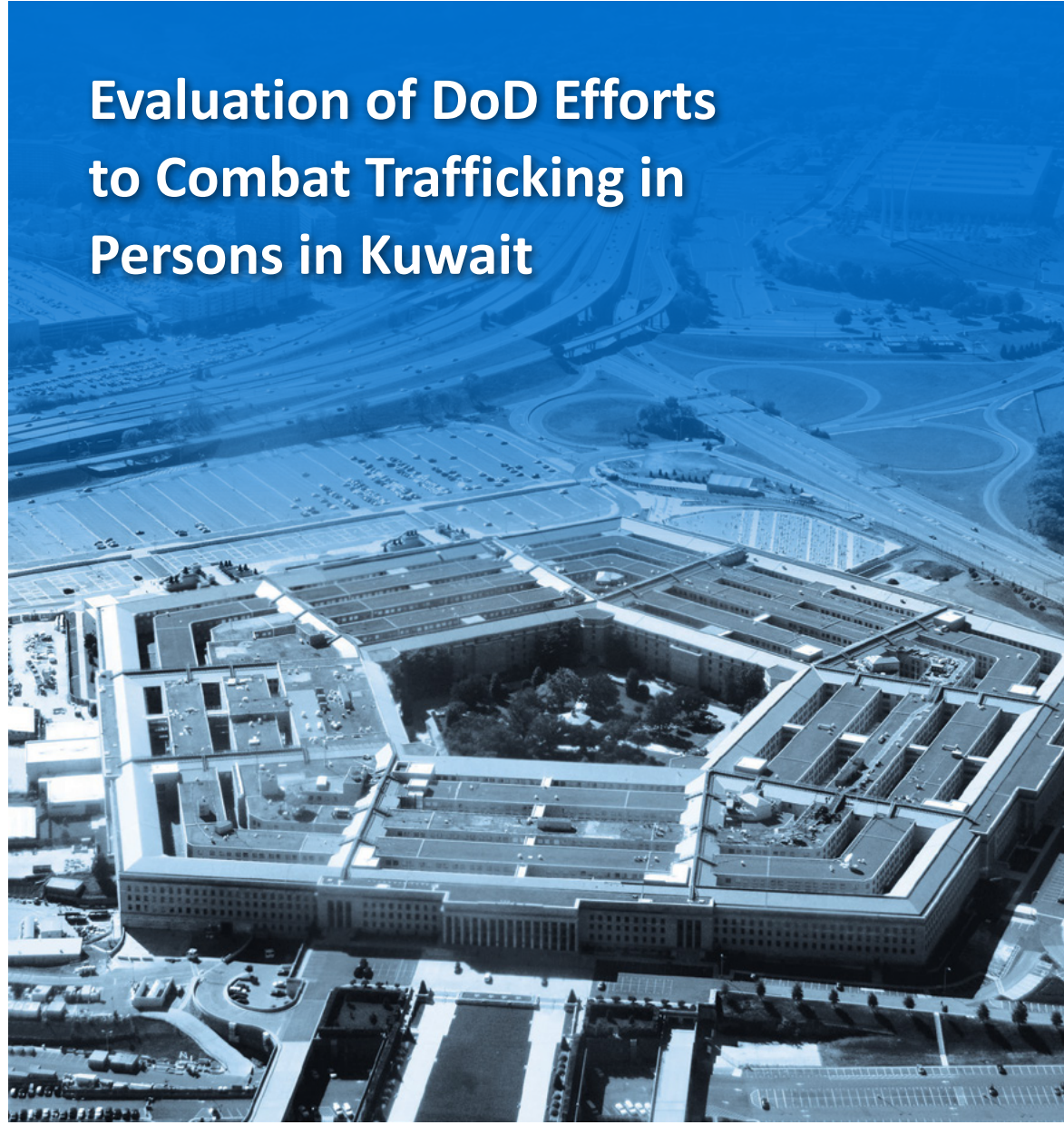




# INSPECTOR GENERAL

*U.S. Department of Defense*

JUNE 11, 2019



## Evaluation of DoD Efforts to Combat Trafficking in Persons in Kuwait

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





# Results in Brief

## *Evaluation of DoD Efforts to Combat Trafficking in Persons in Kuwait*

June 11, 2019

### Objective

We determined whether DoD contracts in Kuwait complied with combating trafficking in persons (CTIP) requirements in statutes, the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and other DoD guidance. We also determined whether DoD officials provided oversight of CTIP requirements in accordance with command responsibility and contracting regulations, including addressing instances of noncompliance.

### Background

In 2002, National Security Presidential Directive-22: Combating Trafficking in Persons, December 16, 2002, established the goal of eradicating international trafficking in persons and established a zero-tolerance policy for U.S. Government employees and contractors. DoD Instruction 2200.01, "Combating Trafficking In Persons," April 21, 2015, Incorporating Change 1, Effective April 5, 2017, was issued to implement National Security Presidential Directive-22. The FAR was updated to require that all Government contracts include FAR clause 52.222-50, "Combating Trafficking in Persons" (the FAR CTIP clause), which prohibits contractors, contractor employees, and their agents from practices associated with trafficking in persons, such as withholding passports, charging recruitment fees, or providing wages and housing below host-nation standards.

We initiated this evaluation after military criminal investigators substantiated that a DoD contractor violated the FAR CTIP

### Background (cont'd)

clause. The contractor, which operated food services for U.S. and Coalition personnel on Camp Arifjan, Camp Buehring, and Ali Al Salem Air Base, all located in Kuwait, failed to pay its employees the legally required minimum monthly salary. To even obtain work in Kuwait, these employees had to pay exorbitant recruitment fees, putting them in a "state of enslaved bondage" for the contractor's employees because most of the employees' salary went to paying off the debt for the fee and its accrued interest. Furthermore, the contractor enforced a 7-day-a-week, 12-hour-workday schedule with continuous overtime and no permissible sick leave or regular days off while providing substandard housing.

### Findings

We determined that DoD officials at U.S. Central Command (USCENTCOM) did not consistently enforce DoD and command regulations regarding the identification of trafficking in persons and the oversight of CTIP in Kuwait. As a result, USCENTCOM is at an increased risk of not detecting or correcting and underreporting labor trafficking in persons on U.S. military bases.

In addition, DoD contracting personnel did not always ensure that contracts performed in Kuwait complied with the FAR CTIP clause. Specifically, Army and Air Force contracting officers did not always confirm that contracts included the required clauses and had oversight plans, and Army and Air Force Exchange Service (AAFES) personnel did not consistently monitor for contractor CTIP compliance, document their monitoring, and report results to contracting officers.

Furthermore, the FAR prohibits U.S. contractors from engaging in various forms of trafficking in persons, and defines these practices with reference to the host-nation labor and wage laws. However, DoD contracting organizations lacked a process for determining Kuwaiti labor law requirements regarding wage, housing, and safety standards. Therefore, DoD contracting organizations could not fully conduct objective contract oversight of the FAR CTIP clause that requires contractors to comply with Kuwaiti labor laws.



# Results in Brief

## *Evaluation of DoD Efforts to Combat Trafficking in Persons in Kuwait*

### Recommendations

We recommend that the USCENTCOM Commander enforce Central Command Regulation (CCR) 570-4, "Combating Trafficking in Persons," October 27, 2016, which implements DoD Instruction 2200.01, and establishes procedures and assigns responsibilities for the identification and oversight of CTIP in the USCENTCOM area of responsibility.

We recommend that senior officials of U.S. Air Forces Central Command (USAFCENT) and Army Contracting Command–Rock Island ensure that contracting officers include the FAR CTIP clause in all contracts, and ensure that quality assurance surveillance plans are prepared for all service contracts that require them and include appropriate methods for monitoring the contractor's performance regarding trafficking in persons.

We recommend that the AAFES Chief Executive Officer (CEO) update the AAFES CTIP policy to provide guidance on monitoring contractor compliance with the FAR CTIP clause.

We recommend that senior officials of USAFCENT and Army Contracting Command–Rock Island, and the AAFES CEO, establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.

### Management Comments and Our Response

The USCENTCOM Chief of Staff, responding for the USCENTCOM Commander, disagreed with our recommendation that USCENTCOM enforce CCR 570-4 throughout its area of responsibility, including designating a command headquarters to be responsible for CTIP compliance in Kuwait. The Chief of Staff stated that both DoD Instruction 2200.01 and CCR 570-4, as written, may conflict with Federal intelligence collection regulations which preclude USCENTCOM enforcement of CCR 570-4.

The Chief of Staff also stated that USCENTCOM's service components do not always have a headquarters in country to allow for formally designated responsibility for CTIP compliance. The Chief of Staff further stated that USCENTCOM will, in the future, update CCR 570-4, in response to an updated DoD Instruction on CTIP, and then enforce all aspects within its authority.

Comments from the Chief of Staff did not fully address the recommendation; therefore, the recommendation is unresolved and remains open. We disagree that section 11.d of DoD Instruction 2200.01 and section 5.b of CCR 570-4 conflict with Federal intelligence collection regulations which would preclude USCENTCOM enforcement of CCR 570-4. The DoDI and CCR sections only address information on trafficking in persons pertinent to CTIP awareness training, not overall intelligence collection procedures. The absence of service component headquarters should not preclude a formal designation of CTIP compliance responsibility. USCENTCOM therefore should formally designate CTIP compliance responsibility throughout its area of responsibility.

USCENTCOM signed and released CCR 570-4 on October 7, 2016, close to 31 months ago, but did not enforce the regulation. During this time there was a risk that labor trafficking in persons on U.S. military bases in Kuwait would not be detected, corrected, or reported by USCENTCOM. By deferring enforcement of CCR 570-4 until it is updated at a future date, USCENTCOM will not address the current CTIP problems on its bases in Kuwait or fulfill its responsibilities on CTIP as required by DoD Instruction 2200.01. DoD Instruction 2200.01 requires combatant commanders to develop a program that establishes clear guidelines and procedures for subordinate organizations to address trafficking in persons in their operating environments. We request that the USCENTCOM Commander provide comments on the final report that detail how compliance with the current DoD Instruction 2200.01 and CCR 570-4 will be enforced.



# Results in Brief

## *Evaluation of DoD Efforts to Combat Trafficking in Persons in Kuwait*

### **Management Comments (cont'd)**

The USAFCENT Chief of Staff, responding on behalf of the USAFCENT Chief of Contracting, agreed with our recommendations, and stated that he will issue written guidance to USAFCENT contracting officers to include the FAR CTIP clause in all contracts and that he will include CTIP in the USAFCENT quality assurance tracking tools and templates. We consider these recommendations resolved and will close them once we have verified that USAFCENT has taken the stated actions.

