \$253.5 million, with comprehensive subcontracting plans approved and administered by the Defense Contract Management Agency. For example, ACC-Redstone contracting officials awarded a contract for \$22.7 million.¹⁹ ACC-Redstone contracting officials verified that the Defense Contract Management Agency approved the contractor's comprehensive subcontracting plan for FY 2015, which covered all of the contractor's DoD contracts for the fiscal year.

Contracting Officials Awarded Three Contracts With Commercial Subcontracting Plans Approved By Contracting Offices

ACC-Redstone and ACC-Warren contracting officials awarded three contracts, valued at \$17.7 million, with commercial subcontracting plans approved by other contracting offices. For example, ACC-Warren contracting officials awarded a contract for \$9.2 million.²⁰ The contractor had a commercial subcontracting plan, which covered this contract as well as other contracts.

¹⁷ Contract W56HZV-12-C-0286.

¹⁸ The percentages depicted in the report were based on rounded numbers and may not equal the actual subcontracting goal percentage, unless otherwise noted.

¹⁹ Contract W31P4Q-15-C-0104.

²⁰ Contract W56HZV-15-C-0019.

The Defense Logistics Agency approved and administered the plan; therefore, ACC-Warren contracting officials did not need to take any further action to administer the subcontracting plan.

Contracting Officials Awarded Nine Contracts That Did Not Require a Subcontracting Plan

ACC-Redstone and ACC-Warren contracting officials awarded nine contracts, valued at \$148.8 million, which did not require subcontracting plans because there were no subcontracting possibilities, the work was performed outside of the United States, or the contractor's business size changed from large to small after contract award. For example, ACC-Redstone contracting officials awarded a contract for \$55.6 million, which exceeded the threshold for contracts to require a subcontracting plan.²¹ However, the FAR states that a subcontracting plan is not required for contracts where work is performed entirely outside of the United States and its outlying areas.²² The work for this contract was performed in Iraq; therefore, a subcontracting plan was not required.

Contracting Official Rejected the Individual Subcontracting Report for One Contract

~~(FOUO)~~ An ACC-Warren contracting official rejected the ISR for a contract, valued at \$14.9 million.²³ The contract had an individual subcontracting plan, which stated that the contractor intended to subcontract [REDACTED] million to small businesses [REDACTED] percent of total planned subcontracting dollars of [REDACTED] million). On the rejected ISR, the contracting official noted that the contractor may have inappropriately included indirect costs in its reported subcontract awards. On October 31, 2017, the contractor submitted a revised final ISR showing that the contractor met its small business subcontracting goal. The ACC-Warren contracting official accepted the revised ISR.

ACC-Redstone and ACC-Warren Did Not Comply With Requirements for Subcontracting Plans for 23 Contracts

ACC-Redstone and ACC-Warren contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for 23 of 50 contracts, valued at

ACC contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities.

²¹ Contract W58RGZ-15-C-0070.

²² FAR 19.702.

²³ Contract W56HZV-14-C-0073.

\$914.8 million and \$1.6 billion respectively, with estimated completion dates in FYs 2015 or 2016. Specifically, ACC-Redstone and ACC-Warren contracting officials:

- awarded six contracts, valued at \$330.7 million, without a subcontracting plan or a determination that no subcontracting possibilities existed;²⁴
- did not monitor prime contractors' compliance with subcontracting plans for 11 contracts, valued at \$480.3 million;²⁵
- did not determine why prime contractors with individual subcontracting plans did not meet their small business subcontracting goals for five contracts, valued at \$81.6 million; and²⁶
- accepted an ISR for one contract, valued at \$22.1 million, that may have misreported subcontract awards.

Contracting Officials Awarded Six Contracts Without a Subcontracting Plan or a Determination That No Subcontracting Possibilities Existed

ACC-Redstone and ACC-Warren contracting officials awarded six contracts, valued at \$330.7 million, without a subcontracting plan or a determination that no subcontracting possibilities existed. For contracts exceeding \$700,000 (\$650,000 prior to October 1, 2015), the FAR generally requires contracting officials to award the contract with a subcontracting plan or to make a determination that no subcontracting possibilities exist.²⁷ The subcontracting plan must include a statement of total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small businesses as a percentage of total subcontract dollars.²⁸

For example, ACC-Redstone contracting officials awarded a contract for \$234.7 million.²⁹ The original contracting officer awarded the contract without a subcontracting plan or a determination that no subcontracting possibilities existed. The current contracting officer stated that the contract was extended until May 2018. Because of this audit, the current contracting officer requested and was provided a proposed subcontracting plan from the contractor. The contractor and

²⁴ ACC-Redstone contracting officials awarded four contracts, and ACC-Warren contracting officials awarded two contracts.

²⁵ ACC-Redstone contracting officials awarded seven contracts, and ACC-Warren contracting officials awarded four contracts.

²⁶ ACC-Redstone contracting officials awarded two contracts, and ACC-Warren contracting officials awarded three contracts.

²⁷ FAR Part 19, "Small Business Programs," Subpart 19.7, "The Small Business Subcontracting Program," 19.705, "Responsibilities of the Contracting Officer Under the Subcontracting Assistance Program," 19.705-2, "Determining the Need for a Subcontracting Plan." FAR 19.702(b) states that subcontracting plans are not required from small businesses, for personal services contracts, or for contracts or modifications that will be performed entirely outside of the United States.

²⁸ FAR 19.704.

²⁹ W58RGZ-14-C-0082.

the contracting officer are currently negotiating the small business subcontracting goals in the subcontracting plan, and the contracting officer will incorporate the plan into the contract when negotiations are complete.

In another example, ACC-Redstone contracting officials awarded a contract for \$71.9 million.³⁰ The original contracting officer awarded the contract without an individual subcontracting plan or a determination that no subcontracting possibilities existed. The contractor did submit a master subcontracting plan, which the FAR defines as "a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans."³¹ However, the contract did not have an individual subcontracting plan with small business subcontracting goals as a part of the master plan. The contracting officer currently assigned to the contract believed that the original contracting officer did not understand the difference between a master subcontracting plan and a comprehensive subcontracting plan, which does include small business subcontracting goals.

Contracting Officials Did Not Monitor Compliance with Small Business Subcontracting Goals for 11 Contracts With Subcontracting Plans

ACC-Redstone and ACC-Warren contracting officials did not monitor prime contractors' compliance with subcontracting plans for 11 contracts, valued at \$480.3 million. Specifically, the contracting officials were not aware that contractors did not submit subcontracting reports to the eSRS for their review.

The FAR requires contractors to enter subcontracting reports into the eSRS showing whether the contractor is meeting its small business subcontracting goals for the contract.³² In addition, the FAR states that it is the responsibility of the contracting officer to acknowledge or reject the subcontracting reports in the eSRS.³³ The FAR also states that contractors that do not make a good-faith effort to meet their small business subcontracting goals may be liable for liquidated damages.³⁴ The FAR defines a failure to make a good-faith effort as a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan. The contracting officers who were initially responsible for

³⁰ W58RGZ15-C-0085.

³¹ FAR 19.701.

³² FAR 19.704.

³³ FAR Part 19, "Small Business Programs," Subpart 19.7, "The Small Business Subcontracting Program," 19.705, "Responsibilities of the Contracting Officer Under the Subcontracting Assistance Program," 19.705-6, "Postaward Responsibilities of the Contracting Officer."

³⁴ FAR Part 19, "Small Business Programs," Subpart 19.7, "The Small Business Subcontracting Program," 19.705, "Responsibilities of the Contracting Officer Under the Subcontracting Assistance Program," 19.705-7, "Liquidated Damages."

administering the plans were no longer assigned to 9 of the 11 contracts, so their responsibilities passed to the contracting officers who replaced them. However, the contracting officials who were currently assigned to the contracts were unaware that the contractors had not entered subcontracting reports into the eSRS. The following examples are contracts for which contractors had not entered subcontracting reports.

