

Weaknesses in the USACE Defense Base Act Insurance Program Led to as Much as \$58.5 Million in Refunds Not Returned to the U.S. Government and Other Problems



July 28, 2011



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

July 28, 2011

Executive Departments and Agencies:

This report discusses the results of a performance audit of the U.S. Army Corps of Engineers (USACE) single insurer Defense Base Act (DBA) program. This report includes four recommendations to the Acting Commanding General of USACE to strengthen USACE's contract for DBA insurance and address problems we identified with data provided by the current insurance provider. It also includes four recommendations to both the Acting Commanding General of USACE and the Commander, U.S. Central Command Joint Theater Support Contracting Command (C-JTSCC), to strengthen the DBA program and, where possible, recover refunds given to contractors for their DBA insurance costs.

When preparing the final report, we considered comments from USACE and C-JTSCC, which are reproduced in appendices III and IV of this report, respectively. USACE and C-JTSCC concurred with our recommendations and noted actions they are taking to address them.

A summary of this report is on page ii. This performance audit was conducted by the Office of the Special Inspector General for Afghanistan Reconstruction under the authority of Public Law No. 110-181, as amended; the Inspector General Act of 1978; and the Inspector General Reform Act of 2008.

A handwritten signature in black ink that reads "Herbert Richardson". The signature is written in a cursive style.

Herbert Richardson
Acting Special Inspector General
for Afghanistan Reconstruction

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The Honorable Leon E. Panetta
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Acting Chief of Engineers and
Acting Commanding General, U.S. Army Corps of
Engineers



SIGAR

Special Inspector General for Afghanistan Reconstruction

SIGAR Audit-11-15

July 2011

Weaknesses in the USACE Defense Base Act Insurance Program Led to as Much as \$58.5 Million in Refunds Not Returned to the U.S. Government and Other Problems

What SIGAR Reviewed

The Defense Base Act (DBA) of 1941, as amended, requires federal government prime contractors and subcontractors to provide workers' compensation insurance for their employees who work overseas. DBA insurance carriers provide disability and medical benefits to employees for work-related injuries and death benefits to eligible survivors for work-related deaths. The U.S. government reimburses contractors for the cost of their DBA premiums. As of December 2010, the number of DBA cases for Afghanistan totaled 10,600. Since 2005, the U.S. Army Corps of Engineers (USACE) has contracted with Continental Insurance Company (CNA) to serve as the single DBA provider for all USACE contracts. In 2008, U.S. Central Command Joint Theater Support Contracting Command (C-JTSCC) contracts were added to the USACE DBA program. CNA has collected approximately \$225 million in premiums for these contracts. SIGAR initiated this audit to (1) determine the extent to which DBA premium rates were set at appropriate levels, (2) assess USACE and C-JTSCC's internal controls for ensuring that prime contractors and subcontractors obtain insurance in compliance with the DBA, and (3) evaluate the process for billing and reimbursing contractors for their DBA costs. We conducted our work in Washington, D.C.; Winchester, VA; Chicago, IL; and Kabul and Kandahar, Afghanistan from February 2011 through July 2011, in accordance with generally accepted government auditing standards.

What SIGAR Found

SIGAR found that USACE agreed to higher premium rates than were called for based on CNA's reported data and failed to exercise strong oversight of CNA's performance under the contract. Under the USACE contract awarded in October 2008, DBA premium rates for the option year beginning in October 2009 should have been based on CNA's loss ratio (incurred losses divided by earned premiums). Although CNA reported a loss ratio of 5.2 percent, it requested and received higher rates than were indicated for that ratio, giving it \$9.9 million more in premiums than it would have collected using the lower rates. USACE's decision to approve these rates was permissible under the contract. However, USACE did not take oversight measures it could have to validate CNA's loss data. For example, a contract requirement states that the rates will be contingent upon an audit by the Defense Contracting Audit Agency, but USACE never requested the audit. Our analysis of CNA's data demonstrates that strong oversight was needed because some of CNA's data were not complete, accurate, or current.

We also found that USACE and C-JTSCC's internal controls failed to ensure that contractors obtained the correct amount of DBA insurance. First, although USACE and C-JTSCC direct prime contractors to require subcontractors to purchase DBA insurance, we identified some subcontractors that did not have DBA policies. Second, we found instances in which contracts were modified, but we found no documentation indicating that the contracting officer adjusted the amount of DBA insurance accordingly. Third, in cases where contractors' DBA policies expired prior to the end of the contract period, we could not find documentation showing that the contractors renewed their policies.

Finally, we determined that CNA's process for billing and reimbursing contractors for DBA costs commingles funds in violation of U.S. funding restrictions and limits USACE and C-JTSCC oversight over actual costs. CNA's broker agent issues one policy per contractor—often including multiple contracts—and, at the end of the year, applies credits from contracts that had overestimated labor costs to contracts with underestimated labor costs. If these contracts have different funding sources, this process can violate U.S. funding restrictions. Furthermore, contracting officers lack oversight over actual DBA costs. For example, we found that contractors may purchase less DBA coverage than indicated in their contracts and receive refunds, but contracting officers are unaware when this occurs. We identified refunds totaling \$58.5 million since November 2005, at least some of which may be due USACE and C-JTSCC.

What SIGAR Recommends

SIGAR made four recommendations to the Acting Commanding General of USACE and four recommendations to both the Acting Commanding General of USACE and the Commander of C-JTSCC to strengthen the DBA insurance program and take steps to recover any refunds that may be due the U.S. government. USACE and C-JTSCC concurred with the recommendations and noted actions planned to address them.

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ACRONYMS

ALAE	Allocated Loss Adjustment Expense
ASFF	Afghanistan Security Forces Fund
C-JTSCC	U.S. Central Command Joint Theater Support Contracting Command
CLIN	Contract Line Item Number
CNA	Continental Insurance Company
DBA	Defense Base Act
IBNR	Incurred But Not Reported
Labor	Department of Labor
LDF	Loss Development Factor
Rutherford	Rutherford International, Inc.
SIGAR	Special Inspector General for Afghanistan Reconstruction
USACE	U.S. Army Corps of Engineers
WHCA	War Hazards Compensation Act



Weaknesses in the USACE Defense Base Act Program Led to as Much as \$58.5 Million in Refunds Not Returned to the U.S. Government and Other Problems

The Defense Base Act (DBA) of 1941, as amended,¹ requires federal government prime contractors and subcontractors to provide workers' compensation insurance for their employees who work overseas, including in Afghanistan.² DBA insurance carriers provide disability and medical benefits to employees for work-related injuries and death benefits to eligible survivors for work-related deaths. U.S. agencies reimburse contractors for the cost of their DBA insurance premiums. The U.S. Department of Labor (Labor) administers the DBA program and is responsible for ensuring that covered employees receive their benefits. Since the start of the conflicts in Iraq and Afghanistan, the size of the DBA program has grown exponentially. The number of DBA cases paid worldwide climbed from 309 in 2000 to 14,863 in 2009. That year, DBA insurance providers paid over \$242 million in DBA claims. According to Labor, the number of DBA cases for Afghanistan totaled 10,600, as of December 2010.

In 2005, the U.S. Army Corps of Engineers (USACE) began awarding a series of contracts to the Continental Insurance Company (CNA)³ as the single DBA insurance provider for all USACE contracts outside the United States. U.S. Central Command Joint Theater Support Contracting Command (C-JTSCC) contracts were added to the USACE contract in 2008. As of March 2011, CNA had collected approximately \$225 million in premiums under these contracts.

Given the significant rise in DBA cases and the substantial cost to the U.S. government of reimbursing DBA premiums, we initiated an audit of the USACE DBA single insurer program. We chose to focus our audit on this program because USACE and C-JTSCC have together obligated more funds for reconstruction contracts in Afghanistan than any other U.S. government contracting entities. Our objectives were to (1) determine the extent to which DBA premium rates were set at appropriate levels; (2) assess USACE and C-JTSCC's internal controls for ensuring that prime contractors and subcontractors obtain insurance in compliance with the DBA; and (3) evaluate the process for billing and reimbursing contractors for their DBA costs.

To determine the extent to which DBA premium rates were set at appropriate levels, we analyzed reports that CNA provided to USACE under the terms of the contract and reviewed CNA's case files for a sample of claims included in those reports. We also reviewed USACE's price negotiation memoranda; analyzed Labor data on our sample claims; interviewed officials from USACE, CNA, and Labor; and consulted experts from the insurance industry. To assess the controls in place for ensuring that prime contractors and subcontractors obtain DBA insurance, we selected nine of the largest dollar value

¹ 42 U.S.C. §§ 1651-1654 and 33 U.S.C. §§ 901-950.

² The Secretary of Labor can waive the DBA requirement for certain persons who are covered under another workers' compensation protection plan, such as in countries where the host nation government has an applicable protection plan.

³ CNA is headquartered in Chicago, IL and has offices throughout the U.S., Canada, and Europe. CNA is incorporated in Illinois. CNA is the thirteenth largest casualty insurance provider, with over \$9 billion in revenue for 2010.

contractors for USACE and C-JTSCC⁴ and assessed these contractors' DBA insurance policies. We also reviewed USACE and C-JTSCC's documentation available on the contracts held with these companies and interviewed USACE and C-JTSCC contracting officials. To evaluate the processes for billing and reimbursing contractors for their DBA costs, we analyzed the end-of-year audits that our selected contractors conducted of their labor costs and DBA insurance premiums and reviewed the invoices documenting USACE and C-JTSCC payments to these contractors. We conducted our work in Washington, D.C.; Winchester, VA; Chicago, IL; Kabul, Afghanistan; and Kandahar, Afghanistan from February 2011 to July 2011, in accordance with generally accepted government auditing standards. See appendix I for a more detailed discussion of our scope and methodology.

BACKGROUND

Due to the rising cost of DBA insurance, Congress directed the Secretary of Defense to adopt an acquisition strategy to help control costs. In response, the Department of Defense directed USACE in 2005 to conduct a pilot program to determine if contracting with a single DBA insurance provider would help control costs. Under a single provider model, contractors must use the designated provider to obtain DBA insurance or forfeit the right to reimbursement for their DBA insurance premiums. Beginning in November 2005, USACE awarded two 1-year contracts to CNA to be the single insurance provider for the pilot program. At the conclusion of the program, USACE determined that the single provider model helped control costs by eliminating minimum premiums, which most insurance carriers charge and which can be too expensive for small contractors. However, the Under Secretary of Defense for Acquisition Technology and Logistics, who responded to Congress on behalf of the Department of Defense, reported that the pilot program did not deliver the expected cost savings and argued that the most cost effective option was for the government to self insure. In 2010, the Army Audit Agency issued an audit of USACE's single insurance provider pilot program. Although it found that the program was conducive to providing more affordable coverage to and increasing participation of smaller contractors on USACE projects, it also recommended that the Army continue pursuing other methods, such as self-insurance, for satisfying the requirements of the DBA.⁵ Despite these reports, USACE has continued to use the single provider model and has since awarded two DBA contracts to CNA, including the most recent contract awarded on April 1, 2011.⁶

Under these contracts, CNA charges premiums based on labor costs and provides a single rate of insurance for each of four labor categories: services,⁷ security,⁸ aviation,⁹ and construction.¹⁰ For example, under the contract awarded in October 2008, the rate for a construction contract was \$7.50

⁴ These contractors were DynCorp International, Contrack International Inc., FCEC United Infrastructure Projects Joint Venture, Nimrah Construction Company, ECC International, LLC, RM Asia (H.K.) Ltd., Technologists, Inc., and Red Sea Engineers Constructors, Inc. We identified these contractors based on data provided by USACE and C-JTSCC.

⁵ See Army Audit Agency Report A-2010-0152-ALL (31 August 2010). See appendix III for information on prior audit coverage of the DBA insurance program.

⁶ Contract W912HQ-07-D-0001 was awarded March 20, 2007 and covered all USACE contracts outside the United States; contract W912HQ-09-D-0001 was awarded October 1, 2008 and covered all USACE and C-JTSCC contracts outside the United States; contract W912HQ-11-D-0004 was awarded March 31, 2011 and covers all USACE, C-JTSCC, and 408th Contracting Command contracts outside the United States.

⁷ The services category includes workers, such as information technology consultants, engineers, and administrative-type office workers who often work at American embassies. Security consultants can be included in this category if they are just assessing risk and not providing armed protection.

⁸ This category includes personal security details and static or convoy personnel guarding property or personnel.

⁹ This category includes the pilot and crew of any aircraft, excluding ground personnel who provide maintenance or services and stay on the ground.

