



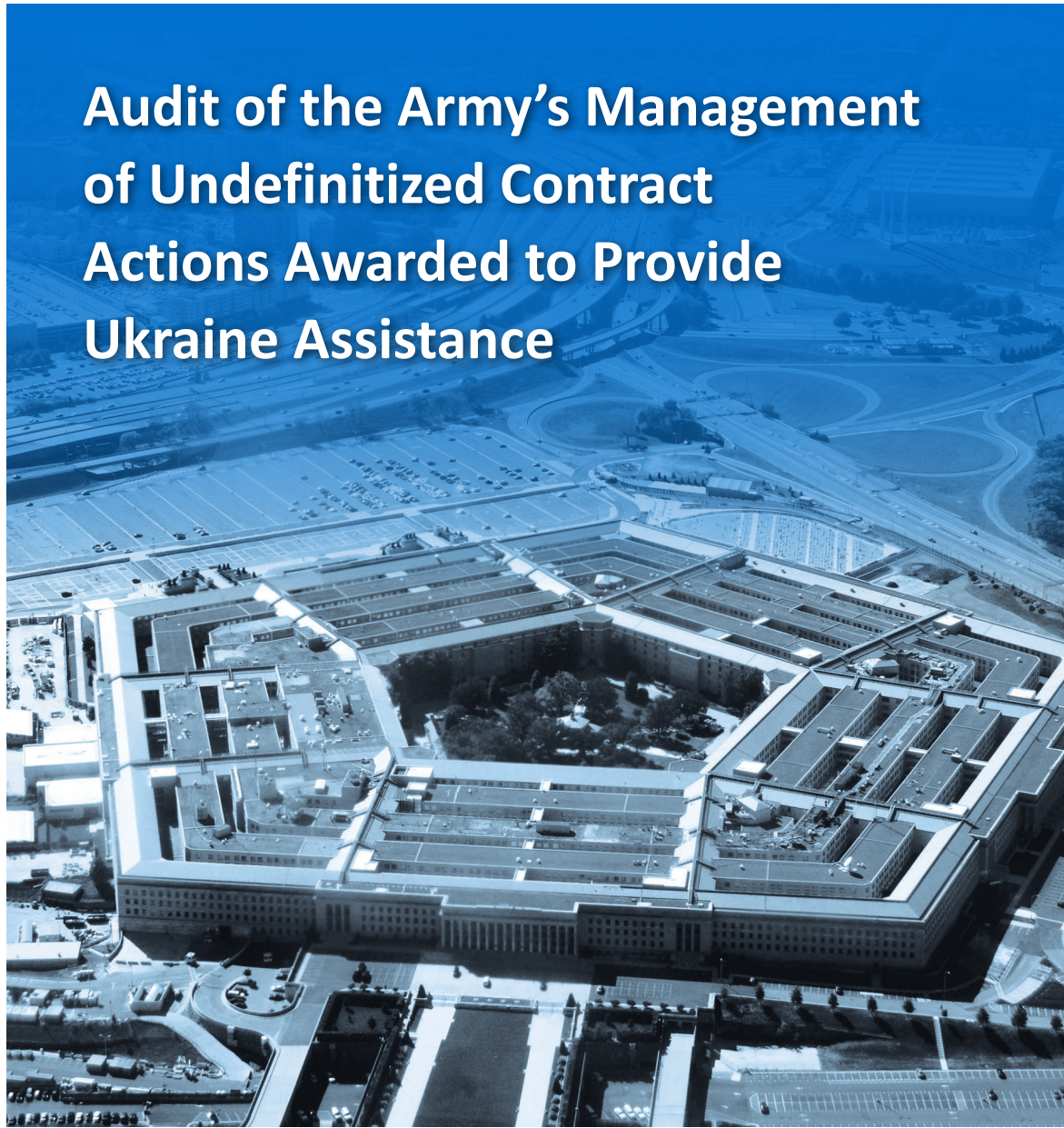
INSPECTOR GENERAL

U.S. Department of Defense

JANUARY 17, 2025



Audit of the Army's Management of Undefinitized Contract Actions Awarded to Provide Ukraine Assistance



INDEPENDENCE ★ INTEGRITY ★ EXCELLENCE ★ TRANSPARENCY





Results in Brief

Audit of the Army's Management of Undefined Contract Actions Awarded to Provide Ukraine Assistance

January 17, 2025

Objective

The objective of this audit was to determine whether Army contracting officials properly managed undefinitized contract actions (UCAs) awarded to assist Ukraine by obligating funds and definitizing actions within the required limits and adjusting profit for costs incurred, or properly waiving the requirements in accordance with Federal and DoD policies.

Background

A UCA is any contract action for which the contract terms, specifications, or price are not agreed upon before the contractor begins performance under the action. Once a contracting officer awards a UCA, the Government reimburses all of the contractor's allowable costs during the undefinitized period. As a result, the UCA is essentially a cost-reimbursable contract, and the Government accepts nearly all of the associated risk until the contract is definitized. A UCA must be definitized within 180 days of receiving a qualified proposal, unless a waiver is received from the head of a contracting activity. We reviewed 18 UCAs with initial not to exceed (NTE) value totaling \$6.2 billion.

Finding

Army contracting personnel did not manage the 18 (75 percent) out of 24 UCAs we reviewed in accordance with Federal and DoD policies. While Army contracting

Finding (cont'd)

personnel generally awarded the UCAs and obligated the funds in accordance with Federal and DoD policies, Army contracting personnel did not:

- Obtain qualifying proposals by the dates required in the definitization schedules for 12 (67 percent) of the 18 UCAs, totaling \$4.9 billion in initial NTE values. This occurred because Army contracting personnel established unrealistic time frames in the definitization schedules to obtain qualifying proposals and the Government changed requirements after awarding UCAs. In addition, qualifying proposals continued to be late because Army contracting personnel did not use their authority to withhold payments when the contractor did not provide a qualifying proposal in accordance with the definitization schedule. According to Army contracting personnel, the decision to not withhold payments and continue to wait for qualifying proposals was in the best interest of the Government.
- Definitize UCAs within 180 days of receiving qualifying proposals from contractors for 12 (67 percent) of the 18 UCAs, totaling \$4.2 billion in initial NTE values. This occurred because Army contracting personnel interpreted the guidance inconsistently on when to start the 180-day period to definitize a UCA and did not have policy in place for contracting officers to follow to establish the start of the 180-day period. Furthermore, Army contracting personnel did not definitize UCAs within 180 days of receiving qualifying proposals because they experienced time-consuming proposal reviews, difficulty obtaining data needed to make fair and reasonable pricing determinations because Government requirements were complex and sometimes new to contracting personnel, and delays related to lengthy negotiations. In addition, UCAs continued to remain undefinitized after 180 days of receiving a qualifying proposal because Army contracting personnel did not use their authority to unilaterally definitize UCAs.



Results in Brief

Audit of the Army's Management of Undefined Contract Actions Awarded to Provide Ukraine Assistance

Finding (cont'd)

- Comply with DoD requirements related to adjusting profit for 7 (54 percent) of the 13 definitized UCAs, totaling \$1.2 billion in initial NTE values. This occurred because Army contracting personnel prepared an outdated form when calculating the Government's profit objective. Additionally, according to Army contracting officers, documentation was missing because of an oversight or because they included the documentation in the pre-negotiation objectives memorandum.

As a result of Army contracting personnel's noncompliance with Federal and DoD requirements when managing UCAs awarded to assist Ukraine, the DoD took on unnecessary financial risk. During the undefinitized periods, the DoD incurred most of the cost of the contracts and risked paying increased costs. In addition, without adequate procedures to assess incurred costs and adjust profit rates for contract risk to reflect incurred costs during definitization, contractors have little incentive to control costs and provide timely qualifying proposals, creating a potential for wasted taxpayer dollars. Therefore, the DoD needs to ensure it is using UCAs only when necessary, negotiating these UCAs within the required time frames, and adjusting profit rates for contract risk to reflect incurred costs.

Recommendations

We made 14 recommendations to address the findings in this report, including recommendations for implementing procedures to establish realistic qualifying proposal due dates in definitization schedules, implementing policy to standardize how contracting personnel establish the beginning of the 180-day period to definitize, and implementing procedures to document contracting officers' consideration of reduced cost risk during the undefinitized period.

Management Comments and Our Response

The Army Contracting Command Deputy to the Commanding General, responding for the Army Contracting Command Commanding General, agreed to take actions sufficient to address all the recommendations; therefore, the recommendations are resolved but will remain open. We will close the recommendations when management provides documentation verifying that management has implemented corrective actions. Please see the Recommendations Table on the next page for the status of the recommendations.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Commanding General, Army Contracting Command	None	1-14	None

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

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





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

January 17, 2025

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION
AND SUSTAINMENT
AUDITOR GENERAL, DEPARTMENT OF THE ARMY**

SUBJECT: Audit of the Army's Management of Undefined Contract Actions Awarded
to Provide Ukraine Assistance (Report No. DODIG-2025-059)

This final report provides the results of the DoD Office of Inspector General's audit. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

The Army Contracting Command Deputy to the Commanding General, responding for the Army Contracting Command Commanding General, agreed to take actions sufficient to address all the recommendations presented in the report; therefore, we consider the recommendations resolved and open. We will close the recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendations are completed. Therefore, please provide us within 90 days your response concerning specific actions in process or completed on the recommendations. Send your response to aud-colu@dodig.mil.

If you have any questions, please contact me at [REDACTED].

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, reading "Carmen J. Malone", is positioned below the text "FOR THE INSPECTOR GENERAL:". The signature is fluid and cursive.

Carmen J. Malone
Assistant Inspector General for Audit
Acquisition, Contracting, and Sustainment

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Introduction

Objective

The objective of this audit was to determine whether Army contracting officials properly managed undefinitized contract actions (UCAs) awarded to assist Ukraine by obligating funds and definitizing actions within the required limits and adjusting profit for costs incurred, or properly waiving the requirements in accordance with Federal and DoD policies. See Appendix A for our scope and methodology and prior coverage related to the audit.

Background

On February 24, 2022, Russia launched its full-scale invasion of Ukraine. As a result of this invasion, the United States invested billions of dollars to provide security assistance to demonstrate its commitment to Ukraine's sovereignty and territorial integrity. The DoD delivers this security assistance through two main authorities—Presidential Drawdown Authority and the Ukraine Security Assistance Initiative. Under Presidential Drawdown Authority, the DoD delivers equipment to Ukraine through the drawdown of DoD stocks, while under the Ukraine Security Assistance Initiative, the DoD procures defense articles directly from the defense industry. Both authorities provide Ukraine with a multitude of military capabilities and equipment, such as infantry fighting vehicles, ammunition, missiles, aircraft rockets, and secure communication and surveillance systems.

As of July 3, 2024, the U.S. Government executed 60 drawdowns of equipment from DoD inventories for Ukraine, totaling \$28.3 billion, and the United States has provided \$51.4 billion in security assistance since the Russian full-scale invasion. To provide this assistance and produce these contracts as quickly as possible, the DoD uses various tools, such as UCAs, to accelerate acquisition timelines.

Undefinitized Contract Actions

A UCA is any contract action for which the contract terms, specifications, or price are not agreed upon before the contractor begins performance under the action. UCAs can be entered into through several ways, such as a letter contract (a stand-alone contract), a contract modification, or a task or delivery order issued against a pre-established contract. Once a contracting officer awards a UCA, the Government reimburses all of the contractor's allowable costs during the undefinitized period. As a result, the UCA is essentially a cost-reimbursable contract, and the Government accepts nearly all of the associated risk until the

contract is definitized. Specifically, cost-reimbursable contracts place maximum responsibility on the Government to monitor performance to ensure that the contractor stays within budget and time constraints.