- ~~(FOUO)~~ **Contract W58RGZ-12-C-0010 (ACC-Redstone).** The contract, valued at \$373.1 million, had an individual subcontracting plan, which stated that the contractor intended to subcontract [REDACTED] million to small businesses ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million).
- ~~(FOUO)~~ **Contract W56HZV-14-C-0031 (ACC-Warren).** The contract, valued at \$1.9 million, had a commercial subcontracting plan, which stated that the contractor intended to subcontract [REDACTED] million to small businesses ([REDACTED] percent of all of its subcontracting dollars covered by the subcontracting plan, totaling [REDACTED] million during calendar year 2013). The FAR defines a commercial plan as "a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof."³⁵ Contracts awarded under commercial subcontracting plans do not require the contractor to report on subcontracting activities for a specific contract. The contractor is required to submit one summary subcontracting report for all contracts covered by the commercial subcontracting plan at the end of the fiscal year. The contracting officer who approved the plan must review the summary subcontracting reports. Because an ACC-Warren contracting officer approved the subcontracting plan, that contracting officer was responsible for monitoring the plan. The contractor is no longer in business, so ACC-Warren cannot obtain the reports to determine whether the contractor met the plan's small business subcontracting goals.³⁶
- ~~(FOUO)~~ **Contract W31P4Q-15-C-0078 (ACC-Redstone).** The contract, valued at \$4.5 million, had an individual subcontracting plan, which stated that the contractor intended to subcontract [REDACTED] million to small businesses ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million).

ACC-Redstone contracting officials should ensure ISRs are entered into the eSRS for contracts W58RGZ-12-C-0010, W58RGZ-13-C-0086, W58RGZ-14-C-0037, W31P4Q-15-C-0078, W31P4Q-13-C-0023, W31P4Q-15-C-0002, and W31P4Q-13-C-0046. If the ISRs show that the contractors did not meet the

³⁵ FAR 19.701.

³⁶ We are not recommending any follow-up action for this contract because the contractor has gone out of business.

contract's subcontracting goals, the contracting officials should determine whether the contractor made a good-faith effort to meet its subcontracting goals and, if not, whether liquidated damages can be imposed against the contractor.

ACC-Warren contracting officials should ensure ISRs are entered into the eSRS for contracts W56HZV-15-C-0222, W56HZV-15-C-0213, and W56HZV-14-C-L713. If the ISRs show that the contractors did not meet the contract's subcontracting goals, contracting officials should determine whether the contractor made a good-faith effort to meet its subcontracting goals and, if not, whether liquidated damages may be imposed against the contractor.

Contracting Officials Did Not Determine Why Subcontracting Goals for Five Contracts Were Not Met

ACC-Redstone and ACC-Warren contracting officials did not determine why prime contractors did not meet their small business subcontracting goals for the following five contracts, valued at \$81.6 million.

ACC contracting officials did not determine why prime contractors did not meet their small business subcontracting goals.

- **(FOUO) Contract W58RGZ-13-C-0127 (ACC-Redstone).** The contract, valued at \$29.6 million, had an individual subcontracting plan which stated that the contractor intended to subcontract [REDACTED] ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million) to small businesses. Based on the ISR, the contractor did not meet the small business subcontracting goal. The contractor subcontracted [REDACTED] to small businesses, 0.8 percent of total subcontracting dollars of [REDACTED] million.
- **(FOUO) Contract W31P4Q-13-C-0069 (ACC-Redstone).** The contract, valued at \$7.1 million, had an individual subcontracting plan which stated that the contractor intended to subcontract [REDACTED] to small businesses for the base year of the contract ([REDACTED] percent of total planned subcontracting dollars of [REDACTED]). The contracting officer did not exercise the contract option year. Based on the ISR, the contractor did not meet the small business subcontracting goal. The contractor did not subcontract to any small businesses.
- **(FOUO) Contract W56HZV-14-C-0302 (ACC-Warren).** The contract, valued at \$12.6 million, had an individual subcontracting plan that stated that the contractor intended to subcontract [REDACTED] million ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million) to small businesses.³⁷ Based on the ISR, the contractor did not meet the small

³⁷ Difference due to rounding.

(FOUO) business subcontracting goal. The contractor subcontracted [REDACTED] million to small businesses, [REDACTED] percent of total subcontracting dollars awarded.

- (FOUO) **Contract W56HZV-12-C-0092 (ACC-Warren).** The contract, valued at \$17.1 million, had an individual subcontracting plan that stated that the contractor intended to subcontract a total of [REDACTED] million to small businesses ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million). From April 2015 to April 2016, the contractor entered ISRs into the eSRS, but the ISRs remained in "pending" status because no ACC-Warren contracting officials reviewed them. We brought the pending reports to the attention of the contracting officer currently assigned to the contract. He reviewed the final ISR and found that the goals on the ISR were for the base year of the contract instead of the period of performance for the base and option years of the contract. The contracting officer rejected the ISR and requested that the contractor submit a new ISR. According to the revised ISR, the contractor only awarded [REDACTED] million to small businesses ([REDACTED] percent of total subcontracting dollars of [REDACTED] million), falling short of its small business subcontracting goal by [REDACTED] million.
- (FOUO) **Contract W56HZV-14-C-0239 (ACC-Warren).** The contract, valued at \$15.2 million, had an individual subcontracting plan which stated that the contractor intended to subcontract [REDACTED] million ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million) to small businesses. Based on the ISR, the contractor did not meet the small business subcontracting goal. The contractor subcontracted [REDACTED] million to small businesses, [REDACTED] percent of total subcontracting dollars awarded.

ACC-Redstone contracting officials should determine whether the contractors for contracts W58RGZ-13-C-0127 and W31P4Q-13-C-0069 made a good-faith effort to meet the small business subcontracting goals in their subcontracting plans and, if not, contracting officials should determine whether liquidated damages can be imposed against the contractor.

ACC-Warren contracting officials should determine whether the contractors for contracts W56HZV-14-C-0302, W56HZV-12-C-0092, and W56HZV-14-C-0239 made a good-faith effort to meet the small business subcontracting goals in their

subcontracting plans and, if not, contracting officials should determine whether liquidated damages can be imposed against the contractor.

Contracting Officials Accepted a Potentially Erroneous Subcontracting Report for One Contract

~~(FOUO)~~ ACC-Warren contracting officials accepted an ISR that may have misreported subcontract awards for one contract.³⁸ The contract, valued at \$22.1 million, had an individual subcontracting plan which stated that the contractor intended to subcontract [REDACTED] million to small businesses ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million). The most recent ISR stated that the contractor had subcontracted a total of [REDACTED] million to small businesses. However, the contracting officer stated that the [REDACTED] million "had to be a mistake" because the ISR showed that the contractor awarded [REDACTED] million to service-disabled veteran owned small businesses, which seemed to be excessive. She stated that the contractor probably entered information from the wrong contract. The contracting officer stated that she would instruct the contractor to prepare a corrected ISR for the period ending September 30, 2017, when the next ISR is due. ACC-Warren contracting officials should instruct the contractor to enter a corrected ISR into the eSRS for contract W56HZV-15-C-0092 for the period ending September 30, 2017, when the next ISR is due. If the ISR shows the contractor did not meet the contract's subcontracting goals, contracting officials should determine whether the contractor made a good-faith effort to meet its subcontracting goals and, if not, whether liquidated damages can be imposed against the contractor.

Contracting Officials Did Not Understand Subcontracting Plan Requirements

ACC-Redstone and ACC-Warren contracting officials stated that some members of the contracting staff did not understand subcontracting plan requirements. For example:

- An ACC-Redstone contracting officer stated that a former contracting officer awarded a contract without an individual subcontracting plan because the former contracting officer did not understand the difference between the types of subcontracting plans. Specifically, the current contracting officer stated that she believed the former contracting officer thought that the contract did not need an individual subcontracting plan because the contractor had a master subcontracting plan.

³⁸ Contract W56HZV-15-C-0092.

- An ACC-Redstone contract specialist stated that she thought that the Defense Contract Management Agency was responsible for monitoring subcontracting plans. However, the FAR states that the contracting officer who awarded the contract is responsible for monitoring the plan.
- An ACC-Redstone contracting officer stated that she thought there were no subcontracting reports in the eSRS for one contract because the contract was complete. However, the eSRS does not delete subcontracting reports when a contract is completed.
- An ACC-Warren contracting officer was not aware that a contract's "Subcontract Plan" field in the FPDS-NG must state that a plan is required in order for the contractor to submit subcontracting reports to the eSRS.