¹⁰ This category includes workers providing construction services, such as carpentry, electrical work, plumbing, and operation and maintenance of heavy equipment.

for every \$100 paid to employees, and the rate for a service contract was \$4 for every \$100 paid to employees. The contracts guarantee the same rates on insurance for all contractors, regardless of safety records or claims reported.

In the contract awarded to CNA in October 2008, USACE stated that the premium rates for the option year (beginning October 2009) would be based on CNA's loss ratio. The contract defined loss ratio as incurred losses divided by earned premiums. For example, \$25 in incurred losses against \$100 in earned premiums would generate a loss ratio of 25 percent. The higher the ratio, the higher the premium rates that CNA could charge. The contract outlined five loss ratio tiers: below 50 percent, 50-60 percent, 60-75 percent, 75-80 percent, and above 85 percent.¹¹ Each tier had an established premium rate for each of the four labor categories.

The contract also established reporting requirements for CNA related to the losses it experiences.¹² Specifically, the contract stated that CNA is required to submit a written semi-annual loss experience report including information on: name of the USACE contractor, name of the claimant, USACE contract number, policy number, nature and date of loss, and claim amount for each individual loss. The contract also required CNA to submit a written annual loss experience report containing this same information, but also showing total loss to date.

In reporting the claim amount for each individual loss, CNA includes three main categories of costs:

- **expenses**, defined as costs associated with administering claims and policies in the normal cost of doing business;
- **net paid**, defined as monies actually paid out for claims of medical bills or lost wages; and
- **reserves**, defined as funds held in reserve for the cost of claims that may be or are expected to be paid in the future.

CNA has submitted its loss reports on a quarterly, and sometimes monthly, basis.

CNA uses a broker agent company, Rutherford International, Inc. (Rutherford), to help administer the DBA program. Rutherford is responsible for issuing the policies and billing the contractors for the cost of their DBA premiums. Contractors are required to obtain DBA insurance after USACE or C-JTSCC awards them a contract but prior to beginning work. The contractor estimates the labor costs needed to complete the terms of the contract and submits its estimates to Rutherford for coverage. Rutherford then determines which labor category the contract falls under, bills the contractor for the cost of coverage, and either issues a new policy or amends the contractor's existing policy. Once the contractor pays Rutherford, Rutherford provides an invoice, as well as a copy of the new policy or policy amendment to the contractor verifying that DBA insurance was obtained for the specific contract. Rutherford also provides notice to the contracting officer for that specific contract as proof of insurance. Once the contracting officer receives this notification, he or she issues a notice to proceed, allowing the contractor to commence work.¹³

Although CNA is responsible for paying benefits to injured workers whose employers hold DBA insurance policies with CNA, it can also receive reimbursement for the cost of compensating workers under certain circumstances. Under the War Hazards Compensation Act (WHCA),¹⁴ the U.S. government

¹¹ The contract did not stipulate premium rates for any of the labor categories for a loss ratio between 81 and 84 percent.

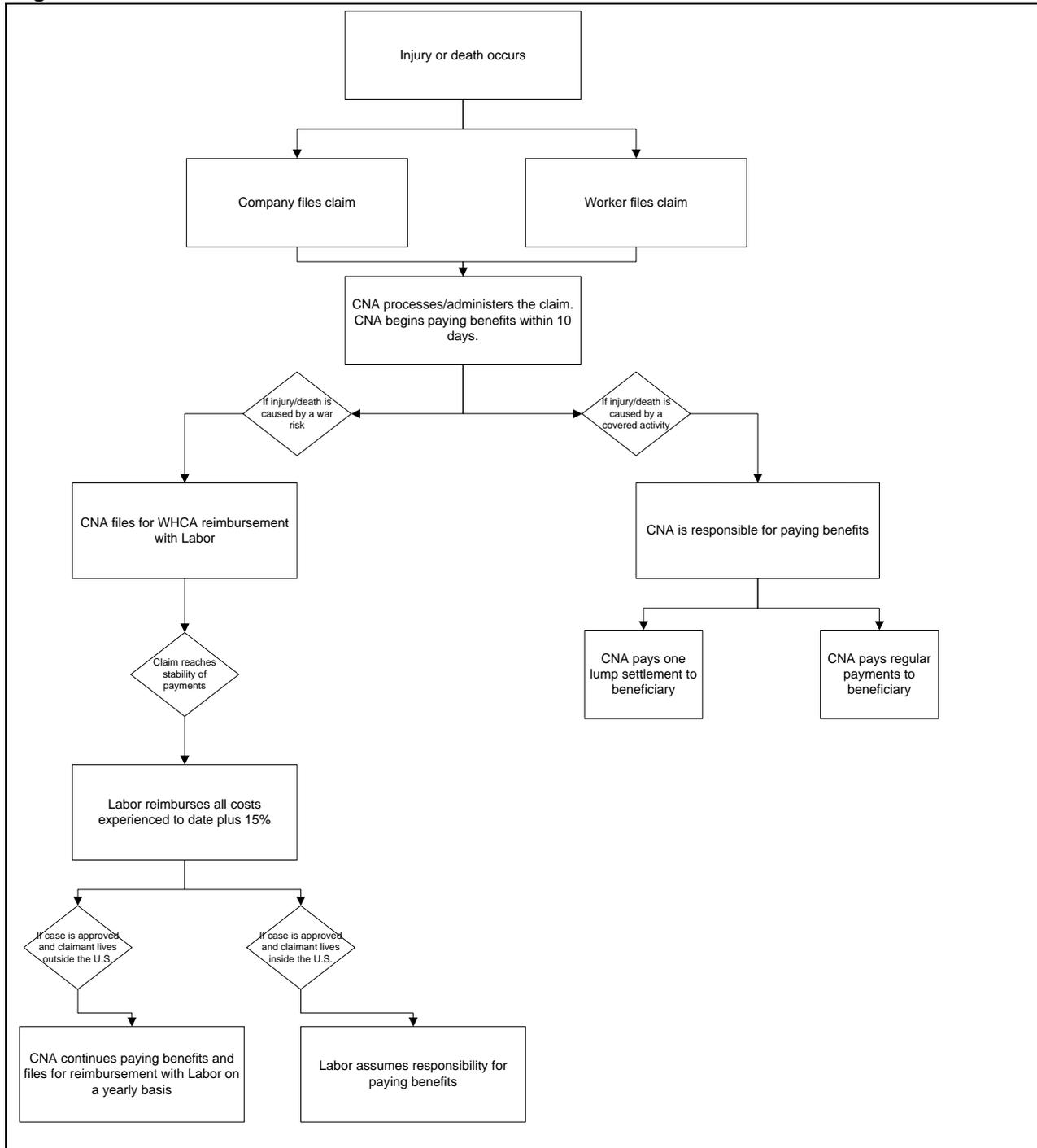
¹² In addition, the contract also established a reporting requirement related to the premiums CNA collects under the program.

¹³ There are additional requirements that the contractor must satisfy before the notice to proceed is issued that do not relate to DBA insurance.

¹⁴ 42 U.S.C. § 1701 et seq.

reimburses insurance carriers for DBA benefits paid if the injury or death is caused by a war-risk hazard (e.g., shrapnel wounds from an improvised explosive device), provided that the insurance carrier did not charge its customer a war-risk hazard premium. In addition to disability and death payments, war-risk hazard benefits include funeral and burial expenses, medical expenses, and reasonable costs necessary to process the claims. If an insurance carrier believes it has a claim that qualifies for WHCA reimbursement, it files an application with Labor, which adjudicates the case. Certain criteria must be met before Labor will accept an approved WHCA claim for direct payment. Specifically, if the claimant is living, Labor requires that the annual cost of the claim has become relatively stable so that it can accurately assess the costs associated with the claim. If the claimant has died, the survivor benefits are typically commuted (paid in full) or a regular bi-weekly compensation amount is set. If approved, Labor reimburses the insurance carrier for any allocable costs associated with the WHCA claim, plus an additional 15 percent of unallocable costs. When a claimant lives overseas, Labor continues to use the insurance carrier to administer the claim. Figure 1 demonstrates the typical process by which DBA and WHCA claims are filed, adjudicated, and reimbursed.

Figure 1: DBA and WHCA Claims Process



Source: SIGAR analysis of the DBA, the WHCA, and information provided by CNA and Labor.

The October 2008 contract included a reporting requirement for WHCA claims. Specifically, the contract required CNA to submit a quarterly, semi-annual, and annual war hazard report to the contracting officer including a detailed report of each war hazard claim, a statistical report of all claims and Labor reimbursement approvals, denials, and amounts, and information on Labor direct payments of war hazard benefits to beneficiaries.

USACE AGREED TO HIGHER PREMIUM RATES THAN STIPULATED UNDER THE CONTRACT'S DEFINITION OF LOSS RATIO AND FAILED TO EXERCISE STRONG OVERSIGHT OF CNA'S PERFORMANCE

USACE agreed to higher premium rates than were called for based on CNA's loss ratio and did not exercise strong oversight of CNA's performance under the contract. In July 2009, CNA reported a loss ratio of 5.2 percent for the base year of the October 2008 contract. However, during negotiations with USACE, CNA officials argued that their loss ratio was actually 57.7 percent based on a standard insurance industry definition of loss ratio. They, therefore, requested that their DBA rates for the option year be set at the above 50 percent loss ratio tier.¹⁵ The USACE contracting officer disagreed with CNA's position, but ultimately approved higher rates than would have been set for a 5.2 percent loss ratio because they fell within the range of appropriate rates set through open market research. These rates have given CNA \$9.9 million more in premiums than it would have collected had the contract definition of loss ratio been used.

Although this negotiation process and outcome was permissible because the selection of the rates was to be based on final agreement by the government and the insurance carrier, we found that USACE did not take all of the oversight measures it could to verify CNA's loss figures. For example, when USACE awarded the new rates for the option year, it added a requirement to the contract modification stating that the rates were contingent upon agreement to an audit by the Defense Contract Audit Agency (DCAA)¹⁶ and the findings of that audit. However, according to USACE officials, the contracting officer never requested the DCAA audit; as a result, the contracting officer lost an opportunity to verify CNA's reported loss experience.

Our analysis of CNA's loss figures and claims files demonstrates that such oversight was needed because the data CNA provided to USACE during contract negotiations raise questions about the validity of the stated 57.7 percent loss ratio. In addition, we found that some data provided to CNA through its quarterly loss reports were not complete, accurate, or current. For example, significant reserve adjustments in the claims files were not reflected in the quarterly loss reports in a timely manner. CNA's most recent loss and premium data also call into question some of CNA's assertions regarding its overall loss experience.

Despite a Loss Ratio of 5.2 Percent, USACE Agreed to DBA Rates above the 50 Percent Tier

USACE price negotiation memoranda indicate that, although CNA's loss ratio fell significantly below 50 percent for the base year of the contract awarded in October 2008, USACE ultimately agreed to set premium rates above the 50 percent tier. Table 1 shows the premium rates that, according to the terms of the contract, CNA could charge for each labor category in the option year, depending on its reported loss ratio.

¹⁵ Negotiations began in August 2009 and concluded at the end of September 2009.

¹⁶ DCAA performs contract audits for the Department of Defense and provides accounting and financial advisory services regarding contracts and subcontracts to all Department of Defense components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts to ensure taxpayer dollars are spent on fair and reasonable contract prices.

Table 1: Contract Number W912HQ-09-D-0001 Option Year Premium Rates, by Labor Category and Loss Ratio

Labor Category	Loss Ratio of Less than 50%	Loss Ratio of 50-60%	Loss Ratio of 60-75%	Loss Ratio of 75-80%	Loss Ratio Greater than 85%
Service	\$3.00 per \$100 of employee remuneration	\$3.40 per \$100 of employee remuneration	\$4.00 per \$100 of employee remuneration	\$4.60 per \$100 of employee remuneration	\$6.00 per \$100 of employee remuneration
Construction	\$5.625 per \$100 of employee remuneration	\$6.375 per \$100 of employee remuneration	\$7.50 per \$100 of employee remuneration	\$8.625 per \$100 of employee remuneration	\$11.25 per \$100 of employee remuneration
Aviation	\$15.00 per \$100 of employee remuneration	\$17.00 per \$100 of employee remuneration	\$20.00 per \$100 of employee remuneration	\$23.00 per \$100 of employee remuneration	\$30.00 per \$100 of employee remuneration
Security	\$9.375 per \$100 of employee remuneration	\$10.625 per \$100 of employee remuneration	\$12.50 per \$100 of employee remuneration	\$14.375 per \$100 of employee remuneration	\$18.75 per \$100 of employee remuneration

Source: Contract number W912HQ-09-D-0001, awarded to CNA, Inc. October 1, 2008.