The Army Contracting Command Deputy to the Commanding General, responding for the Army Contracting Command–Rock Island Executive Director, agreed with our recommendations. The Deputy stated that the command will review contracts with performance in Kuwait to ensure that the FAR CTIP clause is included, and will review the quality assurance surveillance plans to verify that appropriate methods for monitoring contractors' performance regarding trafficking in persons are included. We consider these recommendations resolved and will close them once we have verified that Army Contracting Command–Rock Island has taken the stated actions.

The AAFES CEO agreed with our recommendation to provide more specific guidance on monitoring CTIP compliance. AAFES revised its CTIP operating policy and procedure. We reviewed the new policy and determined that it includes a clearer delineation of roles and responsibilities for monitoring CTIP. Therefore, we consider the recommendation closed.

The Army Contracting Command Deputy to the Commanding General, the Air Force Chief of Contracting Operations, and the AAFES CEO gave conflicting responses to our recommendations that they establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts. Their comments did not fully address the recommendations; therefore, the recommendations are unresolved and remain open.

Specifically, the Army Contracting Command Deputy to the Commanding General agreed with the recommendation and stated that if USCENTCOM designated a command headquarters in Kuwait to be responsible for CTIP compliance, Army Contracting Command would recognize that command as the sole resource for Kuwaiti labor law guidance. The Air Force Chief of Contracting Operations, responding for the Deputy Assistant Secretary (Contracting), disagreed with the recommendation and stated that in his view USCENTCOM is required by DoDI 2200.01 to develop a program that establishes a clear set of guidelines and procedures for units outside the continental United States to address trafficking in persons, including guidance on Kuwaiti labor law. The AAFES CEO agreed with the recommendation and stated that AAFES would contact Army Contracting Command and the Deputy Assistant Secretary (Contracting) to coordinate on how to determine definitive guidance on Kuwaiti labor law.

However, USCENTCOM disagreed with our recommendation to implement CCR 570-4, its own regulation on CTIP, including designating a command headquarters in Kuwait to be responsible for CTIP compliance.

To address this disagreement over which DoD organization should determine the definitive guidance on Kuwaiti labor law, we added Recommendation C.4. Joint Publication 4-10, "Operational Contract Support," Chapter II, Section J, March 4, 2019, states, "The Office of General Counsel (DoD OGC) provides advice to SecDef and the Deputy Secretary of Defense regarding all legal matters and services performed within, or involving, DoD and legal advice to OSD organizations and, as appropriate, other DoD components." Subsection (5) of the Joint Publication states that DoD OGC is to "[d]etermine DoD's position on specific legal problems and resolve disagreements within DoD on such matters." Therefore, we added Recommendation C.4 for implementation by the DoD Office of General Counsel.



# Results in Brief

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## *Evaluation of DoD Efforts to Combat Trafficking in Persons in Kuwait*

### **Added Recommendation C.4**

We also recommend that the DoD General Counsel coordinate with the DoD organizations responsible for overseeing contracting in Kuwait to determine the appropriate DoD organization responsible for determining definitive guidance on Kuwaiti labor laws that apply to DoD contracts with performance in Kuwait, work to resolve disagreements among the organizations, and advise the Secretary of Defense and the Deputy Secretary of Defense on a comprehensive solution.

Please see the recommendations table on the next page for the status of recommendations.

## Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
General Counsel of the Department of Defense	C.4	None	None
Commander of U.S. Central Command	A.1.a, A.1.b, A.1.c, D.2	None	None
Commander of U.S. Air Forces Central Command	None	A.2, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e	None
Deputy Assistant Secretary (Contracting)	C.2	None	None
Commanding General of Army Contracting Command–Rock Island	C.1	B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.2	None
Chief Executive Officer of Army and Air Force Exchange Service	C.3	None	B.3
Commander of the 408th Contract Support Brigade	None	D.1	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** – OIG verified that the agreed upon corrective actions were implemented.







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

June 11, 2019

MEMORANDUM FOR SECRETARY OF DEFENSE UNDERSECRETARY OF  
DEFENSE FOR PERSONNEL AND READINESS  
COMMANDER, UNITED STATES CENTRAL COMMAND  
COMMANDER, UNITED STATES ARMY CENTRAL  
COMMANDER, UNITED STATES AIR FORCE CENTRAL  
COMMANDING GENERAL, UNITED STATES ARMY MATERIEL  
COMMAND GENERAL COUNSEL

SUBJECT: Evaluation of DoD Efforts to Combat Trafficking in Persons in Kuwait  
(Report No. DODIG-2019-088)

We are providing this report for your review and comment. We conducted this evaluation from September 2017 through June 2019 in accordance with the "Quality Standards for Inspection and Evaluation," published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency.

We considered comments on a draft of this report. DoD Instruction 7650.03 requires that all recommendations be resolved promptly. Comments from the Commander of U.S. Central Command did not address the intent of Recommendations A.1.a, A.1.b, A.1.c, or D.2. Therefore, we request that the Commander of U.S. Central Command provide additional comments for these recommendations on the final report by July 26, 2019.

Comments from the Deputy Assistant Secretary (Contracting), the Deputy to the Commanding General of Army Contracting Command, responding for the Executive Director of the Army Contracting Command-Rock Island, and the Chief Executive Officer of the Army and Air Force Exchange Service did not address the intent of Recommendations C.1, C.2, and C.3, respectively. Therefore, we request that they provide comments for these recommendations on the final report by July 26, 2019.

As a result of the management comments that we received to Recommendations C.1, C.2, and C.3, we added Recommendation C.4, which is directed to the DoD Office of General Counsel. Therefore, we request that the DoD General Counsel comment on Recommendation C.4 by July 26, 2019.

Please send a PDF file containing your comments to [REDACTED]  
Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the cooperation and assistance received during the evaluation. Please direct questions to [REDACTED]

A handwritten signature in black ink, appearing to read 'MJR', is centered on the page.

Michael J. Roark  
Deputy Inspector General for  
Evaluations

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## Introduction

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In 2004, DoD reports documented forced labor and debt bondage among U.S. contractors in Iraq, and 4 years later, workers for a subcontractor in Iraq rioted over poor treatment. In 2011, the Commission on Wartime Contracting reported uncovering “tragic evidence of the recurrent problem of trafficking in persons by labor brokers or subcontractors of contingency contractors” in Iraq and Afghanistan.<sup>1</sup> The report concluded that the abuse of people from poorer countries by contingency contractors and opportunistic labor brokers “bring[s] discredit to the United States and act[s] as a barrier to building good diplomatic relations.”

Kuwait is a destination country for men and women subjected to forced labor and, to a lesser degree, forced prostitution, according to the Department of State’s “Trafficking in Persons Report,” June 2018. Over the past 5 years, men and women have migrated from South and Southeast Asia, particularly Bangladesh, India, Nepal, and Indonesia; Egypt; the Middle East; and increasingly from throughout Africa to work in Kuwait, predominantly in the domestic service, construction, hospitality, and sanitation sectors. Almost 70 percent of Kuwaiti residents are not Kuwaiti citizens. These non-citizens are known on U.S. military installations as Other Country Nationals.

Most migrant workers or Other Country Nationals arrived in Kuwait voluntarily, according to the “Trafficking in Persons Report.” However, upon arrival, some were subjected to forced labor, including non-payment of wages, protracted working hours without rest, food deprivation, threats, physical abuse, and restrictions on movement, such as confinement to the workplace and withheld passports. Many of the migrant workers arriving in Kuwait paid exorbitant recruitment fees to labor recruiters in their home countries or were coerced into paying labor broker fees in Kuwait, which, according to Kuwaiti law, the employer should pay. These recruitment fees made workers highly vulnerable to forced labor, including debt bondage.

## Objective

We determined whether DoD contracts in Kuwait complied with combating trafficking in persons (CTIP) requirements in statutes, the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and other DoD guidance. We also determined whether DoD officials provided oversight of CTIP requirements in accordance with command responsibility and contracting regulations, including addressing instances of noncompliance.

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<sup>1</sup> The Commission on Wartime Contracting was an independent, bipartisan legislative commission created in 2008 to study wartime contracting in Iraq and Afghanistan. It issued its final report to Congress in 2011.

## Background

### ***Contracting in Kuwait***

In 2002, the U.S. Government adopted a “zero-tolerance” policy for human trafficking among U.S. Government employees and contractors; however, DoD criminal investigators and contracting officials continued to substantiate cases of human trafficking by U.S. Government contractors on U.S. military bases in Kuwait. From 2015 to 2017, U.S. Army investigators found that four companies operating on military installations in Kuwait violated various tenets of human trafficking laws, such as failing to pay employees a full salary, withholding passports, charging excessive recruitment fees, and housing employees in substandard living conditions. The Army proposed debarring these companies and some of their executives, which would have prohibited them from competing for U.S. Government contracts for 3 years. One of the companies was debarred, two withdrew from working for the prime contractor, and a fourth negotiated an administrative compliance agreement with the Army’s Suspension and Debarment Official (SDO).

During our fieldwork in November 2017, we determined that no single DoD organization had oversight over all DoD contracts in Kuwait or had sole responsibility for contractors’ compliance with CTIP requirements. In 2016, the Defense Contract Management Agency (DCMA) transferred contingency contract administration tasks in Kuwait to the Military Services. As of October 2017, data from the Defense Procurement Acquisition Policy Office of the then-Under Secretary of Defense for Acquisition, Technology and Logistics showed that more than three dozen contracting offices from the Services and other Defense organizations, such as the Defense Logistics Agency and U.S. Transportation Command, had contracts to oversee in Kuwait.<sup>2</sup> This evaluation focused on the DoD organizations with the largest-value contracts on military installations in Kuwait or those which had a previous history of known trafficking in persons (TIP) problems.

### ***Federal Law and Executive Policy***

Both the legislative and executive branches of the U.S. Government have recognized the TIP problem that existed both inside and outside U.S. borders and attempted to alleviate it. Since 2000, Congress has enacted legislation to address different aspects of human trafficking, including the “Trafficking Victims Protection Act of 2000” and its reauthorizations in 2003, 2005, 2008, and 2013.<sup>3</sup> The Act is the cornerstone law for current U.S. policy to combat human trafficking. The Act states, “The purposes of

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<sup>2</sup> On February 1, 2018, USD AT&L was split into two organizations: the USD for Research and Engineering and USD for Acquisition and Sustainment.

<sup>3</sup> Public Law 106-386, “Trafficking Victims Protection Act of 2000,” October 28, 2000.

this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”

In 2002, the President issued National Security Presidential Directive-22.<sup>4</sup> The Directive established the U.S. Government-wide goal of eradicating international trafficking in persons and included a zero-tolerance policy among U.S. Government employees and contractors. The Directive also called on Federal Departments, including the DoD, to develop and implement training to combat trafficking in persons. The Directive states that department heads may review all aspects of their internal organizations, including their internal personnel requirements and budgets, to accommodate provisions of the Directive.