In addition, ACC-Redstone contracting management did not provide adequate training or standard operating procedures on the administration of subcontracting plans. The FAR states that contracting officers' responsibilities include determining whether the contract requires a subcontracting plan, reviewing the subcontracting plan for adequacy, acknowledging receipt of subcontracting reports in the eSRS, and determining whether the contractor made a good-faith effort to meet its subcontracting goals.³⁹ Based on documentation provided by ACC-Redstone and discussions with ACC-Redstone personnel, the ACC-Redstone training and standard operating procedures focused primarily on pre-contract award evaluation of subcontracting plans and provided little guidance on a contracting officer's post-award responsibilities for administering subcontracting plans. Specifically, ACC-Redstone's standard operating procedures simply stated that the contracting officer who approved the plan was responsible for the post-award responsibilities outlined in FAR 19.705-6 and FAR 19.705-7. In addition, the Army Federal Acquisition Regulation Supplement (AFARS) did not include guidance on the contracting officers' responsibilities for administering subcontracting plans.⁴⁰

During a meeting between the audit team and the Office of the Deputy Assistant Secretary of the Army for Procurement (DASA[P]), the Acting Deputy Director requested that all policy and training-related recommendations in this report be directed to her office for Army-wide implementation. The Army Office of Small Business Programs Deputy Director requested that all recommendations in this report related to small business subcontracting issues be coordinated with her office. In addition, the Army Office of Small Business Programs Deputy Director stated that her office plans to issue a policy alert and update AFARS 5119.7 to ensure that contracting officers are aware of their responsibilities for accepting individual subcontracting reports in the eSRS. The DASA(P), in coordination

³⁹ FAR Subpart 19.7, "The Small Business Subcontracting Program."

⁴⁰ AFARS Part 5119, "Small Business Programs," Subpart 5119.7, "The Small Business Subcontracting Program."

with the Director of the Army Office of Small Business Programs, should train contracting officials on their FAR Subpart 19.7 responsibilities for administering subcontracting plans. The DASA(P), in coordination with the Director of the Army Office of Small Business Programs, should revise AFARS Subpart 5119.7 to incorporate guidance on administering subcontracting plans. The DASA(P), in coordination with the Director of the Army Office of Small Business Programs, should issue a policy alert to notify contracting officials of the revision to AFARS Subpart 5119.7 incorporating guidance on administering subcontracting plans.

Administering Subcontracting Plans Was Not a High Priority

ACC-Redstone and ACC-Warren contracting officials stated that administering subcontracting plans was not a high priority. Contracting officials stated that low priority was the reason their offices did not ensure that contractors entered subcontracting reports into the eSRS and why their offices did not determine whether contractors made good-faith efforts to meet small business subcontracting goals. One ACC-Redstone contracting officer stated that administering subcontracting plans is not a high priority because contracting officials are busy trying to fulfill customer requirements. Another ACC-Redstone contracting officer inherited a contract, which had been awarded as an undefinitized contract action without a subcontracting plan.⁴¹ The contracting officer did not request a subcontracting plan from the contractor until this audit. Although it was an oversight by the contracting officer not to request a subcontracting plan, this also indicates that the subcontracting plan was not a high priority. One contract with an individual subcontracting plan was missing ISRs; the ACC-Warren contracting officer stated he overlooked the ISRs for the contract.

Guidance Did Not Address Transfer of Subcontracting Plan Administration Duties to a New Contracting Officer

ACC-Redstone and ACC-Warren contracting officials experienced heavy turnover among their contracting officers. However, subcontracting plan administration guidance at both locations did not address the transfer of subcontracting plan administration duties described in the FAR when a contract is assigned to a new contracting officer.⁴² In addition, the AFARS did not address the transfer of

⁴¹ An undefinitized contract action is a contract action where the contracting officer and the contractor have not fully agreed on the contract terms, specifications, or price before performance begins.

⁴² FAR 19.705-6 states that contracting officer administration duties include acknowledging receipt of or rejecting reports in the eSRS and assessing liquidated damages, if applicable.

subcontracting plan administration duties when a contract is assigned to a new contracting officer.⁴³ For several of the contracts we reviewed, the contracting officer who approved the subcontracting plan was no longer assigned to the contract, and a different contracting officer became responsible for monitoring the plan. For two contracts, administration of the plans stopped when new contracting officers were assigned to the contracts.⁴⁴ The contracting officers reviewed the contractors' subcontracting reports during the early periods of the contracts. However, when the contracts were transferred to new contracting officers, they did not review the reports for the later contract periods. Contracting officers not reviewing the subcontracting reports is particularly problematic because the report the contractor enters at contract conclusion is the one that shows whether the contractor ultimately met its small business subcontracting goals. The contracting officials currently assigned to the contracts that had missing ISRs for individual subcontracting plans typically were not aware that reports were missing. DASA(P), in coordination with the Director of the Army Office of Small Business Programs, should revise AFARS Subpart 5119.7 to incorporate guidance for transferring subcontracting plan administration duties when a contract is assigned from one contracting officer to another. DASA(P), in coordination with the Director of the Army Office of Small Business Programs, should issue a policy alert to notify contracting officials of the revision to AFARS Subpart 5119.7 incorporating guidance for transferring subcontracting plan administration duties when a contract is assigned from one contracting officer to another.

⁴³ AFARS Subpart 5119.7.

⁴⁴ ACC-Redstone awarded one contract (W31P4Q-13-C-0069), and ACC-Warren awarded one contract (W56HZV-12-C-0092).

Opportunities to Recoup Liquidated Damages May Have Been Missed

Small businesses may not have received subcontract work that prime contractors were required by the FAR to make a good-faith effort to provide.⁴⁵

Small businesses may not have received subcontract work that prime contractors were required to make a good-faith effort to provide.

In addition, because ACC-Redstone and ACC-Warren contracting officials did not obtain subcontracting reports and did not follow up on reports that showed contractors were not meeting their small business goals, contracting officials did not determine whether prime contractors made good-faith efforts to comply with negotiated subcontracting goals. Therefore, ACC-Redstone and ACC-Warren may have missed opportunities to recoup liquidated damages of up to

\$82.3 million. FAR Subpart 19.7 discusses the requirement for complying with subcontracting plans, and provides the statutory basis for obtaining liquidated damages, stating:

Maximum practicable utilization of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone [Historically Underutilized Business Zone] small business, small disadvantaged business, and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor.⁴⁶

FAR Subpart 19.7 further states, "The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal." The following table shows that the contractors may owe up to \$82.3 million in liquidated damages to ACC-Redstone and ACC-Warren.

⁴⁵ FAR 19.702.

⁴⁶ FAR 19.705-7.

(FOUO) Table. Potential Liquidated Damages

Contract Number	Total Value	Small Business Subcontracting Goal (FOUO)	Actual Subcontracting Dollars (FOUO)	Potential Liquidated Damages
ACC-Redstone				
W58RGZ-12-C-0010	\$373,110,857	(FOUO)	Unknown ¹	\$50,391,031
W58RGZ-13-C-0086	51,350,000	(FOUO)	Unknown ¹	6,917,045
W58RGZ-13-C-0127	29,608,061	(FOUO)	(FOUO)	298,008
W58RGZ-14-C-0037	22,359,137	(FOUO)	Unknown ¹	478,437
W31P4Q-13-C-0069	7,082,738	(FOUO)	(FOUO)	122,120
W31P4Q-15-C-0078	4,536,627	(FOUO)	Unknown ¹	1,105,463
W31P4Q-13-C-0023	4,005,584	(FOUO)	Unknown ¹	35,185
W31P4Q-13-C-0046	1,996,749	(FOUO)	Unknown ¹	651,516
W31P4Q-15-C-0002	1,262,892	(FOUO)	Unknown ¹	108,946
Subtotal	\$495,312,645	\$60,246,652	\$138,901	\$60,107,751
ACC-Warren				
W56HZV-15-C-0092	22,142,270	(FOUO)	Unknown ²	13,614,242
W56HZV-12-C-0092	17,139,296	(FOUO)	(FOUO)	1,005,639
W56HZV-15-C-0222	15,285,190	(FOUO)	Unknown ¹	727,943
W56HZV-14-C-0239	15,221,495	(FOUO)	(FOUO)	454,444
W56HZV-14-C-0302	12,576,270	(FOUO)	(FOUO)	326,519
W56HZV-15-C-0213	2,279,999	(FOUO)	Unknown ¹	254,863
W56HZV-14-C-L713	2,187,841	(FOUO)	Unknown ¹	22,233
W56HZV-14-C-0031	1,906,980	(FOUO)	Unknown ¹ (FOUO)	5,750,000
Subtotal	\$88,739,341	\$35,224,947	\$13,069,064	\$22,155,883
Total	\$584,051,986	\$95,471,599	\$13,207,965	\$82,263,634

Note: All figures in this table are rounded to the nearest dollar.