Note: The contract did not stipulate premium rates for any of the labor categories for a loss ratio between 81-84 percent.

In September 2009, CNA’s loss ratio (case incurred losses divided by earned premiums) was 5.2 percent. However, CNA stated that its loss ratio was actually 57.7 percent because CNA actuaries had included a 52.5 percent provision for losses known as “Incurred But Not Reported” (IBNR). IBNR refers primarily to two categories of losses—(1) claims that have occurred, but not yet been reported to CNA and (2) future development on known claims.¹⁷ To illustrate their point, CNA officials explained that the total incurred claims for the period of September 30, 2007 – September 30, 2008 were initially \$3.7 million. However, 1 year later, the total incurred claims for this same period were \$7.3 million. CNA attributed this increase to IBNR. According to CNA, it is standard commercial insurance industry practice to include IBNR in the calculation of the total incurred losses associated with a particular set of claims. Therefore, CNA officials argued that the rates should be set at the 50-60 percent loss ratio tier.

USACE rejected the proposal to include IBNR stating that “the use of IBNR has no basis in our current contract and the amounts used for the additional loss attribution is without factual support.” USACE added that “even if the government were to allow consideration of an IBNR component in the loss ratio calculation (which is not dealt with in the contract’s definition of loss ratio), using an amount that is almost 10 times the true reported losses does not even comport with [CNA’s] reported differences between reported losses and subsequent figures when reviewed after the fact.” In addition to concerns about CNA’s inclusion of IBNR, USACE contracting officials questioned whether CNA was including cases that would be eligible for reimbursement under the WHCA. Specifically, USACE stated that cases eligible under this act “should not be included in the loss ratio calculation.”

The final premium rates USACE agreed to fell within differing amounts for the various tiers and labor categories. Table 2 shows the premium rates that would have been charged for a loss ratio of below 50 percent, according to the terms of the October 2008 contract; the rates that CNA proposed in an August 2009 email to USACE; the rates that CNA proposed at the price negotiation meeting in September 2009;

¹⁷ The other categories of IBNR are estimates for reopened claims and claims in transit.

USACE's counter proposal that same month; and the final rates agreed to in September 2009 for the option year.

Table 2: Contract Number W912HQ-09-D-0001 Option Year Negotiated and Finalized Premium Rates

Category	Contract Rate for a Below 50 Percent Loss Ratio, October 2008	CNA Email Proposal, August 2009	CNA Initial Proposal at Price Negotiation Meeting, September 2009	USACE Counter Proposal, September 2009	Final Agreed Upon Rates, September 2009
Service	\$3.00 per \$100 of employee remuneration	\$3.40 per \$100 of employee remuneration	\$6.00 per \$100 of employee remuneration	\$3.20 per \$100 of employee remuneration	\$4.00 per \$100 of employee remuneration
Construction	\$5.625 per \$100 of employee remuneration	\$6.375 per \$100 of employee remuneration	\$6.00 per \$100 of employee remuneration	\$6.00 per \$100 of employee remuneration	\$6.00 per \$100 of employee remuneration
Aviation	\$15.00 per \$100 of employee remuneration	\$17.00 per \$100 of employee remuneration	\$17.00 per \$100 of employee remuneration	\$16.00 per \$100 of employee remuneration	\$17.00 per \$100 of employee remuneration
Security	\$9.375 per \$100 of employee remuneration	\$10.625 per \$100 of employee remuneration	\$9.00 per \$100 of employee remuneration	\$9.00 per \$100 of employee remuneration	\$10.00 per \$100 of employee remuneration

Source: Contract Number W912HQ-09-D-0001.

As shown in the table, CNA ultimately got higher premium rates for each labor category than it would have received under the terms of the contract for its loss ratio. Had premium rates been set at the amount called for under the terms of the contract for the less than 50 percent loss ratio, CNA would have collected \$9.9 million less in premiums since September 2009.¹⁸

When we asked USACE officials why they agreed to these rates, they responded that the contracting officer had not used the loss ratio to set rates. Instead, the contracting officer relied on open-market research, which showed that open-market rates for this type of insurance were either equal to or higher than the premium rates agreed to. USACE's decision to negotiate with CNA regarding its rates was allowed under the contract, which states that selection of the appropriate fixed rate will be based upon final agreement by the government and the insurance carrier.

¹⁸ We calculated this figure by analyzing CNA's premium collection report to identify premium amounts collected after the negotiation period in September 2009. Specifically, we determined the total labor cost for each policy listed in the report and then applied the rate called for under the terms of the contract for the applicable labor category. For example, if a contractor had a service policy and had paid a premium of \$400, we determined that the total labor cost was \$1,000 (because the negotiated service rate was \$4.00 per \$100 of employee remuneration.) We then applied the rate of \$3.00 per \$100 of employee remuneration to the total labor cost, revealing a \$100 difference. We performed this calculation on all premiums collected after September 2009 to determine a total of \$9.9 million.

USACE Did Not Take Advantage of Oversight Measures Available

Despite agreeing to higher premium rates, USACE did not implement all oversight measures available under the terms of the contract or maintain copies of all loss reports filed by CNA. We identified several specific problems.

- The October 2008 contract states that the government reserves the right to obtain the services of expert consultation to analyze the loss history data submitted by the insurance carrier. However, we were unable to find any evidence that USACE did so. In addition, when USACE modified the 2008 contract to award the new rates for the option year, it added language stating that the rates were contingent upon agreement to a DCAA audit and the resultant findings of that audit. However, USACE officials informed us that the contracting officer never requested the audit. By failing to consult outside experts or request the DCAA audit, USACE lost an opportunity to verify CNA's loss data, a particularly important step given the decision to approve higher premium rates.
- Although the October 2008 contract required specific reporting on WHCA claims, USACE did not hold CNA responsible for fully meeting this requirement. The contract states that the insurance carrier will report regularly on WHCA claims by providing a detailed report for each war hazard claim and an overall report for all claims showing Labor reimbursement approvals, denials, and amounts. However, USACE agreed that CNA could fulfill this reporting requirement by simply adding a column to the loss reports called "War Hazard" and indicating "Y(es)" or "N(o)" for each claim. In September 2009, CNA added another column to its quarterly loss reports called "War Hazard Recoveries" to show amounts received from Labor for cases approved for WHCA reimbursement. However, these additional data did not provide all of the information called for under the contract. We also found that the contracting officer did not maintain copies of each of the quarterly loss reports that CNA submitted. The USACE contracting officer told us that she did not maintain copies of the reports because they are cumulative. In other words, a loss report from December 2009 will include all cases from the September 2009 report. However, without loss reports from each quarter or detailed information on WHCA cases, USACE could not track the development of claims over time or assess the impact of WHCA on USACE's loss history, important pieces of information for assessing CNA's experienced losses under the contract.

CNA's Data Were Not Always Complete, Accurate, or Current

By analyzing the data CNA submitted to USACE, some of its contract files, WHCA data from Labor, and option year negotiation documentation, we determined that CNA's submissions to USACE were not always complete, accurate, or current. In addition, at least one statement made by CNA officials during option year negotiations was not supported by the data. Finally, some trends in CNA's reserve data, as well as its most recent loss and premium reports, raise questions about actual loss experience.

CNA's 57.7 Percent Loss Ratio Was Not Supported

The 2008 contract states that, for purposes of establishing the option year rates, the insurance carrier (CNA) shall provide to USACE "data that clearly reflects the cumulative loss history." However, we found that the data that CNA submitted to USACE under this reporting requirement did not do so. For example, consistent with CNA officials' statements that they considered IBNR when calculating their loss ratio, the data included "loss development factors (LDF)." According to CNA, these factors are commonly used in the insurance industry to arrive at the ultimate value that can be expected for a claim

because of loss development and IBNR. For example, an LDF of 1.5 means that for every \$1 of current claims, the ultimate payout will be \$1.50. However, CNA did not provide any information showing USACE how these factors were developed. For accident year 2008,¹⁹ the LDF increased CNA's total incurred losses, as reported in the table, from about \$10 million to about \$19 million.

In addition, although CNA provided USACE a table (see table 3) showing an overall 57.7 percent loss ratio, it is not evident from the information provided in the table how the 57.7 percent figure was calculated. One problem with the table is that it is not apparent how the different lines of data in the table relate to one another and why. For example, we were able to determine that the "selected" amount is a weighted average²⁰ of "Ultimate (based upon Paid Losses) and "Ultimate (based upon Incurred Losses)." However, the weighted average is calculated differently each year, generally (but not always) giving greater weight to the latter category for more recent accident years than for older accident years. We identified other inconsistencies in the table. For example, we found that, although the "Ultimate (based upon Incurred Losses)" is generally calculated as "Total Incurred & [Allocated Loss Adjustment Expense] ALAE"²¹ multiplied by the "Incurred LDF," it was calculated differently for accident year 2007. We could find no evidence that CNA explained why the calculation differed for that year. Similarly, although the "Incurred Loss & ALAE Ratio" was calculated the same way for accident years 2005, 2006, 2007, 2008, 2002-2008, and 2009, CNA calculated it differently for accident years 2002-2009. Had CNA calculated it consistently, the "Incurred Loss & ALAE Ratio" in the final column would have been 98.24 percent, instead of 161.8 percent. This difference may be significant because the overall loss ratio of 57.7 percent appears based, in part, on this figure. Finally, the table is difficult to interpret because it relies, in large part, on percentages and percentages of percentages instead of raw numbers, further limiting USACE's ability to clearly understand how the 57.7 percent figure was developed.

¹⁹An accident year is equivalent to the calendar year.

²⁰An average giving weights to different numbers in proportion to their importance.

²¹According to CNA, ALAE refers to expenses that are assignable or allocable to specific claims. Fees paid to outside attorneys, experts, and investigators used to defend claims are examples of ALAE.

Table 3: CNA Table Provided to USACE to Document the 57.7 Percent Loss Ratio

	Actual AY ^a 2005	Actual AY 2006	Actual AY 2007	Actual AY 2008	Total AY 2002 - AY 2008	Actual AY 2009	Total AY 2002 - AY 2009
Written Premium (000's)	20	15,785	19,592	28,718	64,115	32,681	96,796
Earned Premium (000's)	10	7,901	17,497	23,925	49,333	22,529	71,862
Paid Losses & ALAE (000's)	15	11,422	17,861	2,075	31,372	176	31,549
Total Incurred & ALAE (000's)	15	21,286	35,884	9,584	66,768	3,834	70,603
Paid LDF	1.03	1.55	2.48	5.10		8.50	
Incurred LDF	1.03	1.26	1.75	2.03		3.78	
Ultimate (based upon Paid Losses)	15	17,646	32,392	10,582	60,636	1,500	62,136
Ultimate (based upon Incurred Losses)	15	26,820	55,567	19,431	101,833	14,475	116,309
Selected	15	22,692	48,267	16,484	87,458	12,529	99,987
Paid Loss & ALAE Ratio	143.9%	144.6%	102.1%	8.7%	63.6%	0.8%	86.5%
Incurred Loss & ALAE Ratio	143.9%	269.4%	205.1%	40.1%	135.3%	17.0%	161.8%
Gross Ultimate Incurred Loss & ALAE	148.7%	287.2%	275.9%	68.9%	177.3%	55.6%	139.1%
War Hazard Incurred & ALAE (000's)		14,225	31,781	5,417	51,423	1,353	52,776
% War Hazard		0.668	0.886	0.565	0.770	0.353	0.748
Selected % War Hazard		0.535	0.709	0.452	0.616	0.282	0.598
Selected War Hazard Ultimate Incurred		153.5%	195.5%	31.2%	109.2%	15.7%	83.2%
Ultimate Incurred Loss & ALAE (net of Recoveries)	148.7%	133.7%	80.4%	37.7%	68.1%	39.9%	55.9%
Earned Premium at Current Rate Levels	9	7,172	18,462	26,915	52,559	22,529	75,088
Indicated Weights	0.0%	9.6%	24.6%	35.8%		30.0%	100.0%
Selected Weights	0.0%	10.0%	25.0%	32.5%		32.5%	100.0%
Ultimate Incurred Loss & ALAE (net of Recoveries)	163.8%	147.2%	76.2%	33.6%	66.2%	39.9%	57.7%

Source: CNA.

^aAccident Year.

The table also indicated use of some data or information starting in 2002. This use of data prior to 2005 appears to contradict the contract requirement that the loss ratio will be cumulative from the inception of the program for each loss ratio calculation used to determine the rate for the next period. As noted

earlier in this report, CNA began providing DBA insurance to USACE in 2005. Therefore, any data or assumptions from 2002 would be 3 years outside the timeframe for calculating the loss ratio.