On September 25, 2012, the President signed Executive Order 13627, which mandates that the Federal Acquisition Regulatory Council revise existing contractor guidelines for preventing human trafficking, including prohibiting the following:

- using misleading or fraudulent recruitment practices, such as failing to disclose basic information like wages and costs charged to the employee;
- charging recruitment fees;
- destroying or confiscating employee identification documents; and
- failing to pay return transportation costs for employees at the end of their employment.

Executive Order 13627 also mandated that the Federal Acquisition Regulatory Council revise guidelines to require contractors and subcontractors to:

- cooperate fully with U.S. Government agencies conducting audits or investigating TIP allegations; and
- establish CTIP compliance plans when the services or supplies being provided are valued at more than \$500,000.

This Executive Order was implemented on March 2, 2015, when the Federal Acquisition Regulatory Council published a final rule amending the FAR, which applies to all new contracts and future orders. The DoD published a final rule amending the DFARS to implement the DoD’s anti-trafficking policy and supplement government-wide changes. The DFARS amendment took effect on January 29, 2015.

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<sup>4</sup> National Security Presidential Directive-22, “Combating Trafficking in Persons,” December 16, 2002.

## ***The FAR CTIP Clause***

The FAR requires that all Government solicitations and contracts include FAR clause 52.222-50 (the FAR CTIP clause).<sup>5</sup> This clause prohibits contractors, contractor employees, and their agents from practices associated with trafficking in persons. The clause also lists specific prohibitions, such as withholding passports or charging recruitment fees, as well as remedies, such as suspending contract payments, terminating the contract, and suspending or debarring the contractor.

For all Government contracts, the FAR also requires:

- including the Alternate I clause, if applicable;<sup>6</sup>
- incorporating clauses by reference to the maximum practical extent even if they are used with one or more alternates; and
- identifying clauses by number, title, and date.

The DFARS requires DoD contracting officers to ensure that the FAR CTIP clause, with its Alternate I, if appropriate, is included in every solicitation and contract.

## ***Contract Oversight Roles and Responsibilities***

### ***Contracting Officers***

Contracting officers are responsible for:

- ensuring that contractors comply with the terms of the contract;
- safeguarding the interests of the United States in its contractual relationships;<sup>7</sup>
- reviewing contracting officer's representative (COR) reports, files, and other documentation for completeness; and
- providing feedback on the COR's performance to the COR and the COR's supervisor.<sup>8</sup>

### ***Contracting Officer's Representatives***

The contracting officer delegates specific authority to members of the requiring organization to monitor contracts. CORs verify that the contractor is fulfilling contract requirements and document performance for the contract record. CORs also report on contract performance to the contracting officer. In other words, CORs function as the eyes and ears of the contracting officer.

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<sup>5</sup> FAR Part 2, "Definitions of Words and Terms," Subpart 52.2, "Texts of Provisions and Clauses," Clause 22.17, "Combating Trafficking in Persons," March 2015.

<sup>6</sup> The Alternate I clause requires the contracting officer to list additional specific U.S. directives or notices that apply (including document titles, sources, and contract performance location).

<sup>7</sup> FAR, Part 1, "Federal Acquisitions Regulation System," Subpart 1.6, "Career Development, Contracting Authority, and Responsibilities, Clause 1.602-2.

<sup>8</sup> DoD Instruction 5000.72, "DoD Standard for Contracting Officer's Representative (COR) Certification," March 26, 2015.



CORs are responsible for reviewing and understanding the contract terms and conditions. The Defense Contingency COR Handbook states, “As the COR monitors the contractor and its employees, CTIP should rank among the COR’s chief priorities. CORs must be diligent in ensuring that contractors and contractor personnel are not trafficking in persons.”<sup>9</sup> The COR must inform the contracting officer if the contractor, contractor personnel, subcontractor, or subcontractor personnel have failed to comply with the requirements of the CTIP clause.

The Defense Contingency COR Handbook also states:

Human trafficking is not new and is actively practiced globally, especially in third-world countries where CORs are most likely operating. The U.S. military has a particular duty to act because human trafficking is a direct threat to national security. CORs must be aware of how contractors treat their employees. CORs are the first line of defense in the battle against human trafficking.

### *Requiring Organization*

The requiring organization, which uses goods and services provided by contractors to accomplish all or part of its mission, is ultimately responsible for the contractors’ performance. The COR provides a critical link in supporting the requiring organization’s mission by ensuring that contractors successfully perform their duties and fulfill the requiring organization’s mission needs. The requiring organization, in coordination with the contracting officer, writes the contract quality assurance, surveillance, and performance-assessment plans.

The requiring organization may nominate a qualified COR from within its organization and inform those COR nominees of their designated responsibilities along with the importance of performing those responsibilities. COR supervisors within the requiring organization affirm that the COR will have the resources, such as time, equipment, and opportunity, necessary to perform designated COR responsibilities.

### *Suspension and Debarment Officials*

The Military Departments, and at least one civilian defense agency, have SDOs. SDOs use suspensions and debarments to ensure that the U.S. Government does business only with responsible contractors.

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<sup>9</sup> “Defense Contingency COR Handbook,” Version 2, September 2012.

## ***DoD and Military Service Guidance Related to CTIP***

In 2015, the DoD issued DoD Instruction (DoDI) 2200.01 that specifies DoD policy for CTIP, the definition of which includes “forced labor and involuntary servitude.”<sup>10</sup>

The Instruction requires DoD Component leaders to:

- designate a Component CTIP program officer or CTIP office of primary responsibility;
- provide CTIP awareness training;
- develop policies and procedures to implement the DoD CTIP program;
- take steps to ensure that DoD contractors, subcontractors, and their employees do not engage in TIP;
- assess Component-level CTIP programs; and
- report all suspected and confirmed TIP incidents to the OIG DoD Hotline.

These requirements also include reporting DoD contractor compliance with CTIP policy to the DoD Defense Human Resources Activity CTIP Program Management Office (PMO) for its annual report.

### ***U.S. Central Command***

In response to DoDI 2200.01, U.S. Central Command (USCENTCOM) updated Central Command Regulation (CCR) 570-4.<sup>11</sup> This regulation establishes procedures and assigns responsibilities for implementing CTIP awareness training, reporting, and oversight within the USCENTCOM area of responsibility (AOR).<sup>12</sup>

### ***U.S. Army Central Command***

U.S. Army Central Command (USARCENT) issued an updated policy memorandum establishing CTIP policies and procedures in 2016.<sup>13</sup> It also assigned responsibilities to implement CTIP awareness for all U.S. Army forces belonging to and assigned to USARCENT.

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<sup>10</sup> DoD Instruction 2200.01, “Combating Trafficking In Persons,” April 21, 2015, Incorporating Change 1, Effective April 5, 2017.

<sup>11</sup> Central Command Regulation 570-4, “Combating Trafficking in Persons,” October 27, 2016.

<sup>12</sup> The USCENTCOM AOR includes Afghanistan, Bahrain, Egypt, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Oman, Pakistan, Qatar, Saudi Arabia, Syria, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, and Yemen.

<sup>13</sup> U.S. Army Central, Policy Memorandum 2016-37, May 6, 2016.

### *U.S. Air Forces Central Command*

According to Air Force officials at U.S. Air Forces Central Command (USAFCENT) headquarters and at Air Force installations in Kuwait, USAFCENT had no theater CTIP policy in place to guide Air Force units while assigned to the USCENTCOM AOR. This occurred even though USCENTCOM guidance directed them to have one.

## **Remedies for Trafficking in Persons Violations**

### *Criminal Remedies*

The Military Services may impose criminal penalties on service members found to have committed crimes involving TIP, while DoD civilians and contractor employees may be subject to prosecution in the U.S. criminal justice system.

### *Contract Remedies*

The FAR prescribes multiple actions for contracting officers to manage situations in which contractors fail to comply with contract terms or conditions. These actions can start with a Show Cause Notice or a Cure Notice, and remedies may include deferred payments, termination for cause, or termination for default.

#### *Show Cause Notice*

This notice directs the contractor to justify, or “show cause,” why the contract should not be terminated for default. The notice may further state that the contracting officer may interpret failure to provide an explanation as an admission that no valid explanation exists. Under the FAR, both the Show Cause Notice and the Cure Notice provide the contractor with 10 days or more to “cure” the problem cited.

#### *Cure Notice*

Contracting officers can issue a written notification to the contractor, called a Cure Notice, when they substantiate that the contractor failed to perform provisions of the contract, such as the CTIP clause. At the end of the period specified in the Cure Notice, the contracting officer can issue a notice of termination of the contract for default, unless the contracting officer determines that the failure to perform has been “cured.”

### *Suspension and Debarment*

An SDO may suspend or debar a contractor for procurement fraud, TIP violations, and other criminal and non-criminal acts that cause the SDO to conclude that it is in the Government's best interest to prohibit the contractor from obtaining future contract awards. Suspension and debarment measures include:

- **Suspension:** Temporarily prohibits a contractor from obtaining new contract or subcontract awards usually for a period not exceeding 12 months, pending the completion of an investigation or legal proceeding.
- **Proposed Debarment:** Temporarily disqualifies a contractor from competing for new contract awards while officials review the results of an investigation, legal proceeding, or other matter.
- **Debarment:** Excludes a contractor from obtaining new contract or subcontract awards for a specific period not exceeding 3 years.

## Finding A

### **USCENTCOM Did Not Consistently Implement or Enforce CTIP Requirements in Kuwait**

USCENTCOM senior leaders did not consistently enforce DoD regulations and USCENTCOM's own guidance regarding the identification of TIP and the oversight of CTIP in Kuwait.

This occurred because key USCENTCOM officials responsible for implementing and enforcing DoD and USCENTCOM CTIP guidance in Kuwait:

- were unaware of their responsibilities, and
- maintained that another command had the primary responsibility for CTIP.

As a result, USCENTCOM is at an increased risk of not detecting or correcting and underreporting labor trafficking in persons on U.S. military bases in Kuwait. While military investigative organizations substantiated human trafficking cases against four contractors or subcontractors on military installations in Kuwait from 2012 to 2017, USCENTCOM officials did not take the necessary steps to ensure that these human rights and contract violations were not present elsewhere in USCENTCOM's AOR.