¹ The contracting officer did not ensure that the contractor entered subcontracting reports into the eSRS. Therefore, the amount of actual subcontracting dollars is unknown.

² The contractor submitted an ISR; however, the contracting officer stated that the contractor may have entered incorrect information. Therefore, the actual subcontracting dollars are unknown until the contractor submits a revised ISR for the period ending September 30, 2017.

³ Commercial Subcontracting Plan.

Source: The DoD OIG.

(FOUO)

During the audit, we notified ACC-Redstone and ACC-Warren contracting officials about the contracts with potential liquidated damages that we identified. Contracting officials determined that the prime contractors met their small business subcontracting goals or made a good-faith effort to comply with negotiated subcontracting goals for nine contracts and no liquidated damages are due for those nine contracts.⁴⁷ Additionally, the contractor for one contract was out of business; therefore, ACC-Warren contracting officials could not determine whether the contractor met its small business subcontracting goals.⁴⁸ ACC-Redstone and ACC-Warren still need to assess whether liquidated damages are due for the other seven contracts.⁴⁹

Other Matters of Interest on Subcontracting With Small Businesses for Contracts Awarded in FY 2016

ACC-Redstone and ACC-Warren contracting officials ensured that 29 of 30 contracts, valued at \$3.7 billion, had an approved subcontracting plan or a justification that a subcontracting plan was not required.⁵⁰

~~(FOUO)~~ For example, ACC-Redstone contracting officials awarded a contract for \$71.2 million.⁵¹ The contract had a 3-year period of performance. The contract included an individual subcontracting plan, which stated that the contractor would subcontract a total of [REDACTED] million to small businesses during the contract. This represented [REDACTED] percent of total planned subcontracting dollars of [REDACTED] million.

In another example, ACC-Redstone contracting officials awarded a contract for \$73.0 million.⁵² Contracting officials prepared a memorandum explaining that there were no subcontracting possibilities because the requirement was based upon the contractor's role as sole developer of the software and its in-depth knowledge of interoperability requirements that could not be provided to another contractor.

~~(FOUO)~~ In another example, ACC-Warren contracting officials awarded a contract for \$60.2 million.⁵³ The contract included an individual subcontracting plan, which stated that the contractor would subcontract a total of [REDACTED] million to small businesses. This represented [REDACTED] percent of total planned subcontracting dollars of [REDACTED] million.

⁴⁷ Contracts W58RGZ-13-C-0086, W58RGZ-13-C-0127, W58RGZ-14-C-0037, W56HZV-12-C-0092, W56HZV-15-C-0222, W56HZV-14-C-0239, W56HZV-14-C-0302, W56HZV-15-C-0213, and W56HZV-14-C-L713.

⁴⁸ Contract W56HZV-14-C-0031.

⁴⁹ Contracts W58RGZ-12-C-0010, W31P4Q-13-C-0069, W31P4Q-15-C-0078, W31P4Q-13-C-0023, W31P4Q-13-C-0046, W31P4Q-15-C-0002, and W56HZV-15-C-0092.

⁵⁰ For one of the 29 contracts, the contracting officer did not approve the subcontracting plan in a timely manner. For another of the 29 contracts, the justification that a subcontracting plan was not required was missing a signature.

⁵¹ Contract W31P4Q-16-D-0018.

⁵² Contract W31P4Q-16-D-0040.

⁵³ Contract W56HZV-16-D-0061.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Executive Director, Army Contracting Command-Redstone:

- a. Ensure individual subcontracting reports are entered into the Electronic Subcontracting Reporting System for contracts W58RGZ-12-C-0010, W58RGZ-13-C-0086, W58RGZ-14-C-0037, W31P4Q-15-C-0078, W31P4Q-13-C-0023, W31P4Q-15-C-0002, and W31P4Q-13-C-0046. If the individual subcontracting reports show that the contractors did not meet the contract's subcontracting goals, contracting officials should determine whether the contractors made a good-faith effort to meet their subcontracting goals and, if not, whether liquidated damages can be imposed against the contractors.

Management Actions Taken During the Audit for Recommendation 1.a

We verified that ACC-Redstone contracting officials obtained information from the contractors that included their subcontracting achievements for two of the seven contracts. The information showed that the contractors met or exceeded their small business subcontracting goals.

(FOUO) For contract W58RGZ-14-C-0037, ACC-Redstone contracting officials obtained information that showed that the contractor met its small business subcontracting goal of [REDACTED] percent. Specifically, the contractor subcontracted a total of [REDACTED], all of which was awarded to small businesses. The amount was less than the small business subcontracting goal of \$[REDACTED]. The contracting officer stated that the contract scope of work was reduced by [REDACTED] million and the contractor completed the work in 7.5 months rather than 12; therefore, there were fewer subcontracting opportunities than originally anticipated.

(FOUO) For contract W58RGZ-13-C-0086, ACC-Redstone contracting officials obtained an ISR showing that the contractor subcontracted a total of [REDACTED] million to small businesses ([REDACTED] percent of total subcontracting dollars of [REDACTED] million), which exceeded the subcontracting goal of [REDACTED] million ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million). In addition, the contracting officer prepared a memorandum, which stated that he reviewed the ISR and confirmed that the contractor met all of the small business subcontracting goals in its small business subcontracting plan.

ACC-Redstone contracting officials still need to obtain the ISRs for the remaining five contracts.

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC-Redstone Executive Director, agreed, stating that ACC-Redstone will ensure that ISRs are entered into the Electronic Subcontracting Reporting System for the five contracts. If the ISRs show that the contractors did not meet any contract's subcontracting goals, the cognizant contracting officer will determine whether the contractors made a good-faith effort to meet their subcontracting goals and, if not, whether liquidated damages can be imposed against the contractors.

Our Response

Comments from the Deputy to the Commanding General addressed all specifics of the recommendation. This recommendation is resolved but remains open. We will close the recommendation once we verify that the ISRs are entered into the Electronic Subcontracting Reporting System and that the contracting officers determined whether the contractors made a good-faith effort to meet the small business subcontracting goals in their subcontracting plan and, if not, whether liquidated damages can be imposed against the contractors.

- b. Determine whether the contractors for contracts W58RGZ-13-C-0127 and W31P4Q-13-C-0069 made a good-faith effort to meet the small business subcontracting goals in their subcontracting plans and, if not, determine whether liquidated damages can be imposed against the contractors.**

Management Actions Taken During the Audit for Recommendation 1.b

We verified that ACC-Redstone contracting officials determined that the contractor for contract W58RGZ-13-C-0127 made a good-faith effort to meet the small business subcontracting goals and, therefore, did not assess liquidated damages against the contractor. Specifically, the contractor explained to the ACC-Redstone contracting officials that the project went through a series of configurations and design changes that adversely affected the opportunities to utilize the small business subcontractors the contractor had originally planned to use.

ACC-Redstone contracting officials still need to determine whether the contractor for contract W31P4Q-13-C-0069 made a good-faith effort to meet the small business subcontracting goals in its subcontracting plan and, if not, determine whether liquidated damages may be imposed against the contractor.