The way in which claims that may qualify for WHCA reimbursement are reflected in the table is also unclear. As noted earlier, USACE contracting officials cautioned CNA during option year negotiations that cases eligible under the WHCA “should not be included in the loss ratio calculation.” CNA officials responded that it takes several years for Labor to determine if claims are reimbursable under the WHCA and, until that time, CNA is responsible for paying the claim and setting aside reserves. They added that Labor had denied claims that, in CNA’s opinion, should have qualified for WHCA reimbursement. We confirmed that CNA took some steps to remove WHCA cases from its overall loss ratio calculation. However, CNA’s methodology for doing so and the extent to which these cases were removed from the overall calculation is unclear. First, CNA officials confirmed that the table shows that, for accident years 2002-2009, 59 percent of its forecasted ultimate incurred losses will be recovered as WHCA from Labor.²² The table’s formulas reveal that this percentage is the result of multiplying the percentage of cases identified as WHCA cases by 80 percent, but it is not clear how CNA developed the 80 percent figure. Second, although CNA applies the LDF to all claims (both WHCA and non-WHCA) in developing its overall loss ratio, it is not clear whether CNA also applies the factor when it removes a portion of the claims because of anticipated WHCA reimbursement. Third, CNA officials have indicated to us that it includes a “small contingency” (8 percent) in IBNR for claims that are initially identified by CNA as WHCA but ultimately are not accepted for WHCA reimbursement by Labor. However, this 8 percent figure does not appear anywhere in the table, and we found no evidence that CNA informed USACE of the 8 percent provision.

Finally, we found that CNA did not provide a clear explanation of how the 5.2 percent loss ratio related to the 57.7 percent loss ratio. In communications with USACE, CNA stated that the 57.7 percent loss ratio was the sum of the 5.2 percent case incurred loss ratio and a 52.5 percent provision for IBNR. However, when we asked CNA officials where the 5.2 percent figure is reflected in the table showing the 57.7 percent loss ratio, they responded that the 5.2 percent figure would not appear in the table because it was calculated on a contract period basis, while the table was based on an accident year basis. They added that the 5.2 percent would be imbedded within the non-War Hazard portion of “Total Incurred and Allocated Loss Adjustment Expenses” for portions of accident year 2008 and accident year 2009. This explanation raises questions about why the two figures were calculated using different time periods and assumptions, and whether the relationship between the two figures is as direct as indicated in contract negotiation documents. CNA’s statement also calls into question whether it followed the contract requirement that the loss ratio be cumulative from the inception of the program if the 5.2 percent loss ratio only covers portions of the 2008 and 2009 accident years.

Statements made by CNA officials regarding the 52.5 percent IBNR figure during option year negotiations also raise questions about the reliability of the overall reported loss ratio. For example, when advocating for the inclusion of IBNR in the definition of loss ratio, a CNA official stated that because the pilot program started in 2005, CNA had several years of experience providing DBA insurance that showed that a good percentage of DBA claims are reported well after the expiration of a contract year. However, CNA’s data only support this assertion for the first year of the program (2005-2006). Specifically, roughly 72 percent of the 2005-2006 claims were reported after that year ended. In comparison, only 17 percent of the 2006-2007 claims and 15 percent of the 2007-2008 claims were reported after those contract years ended.

²² This factor is shown in the “Selected % War Hazard” row of the table.

CNA's Reserve Adjustments Were Not Reported in a Timely Manner

We reviewed a selection of CNA's case files and found delays in reporting reserve adjustments to USACE. As noted earlier in this report, CNA provides quarterly loss reports to USACE in compliance with the 2008 contract. These reports provide claim-level data. To verify the losses reported to USACE in these reports, we selected 20 individual claims representing \$29 million of the \$137 million in reported losses, as of the end of fiscal year 2010.²³ We then reviewed the claims files provided by CNA at its headquarters in Chicago, IL, to compare the total reserves documented in CNA's files with the reserves included in CNA's quarterly reports to USACE.

Our analysis shows that CNA failed to report some of the most significant reserve increases to USACE in a timely manner. For example, in the case of one claimant, the claims file indicated an approved reserve amount of \$1.3 million in December 2009, but the reserve amount reported to USACE was less than \$25,000 until March 2010, when the reserve increased to \$1.2 million. In another case, CNA approved an increase of the reserve amount to \$1.8 million in November 2009, but did not report the increased reserve amount until March 2010. CNA officials told us that delays may occur because reserve adjustments are approved after the closing date for downloading information from CNA's claims system into its financial system, which generates the quarterly report. However, in these cases, we determined that the reserve amounts were approved prior to the closing date for the December 2009 quarterly report. Furthermore, when we questioned a CNA official about these cases, he informed us that they were not reflected in CNA's claims system until 1 to 3 months after they had been approved.²⁴

CNA's Quarterly Reports Reflected Losses for Claims Approved for WHCA Reimbursement

We found that CNA continued to include cases in its quarterly loss reports after they had been approved for WHCA reimbursement and even increased reserves in some cases. For example, for one claim, CNA filed for a WHCA reimbursement of \$150,437.64 on April 2, 2009. Labor approved the claim and, on September 3, 2009, paid CNA \$150,939.18. Two months later, CNA increased the reserves for the claim to \$1,850,359. According to the claims file, CNA decided to commute the claim (pay the beneficiaries a one-time lump sum payment) and in November 2009 estimated the total commutation at \$1.8 million.

CNA officials told us that the reserve amount was also increased because of a change in Labor's processes. In late 2009, Labor determined that insurance carriers would be required to pay and administer foreign national WHCA claims. Prior to that time, Labor had been responsible for doing so. Therefore, CNA increased the amount because that was its best estimate of the ultimate amount that would eventually be paid on the claim. However, because the claim had been accepted for WHCA reimbursement, CNA knew that it would receive reimbursement for the commuted amount from Labor and showed the net loss to CNA in its claims file as \$0. Labor officials confirmed that, once a claimant is approved for WHCA reimbursement, it is "literally guaranteed" that the insurance carrier will receive the commutation amount.

When we raised this issue with CNA officials, they stated that we "should have no concerns regarding the inclusion or timing of the removal of WHCA claims from CNA's incurred losses" because "CNA does

²³ This was not a random sample, and the results of our analysis cannot be generalized

²⁴ When we asked this official why a reserve amount would be changed in the claims file in December but not added to the system until March, he indicated that this was not normal practice, but that CNA likes to avoid adding new large reserves at the end of a calendar year because it can "throw off the numbers" and "causes concern." Notably, CNA is required to report the reserve amounts held for DBA claims at the end of each calendar year to Labor and to purchase a security deposit for the total amount of DBA reserves. Failing to report the higher reserve amounts would lower the security deposit that CNA is required to purchase.

not include War Hazard claims in its calculation of losses, nor did CNA consider War Hazard losses when developing rates for any DBA contracts with USACE.” However, as indicated above, the extent to which CNA removes WHCA cases from its loss ratio is unclear, and CNA has not provided clear information to USACE regarding its methods for doing so.

In the contract issued on April 1, 2011, USACE specified that CNA’s “incurred claims shall exclude those claims identified for reimbursement under WHCA.” However, it does not specify who identifies the claims for reimbursement, at what point these claims are to be removed, how much time CNA has to remove them, or if this requirement applies to claims being administered for claimants who live abroad.

CNA’s Quarterly Loss Reports Did Not Fully Reflect War Hazard Recoveries

As described earlier, CNA included a column labeled “War Hazard Recoveries” in its quarterly loss reports to reflect WHCA reimbursements received from Labor. We found that, except for one claim, the amounts in this category were consistently less than the actual WHCA reimbursements that CNA received. For example, for one claim, CNA received a WHCA reimbursement of \$6,567.06 on August 31, 2010. CNA’s loss report dated September 13, 2010, showed that it had received \$0 in WHCA reimbursements for this claim.²⁵

In other cases, CNA indicated that the reason for the difference between the actual reimbursement and the reported amount was the 15 percent administrative fee that CNA retained from Labor for handling the claim.²⁶ For example, on September 3, 2009, CNA received a \$150,939.18 WHCA reimbursement for one claimant. The amount shown in the “War Hazard Recoveries” category for this claim in September 2009, December 2009, March 2010, June 2010, and September 2010, however, was \$131, 251.46. When we first interviewed CNA officials about the War Hazard Recoveries column, they indicated that it was meant to reflect all funds recovered from Labor for each WHCA-approved claim. However, when we alerted them to the fact that the column did not reflect the full reimbursed amount, they stated that the column actually “includes all indemnity and medical costs incurred by CNA in connection with a particular claim” and “does not include the 15 percent administrative fee paid to CNA.” CNA also stated that it removes the 15 percent fee because the lower amount (the total reimbursement minus the administrative fee) accurately depicts the losses for the claims. However, we noted that CNA did not decrease the amount of expenses²⁷ shown for the claims in its quarterly loss reports, despite receiving the 15 percent fee. This analysis raises questions about how fully and accurately CNA reflected its losses for WHCA cases to USACE.

²⁵ We confirmed that the closing date for the September 2010 quarterly report was well after CNA received the WHCA reimbursement.

²⁶ By Labor regulation, an insurance carrier “may receive reimbursement of unallocated claims expense in an amount of 15 percent of the sum of the reimbursable payments made under the Defense Base Act or other workers’ compensation law.” 20 C.F.R. § 104 (c).

²⁷ As noted earlier in this report, the expense column in the quarterly loss report refers to costs associated with administering claims and policies in the normal cost of doing business.

CNA Reserved about Twice as Much as it Actually Paid for Closed Claims

Our analysis of CNA's quarterly loss reports also indicates that, for DBA cases that had closed at the time of option year negotiations, CNA had reported reserving about twice as much as it had actually paid for these cases. Reserve amounts comprise a significant portion of CNA's total reported losses. For example, at the conclusion of 2010, CNA reported \$137 million in losses since the inception of the USACE DBA program. Of this \$137 million, \$90 million (or 66 percent) were funds held in reserve.

To assess the extent to which reserves represented an actual loss for CNA at the time of negotiations, we reviewed CNA's quarterly loss reports through September 2009,²⁸ identified each claim that had been closed and the maximum that CNA had reported reserving for each claim, and compared that amount to what was actually paid when the claim closed. Through this analysis, we determined that, for the 333 DBA cases that had closed by that date, CNA had reported total reserves as high as \$4.3 million. However, the total amount that CNA had actually paid out for these cases was \$2 million, less than half the amount that had been held in reserve. We also determined that the reserve amount was higher than the actual paid amount in most of the closed cases, rather than just for a few large cases. Specifically, of 282²⁹ closed claims, 237 (or 84 percent) ultimately closed out for less than their reported reserves. Only 45 cases closed out for more than their reported reserves. When we shared this data analysis with CNA, it stated that a significant difference in reserves and paid amounts is not, by itself, an indication of a problem and without reviewing the actual claims files it is impossible to determine why CNA was ultimately able to close out those cases for less than the maximum amount reserved.

CNA officials also told us that claim reserves are initially set as a rough estimate. As the actuaries and claims adjusters get more information about what types of injuries occurred and how much time and lost wages will be incurred, reserve amounts become more accurate. Therefore, CNA's internal standard is for the reserve amount to be 95 percent adequate 12 months after it learns of the claim. In other words, 1 year after a claim is reported to CNA, the company aims to have reserves in place that are 95 percent of the total amount that is ultimately paid when the case is closed. We asked CNA to provide an analysis of its cases under the USACE DBA single insurance program using this standard to measure reserve adequacy. CNA provided this analysis for calendar years 2009 and 2010, as well as the first quarter of 2011. CNA's analysis demonstrated that it had missed its 95 percent target by a wide margin. Specifically, its reserves for 2009 were 316.8 percent of the final paid amounts for cases closed that year, and its reserves for 2010 were 139.7 percent of the paid amounts for cases closed in that year. When we raised concerns about the results of this analysis with CNA officials, they stated that the 95 percent tool is just one of many benchmarks that CNA uses to track the development and resolution of claims. They also stated that the tool has a number of limitations. For example, it does not capture claims that open and close within 12 months and considers closed claims only, which means that the sample size is too small to provide statistically meaningful results.