UCA Requirements

The United States Code (U.S.C), Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and DFARS Procedures, Guidance, and Information (PGI) all provide the following guidance on awarding and managing UCAs.¹

- Contracting officers must request and obtain approval from the head of the contracting activity (HCA) before awarding a UCA. This request must fully explain the need to begin performance before definitization.
- UCAs must include an NTE price, and the contracting officer must document the rationale for the NTE price in the contract file.
- UCAs must contain definitization schedules; additionally, the UCA must provide for definitization (agreement upon contractual terms, specifications, and the price) by the earlier of either: (1) 180 days after the contractor submits a qualifying proposal or (2) the date when obligated funds surpass 50 percent of the NTE price.
- The Government must not obligate more than 50 percent of the NTE price before definitization; however, if the contractor submits a qualifying proposal before obligated funds reach 50 percent, then the Government can obligate up to 75 percent.
- Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. Contracting officers may withhold payments in an amount necessary to protect Government interests if the contractor does not submit a qualifying proposal in accordance with the definitization schedule. In addition, contracting officers must document in the contract file the justification for withholding or not withholding payments.

¹ Section 3372, title 10, United States Code.

FAR Part 16, "Types of Contracts," Subpart 16.6, "Time-and-Material, Labor-Hour, and Letter Contracts," Section 16.603, "Letter contracts."

DFARS Part 215, "Contracting by Negotiation," Subpart 215.4, "Contract Pricing," Section 215.404, "Proposal Analysis," Subsection 215.404-71-3, "Contract type risk and working capital adjustment."

DFARS Part 216, "Types of Contracts," Subpart 216.6, "Time-and-Material, Labor-Hour, and Letter Contracts," Section 216.603, "Letter contracts."

DFARS Part 217, "Special Contracting Methods," Subpart 217.74, "Undefinitized Contract Actions."

DFARS PGI Part 217, "Special Contracting Methods," Subpart 217.74, "Undefinitized Contract Actions."

DFARS PGI Part 243, "Contract Modifications," Subpart 243.2, "Change Orders."

- The allowed profit for the UCA must reflect any reduced cost risk to the contractor for incurred costs before the final negotiated price and for expected costs for the remainder of the contract. Specifically, during the definitization process, contracting officers are required to perform a risk analysis to determine the contractor's profit. This analysis must consider the contractor's cost risk before, and after, the definitization of the contract. For example, if the contracting officer and contractor negotiate the final cost of the UCA after a substantial portion of the performance has been completed, the profit allowed should reflect the reduced cost risk to the contractor. The contracting officer must also document this risk assessment in the price negotiation memorandum (PNM).²

In addition to the requirements above, for UCAs greater than \$50 million, the HCA must approve any unilateral definitization in writing. Furthermore, 30 days must elapse after the contracting officer provides a copy of the written approval to the contractor before the contract may be unilaterally definitized.

The head of an agency may waive the limitations on obligations and definitization schedule if the UCA supports a contingency operation or a humanitarian or peacekeeping operation. The head of an agency may also waive these requirements if a contract or contract modification is awarded by the DoD to build the stocks of critical munitions and other defense articles of the DoD, provide materiel and related services to foreign allies and partners that have provided support to the Government of Ukraine, or provide materiel and related services to the Government of Ukraine.³

UCAs Reviewed

In coordination with the Army Contracting Command (ACC), we identified a total of 24 UCAs, with initial not-to-exceed (NTE) values at award totaling \$10.6 billion, awarded by ACC contracting centers between February 24, 2022, and September 30, 2023, to provide security assistance to Ukraine or to replenish DoD stocks due to presidential drawdowns supporting Ukraine. Table 1 identifies the total number of UCAs we identified and initial NTE values for each ACC contracting center.

² A PNM is the formal document that reflects the price agreement for all negotiated contracts that are not based on adequate price competition. Contracting officers document their negotiations, including profit determinations, in the memorandum.

³ Defense Pricing and Contracting Memorandum 2023-00003, "Class Deviation – Temporary Authorizations for Covered Contracts Related to Ukraine," December 23, 2022.

Table 1. UCAs Awarded by ACC Between February 2022 and September 2023 in Support of Ukraine

ACC Contracting Center	Number of UCAs	Initial NTE Value
Redstone Arsenal	18	\$9.5 billion
Aberdeen Proving Ground	3	\$313.1 million
New Jersey	2	\$435.3 million
Detroit Arsenal	1	\$364.2 million

Source: The DoD OIG.

While we originally identified 24 UCAs, 5 UCAs had not yet reached the expected definitization date in the definitization schedule. Therefore, we removed these 5 from our original sample, leaving 19 UCAs with initial NTE values totaling \$6.2 billion.⁴ Throughout the audit, we determined that 1 of the initial 19 sample UCAs, with an initial NTE value totaling \$22 million, was not related to Ukraine; therefore, we removed this UCA from our sample. This resulted in a final sample of 18 UCAs with initial NTE values totaling \$6.2 billion.

⁴ We identified six UCAs that had not yet reached expected dates to definitize. However, contracting personnel had already received a qualifying proposal for one of the six UCAs; therefore, we kept this one UCA in our sample.

Finding

Army Contracting Personnel Did Not Manage UCAs Awarded to Assist Ukraine in Accordance with Federal and DoD Policies

Army contracting personnel did not manage the 18 UCAs we reviewed in accordance with Federal and DoD policies.⁵ While Army contracting personnel generally awarded the UCAs and obligated the funds in accordance with Federal and DoD policies, Army contracting personnel did not:

- Obtain qualifying proposals by the dates required in the definitization schedules for 12 (67 percent) of the UCAs, totaling \$4.9 billion in initial NTE values. This occurred because Army contracting personnel established unrealistic time frames in the definitization schedules to obtain qualifying proposals and the Government changed requirements after awarding UCAs. In addition, qualifying proposals continued to be late because Army contracting personnel did not use their authority to withhold payments when the contractor did not provide a qualifying proposal in accordance with the definitization schedule. According to Army contracting personnel, the decision to not withhold payments and continue to wait for qualifying proposals was in the best interest of the Government.
- Definitize UCAs within 180 days of receiving qualifying proposals from contractors for 12 (67 percent) of the UCAs, totaling \$4.2 billion in initial NTE values. This occurred because Army contracting personnel interpreted the guidance inconsistently on when to start the 180-day period to definitize a UCA and did not have policy in place for contracting officers to follow to establish the start of the 180-day period. Furthermore, Army contracting personnel did not definitize UCAs within 180 days of receiving qualifying proposals because they experienced time-consuming proposal reviews, difficulty obtaining data needed to make fair and reasonable pricing determinations because Government requirements were complex and sometimes new to contracting personnel, and delays related to complex requirements and lengthy negotiations. In addition, UCAs continued to

⁵ 10 U.S.C § 3372.

DFARS 215.404-71-3.

DFARS 216.603.

DFARS 217.74.

DFARS PGI 217.74.

DFARS PGI 243.2.

As of June 1, 2024, contracting personnel definitized 13 of the 18 UCAs.

remain undefinitized after 180 days of receiving a qualifying proposal because Army contracting personnel did not use their authority to unilaterally definitize UCAs.⁶

- Comply with DoD requirements related to adjusting profit for 7 (54 percent) of the 13 definitized UCAs, totaling \$1.2 billion in initial NTE values.⁷ This occurred because Army contracting personnel prepared an outdated form when calculating the Government's profit objective. Additionally, according to Army contracting officers, documentation was missing because of an oversight or because they included the documentation in the pre-negotiation objectives memorandum.

As a result of Army contracting personnel's noncompliance with Federal and DoD requirements when managing UCAs awarded to assist Ukraine, the DoD took on unnecessary financial risk. During the undefinitized periods, the DoD incurred most of the cost of the contracts and risked paying increased costs. In addition, without adequate procedures to assess incurred costs and adjust profit rates for contract risk to reflect incurred costs during definitization, contractors have little incentive to control costs and provide timely qualifying proposals, creating a potential for wasted taxpayer dollars. Therefore, the DoD needs to ensure it is using UCAs only when necessary, negotiating these UCAs within the required time frames, and adjusting profit rates for contract risk to reflect incurred costs.

Army Contracting Personnel's Management of UCAs Needs Improvement

While Army contracting personnel generally awarded the UCAs and obligated the funds in accordance with Federal and DoD policies, Army contracting personnel did not obtain qualifying proposals by required dates, definitize UCAs in required time frames, or comply with DoD requirements related to adjusting profit for the 18 UCAs we reviewed, totaling \$6.2 billion in initial NTE values. See Appendix B for a breakdown of the 18 UCAs we reviewed and our conclusions.

⁶ We determined whether contracting personnel definitized UCAs within 180 days of qualifying proposal receipt as of June 1, 2024.

⁷ According to DFARS 215.404-71-3, when calculating the negotiating position on profit or fee for a UCA, the contracting officer must assess the extent to which costs have been incurred before definitization of the contract action. In addition, DFARS 215.404-71-3(d)(2) requires contracting officers to document in the PNM the reason for assigning a specific contract type risk value, to include the extent to which any reduced cost risk during the undefinitized period of performance was considered, in determining the negotiation objective.

Army Contracting Personnel Generally Awarded the UCAs and Obligated the Funds in Accordance with Federal and DoD Policies

Army contracting personnel generally awarded and obligated the funds for all 18 UCAs in accordance with Federal and DoD policies. Specifically:

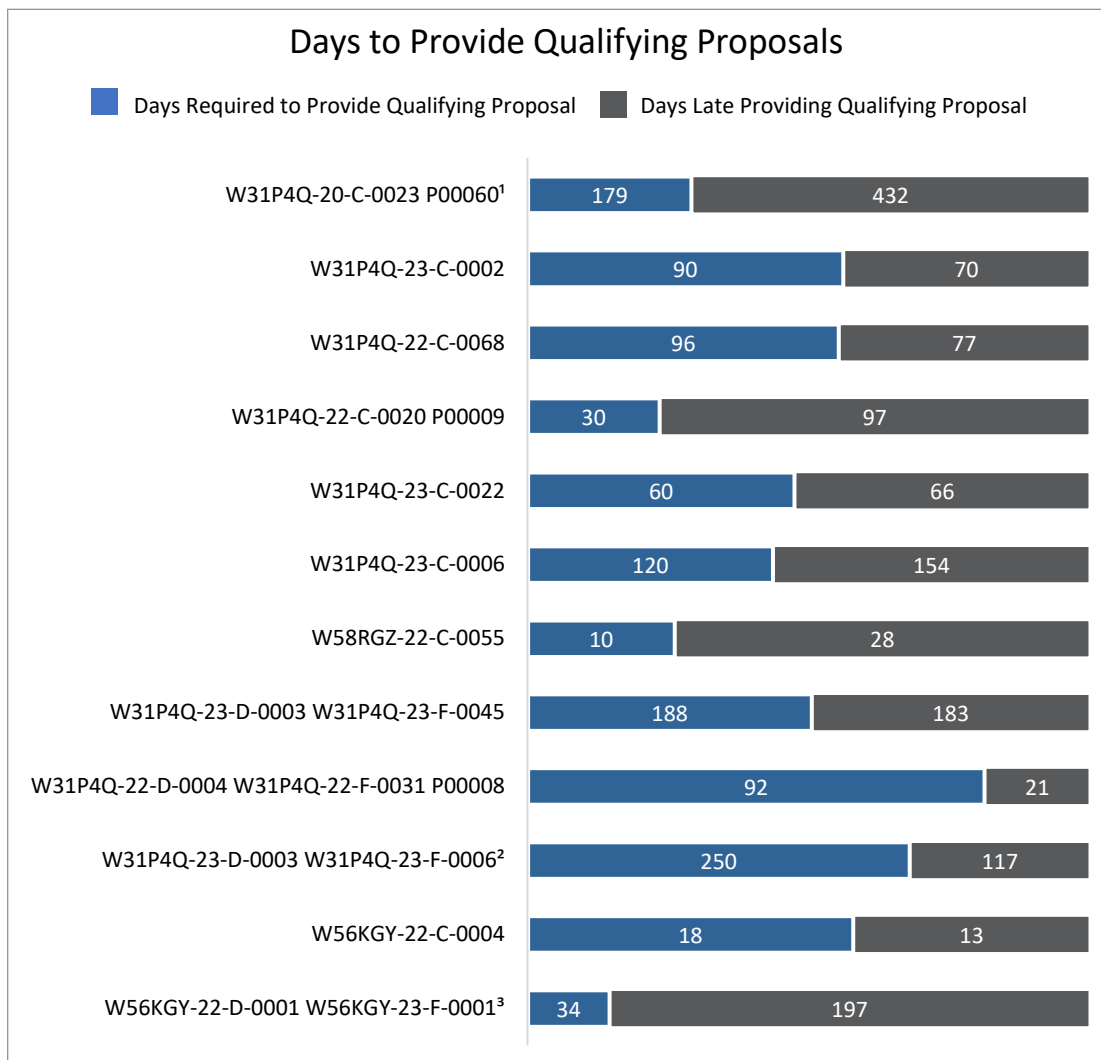
- For all 18 UCAs, Army personnel appropriately prepared a request and obtained approval before award, included an NTE price, and documented rationale for the NTE price in the contract file. *Army contracting personnel generally awarded and obligated the funds for all 18 UCAs in accordance with Federal and DoD policies.*
- For 15 (83 percent) of the 18 UCAs, Army contracting personnel included definitization schedules that provided for definitization within 180 days after the required qualifying proposal receipt dates. For the three UCAs that did not include adequate definitization schedules:
 - Two UCAs included definitization schedules with definitization dates that were 183 and 182 days after the required qualifying proposal receipt dates. The contracting officer for these two UCAs stated that the definitization dates were errors and should have been 180 days after the qualifying proposal receipt date.
 - One UCA included a definitization schedule with a definitization date that was 214 days after the required qualifying proposal receipt date. The current contracting officer was not the awarding contracting officer and stated that they could not determine how the awarding contracting officer determined the definitization date.
- For 16 (89 percent) of the 18 UCAs, Army contracting personnel included all required clauses. According to Army contracting personnel, the two UCAs that did not include both required clauses occurred because of an oversight. Army contracting personnel added the missing clause for the one UCA through a contract modification, and explained the missing clause for the other UCA was no longer relevant as the UCA had since been definitized.
- For all 18 UCAs, Army contracting personnel obligated the funds within the required limits or obtained waivers to exceed the required limits.