### **Criteria that Establishes CTIP Roles and Responsibilities**

DoD Instruction 2200.01 implements National Security Presidential Directive-22, which announced the "zero tolerance" policy regarding U.S. Government employees and contractors who engage in TIP. DoD Instruction 2200.01 establishes policy, assigns responsibilities for CTIP within the DoD, and requires each combatant commander to:

- develop a program that establishes a clear set of guidelines and procedures for units outside the continental United States to address TIP in the command's operating environments,
- designate a CTIP program officer or CTIP office of primary responsibility,
- provide CTIP awareness training to the command's military and civilian personnel,
- develop policies and procedures to implement the DoD CTIP program,
- ensure that CTIP is addressed within applicable concept of operations for use by deployed joint task force headquarters, and

- send an annual self-assessment to the DoD's CTIP PMO, located within the Office of the Under Secretary of Defense for Personnel and Readiness, that includes an analysis of reporting on TIP incidents, TIP investigations, TIP prosecutions, and CTIP training programs.

USCENTCOM developed and issued CCR 570-4 to comply with DoD Instruction 2200.01. USCENTCOM's Chief of Staff signed the current version of CCR 570-4 on October 27, 2016.

CCR 570-4 establishes procedures, assigns responsibilities for implementing CTIP within USCENTCOM's AOR, and requires all USCENTCOM component and joint task force commands to:

- develop CTIP policy and programs, including awareness training unique to the cultural and legal considerations for each area of operations;
- establish theater-level CTIP requirements in all joint operational plans and deployment orders; and
- establish a process to collect and "provide CTIP program data, including DoD contractor adherence to CTIP, to the DoD as required."

CCR 570-4 also assigns the following specific CTIP responsibilities to USCENTCOM staff sections.

- The Manpower and Personnel Directorate (CCJ1) is the Office of Primary Responsibility for CTIP and is required to provide oversight to ensure that the command supports and achieves the requirements established in DoD Instruction 2200.01.
- The Intelligence Directorate (CCJ2) is responsible for providing subordinate component commands with TIP intelligence and information pertinent to ongoing theater and country TIP awareness training.
- The Logistics Directorate (CCJ4) is responsible for ensuring that USCENTCOM incorporates current DoD policy, guidance, and applicable CTIP clauses into USCENTCOM headquarters contracts.
- The Strategy, Plans, and Policy Directorate (CCJ5) is responsible for ensuring that all personnel at Security Cooperation Offices and Offices of Military Cooperation aggressively identify and combat TIP in their respective areas of operation.
- The Judge Advocate is required to provide information to the CTIP PMO on indictments and convictions related to CTIP as part of the annual program review.
- The Inspector General is responsible for logging and tracking all suspected and confirmed TIP incidents in the USCENTCOM AOR and notifying the USCENTCOM Chief of Staff of all incidents.

## **U.S. Military Investigators Substantiate Trafficking in Persons on U.S. Military Bases in Kuwait**

In 2016, military criminal investigators substantiated allegations that a DoD contractor violated the FAR CTIP clause. As described in a March 2017 memorandum from the U.S. Army Judge Advocate General SDO, the contractor, which operated food services for U.S. and coalition personnel on Camp Arifjan, Camp Buehring, and Ali Al Salem Air Base, failed to pay its employees the legally required minimum monthly salary after having required them to pay an exorbitant recruitment fee, creating a “state of enslaved bondage” for its employees. Furthermore, the contractor enforced a 7-day-a-week, 12-hour-workday schedule with continuous daily overtime and no permissible sick leave or regular days off while providing inhospitable and substandard housing. The Army Judge Advocate General SDO entered into an Administrative Compliance Agreement with the contractor in July 2017. In that agreement, the SDO and the contractor acknowledged that a legally sufficient basis existed to debar the contractor for violating the terms of the contract’s FAR CTIP clause; however, by signing the agreement, the contractor declared that it is now “presently responsible” and no longer violating the FAR CTIP clause. On March 4, 2019, the contractor provided a memorandum to us that stated that recruitment fees were allowable under its contract and that it provided 2 hours of break time daily to its workers, encouraged its workers to take regular leave, and worked diligently to improve worker housing after receiving a Cure Notice in 2016.

## **USCENTCOM Subordinate Commands in Kuwait Did Not Consistently Implement CTIP Regulations**

When we began fieldwork in Kuwait in November 2017, Combined Joint Task Force–Operation Inherent Resolve (CJTF-OIR), a joint task force subordinate to USCENTCOM, did not have a CTIP policy and program, as required by CCR 570-4. When interviewed, the CJTF-OIR Chief of Staff said that he did not consider TIP to be a priority for, or the responsibility of, the joint task force. Likewise, USAFCENT did not have a CTIP policy or program tailored to the unique operating situation in Kuwait, as required by CCR 570-4.

USARCENT issued USARCENT Policy Memorandum 2016-37, which includes CTIP policy as required by CCR 570-4. USARCENT had been closely involved with addressing labor trafficking that had occurred at dining facilities on Camp Arifjan, Camp Buehring, Ali Al Salem Air Base, and Kuwait Naval Base. See Appendix C for a brief history of a Defense contractor in Kuwait. Nevertheless, during our briefing with USARCENT in Kuwait in November 2017, the USARCENT Deputy Chief

of Staff stated that he did not know if USCENTCOM had directed any specific CTIP guidance to USARCENT. During our November 2017 interview with officials from Area Support Group–Kuwait (ASG-KU), a subordinate command to USARCENT, the ASG-KU Deputy Commander also stated that he had not seen any CTIP guidance since he arrived in Kuwait. Furthermore, ASG-KU had not designated a CTIP Coordinator, as required by USARCENT Policy Memorandum 2016-37.

During our evaluation, the ASG-KU Commander assigned the duty of CTIP Coordinator to an Army captain who had contracting experience and responsibilities. Also, in April 2018 the ASG-KU sponsored a CTIP Forum to discuss TIP in Kuwait. Senior U.S. officials and U.S. military leaders in Kuwait, as well as Government of Kuwait ministry officials, attended the forum.

## **USCENTCOM Staff Sections Did Not Comply With Assigned CTIP Responsibilities**

We visited USCENTCOM headquarters in March 2018 and met with the USCENTCOM staff sections to ascertain how they were executing CTIP responsibilities assigned to them by CCR 570-4. Our review found that the staff sections did not fully comply with CCR 570-4 requirements.

For example, CCJ1 Manpower and Personnel, the office assigned primary responsibility for CTIP by CCR 570-4, did not fulfill its oversight duties to ensure that USCENTCOM complied with DoD Instruction 2200.01, as evidenced by CJTF-OIR's and USAFCENT's lack of a CTIP policy and program. Similarly, CCJ2 intelligence officials stated that CCJ2 could not comply with CCR 570-4 because the guidance was not consistent with the way CCJ2 actually works. When we asked a CCJ5 Strategy, Plans, and Policy official how CCJ5 carried out its responsibilities as assigned by CCR 570-4, he stated that the directorate "did not know how it would be done."

CCR 570-4 requires the USCENTCOM Judge Advocate to provide the CTIP PMO with information on indictments and convictions related to CTIP for USCENTCOM's annual self-assessment. When asked how he fulfills this requirement, the Judge Advocate stated that he receives information on TIP allegations via different channels and that it seemed optional for subordinate commands to report TIP violations or allegations to USCENTCOM. In addition, the Judge Advocate stated that he did not seek such data from the military criminal investigation organizations in the USCENTCOM AOR. Regarding the CTIP program within the USCENTCOM AOR, the Judge Advocate stated, "Who owns it? That's key."



We found that the USCENTCOM Inspector General did not record and track all suspected and confirmed TIP incidents in the USCENTCOM AOR, as required by CCR 570-4. The CCR also requires that the Inspector General report any “TIP incidents” to the USCENTCOM Chief of Staff. However, the Chief of Staff stated that he was not familiar with the “enslaved bondage” conditions that were substantiated at contractor-run dining facilities on Camp Arifjan, Camp Buehring, and Ali Al Salem Air Base in Kuwait, as described in the March 2017 memorandum from the U.S. Army Judge Advocate General SDO.<sup>14</sup>

Finally, senior USCENTCOM officials acknowledged that DoD Instruction 2200.01 appeared to assign USCENTCOM oversight responsibility for CTIP in Kuwait; however, they stated that USARCENT should be responsible for implementing CTIP oversight in Kuwait because USARCENT had the largest share of forces in Kuwait. Therefore, the USCENTCOM officials stated, USARCENT should shoulder the bulk of requirements under Title 10 for maintaining forces there.<sup>15</sup> However, when informed of USCENTCOM officials’ statement, a senior USARCENT official stated that he was unaware of any delegation of that responsibility.

The USARCENT Chief of Staff stated that CCR 570-4 did not clearly spell out responsibility for CTIP, and that the regulation could benefit from additional detail about how U.S. bases run by different Service branches should coordinate with one another. For example, Kuwait, in USCENTCOM’s AOR, has U.S. Air Force and U.S. Navy bases in addition to U.S. Army installations. However, USARCENT Policy Memorandum 2016-37 for CTIP applies only to personnel assigned or attached to USARCENT; it does not apply to other Service components or DoD agencies. This lack of clarity regarding inter-Service coordination could reduce CTIP effectiveness in a situation, for example, with an Army contract providing dining facility services on an Air Force installation.