Because of the complexity of the data, we consulted experts in the insurance industry with specialized knowledge of workman's compensation insurance. One expert stated that, in his experience, while it is not necessarily uncommon for insurance carriers to reserve more than they actually pay out, the data trends we observed raised some questions about how CNA was calculating reserves. Other experts

²⁸ We chose this point in time because this was when CNA and USACE were negotiating premium rates for the option year. Our data analysis does not include loss reports for 2006 and 2007 because CNA was unable to provide all quarterly reports for those years, due to a change in accounting systems. However, because the quarterly loss reports are cumulative, the absence of 2006 and 2007 quarterly reports did not impact our analysis.

²⁹ In conducting this analysis, we excluded the 51 closed claims that had never had a paid or reserved amount associated with them.

stated that more robust analysis of claims data would be needed before making a judgment as to the adequacy of the carrier's reserves.

We also conferred with an expert in risk management, insurance, and actuarial science.³⁰ He determined that, although the increase in CNA's reserves over time was typical, the degree to which reserves increased was surprising and could not be easily explained. For instance, in September 2009, CNA reported reserves of \$6.8 million for 58 claims reported during the 2005-2006 contract year. One year later, CNA increased its reserves to \$11 million for the same 58 claims. According to the expert, this type of increase on the same claims 3 years after they were reported was striking. According to CNA officials, roughly 90 percent of these reserves were for WHCA cases,³¹ and CNA does not include WHCA cases when calculating its loss ratio. However, as noted above, the extent to which CNA excludes WHCA cases from its loss ratio analysis is unclear. Furthermore, CNA has included WHCA cases in its quarterly loss reports.

According to some of the experts we consulted, insurance carriers are often required to have an independent actuary review of reserve adequacy. However, because the USACE DBA program is a small portion of CNA's business, CNA did not have an independent review of reserve adequacy for the reserves under this contract.³²

CNA's Recent Loss Data Raise Additional Questions

CNA's most recent quarterly loss data and premiums collected data raise additional questions about CNA's assertions regarding its overall loss experience. We analyzed CNA's March 2011 premiums collected report³³ and determined that, from November 2005 through September 2009, CNA collected a total of about \$114 million in premiums. We also analyzed CNA's quarterly loss data and determined that CNA's total incurred losses for non-WHCA cases³⁴ for this same time period were approximately \$42 million, as of March 2011, yielding a loss ratio of 37 percent. This figure is significant because it provides the clearest and most current picture available of CNA's actual loss experience for the claims discussed during the option year negotiations. For CNA to realize the above 50 percent loss ratio that it asserted in September 2009, it will need to experience at least another \$15 million in losses on these same claims. While additional losses are likely because of continued claim development through IBNR, the likelihood that they will increase this much is questionable. Furthermore, over half of the \$42 million in losses that CNA is currently reporting for these claims are reserves. Unless these reserves are fully paid out when the claims close, CNA will have to incur even more than \$15 million in additional losses for these claims to reach the 50 percent loss ratio.

³⁰To protect individuals' privacy and to ensure an independent and unbiased opinion, we redacted the information, removing names and other identifying information about claimants, their employers, the insurance company, and the contracting government agency.

³¹ CNA also stated that the reserve amounts for these WHCA cases increased because of a change in Labor's policy for handling war hazard claimants and beneficiaries who live outside the United States.

³² After reviewing an excerpt of this draft report, CNA retained an expert who determined that, in his experience, CNA reserving practices were actuarially sound and commercially reasonable.

³³The March 2011 premiums collected and quarterly loss reports were the most recent reports we obtained.

³⁴ We selected non-WHCA cases because of CNA's statements that these cases are not included in its loss calculations.

USACE AND C-JTSCC'S INTERNAL CONTROLS FAILED TO ENSURE THAT PRIME CONTRACTORS AND SUBCONTRACTORS PURCHASED AND MAINTAINED THE CORRECT AMOUNT OF DBA INSURANCE

Although USACE and C-JTSCC have some controls in place to ensure that both prime contractors and subcontractors purchase DBA insurance, our review of 121 contract actions and their associated files found that these controls are not sufficient. In general, the USACE and C-JTSCC contract files that we reviewed were missing some key components, such as contract modifications or invoices, needed to determine whether DBA insurance was appropriately purchased and maintained. However, based on the components we could review, existing controls appeared insufficient. First, although USACE and C-JTSCC direct prime contractors to require their subcontractors to purchase DBA insurance, we identified subcontractors that did not have DBA insurance policies. Second, we found instances in which significant contract modifications occurred, but we found no documentation indicating that the contracting officer took action to adjust the amount of DBA insurance accordingly. Finally, in cases where contractors' policies expired prior to the end of the contract period, we did not find documentation in the case files showing proof that the contractors had renewed their insurance policies.

Contract Files Were Missing Some Key Components

We generally found insufficient documentation to determine what was spent for DBA insurance, how much coverage was required, and whether policies were in place for the period of performance. We reviewed 46 USACE and 8 C-JTSCC contract files³⁵ during the course of this audit. We also reviewed files for an additional 67 task orders issued under indefinite quantity indefinite delivery contracts, for a total of 121 contract actions. We could not always find the documentation needed to fully analyze these contract actions. For example, we were unable to find a "notice to proceed" in 97 of the 121 contract files. If the date on the notice to proceed is earlier than the date on the insurance policy, it is an indication that work could have begun under the contract without DBA insurance in place. Additionally, invoicing data were uniformly not included in the contract files. We found almost no information regarding payment from USACE and C-JTSCC to the contractors for DBA insurance. USACE personnel stated that Engineer Form 93 is used to track payments made from the USACE finance center to contractors. We requested these forms for the contracts in our sample. However, only a few of the contracts in our sample had these forms that specifically identified an invoiced amount for DBA.

We provided a list of items that were missing from each of the contract files in our sample to USACE and C-JTSCC. Although USACE and C-JTSCC officials indicated that they would be able to locate these items by reviewing their electronic systems, they provided only a few of the requested items.

In 2010, a USACE internal review office issued a Material Weakness Report, which found that the Afghanistan Engineer District-North³⁶ contract office had weaknesses in its administrative processes, contract documentation, and records of contract actions and financial transactions. For example, prescribed checklists were not always completed and required copies of both basic contract and contract amendments were sometimes missing from files.

³⁵ We selected the five largest contractors based on total dollar value of reconstruction contracts as identified by SIGAR report 11-4 for both USACE and CCC. We then requested the two most recent completed policy years from Rutherford for those contractors and compiled a list of the 54 contracts identified on those policies. Kabuljan was originally identified for a case study, but was dropped due to having no obligations.

³⁶ USACE Afghanistan Engineer District-North provides program management and oversight of construction in Afghanistan. Several of the contracts in our sample were located with the Afghanistan Engineer District-North contract office.

Subcontractors Did Not Consistently Purchase DBA Insurance

Although the DBA requires subcontractors under U.S. government contracts to purchase DBA insurance, we found some instances in which this had not occurred. Consistent with the requirements set forth in the DBA, the Federal Acquisition Regulation directs contracting officers to insert, in all subcontracts to which DBA applies, a clause requiring subcontractors to provide DBA insurance.³⁷ In our review of the 121 contract actions,³⁸ we found that only 41 correctly included this clause.

To test whether subcontractors purchased DBA insurance, we identified 24 subcontractors that had performed work under two contracts in our sample—contracts with a company to build Afghan National Army garrisons at locations in Afghanistan. We then requested that Rutherford provide documentation of these 24 subcontractors' DBA policies. Rutherford located insurance policies for 20 of the 24 subcontractors and confirmed to us that the remaining 4 subcontractors did not hold DBA insurance with CNA, USACE and C-JTSCC's sole insurance provider. In addition, of the remaining 20 subcontractors, 7 did not purchase insurance for all contracts for which they were identified as subcontractors, and 4 had policies that did not cover either of the contracts we identified. Altogether, only 9 of the 24 subcontractors had DBA coverage for all of their contracts that we reviewed as part of this analysis.

USACE Contracting Officers Did Not Adjust DBA Insurance to Account for Significant Changes in the Scope of Work on Contracts

Although modifications to contracts can significantly alter total labor costs associated with that contract, for the 121 contract actions we reviewed, we found instances where contracting officers did not take action to ensure that the amount of DBA insurance was adjusted accordingly. For example, on contract W917PM-08-C-0076, awarded for the design, partial site-adaptation, and construction of new facilities for the Afghan National Army, the DBA Contract Line Item Number (CLIN) was established as a firm-fixed-price cost.³⁹ During the course of performing this contract, USACE issued a procurement modification to provide an asphalt road and increased the value of the contract by over \$624,000. However, no adjustment was made to the DBA CLIN to increase its value, which may have resulted in workers not being covered for this portion of work.

Additionally, Contract W917PM-08-C-0059, which was awarded for the design, site-adaptation, and construction of a new garrison for the Afghan National Army in Nimroz, Afghanistan, had an administrative modification that de-scoped work for construction of a portion of security wall. However, we could find no adjustment made to lower the cost of DBA insurance. Since at least some labor costs would have been associated with the security wall construction, we determined that it would have been appropriate for the contracting officer to recover some of the funds initially agreed to under the contract to cover DBA costs.

³⁷ See Federal Acquisition Regulation 52.228-3.

³⁸ When reviewing indefinite quantity indefinite delivery contracts we reviewed, when possible, the base contract and the issued task orders to determine if the appropriate actions had been taken.

³⁹ Firm-fixed-price contracts provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. Firm-fixed-price contracts require the contractor to deliver services within an agreed-upon schedule and cost to the United States.

Contracting Officers Did Not Obtain Proof of Insurance Renewal for Contract Periods that Exceeded the Policy Year

Although the DBA requires that contractors maintain insurance for the life of the contract, we identified some contract files that did not include proof that contractors had renewed their insurance policies when necessary. Because most of the contracts in our sample had performance periods spanning more than 1 policy year, the contractors were required to renew their policies to ensure continued coverage of those contracts. However, we found no instances where the contractors submitted updated policy information. While we determined that the contractors often maintained the coverage, we also determined that the contracting officers' lack of oversight over contractors' renewals is an internal control weakness. If a contractor failed to renew its policy, the workers on that contract would be uninsured. Although the DBA provides for payments to these uninsured workers through the "Section 44 Special Fund,"⁴⁰ Labor officials said that these cases are often complicated and it can take several years for the workers to receive any payments or benefits.

EXISTING PROCESS FOR BILLING AND REIMBURSING CONTRACTORS FOR DBA INSURANCE COSTS VIOLATES THE PURPOSE STATUTE AND LIMITS USACE AND C-JTSCC OVERSIGHT OF ACTUAL DBA INSURANCE COSTS

The current process for billing and reimbursing contractors for DBA costs commingles funds in violation of the Purpose Statute⁴¹ and limits USACE and C-JTSCC oversight over actual DBA insurance costs. Under the Purpose Statute, one funding source cannot be used to cover the expenses of another. However, Rutherford, CNA's broker agent, issues one policy for multiple contracts and, at end of the year, applies credits from contracts that had overestimated labor costs to contracts with underestimated labor costs. If these contracts have different funding sources, this process violates the Purpose Statute and may also violate the Anti-Deficiency Act.⁴²

Furthermore, contracting officers lack oversight over actual DBA costs. We found instances in which contractors did not purchase as much DBA insurance as indicated in their contract CLINs. We also determined that USACE and C-JTSCC have not recovered refunds for DBA insurance that should be due them. If a contractor, in total, overestimated its labor costs more than it underestimated them, Rutherford issues a refund to the contractor for the difference. We identified five contractors in our sample that received a total of \$259,319 in refunds. Although not all of these refunds are due USACE or C-JTSCC, some are. Data also indicate that the total amount of refunds potentially due the U.S. government for the USACE DBA program could be significantly larger because CNA has refunded at least \$58.5 million to contractors since the start of the pilot program in 2005.