Army Contracting Personnel Did Not Obtain Qualifying Proposals by the Dates Required in the Definitization Schedules

Army contracting personnel did not obtain qualifying proposals from contractors by the dates required in the definitization schedules for 12 (67 percent) of the 18 UCAs, totaling \$4.9 billion in initial NTE values. The DFARS states that submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract.⁸ Figure 1 identifies the required and actual days to receive qualifying proposals for the 12 UCAs for which the contractor did not provide a qualifying proposal in accordance with the definitization schedule.

⁸ DFARS 217.74, Section 217.7404, "Limitations," Subsection 217.7404-3, "Definitization schedule." The DFARS defines a qualifying proposal as a proposal that contains sufficient information to enable the DoD to conduct meaningful analyses and audits of the information contained in the proposal.

Figure 1. Days to Receive Qualifying Proposals



¹ This UCA established 15 contract line item numbers (CLINs). Army contracting personnel received multiple qualifying proposals and definitized 12 (80 percent) of these 15 CLINs with multiple definitization modifications as of June 4, 2024. Contracting personnel received qualifying proposals for 9 of the 12 definitized CLINs in accordance with the qualifying proposal submission date in the definitization schedule. Contracting personnel received qualifying proposals for the other 3 definitized CLINs after the qualifying proposal submission date in the definitization schedule. As of June 4, 2024, the remaining 3 (20 percent) of the 15 total CLINs were undefinitized and contracting personnel had not yet received a qualifying proposal for these CLINs as of June 1, 2024. Therefore, for this figure, we used June 1, 2024, to calculate the days late providing qualifying proposal.

² The Government changed requirements after awarding this UCA and issued a modification to update the definitization schedule. For this figure, we used the date of the modification updating the definitization schedule and updated qualifying proposal receipt date to determine the days required and days late providing qualifying proposal.

³ Contracting personnel received two qualifying proposals and definitized this UCA in two separate definitization modifications. Contracting personnel received the two qualifying proposals 37 and 197 days after the qualifying proposal submission date in the definitization schedule. For this figure, we used the qualifying proposal receipt date for the second qualifying proposal as the number of days late providing qualifying proposals.

Source: The DoD OIG.

Contractors for these 12 UCAs did not provide timely qualifying proposals to the Government, as required by the definitization schedules in these UCAs. The following sections describe why Army contracting personnel did not obtain qualifying proposals by the dates required in the definitization schedules.

Contractors did not provide timely qualifying proposals to the Government, as required by the definitization schedules in these UCAs.

Army Contracting Personnel Established Unrealistic Time Frames to Obtain Qualifying Proposals

In at least three instances, qualifying proposals were late because Army contracting personnel established unrealistic time frames to receive qualifying proposals.⁹ In these instances contracting personnel identified that the time frames were unrealistic based on past experiences with obtaining contractor proposals and the complexity of the requirements. For example, ACC – Aberdeen Proving Ground (ACC-APG) awarded a UCA on October 27, 2022, with an initial NTE value of \$238 million, for AN/TPQ 53 Radar Systems. The definitization schedule required the contractor to provide a qualifying proposal by November 30, 2022, 34 days after UCA award. When asked why the contractor did not provide a qualifying proposal by the required date, the Army contracting officer, who had prior experience with this contractor, stated that the contractor usually takes around 90 days to provide a proposal.

Because providing a qualifying proposal is a material element of the contract, Army contracting personnel should establish more realistic proposal due dates in definitization schedules. Army contracting officers should consider all relevant factors such as the size and complexity of the requirement, historical time frames of the contractor providing proposals, and other programs requiring proposals from the same contractor. Therefore, the ACC Commanding General should develop and implement procedures to establish realistic qualifying proposal due dates in definitization schedules, including considering size and complexity of requirements, historical time frames of the contractor providing proposals, and other programs requiring proposals from the same contractor.

Changing Government Requirements Resulted in Delayed Qualifying Proposals

Army contracting personnel identified at least two instances of the Government changing requirements for the UCA without revising the qualifying proposal due date, which caused delays in receiving qualifying proposals from contractors.

⁹ Figure 1 above illustrates the wide range of days, several being unrealistic, to provide the proposal, from as little as 10 days to as high as 250 days.

For example, ACC-RSA awarded a UCA on August 26, 2022, with an initial NTE value of \$182.3 million, for a separate procurement of National Advanced Surface-to-Air Missile Systems (NASAMS). The Army contracting officer stated that the contractor did not provide a qualifying proposal on time because the original request was for two NASAMS; however, the Government later requested proposals for six additional NASAMS, an additional launcher, and launcher elevation equipment. Despite the change in requirements, which would result in the contractor needing additional time to revise the proposal and incorporate changes and quote new prices, Army contracting personnel did not revise the qualifying proposal due date. See Figure 2 for a photograph of a NASAMS.



Figure 2. NASAMS
Source: The U.S. Army.

Changing Government requirements results in the contractor potentially needing additional time to modify proposals for the updated requirements and pricing. Because these changes are out of the contractor's control, Army contracting personnel should provide for additional time to obtain the qualifying proposal, and therefore revise the schedule as needed. Therefore, the ACC Commanding General should develop and implement procedures to update definitization schedule time frames when the Government makes changes to the original requirements, depending on the extent of changes.

Army Contracting Personnel Did Not Use Their Authority to Withhold Payments

Qualifying proposals continued to be late because Army contracting personnel did not use their authority to withhold payments for any of the 12 UCAs for which the contractor did not provide a qualifying proposal in accordance with the definitization schedule.

Army contracting personnel did not use their authority to withhold payments for any of the 12 UCAs for which the contractor did not provide a qualifying proposal.

In addition, Army contracting personnel did not document their justifications for not withholding payments for 7 UCAs, totaling \$3 billion in initial NTE values, in accordance with the DFARS.¹⁰ While Army contracting personnel identified

reasons beyond the contractor's control for not providing qualifying proposals in accordance with the definitization schedule, according to Army contracting personnel, many contractors were just typically late providing qualifying proposals without justification.

The DFARS provides contracting officers the authority to withhold payments to contractors who do not submit qualifying proposals in accordance with the definitization schedule.¹¹ Before May 25, 2023, the DFARS stated that the contracting officer may suspend or reduce progress payments if the contractor does not submit a qualifying proposal in accordance with the definitization schedule. As a result of a recommendation from a prior DoD OIG report, the DFARS was updated on May 25, 2023, to state that the contracting officer may withhold an amount necessary to protect the interests of the Government, not to exceed 5 percent of all subsequent financing requests, if the contractor does not submit a qualifying proposal in accordance with the definitization schedule.¹²

While the DFARS allows for contracting personnel to withhold payment as a way to incentivize contractors to submit timely qualifying proposals, several Army contracting officers stated that they could not justify withholding payments for late proposals because they did not identify a substantial risk to the Government. Rather, these Army contracting officers identified that it was in the best interest of the Government to continue to wait for a qualifying proposal.

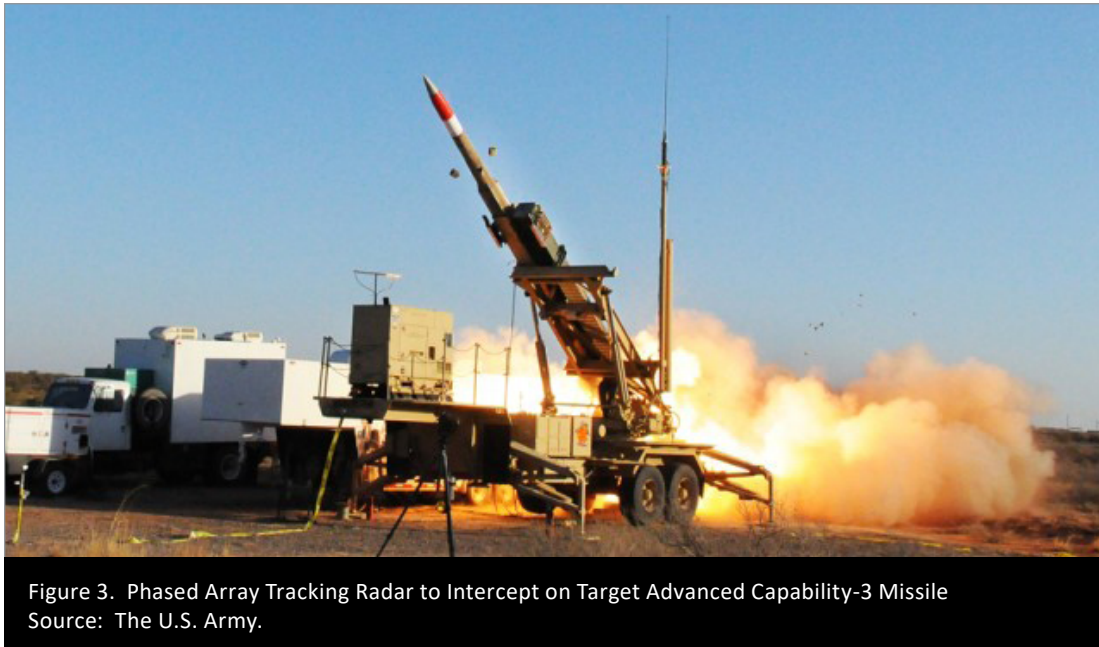
For example, ACC-RSA awarded a UCA on March 15, 2023, with an initial NTE value of \$14.6 million, to provide technical assistance in support of the Phased Array Tracking Radar to Intercept on Target Advanced Capability-3 Missiles to Ukraine. The contract definitization schedule required a qualifying proposal from the contractor by

¹⁰ Contracting personnel did not document their justifications for not withholding payments in the contract files for all 12 UCAs for which the contractor did not provide a qualifying proposal in accordance with the definitization schedule. However, the DFARS requirement to document the justification in the contract file was not established until May 25, 2023. Because contracting personnel received late qualifying proposals for only 7 of the 12 UCAs after the DFARS requirement was established, the requirement was applicable for only these 7 UCAs.