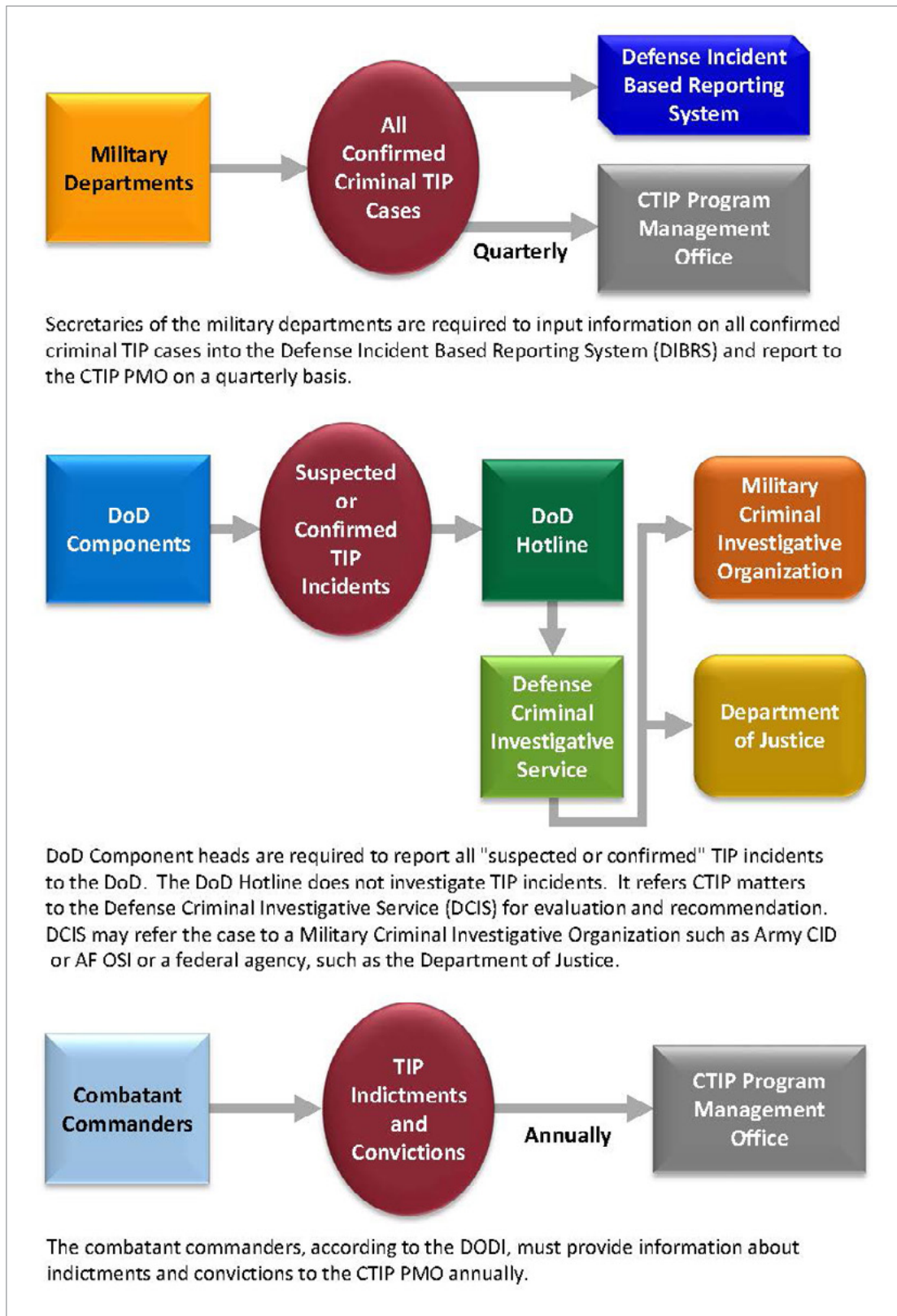
As the Figure illustrates, DoDI 2200.01 provides no clear, single reporting chain for TIP incidents, and designates no single entity with final authority for collecting and analyzing TIP data.

<sup>14</sup> The language was included in the Army’s Suspension and Debarment Office’s Notice of Proposed Debarment for a defense contractor and four of its employees on March 31, 2017. See Appendix C for more details.

<sup>15</sup> Section 3032, title 10, United States Code describes the general duties of the Army Staff as follows:

- (a) The Army Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Army and to the Chief of Staff of the Army.
- (b) Under the authority, direction, and control of the Secretary of the Army, the Army Staff shall—
  - (1) subject to subsections (c) and (d) of section 3014 of this title, prepare for such employment of the Army, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Army), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Army, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;
  - (2) investigate and report upon the efficiency of the Army and its preparation to support military operations by combatant commands...

Figure. Trafficking in Persons Reporting Chains According to DoDI 2200.01



Source: The DoD OIG.

## USCENTCOM Did Not Fulfill Its Reporting Requirements

DoD Instruction 2200.01, section 8.d(4), requires the USCENTCOM Commander to send an annual self-assessment report to the DoD's CTIP PMO. This report is supposed to assess the strengths, weaknesses, and effectiveness of USCENTCOM's CTIP program. The assessment should cover the USCENTCOM AOR, which includes Kuwait, and must include an analysis of reporting on suspected TIP incidents, TIP investigations, TIP prosecutions, and CTIP training programs. However, the self-assessment that USCENTCOM submitted for our review focused on training accomplishments, not on actual TIP incidents, investigations, or prosecutions.

The CTIP PMO collects CTIP data from across the DoD and reports its findings to the Department of Justice to be included in a U.S. Attorney General report to Congress describing the U.S. Government's campaign to combat human trafficking.<sup>16</sup>

USCENTCOM did not report the following documented TIP incidents involving contractors over the past few years to the CTIP PMO. Consequently, the CTIP PMO did not include these incidents in its annual report to the Department of Justice.

- September 2015: Inspectors found that employee housing areas in Kuwait were hazardous and in violation of Kuwaiti labor law. According to the FAR CTIP clause, contractor-provided housing for employees must meet host-nation housing and safety standards.
- December 2015: The Army SDO debarred a contractor for multiple TIP violations that occurred throughout 2014 at Camp Arifjan, Kuwait.
- August 2016: Army Contracting Command–Rock Island (ACC-RI) issued a Cure Notice for 12 TIP violations to the contractor that operated the dining facilities on Camp Arifjan, Camp Buehring, Ali Al Salem Air Base, and Kuwait Naval Base. Army Criminal Investigation Command and the Defense Criminal Investigative Service later substantiated the charges. The violations resulted in the U.S. Army Judge Advocate General and the Army SDO issuing a Notice of Proposed Debarment. The Army SDO described “exorbitant” recruiting fees exacted by the contractor as creating “a state of enslaved bondage” for the contractor’s employees because most of the employees’ salary went to paying off the debt for the fee and its accrued interest. The contractor stated that the payment of recruitment fees was not prohibited by the 2007 FAR clause contained in its contract.

<sup>16</sup> Department of Justice, “Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons,” Fiscal Year 2015.

- November 2016: USARCENT staff delivered a decision brief to the USARCENT Commanding General on what to do about labor bondage conditions occurring on Camp Arifjan, Camp Buehring, Ali Al Salem Air Base, and Kuwait Naval Base.
- December 2016: The 408th CTIP Inspection Team discovered that a contractor servicing Camp Arifjan provided employees with housing that lacked living space and mattresses and had numerous fire hazards, in violation of the FAR CTIP clause. The contracting officer issued a Non-Conformance Report in January 2017.

Senior officials from USCENTCOM did not consistently enforce DoDI 2200.01 and CCR 570-4; did not log and track information about TIP incidents, investigations, or prosecutions; and were unaware of the full extent of TIP occurring on USCENTCOM's military bases in Kuwait. As a result, USCENTCOM did not report these TIP incidents to the CTIP PMO, which, in turn, did not report the data to the Department of Justice.

## Conclusion

Although USCENTCOM developed CCR 570-4 to implement DoDI 2200.01, USCENTCOM officials did not implement this guidance or ensure that USCENTCOM subordinate commands met their CTIP requirements. For example, subordinate commands did not consistently develop their own CTIP policies or assign key CTIP responsibilities to personnel or organizations. In addition, senior officials at USCENTCOM and USARCENT disagreed regarding where chief responsibility for CTIP resides. Our analysis of reporting chains for TIP incidents outlined by DoDI 2200.01 shows that no single entity within the DoD collected comprehensive data on TIP incidents in Kuwait. As a result, the DoD shared incomplete information with the Department of Justice. Meanwhile, substantiated cases of TIP occurred over several years in Kuwait and may have occurred or may be occurring in other parts of USCENTCOM's AOR without detection due to these weak controls. See Appendix C for more information.

## Recommendations, Management Comments, and Our Response

### **Recommendation A.1.a**

**We recommend that the Commander of U.S. Central Command enforce all aspects of Central Command Regulation 570-4 throughout the command's area of responsibility.**

#### *Commander of U.S. Central Command Comments*

The USCENTCOM Chief of Staff, responding for the USCENTCOM Commander, disagreed with Recommendation A.1.a, stating that implementation of CCR 570-4 is on hold until DoDI 2200.01, currently in the coordination process, is published. The Chief of Staff stated that CCR 570-4 would be updated to reflect how USCENTCOM is to function, and that USCENTCOM would enforce the elements of the updated DoDI 2200.01 that are within its authority. The Chief of Staff also stated that DoDI 2200.01 identified TIP intelligence as a combatant commander responsibility and that CCR 570-4 assigned responsibility for TIP intelligence to the CCJ2. The Chief of Staff stated that this intelligence responsibility assigned to the CCJ2 appeared to conflict with intelligence oversight requirements that forbid intelligence collection on U.S. persons (citizens, resident aliens, or corporate entities).

#### *Our Response*

Comments from the Chief of Staff partially addressed the specifics of the recommendation; therefore, the recommendation is unresolved and remains open. DoDI 2200.01, section 11.d, requires combatant commanders to “provide subordinate component commanders with TIP intelligence and information pertinent to ongoing theater and country CTIP awareness training.” A CTIP PMO official informed us that the language in DoDI 2200.01, and by extension CCR 570-4, is meant to direct the combatant commander to provide subordinate component commanders with information on TIP pertinent to theater and country awareness training; it does not mean collecting intelligence on U.S. persons. Further, the CTIP PMO official stated that USCENTCOM was the only combatant command to misinterpret that subsection of DoDI 2200.01.

The response from the Chief of Staff did not address other issues identified in this Finding regarding the inability of other USCENTCOM staff sections, such as the CCJ1, the CCJ5, and the Judge Advocate, to accomplish their assigned CTIP responsibilities.

USCENTCOM signed and released its current version of CCR 570-4 on October 27, 2016, close to 30 months ago, but did not enforce the regulation. During this time there was a risk that labor trafficking in persons on U.S. military bases in Kuwait would not be detected, corrected, or reported by USCENTCOM. By deferring enforcement of an updated CCR 570-4 to a future time, USCENTCOM does not address the current TIP problems nor USCENTCOM's CTIP responsibilities. We request that the USCENTCOM Commander provide comments on the final report that detail how compliance with the current DoDI 2200.01 and the CCR 570-4 will be enforced.

### ***Recommendation A.1.b***

**We recommend that the Commander of U.S. Central Command clearly assign roles and responsibilities to its subordinate commands regarding combating trafficking in persons, including formally designating an appropriate command headquarters in Kuwait to be responsible for CTIP compliance.**

#### *Commander of U.S. Central Command Comments*

The USCENTCOM Chief of Staff, responding for the USCENTCOM Commander, disagreed with Recommendation A.1.b, stating that the service components do not always have a headquarters in country to allow for formally designated responsibility for CTIP compliance throughout the AOR. The Chief of Staff further stated that it would be impractical to designate a service component with CTIP responsibility for an entire country because it would "cause one service component to oversee another service component," potentially resulting in missing Service-specific guidance.