The Process for Billing Contractors Commingles Funds in Violation of the Purpose Statute

We found that the process for billing contractors for their DBA insurance costs violates U.S. funding restrictions, particularly the Purpose Statute. Rutherford's current practice is to issue one policy for DBA insurance to each contractor for the term of one policy year that covers all of that contractor's contracts with USACE and C-JTSCC. As a result, individual policies can cover multiple contracts awarded

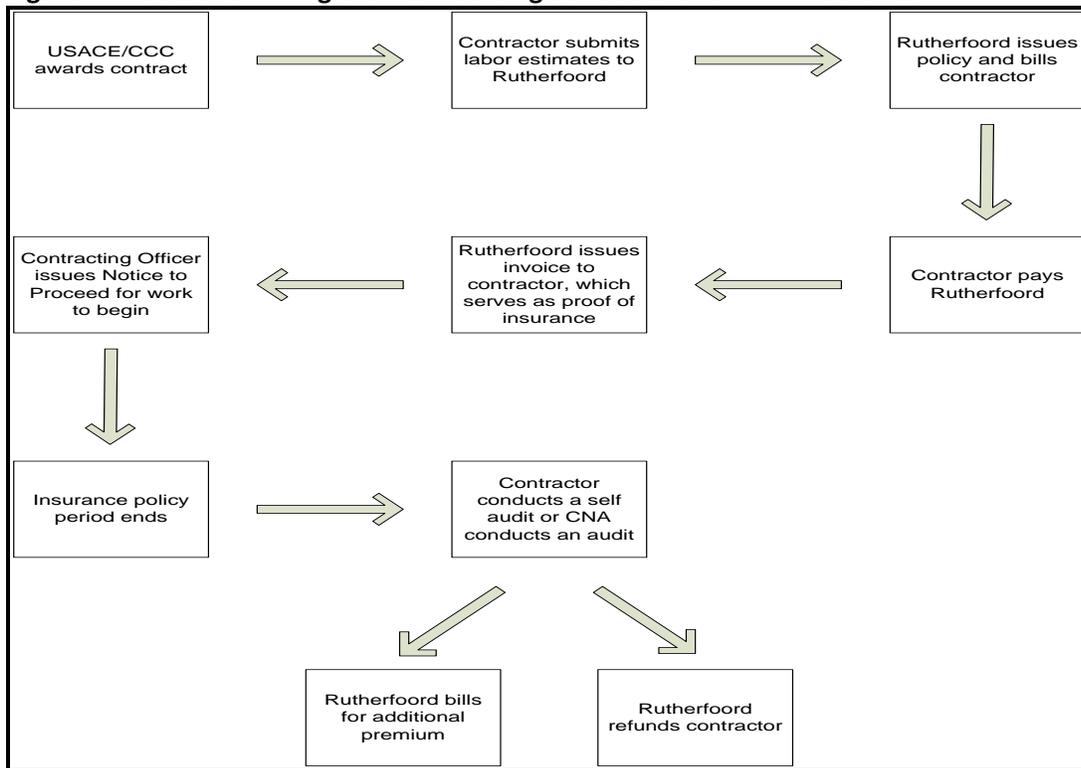
⁴⁰ Uninsured employers subject themselves to fine, imprisonment, civil liability and naming of the corporate officers for personal liability. If the employer cannot pay, DBA provides for potential payment of liability from the "Section 44 Special Fund." This fund is financed primarily by insurers and self-insured employers under the Longshore and Harbor Workers' Compensation Act and its extensions. See 33 U.S.C. 944.

⁴¹ 31 U.S.C. § 1301(a).

⁴² 31 U.S.C. §§ 1341(a), 1342, and 1517(a).

at different times, with different funding types and different periods of performance. According to Rutherford officials, at the conclusion of each policy period, the contractors are required to submit self-administered audits to adjust or determine what the actual costs of labor were under all covered contracts and the extent to which the insurance premiums paid over the course of the year covered those costs.⁴³ This audit process involves a totaling of all contract premiums for each policy and can result in either an additional premium payment or a refund. If the initial estimates are more than the actual labor costs, Rutherford gives the contractor a refund; if the estimates are lower, Rutherford charges the contractor an additional premium. Figure 2 illustrates the process for billing and reimbursing contractors.

Figure 2: Process for Billing and Reimbursing Contractors for DBA Insurance



Source: SIGAR analysis of information provided by USACE, Rutherford, and CNA.

Under this process, one source of funds can be used to pay the DBA premium costs of contracts that have been funded through a different source, therefore violating the Purpose Statute, which requires that funds be used only for the purposes for which they were appropriated.⁴⁴ For example, we reviewed one contractor's DBA insurance policy for the period September 1, 2008-September 1, 2009, which initially covered five contracts. We determined that the source of funds for those contracts was the Afghanistan Security Forces Fund (ASFF), which is used to train and equip the Afghanistan National Security Forces. The contractor added a non-ASFF funded contract to the policy during the policy year. We determined that this contract was awarded for work in Iraq; therefore, ASFF funds should not have been used to fund this contract. At the end of the policy period, the contractor conducted the required

⁴³ CNA retains the right to audit contractors' labor records to verify DBA insurance costs, but does not always exercise this option.

⁴⁴ Comptroller General Opinion B-213137, 63 Comp. Gen. 422 (1984) states that, "It is a basic premise in appropriations law that expenses which are not necessary to carry out the purposes of a particular appropriation may not be funded from that source." See also Comp. Gen. No. B-240365.2 (March 14, 1996); Comp. Gen. No. B-213137 (June 22, 1984); and Comp. Gen. No. B-120676 (October 25, 1954).

self-audit and found that two of the contracts had overestimated labor costs including the one awarded for work in Iraq, while the other four had underestimated labor costs. Rutherford applied the credit for the two over-estimated contracts to the four under-estimated contracts and then provided a reimbursement of \$60,858 to the contractor. Table 4 shows the initial estimates and final audited amounts for each of the six contracts.

Table 4: Source of Funds and Audit Results for a Contractor’s 2008-2009 DBA Policy

Contract Number	Source of Funds	Initial Estimate	Self-Audit	Premium Difference
W917PM-07-D-0014	ASFF	\$147,190	\$1,030	\$146,880
W917PM-08-C-0009	ASFF	\$20,330	\$42,713	-\$22,383
W917PM-07-C-0076	ASFF	\$105,125	\$220,865	-\$115,740
W917PM-08-C-0033	ASFF	\$76,125	\$101,276	-\$ 25,151
W917PM-08-C-0070	ASFF	\$101,500	\$135,034	-\$33,534
W91GY0-09-D-0001	Non-ASFF (place of performance Iraq)	\$448,267	\$337,481	\$110,786
Total		\$899,257	\$838,399	\$60,858

Source: SIGAR analysis of the contractor’s DBA policy and documents for September 1, 2008-September 1, 2009.

This analysis indicates that non-ASFF funds were used to cover the DBA costs incurred on ASFF contracts, which is a violation of the Purpose Statute.

In March 2011, we formally notified USACE that the DBA billing processes could be a violation of U.S. funding restrictions. In our letter detailing this concern, we stated that USACE should consider developing internal controls for any future contracts awarded for providing DBA insurance to prevent the possible commingling of funds. Specifically, we suggested that requiring insurance providers to issue one policy per contract or requiring insurance providers to issue one policy per funding source could be effective ways to address this potential problem. However, on April 1, 2011, USACE awarded a new contract to CNA that failed to address the problem of commingling funds. USACE contracting officials later told us that drafting one policy for multiple contracts was standard industry practice and that requiring one policy per contract could place too great an administrative burden on the insurance carrier. CNA officials we spoke with also indicated that it would be difficult for them to create one policy for each contract. However, USACE officials did not take any steps to address the problem of commingling funds. For example, another way to avoid commingling funds would be to allow insurance carriers to continue issuing one policy for multiple contracts, but require them to invoice the costs of each contract separately and ensure that the contracting officer receives an invoice for each contract. Currently, contracting officers only receive invoices based on the contractors’ initial estimates of labor costs.

Commingling of funds can also result in an Anti-Deficiency Act violation. Under the Anti-Deficiency Act, it is unlawful for a U.S. government employee to make or authorize an expenditure from, or create or authorize an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund.⁴⁵ If the current billing practice has constituted a violation of the Anti-Deficiency

⁴⁵31 U.S.C. § 1341 (a)(1)(A).

Act, USACE is required to report to the President and Congress all relevant facts and a statement of actions taken and transmit a copy of each report to the Comptroller General.⁴⁶

USACE and C-JTSCC Officers Failed to Ensure Contractors Accurately Billed for DBA Insurance

Because contracting officers lack oversight over how much contractors are billed for DBA insurance and how much they are reimbursed, USACE and C-JTSCC have been unable to ensure that contractors accurately billed the U.S. government for DBA insurance. We determined that, in some cases, contractors did not purchase as much DBA insurance as indicated in their contract CLINs. In addition, we found that, although 5 of the 9 contractors in our sample received \$259,319 in refunds for the cost of their DBA insurance premiums, the U.S. government has not recovered any of these refunds. Since 2005, the total amount of refunds due USACE and C-JTSCC under the DBA program may be as much as \$58.5 million.

Contractors Did Not Consistently Purchase the Contracted Amount of DBA Insurance

Contracting officers lack oversight over the complete DBA billing process and therefore cannot determine if contractors purchase the correct amount of DBA insurance. When bidding on USACE or C-JTSCC contracts, contractors estimate labor costs and Rutherfordord applies the applicable rate to determine the estimated cost for DBA. As of October 2008, these estimated costs have been included in the contracts as a separate CLIN. Although the contracting officer receives proof of insurance and the initial payment based on the estimates from the contractors, current processes do not allow the contracting officer to see how much the contractor ultimately paid for DBA insurance. For example, for one contract, the contractor had negotiated a price of \$39,108.97 for DBA insurance with USACE. However, the contractor estimated to Rutherfordord that it would only need to purchase \$25,212 in premiums for that task order. Furthermore, at the end of the policy period, the contractor had only incurred a cost of \$16,160 for premiums on that same task order and received a credit toward premiums on other contracts of \$9,062. We reviewed invoice data provided by USACE to determine what was actually paid to the contractor for DBA and determined that it received the full amount of the CLIN for that task order of \$39,108.97 from USACE, indicating that USACE ultimately paid over \$39,000 for DBA coverage of only about \$16,000.⁴⁷ We were not able to determine the total amount that USACE and C-JTSCC could have overpaid for DBA insurance due to this problem because that would have required analyzing every contract under the DBA program since 2005, including any contract modifications, as well as the corresponding DBA insurance policies and government invoices. However, it is possible that the contracting officers' lack of oversight over what contractors pay to CNA for coverage has represented a substantial loss for the U.S. government.

Contracting Officers Were Unaware of Refunds

Rutherfordord officials stated that, because contracting officers reimburse contractors based on the initial estimated cost of DBA insurance and do not see the end-of year audits, the contracting officers are also not aware if contractors receive a refund. As discussed previously, each contractor submits a self-administered audit at the end of each policy year. If, in total, the contractor overestimated its labor costs more than it underestimated them, the contractor receives a refund for the difference. The extent to which the U.S. government has a right to obtain the refund depends on how the original contract was written, as detailed below.

⁴⁶ See 31 U.S.C. §§ 1341, 1517(a) and Section 145 of Office of Management and Budget Circular A-11.

⁴⁷ We were not able to obtain a copy of the official contract because the contract file was lost by USACE. Subsequently, we were unable to determine if USACE could recover any of these funds from the contractor. As explained later in this report, the way in which contracts are written determines whether the U.S. government can recover any funds for DBA insurance costs.

- For some contracts (particularly contracts dated before October 2008), DBA insurance was not shown as a separate CLIN, and contractors were explicitly instructed not to show a specific amount for DBA insurance in their bids. Instead, we learned from Rutherford officials that contractors purchased the amount of insurance they estimated necessary based on their labor costs and requested reimbursement from the contracting officer for the amount that they were billed by CNA based on these estimates. For these contracts, the U.S. government should receive any refunds.
- For other contracts, DBA insurance was shown as a firm-fixed-price CLIN. For these contracts, the contractor bid a specific amount for DBA insurance, which was ultimately incorporated into the contract award. In general, the government does not receive any refunds for these contracts because the contractor is owed the exact amount shown in the contract. If the contractor overestimated labor costs, the contractor keeps the difference. If the contractor underestimated labor costs, the contractor pays the cost of the difference out of pocket.
- Although contracts with firm-fixed-price CLINs typically mean that the U.S. government does not receive the refund, we identified several contracts with firm-fixed-price DBA CLINs that also included language indicating that the U.S. government should be reimbursed. For example, we identified one contract with a firm-fixed-price DBA CLIN that stated that “the contractor will be reimbursed for the cost of the DBA insurance” and that the CLIN “is not a profit line item.” For this type of contract, the U.S. government should receive any refunds.
- In October 2009, USACE issued a procurement instruction letter⁴⁸ requiring that DBA insurance be a cost reimbursable⁴⁹ CLIN. For these contracts, the contractor should receive reimbursement only for the actual cost of DBA insurance. Therefore, the U.S. government should receive any refunds for these contracts.