¹¹ DFARS 217.7404-3.

¹² Report No. DODIG-2020-084, "Audit of Military Department Management of Undefined Contract Actions," May 11, 2020.

April 14, 2023. The contractor did not provide a qualifying proposal until July 20, 2023, 97 days after the required date in the definitization schedule. The ACC-RSA contracting officer stated that contracting personnel did not obligate any additional money after the initial obligation of 27.61 percent of the NTE. The contracting officer also stated that the contractor had incurred costs totaling only 1 percent of obligations and added that they did not identify this as a substantial risk to justify withholding payments for the late qualifying proposal. See Figure 3 for a photograph of a Phased Array Tracking Radar to Intercept on Target Advanced Capability-3 Missile.



Similar to the example above, Army contracting officers for at least five UCAs identified that it was in the best interest of the Government to not withhold payments to the contractor; however, continuing to wait for a qualifying proposal extends the period that the UCA remains undefinitized. According to other Army contracting officers, when contractors take longer than required to provide a qualifying proposal:

- the Government can be forced to make “bad deals” with the contractor during the definitization process if the contractor takes longer to provide a qualifying proposal;
- costs can increase the longer the UCA remains undefinitized; and
- subcontractors can increase prices during the undefinitized period due to their proposals expiring while the prime contractor is preparing a qualifying proposal.

Because the Government reimburses all of the contractor’s allowable costs during the undefinitized period and accepts nearly all of the associated risk until the contract is definitized, contracting personnel should incentivize contractors to provide more timely qualifying proposals by using their authority to withhold payments. In addition,

if contracting personnel use this authority more often, contractors will be more incentivized to provide timely qualifying proposals for future UCAs. Therefore, the ACC Commanding General should develop and implement procedures and provide training to contracting personnel on when to withhold payments from contractors that do not provide qualifying proposals in accordance with the definitization schedule.

Army contracting officers did not document their justifications to not withhold payments in the contract file.

Additionally, Army contracting officers did not document their justifications to not withhold payments in the contract file in accordance with the DFARS. The May 25, 2023 DFARS update requires contracting officers to document, in

the contract file, the justification for withholding or not withholding payments if the contractor does not submit a qualifying proposal in accordance with the definitization schedule.¹³ Of the 12 UCAs that did not receive timely qualifying proposals, 7 UCAs occurred after the DFARS was updated to require the documentation. However, Army contracting officers did not document the justification for not withholding payments in the contract files for all seven of these UCAs. Army contracting personnel stated that this occurred because they were unaware of the requirement to document the justification or that the missing documentation was an oversight.

The requirement to document the justification for withholding or not withholding payments ensures contracting personnel consider using their authority to withhold payments. Therefore, the ACC Commanding General should develop and implement procedures to ensure that contracting officers document, in the contract file, the justification for withholding payments or not withholding payments from contractors that do not provide qualifying proposals in accordance with the definitization schedule.

Army Contracting Personnel Did Not Definitize UCAs Within 180 Days After Receiving Qualifying Proposals

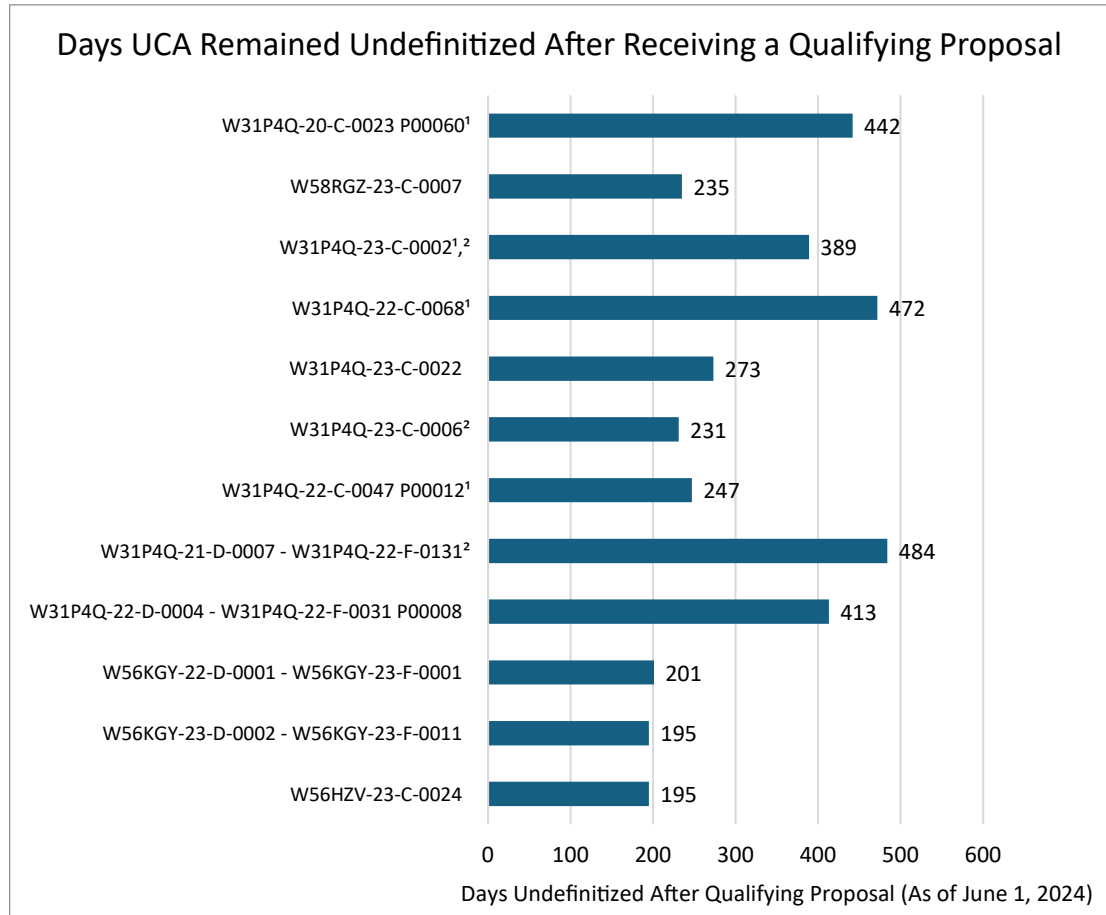
Army contracting personnel did not definitize UCAs within 180 days after receiving qualifying proposals from contractors for 12 (67 percent) of the 18 UCAs we reviewed, totaling \$4.2 billion in initial NTE values.¹⁴ Of these 12 UCAs, Army contracting personnel received approval from the HCA for only 3 UCAs, totaling \$1.8 billion in initial NTE values, to waive the requirement to definitize within 180 days after receiving qualifying proposals. Both the U.S.C. and DFARS require UCAs to be definitized by the earlier of either 180 days after the qualifying proposal receipt date

¹³ DFARS 217.7404-3.

¹⁴ We used June 1, 2024, as the cut-off date to determine the number of days after contracting personnel received a qualifying proposal for UCAs that remained undefinitized during the audit.

or the date when obligated funds exceed 50 percent of the NTE price.¹⁵ Figure 4 identifies the number of days that UCAs remained undefinitized after contracting personnel received a qualifying proposal.

Figure 4. Days Undefinitized After Receiving a Qualifying Proposal



¹ These UCAs were still undefinitized as of June 1, 2024.

² Contracting personnel for these UCAs received approval from the HCA to waive the requirement to definitize the UCAs within 180 days after receiving qualifying proposals.

Source: The DoD OIG.

Army contracting personnel did not definitize these 12 UCAs within 180 days after receiving qualifying proposals because Army contracting personnel:

- interpreted the guidance differently on when to start the 180-day period to definitize a UCA;
- experienced time-consuming proposal reviews by the DCAA and DCMA;
- experienced delays related to complex requirements, and difficulty obtaining data needed to make fair and reasonable pricing determinations; and
- experienced delays related to lengthy negotiations.

¹⁵ 10 U.S.C § 3372.
DFARS 217.7404-3.

In addition, UCAs continued to remain undefinitized after 180 days of receiving a qualifying proposal because Army contracting personnel did not use their authority to unilaterally definitize UCAs.

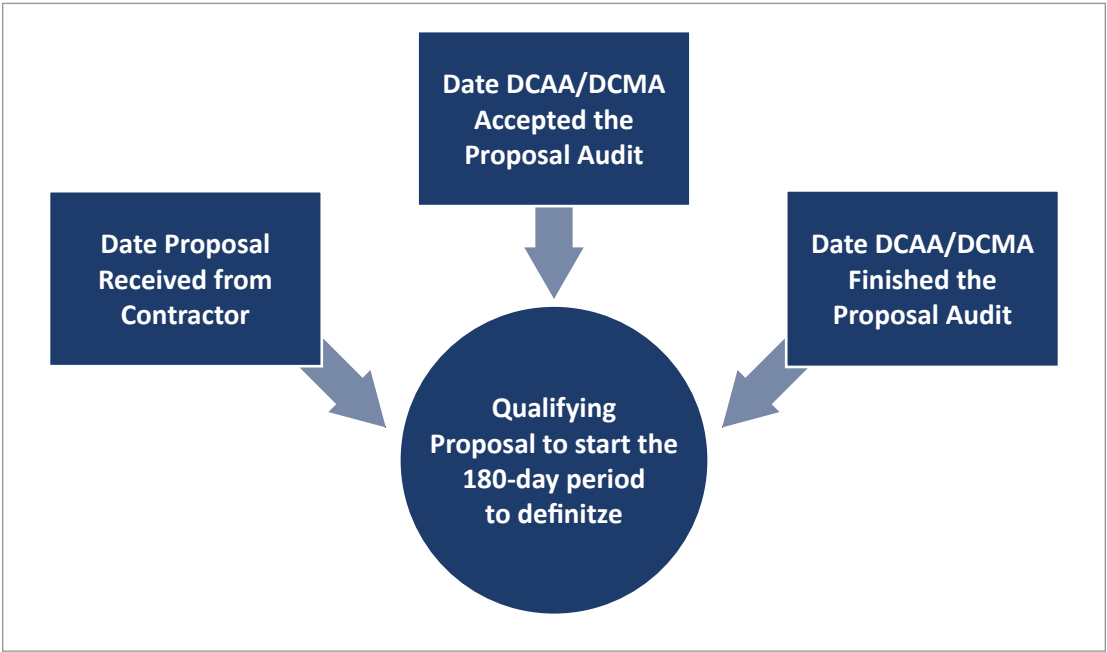
Army Contracting Personnel Used Incorrect Dates to Start the 180-Day Period to Definitize

Army contracting personnel did not definitize the 12 UCAs within the 180-day required time frame because they interpreted the guidance inconsistently on when to start the 180-day period to definitize a UCA. The U.S.C. requires contracting officers to definitize UCAs by the earlier of the end of “the 180-day period beginning on the date on which the contractor submits a qualifying proposal” or the date when obligated funds exceed 50 percent of the NTE price.¹⁶ However, Army contracting personnel used three different and contradicting dates to start

Army contracting personnel used three different and contradicting dates to start the 180-day period.

the 180-day period. Figure 5 illustrates the three different interpretations ACC contracting personnel had for the date to start the 180-day period.

Figure 5. Army Contracting Personnel’s Interpretations of the Start Date for the 180-Day Period to Definitize a UCA



Source: The DoD OIG.

¹⁶ 10 U.S.C § 3372.