#### *Our Response*

Comments from the Chief of Staff partially addressed the recommendation; therefore, the recommendation is unresolved and remains open. As noted in the report, senior officials within USCENTCOM stated that USARCENT should be responsible for implementing CTIP in Kuwait. However, a senior official with USARCENT stated that he was unaware of any delegation of that responsibility to USARCENT. As a result, it was not clear that senior leaders from any command perceived that they had ultimate responsibility for CTIP in Kuwait. If USCENTCOM delegates CTIP responsibilities in Kuwait to USARCENT, the USCENTCOM Commander should inform USARCENT in writing. Then, the USCENTCOM Commander could hold USARCENT accountable for any lapse in CTIP in its AOR. Furthermore, additional guidance from USCENTCOM is needed to describe how U.S. bases in Kuwait operated by different Service branches should coordinate CTIP issues with the designated responsible command. We request that

the USCENTCOM Commander provide comments on the final report that clarify which USCENTCOM organization will oversee CTIP compliance within Kuwait.

### ***Recommendation A.1.c***

**We recommend that the Commander of U.S. Central Command collect and report data on all TIP incidents, TIP investigations, TIP prosecutions, and training programs in the U.S. Central Command area of responsibility to the DoD's Combating Trafficking in Persons Program Management Office.**

#### *Commander of U.S. Central Command Comments*

The USCENTCOM Chief of Staff, responding for the USCENTCOM Commander, disagreed with Recommendation A.1.c. The Chief of Staff stated that the USCENTCOM Inspector General (IG) recorded and reported all allegations of TIP incidents it received in accordance with the procedures outlined by DoD Hotline reporting guidelines. However, the Chief of Staff stated that USCENTCOM was unable to fully meet the intent of DoDI 2200.01 and CCR 570-4 because, although DoDI 2200.01 directs all TIP reporting to be submitted to the DoD Hotline, TIP incidents are criminal by nature and are not appropriate for investigation by the USCENTCOM IG. The Chief of Staff also stated that the DoD Hotline refers TIP allegations to the Defense Criminal Investigative Service for evaluation and potential referral to a Military Criminal Investigation Organization, such as the Army Criminal Investigation Command or Air Force Office of Special Investigations, or another appropriate Federal agency. The USCENTCOM IG is not notified by DoD Hotline nor DCIS of TIP allegations, referrals, or prosecutions. As a result, USCENTCOM is not aware of all TIP incidents, TIP investigations, TIP prosecutions, and training programs in the USCENTCOM AOR. The Chief of Staff stated that the USCENTCOM IG recorded all TIP cases in the AOR that were either reported to or discovered by the USCENTCOM IG in its Automated Case Tracking System, referred the same to the DoD Hotline, and reported them as part of the command's annual CTIP report to the CTIP PMO.

#### *Our Response*

Comments from the Chief of Staff partially addressed the specifics of the recommendation; therefore, the recommendation is unresolved and remains open. We disagree that TIP incidents are only "criminal by nature." In addition to the criminal aspect of TIP, CTIP has contractual, as well as leadership, elements. CCR 570-4 clearly describes CTIP as a leadership responsibility by stating that "eliminating TIP, to include sexual exploitation, involuntary servitude, or debt bondage, must be a continuing focal point of this command."

We agree that obtaining information about TIP is difficult due to the diffused data collection processes, as illustrated by the Figure. However, DoDI 2200.01, section 8.d(4), requires the combatant commander to provide the CTIP PMO with an annual self-assessment that includes “analyzing reporting on suspected TIP incidents, TIP investigations, TIP prosecutions, and training programs” in the command’s AOR. The USCENTCOM Commander did not provide an annual self-assessment that included analysis of TIP reporting. Furthermore, the USCENTCOM IG did not log, track, and provide information about all TIP incidents to the USCENTCOM Chief of Staff.

If the USCENTCOM Commander implemented Recommendation A.1.b, the Commander would have a designated command in country with the responsibility to collect the required data. We request that the USCENTCOM Commander provide comments on the final report that describe actions USCENTCOM will take to provide specific guidance to its subordinate commands and enable more complete collection and reporting of data on all TIP incidents, TIP investigations, and TIP prosecutions.

## ***Recommendation A.2***

**We recommend that the Commander of U.S. Air Forces Central Command develop and implement a combating trafficking in persons program, as required by Central Command Regulation 570-4.**

### *U.S. Air Forces Central Command Comments*

The USAFCENT Chief of Staff, responding for the USAFCENT Commander, agreed with the recommendation. The Chief of Staff stated that USAFCENT will develop and implement CTIP guidance as required by CCR 570-4 in coordination with USCENTCOM.

### *Our Response*

Comments from the USAFCENT Chief of Staff addressed the specifics of our recommendation; therefore, the recommendation is resolved and remains open. We will close the recommendation once we verify that USAFCENT has developed and implemented CTIP guidance.



## Finding B

### **DoD Personnel Did Not Consistently Issue and Administer Contracts for Goods and Services in Kuwait In Compliance With CTIP Requirements**

DoD contracting personnel did not always ensure that DoD contracts performed in Kuwait complied with CTIP requirements.

Specifically, Army and Air Force contracting officers did not always:

- include the FAR CTIP clause or other required CTIP information in contracts;
- ensure that every service contract had a quality assurance surveillance plan (QASP) that described how CORs would monitor the contractor's compliance with the FAR CTIP clause; or
- report contractor past performance data related to TIP in appropriate databases.

Additionally, Army and Air Force Exchange Service (AAFES) personnel did not consistently monitor or report contractor compliance with the FAR CTIP clause to contracting officers.

This occurred because Army and Air Force officials who supervise contracting officers did not provide the necessary oversight to verify that contracting officers accomplished required CTIP tasks. In addition, AAFES policy did not provide sufficient guidance to contracting personnel for CTIP monitoring and reporting.

As a result, contractors in Kuwait may have violated U.S. law and DoD policy and enabled TIPs to remain undetected and unreported.

### **CTIP Policy and Guidance for Government Contracts**

#### ***Federal Acquisition Regulation Requirements Related to CTIP***

FAR subpart 22.17 requires that all Government solicitations and contracts include the FAR CTIP clause, which defines contractor activities that violate the U.S. Government's policy prohibiting TIP. The FAR CTIP clause requires that contractors include the substance of the FAR CTIP clause in the contractor's subcontracts.

Additionally, FAR subpart 22.17 states that "when the contract will be performed outside of the United States and the contracting officer has been notified of specific U.S. directives or notices regarding CTIP that apply to

contractor employees at the contract place of performance,” the contracting officer should use the Alternate I clause in the contract in addition to the FAR CTIP clause. The Alternate I clause requires the contracting officer to list additional U.S. directives or notices that specifically apply at the contract place of performance.

FAR part 52 requires that all provisions, clauses, and alternates include dates because they are subject to periodic revision.<sup>17</sup> Part 52 also requires contracting officers to identify all provisions and clauses from the FAR by date to avoid questions concerning which version is in effect in any given solicitation or contract. As of October 2018, the most recent update to the FAR CTIP clause occurred in March 2015.

The FAR CTIP clause was updated in March 2015 to promote U.S. policy prohibiting TIP activities and to create a stronger framework and additional requirements for awareness, compliance, and enforcement to prevent TIP in U.S. Government contracts. The additional requirements include specifically prohibited trafficking-related activities by contractors, contractor employees, and their agents. For example, they include:

- destroying, confiscating, or otherwise denying employees access to their identity or immigration documents, including passports;
- using misleading or fraudulent recruitment practices;
- charging employees recruiting fees; and
- providing or arranging housing that fails to meet the host country’s housing and safety standards.

An Office of Defense Procurement and Acquisition Policy official within the former Office of the Undersecretary of Defense for Acquisition, Technology, and Logistics explained that the office does not expect contracting officers to update contracts immediately after a clause is updated in the FAR. However, the official stated that the office expects contracting officers to update clauses, if necessary, when they perform other contract modifications.

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<sup>17</sup> FAR Part 52, “Solicitation Provisions and Contract Clauses,” Subpart 52.1, “Instructions for Using Provisions and Clauses,” Clause 52.101e, “Using Part 52.”

## **Other Guidance**

### *Air Force*

Air Force Instruction 36-2921 states that wing or installation commanders are responsible for ensuring that all subordinate contracting units insert the FAR CTIP clause and Alternate I in all contracts, in compliance with the FAR.<sup>18</sup> Additionally, the USAFCENT Contracting Policy and Guidance Handbook states that USAFCENT contracting is responsible for all contracting actions executed by deployed contingency contracting officers within the USAFCENT AOR.<sup>19</sup>

### *Army and Air Force Exchange Service*

The FAR is the primary regulation that all Federal Executive agencies use in their acquisition of supplies and services with appropriated funds. Because AAFES is a non-appropriated fund agency, the FAR and DFARS do not apply to AAFES contracts. However, applicable DoD directives and instructions establish the AAFES procurement policy, and the AAFES policy on CTIP directs contracting officers to include CTIP contracting clauses in all contracts. AAFES contracting personnel stated that although they are not required to follow the FAR the CTIP clause used in AAFES contracts mirrors that in the FAR.

## **Contract Review**

We selected a non-statistical sample of 42 DoD contracts and subcontracts whose place of performance was in Kuwait and reviewed them for compliance with DoD and Federal CTIP requirements. We reviewed 6 contracts and 20 subcontracts from the Army, 11 contracts from the Air Force, and 5 contracts from AAFES.<sup>20</sup> We did not review any Navy or Marine Corps contracts because they had limited contracting presence in Kuwait.

### ***FAR CTIP Clause and Other Required Information***

Contracts we reviewed did not always include the FAR CTIP clause or the additional information required if the Alternate I clause was listed. Additionally, the CTIP clause listed in the contracts we reviewed did not always reference the correct version of the FAR CTIP clause, which would have been the version dated March 2015. Instead, they referenced the previous version of the FAR CTIP clause, dated February 2009.

<sup>18</sup> Air Force Instruction 36-2921, "Combating Trafficking In Persons (CTIP)," August 30, 2011.

<sup>19</sup> USAFCENT, "Contracting Policy and Guidance Handbook," May 1, 2017.

<sup>20</sup> Five of the six Army contracts, two of the eleven Air Force contracts, and one of the five AAFES contracts were issued before the CTIP clause was updated in March 2015.

### *Army*

All 26 Army contracts and subcontracts we reviewed referenced the March 2015 FAR CTIP clause. However, 1 contract and 13 subcontracts contained the Alternate I clause without including the required additional information about applicable directives or notices.

### *Air Force*

Of the 11 Air Force contracts we reviewed:

- one contract contained the FAR CTIP clause and referenced the March 2015 version of the FAR CTIP clause,
- five contracts did not contain the FAR CTIP clause, contained only the Alternate I clause, and did not include the required additional information about applicable directives or notices,
- two contracts contained the FAR CTIP clause, but did not include a date for the FAR CTIP clause, as required by the FAR, and
- three contracts contained the FAR CTIP clause, but referenced the version of the FAR CTIP clause from February 2009. In addition to other possible modifications, each of these contracts required a modification to extend the period of performance of the contract at least annually. Before our review, the latest periods of performance for the three contracts started in July, August, and October 2017. Two of these three also contained the Alternate I clause without including the required additional information.