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC-Redstone Executive Director, agreed, stating that the cognizant ACC-Redstone contracting officer will determine whether the contractor for contract W31P4Q-13-C-0069 made a good-faith effort to meet the small business subcontracting goals in its subcontracting plan and, if not, determine whether liquidated damages can be imposed against the contractor.

Our Response

Comments from the Deputy to the Commanding General addressed all specifics of the recommendation. This recommendation is resolved but remains open. We will close the recommendation once we verify that the contracting officer determined whether the contractor made a good-faith effort to meet the small business subcontracting goals in its subcontracting plan and, if not, whether liquidated damages can be imposed against the contractor.

Recommendation 2

We recommend that the Executive Director, Army Contracting Command-Warren:

- a. Ensure that individual subcontracting reports are entered into the Electronic Subcontracting Reporting System for contracts W56HZV-15-C-0222, W56HZV-15-C-0213, and W56HZV-14-C-L713. If the individual subcontracting reports show that the contractors did not meet the contract's subcontracting goals, contracting officials should determine whether the contractors made a good-faith effort to meet their subcontracting goals and, if not, whether liquidated damages may be imposed against the contractors.

Management Actions Taken During the Audit for Recommendation 2.a

We verified that ACC-Warren contracting officials obtained the ISRs for the three contracts. The contracting officials determined that the contractors for those three contracts exceeded their small business subcontracting goals or were on pace to meet the goals if the contract was ongoing.

- ~~(FOUO)~~ For contract W56HZV-15-C-0222, ACC-Warren contracting officials contacted the contractor and obtained a final ISR. The ISR showed that the contractor subcontracted a total of [REDACTED] to small businesses ([REDACTED] percent of total subcontracting dollars of [REDACTED] million) which exceeded the small business subcontracting goal of [REDACTED] ([REDACTED] percent of total planned subcontracting dollars of [REDACTED] million).

- (FOUO) For contract W56HZV-15-C-0213, ACC-Warren contracting officials contacted the contractor and obtained an ISR for the most recent reporting period. The contract is still ongoing. The small business subcontracting goal was [REDACTED] percent of total planned subcontracting dollars of [REDACTED]. The ISR showed that the contractor subcontracted a total of [REDACTED] to small businesses as of March 31, 2017 [REDACTED] percent of total subcontracting dollars of [REDACTED].
- (FOUO) For contract W56HZV-14-C-L713, ACC-Warren contracting officials obtained summary subcontracting reports which showed that the contractor subcontracted a total of [REDACTED] to small businesses [REDACTED] percent of total subcontracting dollars of [REDACTED], which exceeded the small business subcontracting goal of [REDACTED] of total planned subcontracting dollars of [REDACTED]. The contracting officer stated that the subcontract awards were significantly higher than the goals because the contractor identified additional subcontracting opportunities after the contract was awarded.

Our Response

The management actions taken adequately addressed Recommendation 2.a; therefore, this recommendation is closed.

- b. Determine whether the contractors for contracts W56HZV-14-C-0302, W56HZV-12-C-0092, and W56HZV-14-C-0239 made a good-faith effort to meet the small business subcontracting goals in their subcontracting plans and, if not, determine whether liquidated damages can be imposed against the contractors.**

Management Actions Taken During the Audit for Recommendation 2.b

We verified that ACC-Warren contracting officials determined that the contractors for the three contracts made a good-faith effort to meet the small business subcontracting goals and, therefore, did not assess liquidated damages against the contractors.

- For contract W56HZV-14-C-0302, ACC-Warren contracting officials determined that the contractor did not meet its small business subcontracting goals as a result of a series of contract modifications that changed the contract scope of work and reduced small business subcontracting opportunities.
- For contract W56HZV-12-C-0092, the ACC-Warren contracting officer currently assigned to the contract requested information from the contractor to determine if the contractor made a good-faith effort to meet the subcontracting goals. The contractor stated that it could provide

only limited information because the contractor personnel responsible for subcontracting on this contract were no longer with the company. Based on the available information, the contracting officer determined that the contractor made a good-faith effort to meet the small business subcontracting goals.

- For contract W56HZV-14-C-0239, the ACC-Warren contracting officer determined that the contractor based its small business goals on past commitments which did not include former Government furnished equipment. In addition, the contractor met or exceeded subcontracting goals for women-owned small businesses and veteran-owned small businesses. The contracting officer determined that the contractor made a good-faith effort to comply with its subcontracting goals.

Our Response

The management actions taken adequately addressed Recommendation 2.b; therefore, this recommendation is closed.

- c. **Require the contractor to submit a corrected individual subcontracting report in the Electronic Subcontracting Reporting System for contract W56HZV-15-C-0092 for the period ending September 30, 2017, when the next report is due. If the individual subcontracting report shows the contractor did not meet the contract's subcontracting goals, determine whether the contractor made a good-faith effort to meet its subcontracting goals and, if not, whether liquidated damages can be imposed against the contractor.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC-Warren Executive Director, agreed, stating that ACC-Warren will request the contractor to submit a corrected final ISR, to include the option year subcontracting goals, in the Electronic Subcontracting Reporting System for the contract. Once ACC-Warren has the corrected ISR, the contracting officer will determine whether the contractor made a good-faith effort to meet the small business subcontracting goals in its subcontracting plan.

Our Response

Comments from the Deputy to the Commanding General addressed all specifics of the recommendation. This recommendation is resolved but remains open. We will close the recommendation once we verify that the ISR is entered into the Electronic Subcontracting Reporting System and that the contracting officer determined whether the contractor made a good-faith effort to meet the small business

subcontracting goals in its subcontracting plan, and if not, whether liquidated damages can be imposed against the contractor.

Recommendation 3

We recommend that the Deputy Assistant Secretary of the Army for Procurement, in coordination with the Director, Army Office of Small Business Programs:

- a. Train contracting officials on Federal Acquisition Regulation Subpart 19.7 responsibilities for approving and administering subcontracting plans.
- b. Revise Army Federal Acquisition Regulation Supplement Subpart 5119.7 to incorporate guidance on administering subcontracting plans and procedures for transferring subcontracting plan administration duties when a contract is transferred from one contracting officer to another.
- c. Issue a policy alert to notify contracting officials of the revision to Army Federal Acquisition Regulation Supplement Subpart 5119.7 incorporating guidance on administering subcontracting plans and procedures for transferring subcontracting plan administration duties when a contract is transferred from one contracting officer to another.

Army Office of Small Business Programs Comments

The Army Office of Small Business Programs Director, responding for the Deputy Assistant Secretary of the Army for Procurement, agreed with the recommendations. The Director stated that the Army Office of Small Business Programs, in coordination with the DoD Office of Small Business Programs, implemented training and is developing a schedule to train contracting officials and small business professionals. The Director stated that the Army Office of Small Business Programs, in coordination with the Deputy Assistant Secretary of the Army (Procurement), is drafting the revised language for incorporation into the AFARS Subpart 5119.7 and the policy alert to notify all contracting officials and small business professionals of the revision to the AFARS.

Our Response

Comments from the Army Office of Small Business Programs Director addressed all specifics of the recommendations. The recommendations are resolved but remain open. We will close the recommendations once we verify that the training has been provided and the AFARS change and policy alert have been issued.

Appendix A

Scope and Methodology

We conducted this performance audit from April 2017 through January 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We determined what actions the Army Contracting Command contracting officials took to ensure prime contractors met their small businesses subcontracting goals. We reviewed 80 Army Contracting Command contracts, valued at \$5.9 billion.⁵⁴

Universe and Sample

We used the FPDS-NG to identify the universe of Army contracts. According to the FPDS-NG, the Army awarded 1,336 contracts, valued at \$24.9 billion, with estimated completion dates in FYs 2015 or 2016, to other than small businesses.⁵⁵ We selected three contracting offices to audit: two ACC-Redstone contracting offices and one ACC-Warren contracting office, based on the number of contracts awarded and the dollar value of contracts awarded, for a total of 216 contracts, valued at \$7.6 billion. The two ACC-Redstone offices awarded 121 contracts, valued at \$5.4 billion, and the ACC-Warren office awarded 95 contracts, valued at \$2.2 billion. We eliminated five contracts that were duplicate entries in the FPDS-NG.