For example, ACC-RSA awarded a UCA on May 25, 2022, with an initial NTE value of \$624.6 million, to produce 1,300 Stinger Missiles. The contractor provided a proposal on November 17, 2022, before the required date of November 30, 2022, in the definitization schedule. The acquisition milestones sheet in the contract file identified that the contractor submitted the qualifying proposal on November 17, 2022, and Army contracting personnel confirmed that the contractor submitted the proposal on November 17, 2022. However, Army contracting personnel did not deem the proposal qualifying until DCAA personnel completed their review of the proposal on February 15, 2023, which was 90 days after the date the contractor submitted the proposal. The Army contracting officer stated that February 15, 2023, was the date that Army contracting personnel considered as the start of the 180-day period to definitize the UCA.

The Defense Pricing, Contracting, and Acquisition Policy Acting Director for the Defense Acquisition Regulations System stated that the plain language interpretation of the U.S.C. requirement is that the 180-day period begins on the date the contractor submits the qualifying proposal. Further, the DCAA and DCMA should have qualifying proposals to complete their proposal reviews; therefore, using the dates that the DCAA or DCMA finish their proposal audits as the start of the 180-day period is not compliant with the U.S.C. and DFARS.

We also asked one contracting officer whether ACC contracting personnel had guidance or a legal opinion regarding their differing interpretations of the U.S.C. requirement. The contracting officer provided a response from the ACC policy team, which stated that a qualifying proposal is not just at receipt and that an evaluation of the proposal must take place to deem the proposal qualifying. Lastly, the ACC policy team noted that the ACC does not have policy in place for contracting officers to follow to establish the start of the 180-day period. Therefore, the ACC Commanding General should develop and implement policy to standardize how contracting personnel establish and document in the contract file the beginning of the 180-day period to definitize. In addition, the ACC Commanding General should provide training to contracting personnel to clarify that the 180-day period to definitize the UCA begins on the date the contractor submits the qualifying proposal, in accordance with the U.S.C.

Army Contracting Personnel Experienced Time-Consuming Proposal Reviews by the DCAA and DCMA

According to Army contracting personnel, DCAA and DCMA proposal reviews took up significant portions of the 180-day period to definitize the UCAs. DCAA and DCMA personnel performed proposal reviews, at the request of Army contracting personnel, in which they evaluated pricing and cost estimates to determine

whether the contractors' proposals were fair and reasonably priced. The DFARS PGI states that contracting officers should consider requesting audit assistance from the DCAA for fixed price proposals exceeding \$10 million and cost-type proposals exceeding \$100 million.¹⁷ Additionally, DCMA personnel provided similar reviews that looked at different elements of the proposal than DCAA personnel.

Army contracting personnel stated that these audits can take several months to complete. For example, ACC-APG awarded a UCA on October 27, 2022, with an initial NTE value of \$238 million, for AN/TPQ 53 Radar Systems. The contractor provided a qualifying proposal for the first part of the UCA on January 6, 2023, and the Army contracting officer definitized the first part of the UCA 201 days later. The Army contracting officer stated that DCAA personnel required 2 to 3 months to audit the proposal. Specifically, the Army contracting officer requested the DCAA audit on January 27, 2023, and received the audit report from the DCAA on April 5, 2023, 68 days later.

DCAA personnel confirmed that proposal audits typically take approximately 90 days to complete; however, the length of time to complete an audit depends on the complexity of the contract requirement and the completeness of the actual proposal submitted by the contractor. DCAA and DCMA personnel identified actions that Army contracting personnel can take to assist with reducing proposal review time frames. Specifically, DCAA and DCMA personnel identified that Army contracting personnel can:

- coordinate with the DCAA and DCMA before receiving proposals; and
- use the 'proposal adequacy checklist' in the DFARS to determine whether the proposals are adequate before submitting proposals to the DCAA and DCMA.¹⁸

A DCAA program manager for pricing and a DCMA deputy director for cost and pricing recommended that their audit personnel and Army contracting personnel coordinate before receiving contractor proposals to meet procurement deadlines. Coordinating early with DCAA and DCMA personnel provides them additional time to ensure appropriate audit resources are available. Therefore, the ACC Commanding General should develop and implement procedures to ensure that contracting personnel engage with the DCAA and DCMA before obtaining contractor proposals when they determine that a DCAA or DCMA audit will be required for the UCA.

¹⁷ DFARS PGI Part 215, "Contracting by Negotiation," Subpart 215.4, "Contract Pricing," Section 215.404, "Proposal Analysis," Subsection 215.404-2, "Data to support proposal analysis."

¹⁸ DFARS Part 252, "Solicitation Provisions and Contract Clauses," Subpart 252.2, "Text of Provisions and Clauses," Section 252.215, "Reserved," Subsection 252.215-7009, "Proposal adequacy checklist."

In addition, DCAA and DCMA personnel stated that the contractor's proposal should be adequately prepared before Army contracting personnel submit the proposal to the DCAA or DCMA and request an audit. According to DCAA personnel, the DCAA completes a proposal adequacy assessment before beginning its cost and pricing review of the proposal. DCAA and DCMA personnel identified that their adequacy assessment can take more time if contracting personnel accepted and then submitted an inadequate proposal from the contractor to the agencies.

The DFARS recommends that contracting personnel include the proposal adequacy checklist in solicitations that require submission of certified cost or pricing data to facilitate the submission of accurate and complete proposals.¹⁹ In addition,

Contracting officers for 7 of the 16 UCAs did not review the checklists before submitting the proposals to the DCAA or DCMA for audit support.

the DFARS requires the contractor to complete the proposal adequacy checklist, including providing locations of requested information, or an explanation of why the requested information is not provided.²⁰ Contractors provided proposal adequacy checklists for 15 (94 percent) of the 16 UCAs that required checklists. However, the contracting officers for 7 (44 percent) of the 16 UCAs did not review the checklists before submitting the proposals to the DCAA or DCMA for audit support. Therefore, the ACC Commanding General should develop and implement procedures to ensure that contracting personnel require contractors to submit DFARS proposal adequacy checklists with proposals, in accordance with the DFARS, and ensure contracting personnel review DFARS proposal adequacy checklists to verify that proposals are adequate before submitting the proposals to the DCAA or DCMA for their proposal audits.

Army Contracting Personnel Experienced Delays Related to Complex Requirements and Difficulty Obtaining Data Needed to Make Fair and Reasonable Pricing Determinations

According to Army contracting personnel, another reason why they did not definitize UCAs within 180 days after receiving qualifying proposals was because

Army contracting personnel stated that in many cases they had to send several requests for information to contractors during the 180-day period.

Government requirements were complex and sometimes new to contracting personnel. In addition, Army contracting personnel had difficulty obtaining fair and reasonable pricing data from contractors. Army

contracting personnel stated that in many cases they had to send several requests for information to contractors during the 180-day period.

¹⁹ DFARS 215.4, Section 215.408, "Solicitation provisions and contract clauses."

²⁰ DFARS 252.215-7009.

For example, ACC-RSA awarded a UCA on February 24, 2023, with an initial NTE value of \$44 million, to provide technical assistance in support of the Ukraine Air Defense Phased Array Tracking Radar to Intercept on Target Program. The contractor provided a qualifying proposal on June 30, 2023, and the Army contracting officer definitized the UCA 273 days later. The Army contracting officer stated that the proposal was one of the most complex proposals from the contractor they had ever seen, and that Army contracting personnel were performing price analyses for seven different cost modules within one proposal. The Army contracting officer also stated that the complex proposal resulted in Army contracting personnel experiencing difficulty determining fair and reasonable costs for direct labor and materiality. If the HCA at ACC-RSA issued a waiver for this UCA, the contracting officer could have continued to definitize the UCA while remaining compliant with the U.S.C. and DFARS.

Although the U.S.C. and DFARS require contracting personnel to definitize UCAs by the earlier of either 180 days after the qualifying proposal receipt date or the date when obligated funds exceed 50 percent of the NTE price, public law allows the HCA to waive these requirements for contract actions supporting Ukraine.²¹ Army contracting personnel obtained approval from the HCA to waive these requirements for 3 of the 12 UCAs that were not definitized within 180 days after receiving qualifying proposals. Obtaining waivers when contracting personnel will not meet the 180-day requirement is necessary for remaining compliant with Federal and DoD policies and should be considered if the requirements are complex or difficulties arise in obtaining necessary information. Therefore, the ACC Commanding General should issue a memorandum requiring contracting personnel to request a waiver of the definitization schedule, when appropriate, and detailing the circumstances in which a waiver should be requested.

Army Contracting Personnel Experienced Lengthy Negotiations

According to Army contracting personnel, a fourth reason why they did not definitize UCAs within 180 days after receiving qualifying proposals was because Army contracting personnel experienced lengthy negotiations with contractors. Before definitization, the contractor and the Government enter into negotiations to finalize terms of the contract action. However, these negotiations may take long periods of time, which again affects the ability to definitize the UCA in 180 days.

²¹ 10 U.S.C § 3372.

DFARS 217.7404-3.

Public Law 117-263 section 1244.

For example, ACC-RSA awarded a UCA on September 29, 2022, with an initial NTE value of \$273 million, for Phased Array Tracking Radar to Intercept on Target Advanced Capability-3 production. Army contracting personnel established 15 UCA CLINs and received multiple qualifying proposals to definitize the UCA in several different modifications. Army contracting personnel stated that they

Army contracting personnel stated that because contract terms had not been established contractors could increase pricing without justifications between providing a qualifying proposal and definitizing the UCA.

struggled to obtain offers from the contractor during negotiations. Specifically, according to the PNM for one modification to definitize 4 of the 15 CLINS, Army contracting personnel and the contractor began negotiations on November 16, 2023, to definitize the four CLINs, and the

contractor did not respond to the Government's first offer until February 22, 2024, 98 days later. Additionally, Army contracting personnel from ACC-APG stated that because contract terms had not been established contractors could increase pricing without justifications between providing a qualifying proposal and definitizing the UCA, which restarted the definitization process.

As seen in the prior example, negotiations may take several months, making definitization within 180 days difficult. One improvement noted during the audit was several senior ACC-RSA leaders and Army contracting officials at ACC-RSA attending a self-initiated UCA Summit to determine contracting personnel's and contractors' responsibilities for definitizing UCAs and to improve communication with the contractors. Industry partners, mission partners, stakeholders, and representatives from the DCAA and DCMA attended the Summit. Meeting participants discussed long-term contracts, subcontracts, price reasonableness, and starting pricing reports. As a result of this first Summit, Army contracting officials definitized three of the UCAs in our sample that had remained undefinitized for more than 180 days. ACC-RSA contracting officials and contractors further agreed to hold three Summits each year. Therefore, the ACC Commanding General should develop and implement policy to establish meetings between contracting officials at each contracting activity and contractors on a regular and recurring basis to improve communication and determine responsibilities and impediments, along with a course of action for definitizing UCAs within the 180-day requirement.

Army Contracting Personnel Did Not Use Their Authority to Unilaterally Definitize UCAs

In addition, UCAs continued to remain undefinitized after 180 days of receiving a qualifying proposal because Army contracting personnel did not use their authority to unilaterally definitize the 11 UCAs in our sample that were eligible, valued at \$4.1 billion in initial NTE values.²² Specifically:

- For 10 (91 percent) of the UCAs that were eligible for unilateral definitization, Army Contracting personnel did not attempt to unilaterally definitize; and
- For the other UCA, Army contracting personnel did unilaterally definitize the UCA, but the Army contracting officer did not provide the HCA's written approval to unilaterally definitize the UCA to the contractor 30 days before the unilateral definitization, in accordance with the U.S.C. and DFARS.