### *AAFES*

Although the FAR does not apply to AAFES contracts, all five AAFES contracts we reviewed contained a CTIP clause with text substantially the same as the February 2009 version in the FAR.

## ***FAR Updates and Oversight***

### *Army*

Contracting personnel at ACC-RI were responsible for awarding all the Army contracts we reviewed. ACC-RI contracting officials stated that the Contract Operations Directorate notifies all contracting staff about FAR clause updates, and their contract writing systems contain alert mechanisms for clause updates. Although there was no specific guidance referenced, the officials added that ACC-RI contracting officers, branch chiefs, and directorate chiefs monitor contracts to ensure that the updates are completed. These actions appeared to be effective because contracting officers for all six Army contracts we reviewed had completed modifications to update the CTIP clause.

### *Air Force*

Although USAFCENT contracting personnel stated that they conducted staff education visits, they also stated that they did not look for the presence of specific clauses in contracts and that contracting processes are not standardized. An Air Force contingency contracting officer stated that the Air Force and USAFCENT did not have a specific procedure to notify contracting officers about FAR updates.

Additionally, we reviewed annual CTIP Inspection Reports from the Air Force Wing Inspector General for two wings with contracts included in this evaluation. One report, from May 2017, found that the Wing Commander did not ensure that the FAR CTIP clause appeared in all contracts. The report states that when the deficiency was identified, the Expeditionary Contracting Squadron provided additional training and direction to ensure compliance. Despite the training, however, four contracts we reviewed from that wing did not contain the FAR CTIP clause. The other report we reviewed, dated December 2017, did not identify whether inspectors reviewed contracts to verify that they included the FAR CTIP clause, but the report stated that the “wing CTIP program has been neglected.”

### ***Corrective Action Taken to Update the CTIP Clause***

#### *Air Force*

During this evaluation, in July 2018, Air Force contingency contracting officers modified two contracts to update the date of the FAR CTIP clause to its current March 2015 FAR CTIP clause. The contracting officers also notified us that two contracts had been completed and, thus, were no longer active. Additionally, when we asked about why clauses were not dated, an Air Force contingency contracting officer stated, “The ones that aren’t dated, do not tie them to a specific ‘version’ of the clause; they will be applied to the most recent version that is in the FAR when the contract is awarded.” However, this practice does not follow FAR guidance.

## **Contract Monitoring**

### ***Quality Assurance Surveillance Plans***

FAR part 46 requires contracting officers to ensure that a QASP is prepared in conjunction with the contract’s statement of work or performance of work statement.<sup>21</sup> The QASP specifies the work requiring surveillance and the method of surveillance to determine whether the contractor is meeting contract requirements.

<sup>21</sup> FAR Part 46, “Quality Assurance,” Subpart 45.4, “Government Contract Quality Assurance,” Clause 46.401, “General.”

DFARS subpart 246.4 states that the contracting officer should prepare a QASP for service contracts and should address the need for a QASP for supply contracts.<sup>22</sup>

DFARS Procedures, Guidance, and Information Subpart 222.17 states that QASPs should describe how the CORs will monitor contractors' performance regarding trafficking in persons.<sup>23</sup> Furthermore, subpart 222.17 states that the COR must immediately notify the contracting officer of any noncompliance with the CTIP provisions of the FAR.

The Defense Contingency COR Handbook states that a QASP is "mandatory for contracts, task orders, or delivery orders over the simplified acquisition threshold, including service contracts and construction contracts." The handbook also states that the QASP should explain:

- what will be monitored,
- how monitoring will take place,
- who will conduct the monitoring, and
- how monitoring efforts and results will be documented.

According to the Handbook, the QASP must include procedures to monitor contractors' performance regarding CTIP. The Handbook adds that the QASP must outline the corrective actions the COR should take against the contractor for deficient performance, such as issuing discrepancy reports, deducting from contractor payments, and submitting recommendations to the contracting officer about performance shortfalls. However, contracting officers did not always ensure that QASPs were completed for contracts, and the QASPs we reviewed did not contain sufficient guidance for CORs about CTIP-related contract monitoring and reporting.

### *Army*

All six Army contracts we reviewed had QASPs. We found that two contracts used the same QASP, so we reviewed five QASPs. We determined the following for the five QASPs we reviewed.

- Three QASPs did not contain any information about CTIP-related monitoring or reporting.
- One QASP we reviewed after the Army updated it in February 2018 included additional explanation and requirements for CORs to conduct monitoring of the FAR CTIP clause. Contracting personnel stated that 408th Contracting Support Brigade (408th CSB) personnel required the CTIP information to be added to the QASP.

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<sup>22</sup> FAR Part 46, "Quality Assurance," Subpart 45.4, "Government Contract Quality Assurance," Clause 46.401, "General."

<sup>23</sup> DFARS Procedures, Guidance, and Information Subpart 222.17, "Combating Trafficking in Persons," Clause 1703.4 "Policy."

- One QASP discussed monitoring contractors' performance for compliance with the FAR CTIP clause and directed CORs to ensure that contractors complied with Tier 1 requirements, referencing a website for the Department of State that contained TIP-related data from 2012, but did not further explain Tier 1 requirements. The QASP directed CORs to perform spot checks, reviews, and assessments of contract employees to identify TIP indicators, but did not provide further guidance about recognizing specific indicators. In addition, the QASP referenced a "Contracting Battalion checklist," but did not include a copy of the checklist.

The QASP also required that the COR submit CTIP surveillance reports to the contracting officer every June and November. However, when we requested the November report, the Army contracting officer was unable to locate it and stated that if personnel previously assigned in Kuwait had completed a report, current personnel assigned in Kuwait were unable to find it.

### *Air Force*

Only 2 of the 11 Air Force contracts in our review had QASPs. Of the two QASPs we reviewed:

- one QASP did not contain any information about CTIP-related monitoring or reporting, and
- the other QASP included language about CTIP monitoring being important and required, but did not describe how the CORs would monitor contractors' performance regarding TIP.

When we asked for QASPs or asked why contracting officers did not prepare QASPs, we received the following responses.

- For one contract, an Air Force contingency contracting officer stated that the contract was a service contract, but explained, "This contract was awarded using the simplified acquisition procedures and therefore a QASP was not included in the contract file."
- For another contract, an Air Force contingency contracting officer stated that the Air Force did not develop a separate QASP because the Performance of Work Statement outlined the same information used to create the QASP. Additionally, Air Force Contract Policy personnel stated that they would require a QASP only for contracts valued at \$25 million or more because the same information is required in the Performance of Work Statement.

- For another contract, an Air Force contingency contracting officer stated that the items “were purchased as a commodity; therefore, it [the contract] doesn’t have a QASP, COR or Monthly reports.”
- For the remaining six contracts we reviewed, Air Force contingency contracting officers stated the contracts were for construction; therefore, they did not require QASPs.

QASPs are documents specifically required to describe CTIP monitoring and can be an effective method for monitoring CTIP requirements. By not having a QASP, it is unclear how Air Force contracting officers would explain to CORs how to conduct monitoring contractor compliance with the FAR CTIP clause, particularly in the absence of an alternative method for requiring CORs to check FAR CTIP clause compliance.

### *AAFES*

AAFES is not required to use QASPs; however, its CTIP policy describes some required monitoring activities for contracting officers and CORs, such as conducting passport inspections or sensing sessions with employees. The AAFES CTIP policy is explained in the next section.

### ***Contracting Officer’s Representatives***

The Defense Contingency COR Handbook provides guidance for CORs on contract quality surveillance and the roles and responsibilities of contracting officers, CORs, and requiring organizations. The Handbook specifically discusses CTIP and states that “CORs must be diligent in ensuring that contractors and contractor personnel are not trafficking in persons.”

The Handbook also states that the COR must inform the contracting officer if the contractor, contractor personnel, subcontractor, or subcontractor personnel fail to comply with the requirements of the FAR CTIP clause.

### *Army*

Contracting personnel in Kuwait explained that, for each contract, the COR uses a checklist based on the Performance Work Statement to monitor the contract and submits a monthly report about the contractor’s performance. Our review of surveillance and reporting documents for six contracts, dated from July through October 2017, revealed that they did not contain any questions or sections specific to documenting CTIP activity, nor any documentation indicating that the COR had monitored for or observed any potential TIP indicators. Furthermore, CORs assigned to contracts overseen by the 408th CSB stated that they were not aware of requirements to perform surveillance for potential TIP situations.



### *Air Force*

Air Force contracting personnel in Kuwait explained that the COR submits a monthly report, called a Performance Activity Report, about specific contractor actions included in the Performance Work Statement. They also stated that CORs did not ask contractor employees about information that could be indicators of potential TIP and did not perform any inspections specific to CTIP. We reviewed reporting documents including Performance Activity Reports for 11 contracts dated from August through October 2017 and did not find any specific reporting by the CORs related to monitoring the FAR CTIP clause.

### *AAFES*

The AAFES policy on CTIP does not clearly identify how personnel should monitor CTIP compliance, and does not require CORs to report the results of all monitoring to contracting officers. One contracting officer stated that CTIP monitoring is based on sensing sessions, which he described as discussions with contractor employees about various issues including passports, indebtedness, and work permits. However, the policy does not provide clear guidance about sensing sessions. Likewise, the AAFES policy on CTIP states that CORs are required to conduct sensing sessions; however, the policy's glossary states only that "The Exchange" will conduct sensing sessions. Similarly, the policy states that sensing sessions should focus on employees' living conditions. However, the glossary states that the focus should be on "exploitive measures." Neither the main text of the policy nor the glossary provides any further guidance on the format or focus of sensing sessions.

Additionally, the policy does not state how personnel should document or report information learned in sensing sessions, including information about TIP violations. As a result, we found that information gathered in sensing sessions was reported inconsistently and rarely documented.

For example, in July 2017, the Kuwait-based AAFES General Manager conducted a sensing session and listed issues raised in an e-mail. This e-mail included potential TIP indicators, such as employees who encountered pay problems and employees without a copy of their contract. The General Manager e-mailed these issues raised during the sensing session to the contractor, received the contractor's response, and then notified the contracting officer.

However, for the same contractor, a COR conducted a sensing session in January 2018 and e-mailed a list of issues raised to the contracting officer. The COR's list contained similar potential TIP indicators, including employees not having a copy of their contract and issues about employee pay. In response, the contracting officer issued

a warning letter to the contractor. This letter explained that it was in response to complaints received, reiterated terms and conditions of the contract, and stated that, if substantiated, the complaints would represent contract noncompliance and could result in additional negative contract actions. Additionally, another contracting officer stated that CORs working on her contracts did not maintain documentation for sensing sessions.