Out of the 9 contractors we reviewed, 5 contractors received refunds for DBA during specific policy periods.⁵⁰ For these contracts, we determined that the contractors received a total of \$259,319 in refunds and that none of these funds had been returned to the U.S. government. Because of the problems with incomplete contract files discussed earlier, we could not independently determine how much of the \$259,319 should be returned to the U.S. government. However, our analysis indicates that at least some of this money should be returned to USACE and C-JTSCC. For example, one contractor received a credit of \$110,786 for a specific contract. Because this contract did not include a separate CLIN for DBA insurance, this amount should have been returned to USACE. Instead, it was applied to other contracts on the policy with underestimated labor costs and contributed to the overall refund of \$60,858 given to the contractor for policy year 2008. USACE and C-JTSCC officials confirmed that they have not received refunds for any of the contracts in our sample.

Our data indicate that the amount of refunds potentially due USACE and C-JTSCC from contractors could be significantly larger than the roughly \$259,000 we identified for our sample of nine contractors. We analyzed CNA’s report of premiums it has collected since the start of the pilot program in 2005 and found that, as of March 2011, CNA had refunded a total of \$58.5 million to contractors. As a result, if none of the refunds are returned to the U.S. government, USACE and C-JTSCC will have paid nearly

⁴⁸ USACE Procurement Instruction Letter 2010-01.

⁴⁹ Cost-reimbursement contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Federal Acquisition Regulation Subpart 16.3.

⁵⁰ SIGAR initially selected policy periods for 2008-2009 and 2009-2010. However, for some of the contractors we selected, they had yet to submit an audit for the policy periods we reviewed and we were unable to do a complete case study review of these specific contracts. See appendix II for a list of the selected contracts by contractor that SIGAR reviewed.

\$283.5 million for DBA coverage that should have cost \$225 million. Although it is unlikely that all of the \$58.5 million in refunds are due the U.S. government, our analysis indicates that a substantial portion should be. As described above, the extent to which the government can recover refunds depends on how the applicable contract is written. Specifically, if the contract has a firm-fixed-price CLIN for DBA insurance, the government will not be able to recover the refund unless there was specific language in the contract indicating otherwise. However, the practice of including a separate firm-fixed-price CLIN in contracts was only in effect from October 2008 to October 2009, just 1 year out of the almost 6 year program.

CONCLUSION

DBA was enacted to ensure that individuals working abroad for the U.S. government have workers' compensation insurance should they get injured or killed on the job. Because contractors are reimbursed for their DBA costs, the program also makes it easier for smaller contractors to afford the costs associated with federal contracting. For these reasons, DBA insurance is particularly important in Afghanistan, which has a hostile working environment and where many subcontractors, particularly Afghan companies, are limited in size and resources. However, we identified significant problems with the DBA single insurer program, as implemented by USACE. Specifically, we found that USACE agreed to higher premium rates than were provided for under the contract's definition of loss ratio and, in making that decision, USACE paid \$9.9 million in premiums more than it needed to. We also found that some subcontractors in Afghanistan did not purchase DBA insurance. Furthermore, we determined that contracting officers have not always adjusted the amount of DBA insurance when significant modifications were made to contracts or ensured that contractors renewed their DBA insurance policies when necessary. These weaknesses increase the risk that workers in Afghanistan will not have the coverage they are entitled to under the DBA. Finally, we found that the process for billing and reimbursing contractors commingles funds in violation of the Purpose Statute and fails to ensure that the U.S. government receives any refunds that it is owed, which could total as much as \$58.5 million. Because many of the problems we identified are a result of interaction with a third party—the insurance carrier and its broker agent—our findings suggest that consideration of the self-insurance option may be warranted.

RECOMMENDATIONS

To strengthen USACE's DBA single insurance contract and address the problems with CNA's data that we identified through this audit, we recommend that the Acting Commanding General, USACE:

1. Modify the current contract with CNA to require that an invoice be provided for each contract showing the final amount paid for DBA insurance for that contract. This action should address the problem associated with the Purpose Statute violation we identified.
2. Determine whether the Purpose Statute violation we identified also constitutes an Anti-Deficiency Act violation and, if so, follow the reporting requirements set forth in the Act and in Office of Management and Budget guidance.
3. Modify the current contract with CNA to clarify and make explicit the requirement that incurred losses exclude claims identified for reimbursement under WHCA. Specifically, it should stipulate who identifies the claims for reimbursement, when they are to be removed from the loss report, how much time CNA has to remove them, and how cases with claimants outside the United States should be handled.

4. Modify the current contract with CNA to require an independent actuary review of reserve adequacy particular to the claims covered under the contract with USACE and to submit the review to USACE on an annual basis.

To strengthen the DBA insurance program and take steps to recover any refunds that may be due the U.S. government, we recommend that both the Acting Commanding General, USACE, and the Commander, C-JTSCC:

5. Issue guidance to contracting officers to strengthen their oversight of DBA insurance. This guidance should remind contracting officers of the importance of adjusting the DBA CLIN when contract modifications significantly affect the amount of labor needed to perform the contract and should require contracting officers to receive the final invoice from the insurance carrier for each contract before reimbursing the contractor.
6. Take steps to remind subcontractors of the requirement to and importance of purchasing DBA insurance. These steps could include, for example, a memo issued to prime contractors to be shared with all subcontractors or a training session for prime contractors and subcontractors on DBA insurance policies and procedures.
7. Determine how much of the \$58.5 million in refunded premiums is recoverable by USACE and C-JTSCC.
8. Take immediate action to recover these funds determined to be recoverable by USACE and C-JTSCC.

COMMENTS

USACE and C-JTSCC provided written comments on a draft of this report. These comments are reproduced in appendices IV and V, respectively. Labor provided technical comments, which we have incorporated as appropriate. In addition, we provided CNA an opportunity to review and comment on the sections of the report directly related to the company. We met with CNA officials to discuss their comments and took them into consideration when finalizing the report.

In its comments, USACE concurred with all eight recommendations and identified steps to implement them. For example, in response to the fourth recommendation, USACE stated that it will modify the current contract with CNA to incorporate a requirement for an independent actuary annual review of reserve adequacy relative to DBA claims under the USACE DBA contract. USACE also identified specific timeframes for completing actions responsive to our recommendations. For example, it stated that it will make every effort to complete recovery of any funds due the U.S. government no later than 18 months from the date of issuance of this report.

In its comments, C-JTSCC concurred with all four recommendations directed to it, noting that it would work with USACE where necessary. For example, C-JTSCC stated that it will work with USACE to determine the most effective way to identify all C-JTSCC contractors who have received refunds, obtain records of these refunds, and take action to get the money back.

APPENDIX I: SCOPE AND METHODOLOGY

This report provides the results of the Office of the Special Inspector General for Afghanistan Reconstruction's (SIGAR) review of the U.S. Army Corps of Engineers (USACE) single insurance provider Defense Base Act (DBA) program. This report is one in a series of SIGAR performance audits focused on reconstruction contract outcomes, costs, and oversight.

To assess the price reasonableness of the contracted premium rates with CNA, we analyzed CNA's loss and premium reports and reviewed all four contracts awarded to CNA under this program, including contract documentation such as price negotiation memoranda. In total we collected and analyzed 15 loss run reports submitted from 2006 through 2010. To determine if the data in these reports were reported accurately, we selected 20 open claims with the largest reserve amounts. We then reviewed the corresponding claims files as provided by CNA to determine if the amounts reported to USACE were supported by documentation in the files. We also reviewed these claims cases to determine if they had been approved for War Hazards Compensation Act reimbursement and obtained and analyzed data from the Department of Labor (Labor) on additional WHCA claims filed by CNA. Finally, we interviewed officials from USACE, Labor, and CNA, as well as individuals with expertise in workers' compensation insurance.

To determine how the USACE DBA process works for tracking funds, we analyzed the billing procedures of CNA and its broker agent, Rutherford International. We also analyzed how DBA was incorporated into USACE and C-JTSCC contracts by conducting case study reviews. For these reviews, we selected nine of the largest contractors, based on dollar value, for USACE and C-JTSCC.⁵¹ We analyzed copies of these contractors' DBA policies and determined that 54 contracts and 67 task orders issued under 10 indefinite quantity indefinite delivery contracts were covered by these contractor policies. We did not count the base indefinite quantity indefinite delivery contracts in our sample due to the fact that these types of contracts do not have obligated funds associated with them until a task order is issued (see appendix II for list of contracts and contractors reviewed in our sample). We then reviewed the corresponding contract files to determine how DBA was billed, if coverage was purchased and maintained for the life of the contract, and if the funds were tracked appropriately. As noted in this report, a significant portion of the documentation that we needed to conduct a thorough analysis of these files was missing.

Because our analysis indicated that refunds had been issued to the contractors that were not returned to USACE or C-JTSCC, we reviewed the CNA report of premiums collected to identify refunds. We then totaled all the refunds given since the inception of the program.

We conducted work in Kabul and Kandahar, Afghanistan, as well as Arlington, VA; Washington D.C.; and Chicago, IL, from February 2011 to July 2011 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was conducted by the Office of the Special Inspector General for Afghanistan Reconstruction under the authority of Public Law No. 110-181, as amended, the Inspector General Act of 1978, and the Inspector General Reform Act of 2008.

⁵¹ These contractors were identified based on data provided by USACE and C-JTSCC.

APPENDIX II: LIST OF SELECTED CONTRACTORS AND CONTRACTS FOR CASE STUDY REVIEW

Table I: List of Selected Contractors and Contracts for Case Study Review

Contractor	Contract Number
DynCorp	W917PM-08-C-0009
	W917PM-08-C-0076
	W917PM-08-C-0033
	W917PM-08-C-0070
	W917PM-07-D-0014
	W91GY0-09-D-0001
Contract International	W912ER-08-C-0042
	W912ER-06-D-0006
	W912ER-07-C-0006
	W912ER-07-C-0016
	W917PM-07-D-0018
	W912ER-04-D-0003
	W912ER-09-C-0014
	W912ER-09-C-0018
	W912ER-09-C-0050
	W912ER-09-C-0051
	W912ER-06-C-0003
	W917PM-04-C-0007
	W917PM-05-C-0011
	W912ER-05-C-0020
	W912ER-03-D-0003
FCEC UI	W917PM-08-C-0027
	W917PM-08-C-0057
	W917PM-08-C-0059
	W917PM-08-C-0045
	W917PM-07-D-0019
	W917PM-07-D-0012
	W917PM-09-C-0061
	W917PM-06-C-0040
	W917PM-04-D-0004
	W917PM-09-C-0084
	W917PM-09-C-0099
	W917PM-09-C-0090
	W917PM-06-C-0041

Contractor	Contract Number
	W917PM-06-C-0044
	W917PM-09-P-0330
	W917PM-07-D-0004
	W912GB-06-C-0028
	W917PM-09-C-0098
	W5J9LE-10-D-0005
	W5J9LE-10-D-0005
	W5J9LE-10-D-0014
	W5J9LE-10-C-0013
	W5J9JE-10-C-0015
	W5J9JE-10-C-0017
Red Sea Construction Company	W91B4M-09-C-7340
Nimrah Construction Company	W91B4M-09-C-7045
	W91B4M-09-C-7174
	W91B4M-09-C-7197
	W91B4M-09-C-7244
	W5K9UR-10-C-7036
ECC International	W917PM-07-D-0015
	W5J9LE-10-D-0002
	W5J9LE-10-D-0004
	W5J9LE-10-D-0019
	W912ER-09-C-0117
RM Asia	W91B4M-08-C-0009
Technologists, Inc.	W917PM-07-D-0016
	W917PM-07-D-0006
	W917PM-07-D-0021
	W917PM-07-D-0008
	W917PM-08-C-0069
	W917PM-08-D-0006
	W917PM-07-D-0015
	W917PM-06-C-0051
KBY Bozdemir Joint Venture	W91B4L-09-C-0124

Source: SIGAR

APPENDIX III: PRIOR AUDIT COVERAGE OF THE DBA INSURANCE PROGRAM

The following audit reports provide additional information on the DBA insurance program.

Department of Labor-Office of Inspector General, 03-11-001-04-430, *OWCP Needs To Improve Its Monitoring and Managing of Defense Base Act Claims*, Mar 30, 2011.

U.S. Army Audit Agency, A-2010-0152-ALL, *Pilot Program for Defense Base Act Insurance*, Aug 31, 2010.

U.S. Army Audit Agency (Acquisition, Logistics, and Technology), A-2007-0204-ALL, *Audit of Defense Base Act Insurance for the Logistics Civil Augmentation Program, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom*, Sep 28, 2007.

U.S. Army Audit Agency (Acquisition, Logistics, and Technology), A-2010-0075-ALL, *Audit of Defense Base Act Insurance, Audit of Contracting Operations, U.S. Army Contracting Command Southwest Asia-Kuwait*, Mar 23, 2010.