A unilateral definitization occurs when the contracting officer, with the approval of the HCA, determines a reasonable price or fee and definitizes the contract without the approval of the contractor.²³ A contracting officer can unilaterally definitize a UCA with a value greater than \$50 million if agreement is not reached with the contractor on contractual terms, specifications, and price within 180 days of receiving a qualifying proposal.²⁴

Army contracting personnel explained their perceived negative impact of unilateral definitization as potentially harming business relationships with industry partners and impacting current operating funds if the industry partner submits a request for equitable adjustment. However, even mentioning unilateral definitization can encourage contractors to provide documentation. For example, ACC-RSA awarded a UCA on August 26, 2022, with an initial NTE value of \$182.3 million, for the procurement of NASAMS Fire Units and Contractor Logistics Support services. The contractor provided a qualifying proposal on February 15, 2023, and the UCA was not definitized as of June 1, 2024, 472 days later. The Army contracting officer notified the contractor that Army contracting personnel planned to unilaterally definitize the UCA if the contractor did not provide the requested documentation and, according to the Army contracting officer, the contractor quickly provided the requested documentation.

²² One UCA in our sample was not definitized within 180 days after receiving a qualifying proposal but was awarded with an initial NTE that was less than \$50 million. Therefore, this UCA was not eligible for unilateral definitization.

²³ DFARS Part 252.2, Section 252.217, "Reserved," Subsection 252.217-7027, "Contract Definitization."

²⁴ 10 U.S.C. § 3372.

As a result of not unilaterally definitizing UCAs, Army contracting personnel delayed establishing fair and reasonable contract terms and left the Government subject to increased risk. Furthermore, the Government was at risk for a contractor dispute because a contracting officer did not provide written approval to the contractor 30 days before unilaterally definitizing a UCA. Therefore, the ACC Commanding General should develop and implement procedures and provide training to contracting personnel on how and when to unilaterally definitize UCAs.

As a result of not unilaterally definitizing UCAs, Army contracting personnel delayed establishing fair and reasonable contract terms and left the Government subject to increased risk.

Army Contracting Personnel Did Not Comply with DoD Requirements Related to Adjusting Profit

Army contracting personnel did not comply with DoD requirements to adjust profit for 7 (54 percent) of the 13 definitized UCAs, totaling \$1.2 billion in initial NTE values. Specifically, Army contracting personnel:

- did not adjust the profit rate for contract risk to reflect costs that were already incurred at definitization when calculating the Government's profit objective for 3 (23 percent) of the 13 definitized UCAs, totaling \$313.1 million in initial NTE values; and
- did not document their consideration of reduced cost risk during the undefinitized period or rationale for assigning contract type risk to calculate profit in the PNMs for 7 (54 percent) of the 13 definitized UCAs, totaling \$1.2 billion in initial NTE values.

Army Contracting Personnel Did Not Properly Adjust Profit Rates for Contract Risk

Army contracting personnel did not adjust the profit rate for contract risk to reflect costs that were already incurred at definitization when calculating the Government's profit objective for 3 (23 percent) of the 13 definitized UCAs, totaling \$313.1 million in initial NTE values. When a UCA is definitized, contracting personnel negotiate with the contractor to determine profit for the contract. The assessment must include any reduced contract risk to the contractor for costs incurred before definitization. Because UCAs are essentially cost-reimbursable contracts before definitization, contracting officers should apply separate contract risk factors when determining the profit rate—one for incurred costs and one for the remainder of the estimated costs to complete. The more costs that are incurred on the UCA before definitization, the more the contract risk is reduced to the contractor, and the lower the profit should be for the contractor.

According to the DFARS, when calculating the negotiating position on profit or fee for a UCA, the contracting officer must assess the extent to which costs have been incurred before definitization of the UCA.²⁵ To do this, the DFARS PGI states that contracting officers should use and prepare a DD Form 1547, "Record of Weighted Guidelines Application," whenever a structured approach to profit analysis is required.²⁶ DD Form 1547 was updated in April 2020 to separate the contract type risk factors for incurred costs at the time of qualifying proposal submission and government estimated costs to complete.

Army contracting personnel did not adjust profit rates for contract risk to reflect costs that were already incurred for three UCAs because they prepared an outdated form when completing weighted guidelines analysis. Specifically, the Army contracting officer for the three UCAs in our sample prepared an outdated version of the form, which did not separate the risk factors. According to the Army contracting officer, this occurred because they were not aware of the updated form. Therefore, Army contracting personnel for these three UCAs did not adjust the profit rate for contract risk to reflect costs already incurred at definitization when calculating the Government's profit objective.

As a result, Army contracting personnel might have assumed more contract risk and potentially paid more profit than necessary for these three UCAs. Without

Army contracting personnel might have assumed more contract risk and potentially paid more profit than necessary for these three UCAs.

consistently applying separate risk factors for both incurred costs and estimated costs to complete when calculating the Government's profit objective, contracting officers are not fully incentivizing contractors

to control costs and provide timely qualifying proposals to definitize the UCA. Therefore, the ACC Commanding General should issue a memorandum requiring contracting personnel to use the most current version of DD Form 1547, "Record of Weighted Guidelines Application," when completing weighted guidelines analysis on all negotiated contract actions when certified cost or pricing date is obtained. In addition, the ACC Commanding General should develop and implement procedures to ensure contracting officers assess the extent of incurred costs when definitizing UCAs and prepare the DD Form 1547, including separating incurred costs from estimated costs to complete and applying separate risk factors based on the reduced cost risk to the contractor.

²⁵ DFARS 215.404-71-3.

DFARS 217.74, Section 217.7404, "Limitations," Subsection 217.7404-6, "Allowable profit."

²⁶ DFARS PGI 215.404, Subsection 215.404-70, "DD Form 1547, Record of Weighted Guidelines Method Application."

Army Contracting Personnel Did Not Document Consideration of Incurred Costs or Rationale for Contract Type Risk in Price Negotiation Memorandums

Army contracting personnel did not document their consideration of reduced cost risk during the undefinitized period or rationale for assigning contract type risk to calculate profit in the PNMs for 7 (54 percent) of the 13 definitized UCAs, totaling \$1.2 billion in initial NTE values.²⁷ The DFARS requires contracting officers to document in the PNM the reason for assigning a specific contract type risk value, to include the extent to which any reduced cost risk during the undefinitized period of performance was considered, in determining the negotiation objective.²⁸ For the seven UCAs, Army contracting officers did not prepare PNMs with sufficient detail to determine whether contracting officers considered incurred costs or justified the contract type risk value they assigned to calculate profit.

According to Army contracting officers, the documentation was missing for 3 of the 7 UCAs because of an oversight. In addition, Army contracting personnel for one UCA implied that they did not need to document this information in the PNM because the UCA was for the same type and scope added with a modification to the base contract, and Army contracting personnel could not provide a reason for the missing documentation for another UCA. For the remaining 2 of the 7 UCAs, Army contracting personnel documented their consideration of reduced cost risk during the undefinitized period or rationale for assigning contract type risk in the pre-negotiation objectives memorandum. Because the PNM, not the pre-negotiation objectives memorandum, serves as the formal document that reflects the price agreements, contracting personnel should document these assessments in the PNM, as required by the DFARS. Therefore, the ACC Commanding General should develop and implement procedures to ensure that contracting officers document their consideration of reduced cost risk during the undefinitized period and rationale for the assigned contract type risk values in PNMs.

Conclusion

As a result of Army contracting personnel's noncompliance with Federal and DoD requirements when managing UCAs awarded to assist Ukraine, the DoD took on unnecessary financial risk. During the undefinitized periods, the DoD incurred the majority of the cost of the contracts and risked paying increased costs. In addition, without adequate procedures to assess incurred costs and adjust profit rates for contract risk to reflect incurred costs during definitization, contractors

²⁷ Contract type risk is the degree of cost risk accepted by the contractor and the Government under varying contract types.

²⁸ DFARS 215.404-71-3(d)(2).

have little incentive to control costs and provide timely qualifying proposals, creating a potential for wasted taxpayer dollars. Therefore, the DoD needs to ensure it is using UCAs only when necessary, negotiating these UCAs within the required time frames, and adjusting profit rates for contract risk to reflect incurred costs.

Recommendations, Management Comments, and Our Response

We recommend that the Commanding General, Army Contracting Command:

- 1. Develop and implement procedures to establish realistic qualifying proposal due dates in definitization schedules, including considering size and complexity of requirements, historical time frames of the contractor providing proposals, and other programs requiring proposals from the same contractor.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work with the Office of the Deputy Assistant Secretary of the Army for Procurement (ODASA[P]) to develop formulas to identify timelines, Army Paperless Contract File cabinet information and milestones, and built-in date reminders specific to UCAs, and then publish guidance and related training. The Deputy to the Commanding General stated that this effort will require the ODASA(P) to approve changes to the Army's Virtual Contracting Enterprise and Paperless Contract File systems. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures, guidance, and related training.

- 2. Develop and implement procedures to update definitization schedule time frames when the Government makes changes to the original requirements, depending on the extent of changes.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC's planned efforts to address Recommendation 1 will also address Recommendation 2. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures, guidance, and related training.

- 3. Develop and implement procedures and provide training to contracting personnel on when to withhold payments from contractors that do not provide qualifying proposals in accordance with the definitization schedule.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop procedures and training. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures and training.

- 4. Develop and implement procedures to ensure that contracting officers document, in the contract file, the justification for withholding payments or not withholding payments from contractors that do not provide qualifying proposals in accordance with the definitization schedule.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop procedures, process reviews, and internal controls to ensure that contracting officers document their decisions and activities. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures, process reviews, and internal controls.

- 5. Develop and implement policy to standardize how contracting personnel establish and document in the contract file the beginning of the 180-day period to definitize.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will coordinate with the ODASA(P) to develop Army contracting policy. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying implementation of policy to standardize how contracting personnel establish and document in the contract file the beginning of the 180-day period to definitize.

- 6. Provide training to contracting personnel to clarify that the 180-day period to definitize the undefinitized contract action begins on the date the contractor submits the qualifying proposal, in accordance with the United States Code.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC, in coordination with the ODASA(P), will identify the acceptable definition of a qualifying proposal

and publish an HCA-level contracting note or other guidance, and then follow up as a process review with the HCA-level Procurement Management Review Program. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC identified the acceptable definition of a qualifying proposal, developed guidance, and provided the results of the Procurement Management Review Program.

7. **Develop and implement procedures to ensure that contracting personnel engage with the Defense Contract Audit Agency and Defense Contract Management Agency before obtaining contractor proposals when they determine that a Defense Contract Audit Agency or Defense Contract Management Agency audit will be required for the undefinitized contract action.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop procedures, process reviews, and internal controls to support collaboration and coordination. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures, process reviews, and internal controls.

8. **Develop and implement procedures to ensure that contracting personnel require contractors to submit Defense Federal Acquisition Regulation Supplement proposal adequacy checklists with proposals, in accordance with the Defense Federal Acquisition Regulation Supplement, and ensure contracting personnel review Defense Federal Acquisition Regulation Supplement proposal adequacy checklists to verify that proposals are adequate before submitting the proposals to the Defense Contract Audit Agency or Defense Contract Management Agency for their proposal audits.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop procedures, process reviews, and internal controls for verification. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures, process reviews, and internal controls.

- 9. Issue a memorandum requiring contracting personnel to request a waiver of the definitization schedule, when appropriate, and detailing the circumstances in which a waiver should be requested.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop and issue guidance. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the guidance.

- 10. Develop and implement policy to establish meetings between contracting officials at each contracting activity and contractors on a regular and recurring basis to improve communication and determine responsibilities and impediments, along with a course of action for definitizing undefinitized contract actions within the 180-day requirement.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop and issue guidance. The Deputy to the Commanding General stated that the ACC will explore incorporating a

mandatory meeting timeline into the Army Paperless Contract File system and UCA definitization milestones. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the guidance.

- 11. Develop and implement procedures and provide training to contracting personnel on how and when to unilaterally definitize undefinitized contract actions.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop procedures and issue guidance. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures and guidance.