To refine our universe, we reviewed the remaining 211 contracts to determine whether the contracting officer's business size selection in the FPDS-NG was accurately coded as "other than small business." We determined that the contracting officer miscoded 10 of the 211 contracts as being awarded to "other than small businesses." We eliminated those 10 contracts from our audit universe. We queried the eSRS for the remaining 201 contracts to determine whether there were subcontracting reports in the system and whether the report indicated that the contractor met its small business subcontracting goals.

We nonstatistically selected 50 contracts, valued at \$1.6 billion, from the 201 contracts with estimated completion dates in FYs 2015 or 2016, to determine whether contracting officials ensured prime contractors provided small businesses

⁵⁴ Value includes not-to-exceed values of undefinitized contract actions. This amount may not reflect the actual base and all options value once the contract is definitized.

⁵⁵ For this audit, we limited our universe to definitive contracts, indefinite-delivery indefinite-quantity contracts, and purchase orders performed within the United States because the small business competition requirements in FAR Part 19 apply to these types of contracts. In addition, we limited our universe to contracts awarded in FY 2010 through 2015.

with adequate subcontracting opportunities.⁵⁶ We selected 30 contracts, valued at \$1.3 billion, awarded by ACC-Redstone and 20 contracts, valued at \$318.0 million, awarded by ACC-Warren.

We selected the highest dollar value contracts that could have a high risk of non-compliance with FAR subpart 19.7, "The Small Business Subcontracting Program." Specifically, we selected contracts that:

- required a small business subcontracting plan, but had no reports in the eSRS;
- contained reports in the eSRS which showed that the contractor did not meet its small business subcontracting percentage goals; and
- did not require a subcontracting plan or had an individual subcontracting plan with 0 percent goals.

In addition, we nonstatistically selected 30 contracts, valued at \$4.3 billion, awarded in FY 2016 to determine whether the contracts had an approved subcontracting plan or a determination that no subcontracting possibilities existed. We selected 20 contracts, valued at \$2.8 billion, awarded by ACC-Redstone and 10 contracts, valued at \$1.5 billion, awarded by ACC-Warren. We selected the highest-dollar value contracts from each contracting office.

Work Performed

We collected, reviewed, and analyzed documents for 80 contracts to determine whether ACC-Redstone and ACC-Warren contracting officials held prime contractors accountable for meeting small business subcontracting goals. We reviewed documentation dated between November 2001 and November 2017.

Review of Subcontracting Plans for Contracts Estimated to Be Completed in FYs 2015 or 2016

To determine whether ACC-Redstone and ACC-Warren contracting officials monitored compliance with small business subcontracting goals, we reviewed 50 prime contracts, valued at \$1.6 billion, with estimated completion dates in FYs 2015 or 2016. We reviewed documents from those contract files, including:

- small business coordination records;
- solicitations or request for proposals;
- small business subcontracting plans;

⁵⁶ When contracts are completed, contracting officials can determine whether the contractor met its small business subcontracting goals and, if not, whether the contractor made a good-faith effort to meet the goals. If the contractor did not make a good-faith effort to meet its goals, then contracting officials can assess liquidated damages.

- determinations of no subcontracting possibilities, if applicable; and
- contract action reports.⁵⁷

In addition, we interviewed ACC-Redstone and ACC-Warren contracting officials and obtained subcontracting reports from the eSRS. We also met with officials in the Office of the Deputy Assistant Secretary of the Army for Procurement and the DoD Office of Small Business Programs to discuss subcontracting deficiencies we identified during our review of contracts and meetings with ACC-Redstone and ACC-Warren contracting officials.

Review of Subcontracting Plans for Contracts Awarded in FY 2016

To determine whether contracts awarded in FY 2016 had an approved subcontracting plan or a determination that no subcontracting possibilities existed, we reviewed 30 contracts, valued at \$4.3 billion. We reviewed small business coordination records, solicitations or request for proposals, small business subcontracting plans or a determination of no subcontracting possibilities, and contract action reports. In addition, we interviewed ACC contracting officials.

Criteria

We reviewed the following sections of the FAR relevant to our audit objectives.

- FAR Subpart 19.7, "The Small Business Subcontracting Program," establishes requirements for contracting officials to provide subcontracting opportunities for small businesses.
- FAR Clause 52.219-9, "Small Business Subcontracting Plan," requires contractors to submit a small business subcontracting plan and to upload periodic subcontracting reports to the eSRS.
- FAR Clause 52.219-16, "Liquidated Damages - Subcontracting Plan," requires the contracting officer to assess liquidated damages if the contractor did not make a good-faith effort to comply with its subcontracting plan.

Use of Computer-Processed Data

We relied on the contracting officer's business size selection field in the FPDS-NG to select contracts awarded to other than small businesses. We reviewed documentation from the Electronic Document Access system and the System for Award Management to determine whether the contracts were awarded to other

⁵⁷ A contract action report contains data that is required to be reported in the FPDS-NG.

than small businesses.⁵⁸ To assess the accuracy of computer-processed data, we compared the FPDS-NG data to documents in the contract files and to data from the System for Award Management. Of the 211 contracts we reviewed, the contracting officers miscoded 10 contracts as being awarded to other than small businesses. We notified ACC-Redstone and ACC-Warren contracting officials about the 10 coding errors, and we verified that they made the corrections to the FPDS-NG.

We also used computer-processed data from the eSRS to determine whether the contractor uploaded ISRs into the system for the contracts we reviewed. We reviewed the ISRs to identify whether the contractor met its subcontracting goals and compared the ISRs to the subcontracting plans obtained from the contract file. We determined that the data obtained from the FPDS-NG and eSRS were sufficiently reliable to accomplish our audit objectives.

Prior Coverage

During the last 5 years, the Department of Defense Office of Inspector General (DoD OIG) issued four reports discussing small business contracting. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

DoD OIG

Report No. DODIG-2017-072, "Two Air Force Centers Adequately Considered Small Businesses When Awarding Prime Contracts, but Small Business Subcontracting Needs Improvement," March 31, 2017

Air Force Life Cycle Management Center (AFLCMC) and Air Force Nuclear Weapons Center (AFNWC) contracting officials generally ensured that prime contractors provided small businesses with adequate subcontracting opportunities for 13 of 20 contracts, valued at \$325.3 million and \$350.2 million respectively, with estimated completion dates in FY 2014 or FY 2015. However, AFLCMC contracting officials did not ensure that prime contractors provided small businesses with adequate subcontracting opportunities for the other seven contracts, valued at \$24.9 million. The report recommended that AFLCMC contracting officials correct the FPDS-NG and require the contractors to submit ISRs in the eSRS for three contracts; the Chief, Product Support Contracting Division, AFLCMC, determine whether the contractors for three contracts made a good-faith effort to meet the small business subcontracting goals in their subcontracting plans and, if not, assess liquidated damages

⁵⁸ The System for Award Management is a Federal Government-owned and operated website where a contractor makes several self-certifications, including self-certification of its small business status. The system transmits contractor data to the FPDS-NG, but contracting personnel must manually input the contractor's business size.

against the contractor; and the Director, Contracting Directorate, Air Force Sustainment Center, Hill Operating Location, direct his staff to train AFLCMC and AFNWC, contracting officials on FAR subpart 19.7 responsibilities for administering subcontracting plans, and update the FPDS-NG training to include how to complete the "Subcontract Plan" field in the FPDS-NG.

Report No. DODIG-2016-117, "Marine Corps Installations National Capital Region-Regional Contracting Office Generally Implemented Recommendations," July 29, 2016

This audit determined whether the Marine Corps Installations National Capital Region-Regional Contracting Office (MCINCR-RCO) implemented the recommendations in Report No. DODIG-2015-095. MCINCR-RCO contracting officials addressed all four recommendations in the report and, therefore, those recommendations are closed.

Report No. DODIG-2016-019, "Small Business Contracting at Marine Corps Systems Command Needs Improvement," November 10, 2015

Marine Corps Systems Command (MCSC) contracting officials generally provided small businesses an adequate opportunity to compete for prime contracts, but did not ensure prime contractors provided small businesses with adequate opportunities for prime contracts. The report recommended that MCSC officials determine whether the contractors for the six specified contracts made a good-faith effort to meet their subcontracting goals and, if not, whether liquidated damages may be imposed against the contractor; establish guidance for contracting officers for reviewing, approving, and administering subcontracting plans; and train contracting officials on their responsibilities for evaluating and administering subcontracting plans.