United States Government Accountability Office, GAO-08-772T, *Defense Contracting: Progress Made in Implementing Defense Base Act Requirements, but Complete Information on Costs Is Lacking*, May 15, 2008.

Department of Labor-Office of Inspector General, 03-11-001-04-430, *OWCP Needs To Improve Its Monitoring and Managing of Defense Base Act Claims*, Mar 23, 2011.

U.S. Army Audit Agency, A-2010-0152-ALL, *Pilot Program for Defense Base Act Insurance*, Aug 31, 2010.

U.S. Army Audit Agency (Office of the Deputy Auditor General, Acquisition and Logistics Audits), A-2007-0204-ALL, *Audit of Defense Base Act Insurance for the Logistics Civil Augmentation Program, Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom*, Sep 28, 2007.

U.S. Army Audit Agency (Office of the Deputy Auditor General, Acquisition and Logistics Audits), A-2010-0075-ALL, *Audit of Defense Base Act Insurance, Audit of Contracting Operations, U.S. Army Contracting Command Southwest Asia-Kuwait*, Mar 23, 2010.

United States Government Accountability Office, GAO-08-772T, *Defense Contracting: Progress Made in Implementing Defense Base Act Requirements, but Complete Information on Costs Is Lacking*, May 15, 2008.

APPENDIX IV: COMMENTS FROM THE U.S. ARMY CORPS OF ENGINEERS



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
441 G Street, NW
Washington DC 20314-1000

REPLY TO
ATTENTION OF:

JUL 26 2011

CECT-ZA

MEMORANDUM FOR OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR
AFGHANISTAN RECONSTRUCTION (SIGAR)

SUBJECT: U.S. Army Corps of Engineers (USACE) Response to the SIGAR Draft
Report 11-16 on the Defense Base Act (DBA) Insurance Program

See SIGAR
comment 1.

1. The U.S. Army Corps of Engineers (USACE) appreciates the opportunity to review the draft report.
2. USACE concurs with all of the recommendations. Specific responses to each recommendation are provided in the Enclosure.
3. My point of contact for these comments is Ms. Robin Baldwin (202) 761-8645.

Enclosure

A handwritten signature in black ink, appearing to read "Ted C. Harrison".

THEODORE C. HARRISON
Brigadier General, USA
Director, National Contracting Organization

ENCLOSURE

Headquarters
U.S. Army Corps of Engineers
Response to Draft SIGAR Audit-11-16

RECOMMENDATIONS

Recommendation 1: It is understood that this recommendation will be withdrawn by SIGAR, otherwise please advise and USACE will respond accordingly.

Recommendation 2: Modify the current contract with CNA to require that an invoice be provided for each contract showing the final amount paid for DBA insurance for that contract. This action should address the problem associated with the Purpose Statute violation we identified.

USACE Response: Concur. USACE will work with CNA to develop a method to meet the intent of this recommendation of individually identifying the final amount paid for Defense Base Act Insurance on a contract by contract basis. The generation of individual invoices, rather than one invoice per policy, is not expected to be feasible based on the cost of CNA's administration of multiple invoices per policy and the fact that this is contrary to commercial practice of a single invoice per policy per contractor. However, based on preliminary discussions with CNA it appears possible that a means to identify the final amount paid for DBA Insurance on a contract by contract basis will be realized. Incorporation of the new CNA process for identification of the final amount paid for DBA insurance on an individual contract basis will be completed through a modification to the USACE DBA contract on or before 30 November 2011.

Recommendation 3: Determine whether the Purpose Statute violation we identified also constitutes an Anti-Deficiency Act violation and, if so, follow the reporting requirements set forth in the Act and in Office of Management and Budget guidance.

USACE Response: Concur. If indeed a Purpose Statute violation has occurred, based on the USACE review of the information provided by SIGAR, then USACE will determine whether or not an Anti-Deficiency Act violation has occurred. If an ADA violation has occurred, proper reporting of the ADA violation will be made by USACE to the appropriate parties. This determination will be completed as soon as possible but not later than 30 November 2011.

Recommendation 4: Modify the current contract with CNA to clarify and make explicit the requirement that incurred losses exclude claims identified for reimbursement under WHCA. Specifically, it should stipulate who identifies the

claims for reimbursement, when they are to be removed from the loss report, how much time CNA has to remove them, and how cases with claimants outside the United States should be handled.

USACE Response: Concur. USACE will implement recommended clarifications. USACE will incorporate the new War Hazard Compensation Act process by modification to the USACE DBA contract on or before 30 November 2011.

Recommendation 5: Modify the current contract with CNA to require an independent actuary review of reserve adequacy particular to the claims covered under the contract with USACE and to submit the review to USACE on an annual basis.

USACE Response: Concur. USACE will modify the current contract with CNA to incorporate a requirement for an independent actuary annual review of reserve adequacy relative to DBA claims under the USACE DBA contract. Modification of the USACE DBA contract to incorporate an independent actuary's annual review will be completed on or before 30 November 2011.

Recommendation 6: Issue guidance to Contracting Officers to strengthen their oversight of DBA insurance. This guidance should remind Contracting Officers of the importance of adjusting the DBA CLIN when contract modifications significantly affect the amount of labor needed to perform the contract and should require Contracting Officers to receive the final invoice from the insurance carrier for each contract before reimbursing the contractor.

USACE Response: Concur. USACE will issue a Procurement Instruction Letter (PIL) that will include specific direction to Contracting Officers regarding the need to adjust the DBA CLIN when changes in contract scope significantly impact the amount of labor required to deliver the requirements of the contract and will require Contracting Officers to receive the final invoiced amount for each contract prior to reimbursing the contractor for the DBA CLIN. This PIL will be shared with C-JTCCC to assist in development of C-JTCCC policy guidance and will be issued by USACE on or before 30 November 2011. Additionally, the Principal Assistant Responsible for Contracting Winchester DBA Subject Matter Expert will update DBA Enterprise Training to cover changes in contract scope and adjustment of the DBA CLIN on or before 30 November 2011 and will share this training guidance with C-JTCCC.

Recommendation 7: Take steps to remind subcontractors of the requirement to and importance of purchasing DBA insurance. These steps could include, for example, a memo issued to prime contractors to be shared with all subcontractors or a training session for prime contractors and subcontractors on DBA insurance policies and procedures.

USACE Response: Concur. The Principal Assistant Responsible for Contracting DBA Subject Matter Expert will develop a letter that will be provided to USACE prime

contractors subject to Defense Base Act Insurance that they will issue to their subcontractors. This letter will include DBA Enterprise Training Slides for use by Contracting Officers and contractors to inform all concerned on DBA insurance policies and procedures. USACE Guidance to Contracting Officers using DBA will be updated to include a template of the letter and a web address through which to access referenced DBA Training slides. USACE Guidance to Contracting Officers using DBA will be updated on or before 30 November 2011.

Recommendation 8: Examine all available contract and invoice records covered under the USACE DBA single insurance provider program to determine how much of the \$54 million in refunded money is recoverable by USACE and C-JTSCC.

USACE Response: Concur. USACE will examine available contract and invoice records to determine how much of refunded money is due the U.S. Government and is recoverable. USACE will explore the availability of the assistance of the Defense Contract Audit Agency with the examination of records. Records examination will begin no later than 30 November 2011 and is projected for completion no later than 12 months from the date of issuance of the SIGAR Final Report.

Recommendation 9: Take immediate action to recover these funds determined to be recoverable by USACE and C-JTSCC.

USACE Response: Concur. Upon completion of the examination of available contract and invoice records, USACE will take immediate action to recover funds determined to be recoverable and due the U.S. Government. Actions to respond to this recommendation will commence upon the completion of the examination of available individual contracts and invoices. At this time it is unknown when recovery of funds will be completed. USACE will make every effort to complete recovery of any funds due the U.S. Government no later than 18 months from the date of issuance of the SIGAR Final Report.

APPENDIX V: COMMENTS FROM THE U.S. CENTRAL COMMAND JOINT THEATER SUPPORT CONTRACTING COMMAND



HEADQUARTERS
CENTCOM JOINT THEATER SUPPORT CONTRACTING COMMAND
CAMP AS SAYLIYAH, QATAR
APO AE 09898



C-JTSCC / CoS

17 Jul 2011

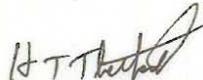
MEMORANDUM FOR RECORD

SUBJECT: CENTCOM TASKER; USCC1117904547, SIGAR Draft 11-16 (033A)

See SIGAR
Comment 1.

1. CENTCOM IG requested that C-JTSCC review Draft SIGAR audit 11-16 "Weaknesses in the U.S. Army Corps of Engineers' Defense Base Act Insurance program led to at least \$9.9 million in overcharges, \$54.5 million in refunds that were not returned to the U.S. government and other abuses" and respond to the recommendations made by SIGAR and provide any technical comments.
2. The draft was reviewed in accordance with SIGAR's instructions. Enclosed are C-JTSCC's responses to SIGAR's recommendations.
3. POC for this memorandum is LT Ifedayo O. Lofinmakin, ifedayo.o.lofinmakin@ccc.centcom.mil, DSN 318-432-6541.

Encl
Response shell to SIGAR draft


HARRY T. THETFORD
CAPT, SC, USN
Chief of Staff

SUBJECT: SCO-A Responses to SIGAR Draft 11-16, USACE DBA Insurance Program

RECOMMENDATION # 6:

Issue guidance to contracting officers to strengthen their oversight of DBA insurance. This guidance should remind contracting officers of the importance of adjusting the DBA CLIN when contract modifications significantly affect the amount of labor needed to perform the contract and should require contracting officers to receive the final invoice from the insurance carrier for each contract before reimbursing the contractor.

C-JTSCC Response: Concur that guidance in the form of a Standard Operating Procedures (SOP) be issued to all contracting officers on oversight of DBA insurance. DBA insurance is a statutory requirement for all contractors and it is a key area of contract administration. Concur that any increase in DBA insurance costs be negotiated and included in the price negotiation memorandum for modifications with labor increases. C-JTSCC follows this as a standard practice when negotiating modifications for increased labor, e.g. increased number of security guards for armed security. Partially concur on receiving final invoice from the insurance carrier before reimbursing the contractor. It is assumed that by "final invoice" we mean the final invoice at completion of contractor performance and prior to making final payment. This would require USACE to modify the contract with CNA to require a separate policy for each contract. The standard commercial practice in the insurance industry is to include multiple contracts on one policy. Inclusive dates of policy periods and individual contract performance periods will not be consistent. One of the key tenets of commercial acquisition is to apply established and accepted industry standards. For the insurance service industry the standard is multiple contracts on one insurance policy. While it is a good approach to resolve future refund issues, it is outside the authority of C-JTSCC to modify the requirements contract with CNA to require a separate policy on each contract in order for this to be achievable.

RECOMMENDATION #7:

Take steps to remind subcontractors of the requirement to and importance of purchasing DBA insurance. These steps could include, for example, a memo issued to prime contractors to be shared with all subcontractors or a training session for prime contractors and subcontractors on DBA insurance policies and procedures.

C-JTSCC Response: Concur. It is the responsibility of the prime contractor to ensure that subcontractors obtain DBA insurance. The terms of the contract are clearly stated in the C-JTSCC special clause for DBA insurance. As a standard practice the contracting office will modify our process to include a briefing on the DBA insurance requirement and the clause at the pre-work conferences for the prime and subcontractors.

RECOMMENDATION #8:

Determine how much of the \$54 million in refunded money is recoverable by USACE and C-JTSCC.

C-JTSCC Response: C-JTSCC concurs and understands SIGAR concerns. The refund is based upon payroll audits conducted by CNA at the end of the policy period to assess actual payroll vs. projected payroll on which the initial premium was based. If payroll exceeds estimate, the contractor owes additional premium; if the payroll was over-estimated, a refund is issued. C-JTSCC will work

with USACE to determine the most effective way to identify all C-JTSCC contractors who have received refunds, obtain records of these refunds and take action to get the money back.

RECOMMENDATION #9:

Take immediate action to recover these funds determined to be recoverable by USACE and C-JTSCC.

C-JTSCC Response: Concur. C-JTSCC will work with USACE to get the refunded money back.

The following is a SIGAR comment on USACE's letter dated July 26, 2011 and C-JTSCC's letter dated July 17, 2011:

1. The draft report issued to USACE and C-JTSCC for their review and comment was numbered SIGAR Audit-11-16. The report number has been changed to SIGAR Audit-11-15.

(This report was conducted under the audit project code SIGAR-033A).

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- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
- prevent fraud, waste, and abuse; and
- advance U.S. interests in reconstructing Afghanistan.

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