- 12. Issue a memorandum requiring contracting personnel to use the most current version of DD Form 1547, "Record of Weighted Guidelines Application," when completing weighted guidelines analysis on all negotiated undefinitized contract actions when certified cost or pricing date is obtained.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC does not develop Army contracting policy, but will coordinate this recommendation with the ODASA(P) for consideration in the Army Federal Acquisition Regulation Supplement or Defense Pricing and Contracting for consideration in the DFARS and DFARS PGI. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC provides the guidance to contracting personnel requiring the use of the most current version of DD Form 1547, "Record of Weighted Guidelines Application," when completing weighted guidelines analysis.

- 13. Develop and implement procedures to ensure that contracting officers assess the extent of incurred costs when definitizing undefinitized contract actions and prepare the DD Form 1547, "Record of Weighted Guidelines Application," including separating incurred costs from estimated costs to complete and applying separate risk factors based on the reduced cost risk to the contractor.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC does not develop Army contracting policy, but will coordinate this recommendation with the ODASA(P) for consideration in the Army Federal Acquisition Regulation Supplement or Defense Pricing and Contracting for consideration in the DFARS and DFARS PGI. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC provides the guidance to ensure that contracting officers assess the extent of incurred costs when definitizing undefinitized contract actions. Additionally, the guidance should require contracting officers prepare the DD Form 1547, "Record of Weighted Guidelines Application," including separating incurred costs from estimated costs to complete and applying separate risk factors based on the reduced cost risk to the contractor.

- 14. Develop and implement procedures to ensure that contracting officers document their consideration of reduced cost risk during the undefinitized period and rationale for the assigned contract type risk values in price negotiation memorandums.**

Army Contracting Command Comments

The ACC Deputy to the Commanding General, responding for the ACC Commanding General, agreed with the recommendation, stating that the ACC will work internally or with the ODASA(P) to develop procedures and issue guidance. The ACC plans to complete these actions by September 30, 2025.

Our Response

Comments from the Deputy to the Commanding General met the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when management provides documentation verifying that the ACC developed and implemented the procedures and guidance.

Appendix A

Scope and Methodology

We conducted this performance audit from December 2023 through September 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We obtained a universe of 26 potentially relevant Army contract actions awarded by the ACC between February 24, 2022, and September 30, 2023, to provide security assistance to Ukraine or to replenish DoD stocks due to presidential drawdowns.²⁹ After initial reviews of the 26 contract actions, we determined that 2 contract actions were not relevant to our audit objective. As a result, our final universe consisted of 24 relevant ACC UCAs, with initial NTE values totaling \$10.6 billion. We reviewed definitization schedules for all 24 UCAs in our universe and identified, as of the date we determined our sample, 5 UCAs, valued at an NTE value of \$4.3 billion, had not yet reached the expected dates to definitize.³⁰ Because we could not initially review whether contracting officials met definitization requirements for these 5 UCAs, we focused our nonstatistical sample on the remaining 19 UCAs, with initial NTE values totaling \$6.2 billion. During the audit, we determined that 1 of the 19 sample UCAs, with an initial NTE value totaling \$22 million, was not related to Ukraine; therefore, we removed this UCA from our sample. Our final nonstatistical sample consisted of a total of 18 UCAs, with initial NTE values totaling \$6.2 billion. The 18 sample UCAs consisted of 14 ACC-RSA UCAs, 3 ACC-APG UCAs, and 1 ACC-Detroit Arsenal UCA. See Appendix B for a breakdown of the 18 sample UCAs.

Contract Action, Background, and Award

We obtained each UCA and relevant modifications from the Electronic Data Access system, and obtained contract file documentation, such as determinations and findings, proposals, and PNMs, from the Army Paperless Contract File system. We identified the award date, the issuing office, contracting personnel, purpose,

²⁹ We obtained 27 contract numbers from ACC personnel. We queried the Electronic Data Access system to obtain contract documentation for all contract actions and our query for 1 of the 27 contract actions did not provide any results. We concluded that this one was not a real contract number. Therefore, our initial universe consisted of 26 potentially relevant Army contract actions.

³⁰ We identified that six UCAs had not yet reached expected dates to definitize. However, contracting personnel had already received a qualifying proposal for one of the six UCAs; therefore, we kept this one UCA in our sample.

and any other relevant background information for the UCA. We reviewed determinations and findings to determine whether the contracting officer justified the need for a UCA and received approval from the appropriate agency head before award. We reviewed the UCAs to determine whether the award met DFARS requirements, such as the requirements to include all required FAR and DFARS clauses, a definitization schedule that provides for definitization within 180 days of receiving a qualifying proposal, and a fully supported NTE price.

NTE limitations and Definitization Requirements

We reviewed each UCA and all relevant modifications to determine whether contracting personnel obligated funds in accordance with Federal and DoD limitations on obligations of funds during the undefinitized period. For UCAs we determined were in excess of the limitations on obligations of funds, we interviewed the contracting officer and reviewed contract file documentation to determine whether contracting personnel waived the requirements in accordance with public law.

In addition, we interviewed the contracting officer and reviewed contract file documentation to determine whether the contractor provided a qualifying proposal in accordance with the definitization schedule and whether contracting personnel definitized the UCA within 180 days of receiving a qualifying proposal. For UCAs we determined were not definitized within 180 days of qualifying proposal receipt, we interviewed the contracting officer and reviewed contract file documentation to determine whether contracting personnel waived the requirements in accordance with public law.

If we identified that contracting personnel definitized the UCA, we interviewed the contracting officer and reviewed contract file documentation to determine whether the contracting officer completed weighted guidelines analysis, adjusted the contractor's profit to reflect the risk inherited by the Government during the undefinitized period, and documented their consideration of incurred costs and rationale for assigning contract type risk factors in the PNM. If contracting personnel unilaterally definitized the UCA, for UCAs exceeding \$50 million, we determined whether contracting personnel complied with the additional requirements pertaining to unilateral definitization outlined by the DFARS.

Criteria

- Section 3372, title 10, United States Code, "Undefinitized Contractual Actions: Requirements and Limitations Relating to Definitization of Contractual Terms, Specifications, and Price"
- Public Law 117-263, "James M. Inhofe National Defense Authorization Act for Fiscal Year 2023," section 1244, "Temporary Authorizations Related to Ukraine and Other Matters"

- Federal Acquisition Regulation (FAR) Part 16, “Types of Contracts,” Subpart 16.6, “Time-and-Materials, Labor Hour, and Letter Contracts,” Section 16.603, “Letter Contracts”
- Defense Federal Acquisition Regulation Supplement (DFARS) Part 215, “Contracting by Negotiation,” Subpart 215.4, “Contract Pricing”
- DFARS Part 216, “Types of Contracts,” Subpart 216.6, “Time-and-Materials, Labor-Hour, and Letter Contracts,” Section 216.603, “Letter Contracts”
- DFARS Part 217, “Special Contracting Methods,” Subpart 217.74, “Unfinitized Contract Actions”
- DFARS Part 243, “Contract Modifications,” Subpart 243.2, “Change Orders,” Section 243.204-70, “Definitization of Change Orders”
- DFARS Procedures, Guidance, and Information (PGI) Part 217, “Special Contracting Methods,” Subpart 217.74, “Unfinitized Contract Actions”
- DFARS PGI Part 215, “Contracting by Negotiation,” Subpart 215.4, “Contract Pricing,” Section 215.404, “Proposal Analysis,” Subsection 215.404-70, “DD Form 1547, Record of Weighted Guidelines Method Application”
- Defense Pricing and Contracting Memorandum 2023-00003, “Class Deviation – Temporary Authorizations for Covered Contracts Related to Ukraine,” December 23, 2022
- Army Federal Acquisition Regulation Supplement Part 5117, “Special Contracting Methods”

Internal Control Assessment and Compliance

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. We assessed the policies and procedures that Army contracting personnel used to manage UCAs awarded to assist Ukraine. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Prior Coverage

During the last 5 years, the DoD Office of Inspector General (DoD OIG) issued two reports discussing UCAs.

Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

DoD OIG

Report No. DODIG-2021-074, “Audit of the U.S. Army Corps of Engineers Use of Undefinitized Contract Actions for the Conversion of Alternate Care Sites in Response to the Coronavirus Disease–2019 Pandemic,” April 7, 2021

The DoD OIG determined that U.S. Army Corps of Engineers contracting officers definitized only 2 UCAs of the 30 total UCAs within the definitization schedules included in the contract actions. For the other 28 UCAs, U.S. Army Corps of Engineers contracting officers definitized the award from 1 to 26 days after the definitization dates they established in the contract actions. The delays occurred because contractors experienced delays in obtaining supplies; Government officials from the Federal Emergency Management Agency and officials at the state and local levels changed the requirements; contractors encountered unexpected site conditions; and U.S. Army Corps of Engineers officials required contractors to complete multiple revisions to proposals and conducted numerous negotiation sessions to align contractors’ proposals to Government estimates.

Report No. DODIG-2020-084, “Audit of Military Department Management of Undefinitized Contract Actions,” May 11, 2020

The DoD OIG determined that Military Department contracting officers generally followed requirements when obligating funds for the 116 UCAs the DoD OIG reviewed. However, some contracting officers did not fully comply with requirements for adjusting profit or definitizing UCAs. Specifically, these contracting officers did not: adjust the profit rate for contract risk to reflect costs already incurred on the UCA at definitization when they determined the profit; adequately support their contract risk determinations in the contract file for 56 UCAs; and definitize 53 UCAs within the required 180 days after the contracting officers received a qualifying proposal from the contractor. The reasons were because the DFARS does not provide clear guidance on how contracting officers should adjust the profit rate for contract risk for costs already incurred on the UCA; because contracting officers did not prepare PNMs with sufficient detail to document incurred costs, and the DD Form 1547 lacked sufficient detail to show the reduced cost risk related to incurred costs during the undefinitized period; and lengthy negotiations were caused by changing Government requirements and they were working with “inexperienced” or “uncooperative” contractors.

Appendix B

Sample Army UCAs in Support of Ukraine

UCA	ACC Contracting Center	Award Date	Initial NTE Value	Qualifying Proposal Received by Definitization Schedule Date?	Definitized as of June 1, 2024?	Definitized Within 180 Days After Receiving Qualifying Proposal?	Profit Rate Adjusted to Reflect Incurred Costs?	Consideration of Reduced Cost Risk and Rationale for Contract Type Risk in PNM?
W31P4Q-20-C-0023 P00060	RSA	9/29/2022	\$272,984,000.00	No	No	No	Yes	No
W58RGZ-23-C-0007	RSA	11/9/2022	\$176,375,801.09	Yes	Yes	No	N/A	N/A
W31P4Q-23-C-0002	RSA	11/30/2022	\$1,140,694,520.39	No	No	No	N/A	N/A
W31P4Q-22-C-0068	RSA	8/26/2022	\$182,295,333.00	No	No	No	N/A	N/A
W31P4Q-22-C-0020 P00009	RSA	3/15/2023	\$14,638,000.00	No	Yes	Yes	Yes	No
W31P4Q-23-C-0022	RSA	2/24/2023	\$44,042,000.00	No	Yes	No	Yes	Yes
W31P4Q-23-C-0006	RSA	12/1/2022	\$430,930,711.00	No	Yes	No	Yes	Yes
W31P4Q-22-C-0047 P00012	RSA	5/18/2023	\$87,582,777.00	Yes	No	No	N/A	N/A
W58RGZ-22-C-0055	RSA	5/17/2022	\$1,537,013.00	No	Yes	Yes	Yes	N/A
W31P4Q-20-C-0024 P00030	RSA	6/23/2023	\$18,761,420.00	Yes	Yes	Yes	Yes	No
W31P4Q-23-D-0003 W31P4Q-23-F-0045	RSA	12/8/2022	\$240,100,000.00	No	Yes	Yes	Yes	Yes
W31P4Q-21-D-0007 W31P4Q-22-F-0131	RSA	5/25/2022	\$624,601,212.00	Yes	Yes	No	Yes	Yes
W31P4Q-22-D-0004 W31P4Q-22-F-0031 P00008	RSA	11/28/2022	\$543,400,662.24	No	Yes	No	Yes	No

Sample Army UCAs in Support of Ukraine (cont'd)

UCA	ACC Contracting Center	Award Date	Initial NTE Value	Qualifying Proposal Received by Definitization Schedule Date?	Definitized as of June 1, 2024?	Definitized Within 180 Days After Receiving Qualifying Proposal?	Profit Rate Adjusted to Reflect Incurred Costs?	Consideration of Reduced Cost Risk and Rationale for Contract Type Risk in PNM?
W31P4Q-23-D-0003 W31P4Q-23-F-0006	RSA	10/21/2022	\$1,754,000,000.00	No	No	N/A	N/A	N/A
W56KGY-22-C-0004	APG	5/24/2022	\$14,330,500.00	No	Yes	Yes	No	No
W56KGY-22-D-0001 W56KGY-23-F-0001	APG	10/27/2022	\$238,000,000.00	No	Yes	No	No	No
W56KGY-23-D-0002 W56KGY-23-F-0011	APG	1/31/2023	\$60,733,280.00	Yes	Yes	No	No	No
W56HZV-23-C-0024	Detroit Arsenal	3/3/2023	\$364,297,823.00	N/A	Yes	No	Yes	Yes
Totals			\$6,209,305,052.72	12 (No) 5 (Yes)	5 (No) 13 (Yes)	12 (No) 5 (Yes)	3 (No) 10 (Yes)	7 (No) 5 (Yes)

Source: The DoD OIG.