Report No. DODIG-2015-095, "Small Business Contracting at Regional Contracting Office-National Capital Region Needs Improvement," March 20, 2015

Regional Contracting Office-National Capital Region (RCO-NCR) contracting officials generally provided small businesses an adequate opportunity to compete for prime contracts, but did not ensure prime contractors provided small businesses with adequate subcontracting opportunities. The report recommended that RCO-NCR officials establish policy requiring contracting officials to obtain adequate subcontracting plans from contractors when the FAR requires subcontracting plans and verify that contractors submit the required subcontracting reports to the eSRS; implement training to ensure that contracting officials understand their responsibilities; and determine whether

the contractors for the two specified contracts made a good-faith effort to meet the small business subcontracting goals in their subcontracting plans and, if not, determine whether liquidated damages can be imposed against the contractor.

Appendix B

Summary of Contracts Estimated to Be Completed in FYs 2015 or 2016

Contract Number	Base & Options Value (rounded to nearest dollar)	Type of Subcontracting Plan	Ensured Subcontracting Opportunities Provided
ACC-Redstone			
1. W58RGZ-12-C-0010	\$373,110,857 ¹	Individual Plan	No
2. W58RGZ-14-C-0082	234,700,000 ¹	No Plan	No
3. W58RGZ-15-C-0017	92,193,137 ¹	Individual Plan	Yes
4. W58RGZ-15-C-0085	71,857,231 ¹	No Plan	No
5. W31P4Q-11-C-0167	71,186,583	No Plan	Yes ²
6. W31P4Q-12-C-0003	64,150,000 ¹	Comprehensive Plan	Yes
7. W31P4Q-12-C-0078	60,100,000 ¹	Comprehensive Plan	Yes
8. W58RGZ-15-C-0070	55,600,000 ¹	None Required ³	Yes
9. W58RGZ-13-C-0086	51,350,000	Individual Plan	No
10. W58RGZ-15-C-0038	31,831,162 ¹	Comprehensive Plan	Yes
11. W58RGZ-13-C-0127	29,608,061	Individual Plan	No
12. W31P4Q-15-C-0104	22,732,500	Comprehensive Plan	Yes
13. W58RGZ-14-C-0037	22,359,137 ¹	Individual Plan	No
14. W31P4Q-14-C-0136	18,752,976	Comprehensive Plan	Yes
15. W31P4Q-15-C-0026	17,359,506	No Plan	No
16. W31P4Q-12-C-0141	16,676,806 ¹	Comprehensive Plan	Yes
17. W31P4Q-12-C-0257	8,872,657	Comprehensive Plan	Yes
18. W31P4Q-13-C-0069	7,082,738	Individual Plan	No
19. W58RGZ-12-C-0157	6,527,751	Comprehensive Plan	Yes
20. W58RGZ-15-C-0069	5,243,339	No Plan Required ³	Yes
21. W31P4Q-15-C-0078	4,536,627	Individual Plan	No
22. W31P4Q-13-C-0072	4,385,743	No Plan Required ³	Yes
23. W58RGZ-14-C-0083	4,009,573 ¹	No Plan	No
24. W31P4Q-13-C-0023	4,005,584	Individual Plan	No
25. W58RGZ-15-C-0015	3,502,110	No Plan Required ³	Yes
26. W31P4Q-11-C-0320	2,572,431 ¹	Comprehensive Plan	Yes
27. W58RGZ-15-C-0004	2,062,750	Commercial Plan	Yes

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Appendixes

Contract Number	Base & Options Value (rounded to nearest dollar)	Type of Subcontracting Plan	Ensured Subcontracting Opportunities Provided
28. W31P4Q-13-C-0046	1,996,749	Individual Plan	No
29. W31P4Q-15-C-0002	1,262,892	Individual Plan	No
30. W58RGZ-13-C-0100	675,000	No Plan	Yes ²
Subtotal	\$1,290,303,900		
ACC-Warren			
31. W56HZV-12-C-0286	\$110,486,276 ¹	Individual Plan	Yes
32. W56HZV-12-C-0264	55,878,452	Individual Plan	Yes
33. W56HZV-15-C-0092	22,142,270	Individual Plan	No
34. W56HZV-12-C-0092	17,139,296	Individual Plan	No
35. W56HZV-14-C-0066	16,286,396	Comprehensive Plan	Yes
36. W56HZV-15-C-0222	15,285,190	Individual Plan	No
37. W56HZV-14-C-0239	15,221,495	Individual Plan	No
38. W56HZV-14-C-0073	14,918,775	Individual Plan	Yes
39. W56HZV-14-C-0302	12,576,270	Individual Plan	No
40. W56HZV-15-C-0019	9,233,219	Commercial Plan	Yes
41. W56HZV-15-P-0204	6,434,280	Commercial Plan	Yes
42. W56HZV-15-C-0051	4,973,430	Comprehensive Plan	Yes
43. W56HZV-15-C-0082	4,090,289	No Plan Required ⁴	Yes
44. W56HZV-15-C-0213	2,279,999	Individual Plan	No
45. W56HZV-14-C-L713	2,187,841	Individual Plan	No
46. W56HZV-15-C-0203	2,079,888	No Plan	Yes ²
47. W56HZV-15-C-0212	2,042,451	No Plan	Yes ²
48. W56HZV-14-C-0031	1,906,980	Commercial Plan ⁵	No
49. W56HZV-14-C-0254	1,846,997	No Plan	No
50. W56HZV-14-C-0194	976,400	No Plan	No
Subtotal	\$317,986,194		

¹ Estimated not-to-exceed value of undefinitized contract action. This amount may not reflect the actual base and all options value once the contract is definitized.

² The contracting officer determined that no subcontracting possibilities existed for the contract.

³ A subcontracting plan was not required because the work was performed outside of the United States.

⁴ A subcontracting plan was not required because the contractor's business size changed from large to small.

⁵ ACC-Warren approved the commercial subcontracting plan.

Source: The DoD OIG.

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Appendix C

Summary of Contracts Awarded in FY 2016

Contract Number	Base & Options Value (rounded to nearest dollar)	Type of Subcontracting Plan	Approved Subcontracting Plan or Justification for No Plan
ACC-Redstone			
1. W58RGZ-16-C-0040	\$656,967,500 ¹	No Plan	No
2. W31P4Q-16-C-0003	523,386,294 ¹	Comprehensive Plan	Yes
3. W31P4Q-16-C-0102	331,760,290 ¹	Comprehensive Plan	Yes
4. W58RGZ-16-C-0016	215,017,649	None Required ²	Yes
5. W58RGZ-16-C-0023	184,930,000 ¹	Individual Plan	Yes
6. W31P4Q-16-C-0036	142,750,920 ¹	Comprehensive Plan	Yes
7. W58RGZ-16-D-0055	90,207,549	Comprehensive Plan	Yes
8. W31P4Q-16-D-0020	89,525,960	Comprehensive Plan	Yes
9. W58RGZ-16-C-0008	85,500,539 ¹	Comprehensive Plan	Yes
10. W31P4Q-16-D-0040	72,963,647	No Plan	Yes ³
11. W31P4Q-16-C-0004	71,932,326	Comprehensive Plan	Yes
12. W31P4Q-16-D-0018	71,194,264	Individual Plan	Yes
13. W31P4Q-16-C-0133	60,240,535	Individual Plan	Yes
14. W58RGZ-16-C-0067	52,248,119	Commercial Plan	Yes
15. W58RGZ-16-D-0067	36,253,117	Comprehensive Plan	Yes
16. W58RGZ-16-D-0056	34,864,070	No Plan Required ²	Yes
17. W58RGZ-16-C-0065	34,541,911	Commercial Plan	Yes
18. W31P4Q-16-D-0002	24,776,753	Individual Plan	Yes
19. W31P4Q-16-D-0001	24,407,499	Individual Plan	Yes
20. W58RGZ-16-D-0011	3,171,225 ¹	Comprehensive Plan	Yes
Subtotal	\$2,806,640,167		
ACC-Warren			
21. W56HZV-16-D-0060	\$533,922,947	Individual Plan	Yes
22. W56HZV-16-C-0028	400,700,372	Individual Plan	Yes
23. W56HZV-16-D-0037	158,443,374	Individual Plan	Yes
24. W56HZV-16-D-0025	91,602,243	Individual Plan	Yes
25. W56HZV-16-D-0106	83,198,324	No Plan	Yes ³