Management Comments

Army Contracting Command



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
4505 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

AMCC-IR (RN 11-7a)

16 Dec 2024

MEMORANDUM FOR Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898-5000

SUBJECT: U.S. Department of Defense Inspector General (DoDIG) Audit Draft Report Project No. D2024-D000AX-0037.000 (CUI) Army's Management of Undefined Contract Actions Awarded to Provide Ukraine Assistance

1. Reference. DoDIG Audit Draft Report (CUI) "Army's Management of Undefined Contract Actions Awarded to Provide Ukraine Assistance" (Project Number D2024-D000AX-0037.000)
2. The Commanding General, U.S. Army Contracting Command (ACC) has reviewed and endorses the subject draft report and concurs with recommendations 1-14. Detailed comments are enclosed.
3. The ACC point of contact for this memorandum is [REDACTED], Internal Review Audit and Compliance Office, at [REDACTED] or [REDACTED].

GALLAGHER.DAN
IEL.JOSEPH

Encl

DANIEL J. GALLAGHER
Deputy to the Commanding General

Army Contracting Command (cont'd)

Project: D2024-D000AX-0037

Objective Title: Audit of the Army's Management of Unfinalized Contract Actions Awarded to Provide Ukraine Assistance

Objective: The objective of this audit was to determine whether Army contracting officials properly managed unfinalized contract actions (UCAs) awarded to assist Ukraine by obligating funds and finalizing actions within the required limits and adjusting profit for costs incurred, or properly waiving the requirements in accordance with Federal and DoD policies.

Conclusion: Army contracting personnel did not manage the 18 UCAs we reviewed in accordance with Federal and DoD policies. While Army contracting personnel generally awarded the UCAs and obligated the funds in accordance with Federal and DoD policies, Army contracting personnel did not:

- Obtain qualifying proposals by the dates required in the finalization schedules for 12 (67 percent) of the 18 UCAs, totaling \$4.9 billion in initial NTE values. This occurred because Army contracting personnel established unrealistic timeframes in the finalization schedules to obtain qualifying proposals and the Government changed requirements after awarding UCAs. In addition, qualifying proposals continued to be late because Army contracting personnel did not use their authority to withhold payments when the contractor did not provide a qualifying proposal in accordance with the finalization schedule. According to Army contracting personnel, the decision to not withhold payments and continue to wait for qualifying proposals was in the best interest of the Government.
- Finalize UCAs within 180 days of receiving qualifying proposals from contractors for 12 (67 percent) of the 18 UCAs, totaling \$4.2 billion in initial NTE values. This occurred because Army contracting personnel interpreted the guidance inconsistently on when to start the 180-day period to finalize a UCA and did not have policy in place for contracting officers to follow to establish the start of the 180-day period. Furthermore, Army contracting personnel did not finalize UCAs within 180 days of receiving qualifying proposals because they experienced time-consuming proposal reviews, difficulty obtaining data needed to make fair and reasonable pricing determinations because Government requirements were complex and sometimes new to contracting personnel, and delays related to lengthy negotiations. In addition, UCAs continued to remain unfinalized after 180 days of receiving a qualifying proposal because Army contracting personnel did not use their authority to unilaterally finalize UCAs.
- Comply with DoD requirements related to adjusting profit for 7 (54 percent) of the 13 finalized UCAs, totaling \$1.2 billion in initial NTE values. This occurred because Army contracting personnel prepared an outdated form when calculating the Government's profit objective. Additionally, according to Army contracting officers, documentation was missing because of an oversight or because they included the documentation in the pre-negotiation objectives memorandum.

As a result of Army contracting personnel's noncompliance with Federal and DoD requirements when managing UCAs awarded to assist Ukraine, the DoD potentially took on unnecessary financial

Army Contracting Command (cont'd)

risk. During the undefinitized periods, the DoD incurred most of the cost of the contracts and risked paying increased costs. In addition, without adequate procedures to assess incurred costs and adjust profit rates for contract risk to reflect incurred costs during definitization, contractors have little incentive to control costs and provide timely qualifying proposals, creating a potential for wasted taxpayer dollars.

Therefore, the DoD needs to ensure it is using UCAs only when necessary, negotiating these UCAs within the required timeframes, and adjusting profit rates for contract risk to reflect incurred costs.

Recommendations

We recommend that the Commander, Army Contracting Command:

Recommendation 1. Develop and implement procedures to establish realistic qualifying proposal due dates in definitization schedules, including considering size and complexity of requirements, historical timeframes of the contractor providing proposals, and other programs requiring proposals from the same contractor.

Command Response 1. Concur – We will work with ODASA(P) to develop formulas that identify timelines and then PCF Cabinet info and Milestones, build in date reminders specific to UCAs and then publish guidance and related training. This effort will require ODASA(P) to approve and direct VCE & PCF changes.

Recommendation 2. Develop and implement procedures to update definitization schedule timeframes when the Government makes changes to the original requirements, depending on the extent of changes.

Command Response 2. Concur – The effort and address of Recommendation 1 will also include Recommendation 2.

Recommendation 3. Develop and implement procedures and provide training to contracting personnel on when to withhold payments from contractors that do not provide qualifying proposals in accordance with the definitization schedule.

Command Response 3. Concur – We will work internal to ACC and / or with ODASA(P) to develop procedures and training.

Recommendation 4. Develop and implement procedures to ensure that contracting officers document, in the contract file, the justification for withholding payments or not withholding payments from contractors that do not provide qualifying proposals in accordance with the definitization schedule.

Command Response 4. Concur – We will work internal to ACC and / or with ODASA(P) to develop procedures as well as process reviews / internal controls to ensure documentation of their decisions and activities.

Recommendation 5. Develop and implement policy to standardize how contracting personnel establish and document in the contract file the beginning of the 180-day period to definitize.

Army Contracting Command (cont'd)

Command Response 5. Concur with comment - ACC will coordinate with Army ODASA(P) to develop Army contracting policy; since that authority resides with the ODASA(P).

Recommendation 6. Provide training to contracting personnel to clarify that the 180-day period to definitize the undefinitized contract action begins on the date the contractor submits the qualifying proposal, in accordance with the U.S.C.

Command Response 6. Concur - ACC ICW ODASA(P) will work to identify the acceptable definition of Qualifying Proposal and publish an HCA level contracting note or other guidance, and follow up as process review / internal control with the HCA level Procurement Management Review (PMR) Program.

Recommendation 7. Develop and implement procedures to ensure that contracting personnel engage with the Defense Contract Audit Agency and Defense Contract Management Agency before obtaining contractor proposals when they determine that a Defense Contract Audit Agency or Defense Contract Management Agency audit will be required for the undefinitized contract action.

Command Response 7. Concur – We will work internal to ACC and as needed with ODASA(P) to develop procedures as well as process reviews / internal controls to support collaboration and coordination.

Recommendation 8. Develop and implement procedures to ensure that contracting personnel require contractors to submit Defense Federal Acquisition Regulation Supplement proposal adequacy checklists with proposals, in accordance with the Defense Federal Acquisition Regulation Supplement, and ensure contracting personnel review Defense Federal Acquisition Regulation Supplement proposal adequacy checklists to verify that proposals are adequate before submitting the proposals to the Defense Contract Audit Agency or Defense Contract Management Agency for their proposal audits.

Command Response 8. Concur – We will work internal to ACC and as needed with ODASA(P) to develop procedures as well as process reviews / internal controls for verification.

Recommendation 9. Issue a memorandum requiring contracting personnel to request a waiver of the definitization schedule, when appropriate, and detailing the circumstances in which a waiver should be requested.

Command Response 9. Concur – We will work internal to ACC and as needed with ODASA(P) to develop and issue such guidance.

Recommendation 10. Develop and implement policy to establish meetings between contracting officials at each contracting activity and contractors on a regular and recurring basis to improve communication and determine responsibilities and impediments, along with a course of action for definitizing undefinitized contract actions within the 180-day requirement.

Command Response 10. Concur – We will work internal to ACC as needed with ODASA(P) to develop and issue such guidance. We will explore this 30/60/90 day mandatory meeting timeline being incorporated into the PCF cabinet and UCA definitization milestones.

Army Contracting Command (cont'd)

Recommendation 11. Develop and implement procedures and provide training to contracting personnel on how and when to unilaterally definitize undefinitized contract actions.

Command Response 11. Concur – We will work internal to ACC and as needed with ODASA(P) to develop procedures and issue such guidance.

Recommendation 12. Issue a memorandum requiring contracting personnel to use the most current version of DD Form 1547, “Record of Weighted Guidelines,” when completing weighted guidelines analysis on all negotiated undefinitized contract actions when certified cost or pricing date is obtained.

Command Response 12. Concur with comment - ACC does not develop Army contracting policy; but will work this recommendation with ODASA(P) for consideration in the AFARS and / or to DP&C for DFARS and PGI consideration.

Recommendation 13. Develop and implement procedures to ensure that contracting officers assess the extent of incurred costs when definitizing undefinitized contract actions and prepare the DD Form 1547, “Record of Weighted Guidelines,” including separating incurred costs from estimated costs to complete and applying separate risk factors based on the reduced cost risk to the contractor.

Command Response 13. Concur with comment - ACC does not develop Army contracting policy; but will work this recommendation with ODASA(P) for consideration in the AFARS and / or to DP&C for DFARS and PGI consideration as this effort is complementary to Recommendation 12.

Recommendation 14. Develop and implement procedures to ensure that contracting officers document their consideration of reduced cost risk during the undefinitized period and rationale for the assigned contract type risk values in price negotiation memorandums.

Command Response 14. Concur – We will work internal to ACC and as needed with ODASA(P) to develop procedures and issue such guidance.

All 14 recommendations will be implemented NLT 30 September 2025.

Acronyms and Abbreviations

ACC	Army Contracting Command
APG	Aberdeen Proving Ground
CLIN	Contract Line Item Number
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
HCA	Head of the Contracting Activity
NASAMS	National Advanced Surface-to-Air Missile Systems
NTE	Not-To-Exceed
ODASA(P)	Office of the Deputy Assistant Secretary of the Army for Procurement
PGI	Procedures, Guidance, and Information
PNM	Price Negotiation Memorandum
RSA	Redstone Arsenal
UCA	Undefinitized Contract Action
U.S.C.	United States Code



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reports or activities, please contact us:**

Congressional Liaison
703.604.8324

Media Contact
public.affairs@dodig.mil; 703.604.8324



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www.dodig.mil
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