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Appendixes

Contract Number	Base & Options Value (rounded to nearest dollar)	Type of Subcontracting Plan	Approved Subcontracting Plan or Justification for No Plan
26. W56HZV-16-D-0061	60,156,831	Individual Plan	Yes
27. W56HZV-16-C-0173	54,137,905	Individual Plan	Yes
28. W56HZV-16-C-0063	53,540,181	Individual Plan	Yes
29. W56HZV-16-D-0035	47,858,415	Individual Plan	Yes
30. W56HZV-16-D-0053	43,916,802	Individual Plan	Yes
30. W56HZV-16-D-0053	43,916,802	Individual Plan	Yes
Subtotal	\$1,527,477,394		
Total	\$4,334,117,561		

¹ Estimated not-to-exceed value of undefinitized contract action. This amount may not reflect the actual base and all options value once the contract is definitized.

² A subcontracting plan was not required because the work was performed outside of the United States.

³ The contracting officer determined that no subcontracting possibilities existed for the contract.

Source: The DoD OIG.

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Management Comments

Army Contracting Command Comments



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4001 HARTWIG ROAD
REDSTONE ARSENAL, AL 35890-5000

AMCIR

16 FEB 2018

MEMORANDUM FOR Department of Defense Inspector General (DoDIG/Ms. Catherine M. Schnetter), Program Director, Contract Management and Payments, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Comments on DoDIG Draft Report, Small Business Subcontracting at Two Army Contracting Command Locations, Project D2017CF-0118

1. The U.S. Army Materiel Command has reviewed the subject draft report and the response from the U.S. Army Contracting Command. The U.S. Army Materiel Command endorses the enclosed U.S. Army Contracting Command response.
2. The U.S. Army Materiel Command point of contact is [REDACTED]

Encl

Lisha H. Adams
LISHA H. ADAMS
Executive Deputy to the
Commanding General

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Army Contracting Command Comments (cont'd)



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
4400 MARTIN ROAD
REDFSTONE ARSENAL, AL 35898-6000

AMSCC-IR

07 FEB 2018

MEMORANDUM FOR Internal Review and Audit Compliance Office, Headquarters,
U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898

SUBJECT: DODIG Draft Report for the Audit of Small Business Contracting at the
Department of the Army (Project No. D2017-DOOOCF-OI 18.000) (D1728)

1. DODIG Report, DoD Inspector General, 11 January 2018, subject: same as above.
2. The Army Contracting Command (ACC) provides the enclosed comments in response to the referenced document.
3. The ACC POC is [REDACTED]

Encl

[Signature]
JOHN M. LYNN
Deputy to the Commanding General

Army Contracting Command Comments (cont'd)

DODIG Draft Report for the Audit of Small Business Contracting at the Department of the Army (Project No. D2017-DOOOCF-OI 18.000) (D1728)

We recommend that the Executive Director, ACC-RSA:

Recommendation 1.a

Ensure individual subcontracting reports are entered into the Electronic Subcontracting Reporting System for contracts W58RGZ-12-C-0010, W58RGZ-13-C-0088, W58RGZ-14-C-0037, W31P4Q-15-C-0078, W31P4Q-13-C-0023, W31P4Q-15-C-0002, and W31P4Q-13-C-0046. If the individual subcontracting reports show the contractors did not meet the contract's subcontracting goals, contracting officials should determine whether the contractor made a good-faith effort to meet its subcontracting goals, and if not, whether liquidated damages can be imposed against the contractor.

ACC-RSA RESPONSE 1.a: Concur

ACC-RSA will ensure individual subcontracting reports are entered into the Electronic Subcontracting Reporting System for contracts W58RGZ-12-C-0010, W31P4Q-15-C-0078, W31P4Q-13-C-0023, W31P4Q-15-C-0002, and W31P4Q-13-C-0046. If the individual subcontracting reports show the contractors did not meet any contract's subcontracting goals, the cognizant Contracting Officer will determine whether the contractor made a good-faith effort to meet its subcontracting goals, and if not, whether liquidated damages can be imposed against the contractor.

Target Implementation Date: 31 May 2018

Recommendation 1.b

Determine whether the contractors for contracts W58RGZ-13-C-0127 and W31P4Q-13-C-0069 made a good-faith effort to meet the small business subcontracting goals in their subcontracting plans, and if not, determine whether liquidated damages can be imposed against the contractor.

ACC-RSA RESPONSE 1.b: Concur

The cognizant ACC-RSA Contracting Officer will determine whether the contractor for contract W31P4Q-13-C-0069 made a good-faith effort to meet the small business subcontracting goals in their subcontracting plan, and if not, determine whether liquidated damages can be imposed against the contractor.

Target Implementation Date: 31 May 2018

Army Contracting Command Comments (cont'd)

We recommend that the Executive Director, ACC-WRN:

Recommendation 2.c

Require the contractor to submit a corrected individual subcontracting report in the Electronic Subcontracting Reporting System for contract W56HZV-15-C-0092 for the period ending September 30, 2017, when the next report is due. If the individual subcontracting report shows the contractor did not meet the contract's subcontracting goals, determine whether the contractor made a good-faith effort to meet its subcontracting goals and, if not, whether liquidated damages can be imposed against the contractor.

ACC-WRN RESPONSE 2.c: Concur

ACC-WRN will request the contractor submit a corrected final Individual Subcontracting Report (ISR) to include the option year subcontracting goals in the Electronic Subcontracting Reporting Systems (eSRS) for closed contract W56HZV-15-C-0092. ACC-WRN will request information from the contractor on Tier 1 & Tier 2 sub-contracting goals to determine a good faith effort.

Target Implementation Date: 30 April 2018

Army Office of Small Business Programs Comments



DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
OFFICE OF SMALL BUSINESS PROGRAMS
100 ARMY PENTAGON
WASHINGTON DC 20310-4106

FEB 7 2018

SASB

MEMORANDUM FOR UNITED STATES ARMY AUDIT AGENCY (USAAA), OFFICE OF THE DEPUTY AUDITOR GENERAL, FINANCIAL MANAGEMENT AND COMPTROLLER AUDITS, 6000 6TH STREET, BUILDING 1464, FORT BELVOIR, VA 22060-5609

SUBJECT: USAAA Draft Report, Audit of Small Business Subcontracting at Two Army Contracting Command Locations (Project D2017-0000CF-0118.000)

1. The Office of Small Business Programs (OSBP), reviewed the subject draft report and agree with the recommendations 3 a-c of the report.
2. OSBP in coordination with the Department of Defense Office of Small Business Programs have implemented training and are developing a schedule to train contracting officials and small business professionals.
3. OSBP in coordination with the Deputy Assistant Secretary of the Army (Procurement) (DASA (P)) is drafting the revised language for incorporation into the Army Federal Acquisition Regulation Supplement Subpart (AFARS) 5119.7.
4. OSBP in coordination with DASA (P) is drafting the policy alert to notify all contracting officials and small business professionals of the revision to the AFARS.
5. The schedule for training and all revisions will be complete no later than 9 Mar 18. The POC for this action is [REDACTED]


Timothy L. Marks
SP5, USA
Director, Small Business Programs

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Acronyms and Abbreviations

ACC	Army Contacting Command
AFARS	Army Federal Acquisition Regulation Supplement
DASA(P)	Deputy Assistant Secretary of the Army for Procurement
eSRS	Electronic Subcontracting Reporting System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
ISR	Individual Subcontracting Report

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Congressional Liaison
703.604.8324

Media Contact
public.affairs@dodig.mil; 703.604.8324

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