The AAFES policy also states that a COR is to perform monthly passport inspections. However, one contracting officer stated that she does not receive any formal reports about passport inspections and that she finds out about inspections only when notified of a problem. The policy states that the contracting officer is the only person with authority to modify the contract. However, without a clear process for conducting, documenting, and reporting the results of sensing sessions, and other CTIP-related inspections, contracting officers may not be able to take appropriate contracting actions.

## Past Performance Reporting Requirements for Contractors

Information regarding a contractor's actions under previous contracts, also known as past performance, indicates future performance and selection officials should consider it when awarding future contracts. Recording and reporting contractor past performance information can also motivate contractors to maintain high quality performance or to improve inadequate performance.

FAR subpart 9.1 states, “[p]urchases shall be made from, and contracts awarded to, responsible prospective contractors only.”<sup>24</sup> FAR subpart 9.1 also defines the general standards a contractor must meet to be determined responsible, which include a satisfactory record of integrity and business ethics.

FAR subpart 42.15 states that agencies must prepare evaluations of contractor performance for each contract and order that exceeds the simplified acquisition threshold, and for each construction contract valued at \$700,000 or more, including contracts performed outside of the United States.<sup>25</sup> The FAR also states that agencies must evaluate past performance at least annually and when the work under a contract is completed. The FAR specifies that past performance evaluations should include TIP violations as a performance evaluation factor.

FAR subpart 42.15 also requires that agencies enter their past performance reports into the Contractor Performance Assessment Reporting System (CPARS). CPARS is a paperless contractor evaluation system that documents contractor performance.

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<sup>24</sup> FAR Subpart 9.1, “Responsible Prospective Contractors,” Clause 9.103, “Policy.”

<sup>25</sup> FAR Part 4, “Administrative Matters,” Subpart 42.15, “Contractor Performance Information,” Clause 42.1502, “Policy.”

Contractor past performance data is collected in CPARS and transmitted to the Past Performance Information Retrieval System (PPIRS), the government-wide single repository of past performance data. The PPIRS was designed to provide timely and pertinent contractor past performance data to federal employees to help them make contract award decisions.

For the contracts in our sample, we reviewed past performance reports in the PPIRS to determine whether contracting officers entered past performance reports within the past year to meet the annual reporting requirement. We also reviewed reports to determine whether they contained information on documented TIP allegations or violations. We further compared the PPIRS reports with specific reports we received that contained allegations of TIP to determine whether contracting officers had included those TIP allegations in the past performance reports. We found that contracting officers did not consistently enter past performance information into CPARS. Additionally, we found that although a contracting officer issued a Cure Notice to a contractor for TIP violations in August 2016, the contracting officer had not entered past performance data for periods of performance after April 2016; therefore, the TIP violations were not documented in past performance reports.

### *Army*

As of August 2018, Army contracting officers did not enter past performance evaluations for periods of performance ending during the past year for two of six contracts we reviewed.

- For one contract containing multiple task orders for various performance locations, we found that the contracting officer's latest evaluation for the task order specific to Kuwait was for a period of performance that ended in September 2016, and was entered into CPARS in October 2017.
- For the second contract, we found that the contracting officer had not entered into CPARS past performance evaluations for any period of performance ending after April 2016. In June 2018, the contracting officer entered several past performance evaluations for periods of performance dating back several years. Additionally, in August 2016, the contracting officer issued a Cure Notice to the contractor that documented TIP violations.

### *Air Force*

As of August 2018, we found that Air Force contingency contracting officers had not entered past performance evaluations for periods of performance ending during the past year for 9 of 10 contracts that required past performance evaluations. In addition, we determined that the 11th Air Force contract we reviewed was a construction contract valued at less than \$700,000; therefore, it did not require past performance evaluations.

For the nine contracts that required past performance evaluations, we found the following.

- For seven contracts, we found that the contracting officers did not enter any past performance evaluations into CPARS.
- For one contract, a contracting officer entered one past performance evaluation into CPARS in June 2017, for a period of performance from August 2015 to December 2015. The evaluation stated that the current contracting officer was unable to verify past performance and that this evaluation was not an assessment of the contractor's past performance, but only an administrative action.
- For one contract, the contracting officer entered the last past performance evaluation into CPARS in June 2018, but it covered a period of performance from September 2016 to September 2017.

### **Conclusion**

Our review found that Army and Air Force contracting officers did not always include the correct FAR CTIP clause. These contracts lacked the FAR CTIP clause or, when they included the Alternate I CTIP clause, did not contain the additional required information. In some cases, the contracts we reviewed lacked the updated March 2015 FAR CTIP clause and Alternate 1 CTIP clause. By not verifying if contracts contained the FAR CTIP clause, its Alternate, if needed, and the most updated version of both clauses, supervisors did not have assurance that contracting officers were properly including the FAR CTIP clause in all contracts.

A QASP is the only document specifically required to explain how the COR monitors a contractor's compliance with the FAR CTIP clause. By not ensuring the existence of a QASP when required or employing an alternate method to monitor contractor compliance with CTIP requirements, Air Force contracting officers could not, in all instances, ensure contractor compliance. Similarly, by not ensuring that the QASP describes how the COR would monitor the contractor's compliance with the FAR CTIP clause, Air Force and Army contracting officers did not provide CORs the necessary guidance to properly monitor contracts. Additionally, by not verifying

that necessary QASPs were completed, or providing some other way of monitoring compliance with the FAR CTIP clause, supervisors did not have assurance that contracting officers were properly ensuring compliance with contract terms.

By not entering contractor past performance evaluations, or not entering past performance evaluations into CPARS in a timely manner, Army and Air Force contracting officers did not provide sufficient and accurate data for other Government contracting personnel to make informed decisions about future contract awards. As a result, contracting officers had no assurance that they awarded new contracts only to contractors who had not committed TIP violations and that their actions had not potentially resulted in additional TIP violations.

AAFES personnel did not have consistent processes for monitoring contractors for CTIP compliance. This occurred because the AAFES policy did not clearly identify how personnel should monitor for CTIP compliance, document their monitoring, and report results to contracting officers. Without clear guidance, AAFES personnel may not have consistently monitored for CTIP compliance or reported any violations identified to contracting officers for action.

Because of insufficient monitoring, DoD contractors in Kuwait may have engaged in TIP that the CORs did not detect and, therefore, did not report to contracting officers. Additionally, not properly monitoring DoD contractors for CTIP compliance could have allowed human trafficking to be funded by U.S. dollars, contrary to U.S. law and the DoD's zero-tolerance policy.

## Recommendations, Management Comments, and Our Response

### ***Recommendation B.1***

**We recommend that the U.S. Air Forces Central Command Chief of Contracting and the Army Contracting Command–Rock Island Executive Director ensure that contracting officers:**

- a. Include Federal Acquisition Regulation clause 52.222-50 in all contracts, and update the clause, as needed, to reflect the current version of the clause.**
- b. Ensure that quality assurance surveillance plans are prepared for all contracts that require them, and include appropriate methods for monitoring the contractor's performance regarding trafficking in persons.**
- c. Document in the contract file how monitoring for compliance with the CTIP clause will be accomplished, and by whom, if a contract does not require a quality assurance surveillance plan.**

- d. Verify that contracting officer's representatives accomplish and document proper monitoring of contractor compliance with DoD combating trafficking in persons regulations.**
- e. Enter contractor past performance information, including combating trafficking in persons violations, promptly into the Contractor Performance Assessment Reporting System.**

### *U.S. Air Forces Central Command Comments*

The USAFCENT Chief of Staff, responding on behalf of the USAFCENT Chief of Contracting, agreed with Recommendation B.1 and described the following actions that USAFCENT will take to implement the recommendations.

- For Recommendation B.1.a, USAFCENT will inform all of its Expeditionary Contracting Squadrons leaders of the requirement to include the FAR CTIP clause in all contracts and then reinforce this requirement during the monthly USAFCENT teleconference for at least 3 months.
- For Recommendation B.1.b, USAFCENT will brief all Expeditionary Contracting Squadron leaders to ensure that proper contract documentation and reviews are conducted prior to contract award. USAFCENT was to conduct initial training in February 2019 of the revamped quality assurance program, including CTIP in tracking tools and templates.
- For Recommendation B.1.c, USAFCENT will reinforce CTIP monitoring responsibilities during annual Expeditionary Contracting Squadron commanders' orientation and quarterly training.
- For Recommendation B.1.d, USAFCENT will review contract files for compliance with the FAR CTIP clause during annual staff education visits as well as during quarterly training.
- For Recommendation B.1.e, USAFCENT will direct all Expeditionary Contracting Squadrons to ensure that each contract in CPARs has a CTIP review, evaluation, and documentation notes section.

### *Our Response*

Comments from the USAFCENT Chief of Staff addressed all of our recommendations; therefore, the recommendations are resolved but remain open. We will close:

- Recommendation B.1.a once we verify that USAFCENT issued a written document reinforcing the requirement to include the FAR CTIP clause in all contracts.
- Recommendation B.1.b once we verify that USAFCENT revamped its quality assurance program and included CTIP in its tracking tools and templates.

- Recommendation B.1.c once we verify that USAFCENT updated training materials that reinforce CTIP monitoring responsibilities during annual Expeditionary Contracting Squadron commanders' orientation and quarterly training.
- Recommendation B.1.d once we verify that USAFCENT issued guidance directing the review of contract files for compliance with CTIP regulations during staff education visits and quarterly training.
- Recommendation B.1.e once we verify that USAFCENT issued direction to all Expeditionary Contracting Squadrons to ensure that each contract in CPARS has a CTIP review, evaluation, and documentation notes section.

### *U.S. Army Contracting Command Comments*

The Army Contracting Command Deputy to the Commanding General, responding on behalf of the ACC-RI Executive Director, agreed with Recommendation B.1 and detailed the following planned actions to implement the recommendations.

- For Recommendation B.1.a, ACC-RI will review its contracts with performance in Kuwait to ensure the FAR CTIP clause is included. If it is not, the contract will be modified to incorporate the current version of the clause.
- For Recommendation B.1.b, ACC-RI will review the QASPs for existing contracts that include a QASP, with performance in Kuwait, to verify that appropriate methods for monitoring contractor's performance regarding TIP are included. If the monitoring methods are not included in the QASP, the requiring activity will be asked to include the monitoring methods in the QASP.
- For Recommendation B.1.c, ACC-RI will identify and document in the contract file how monitoring for FAR CTIP clause compliance is accomplished for those contracts that do not require a QASP.
- For Recommendation B.1.d, ACC-RI will issue a memorandum to all ACC-RI contracting officers and delegated administrative contracting officers requiring that COR appointment letters include a requirement to monitor and document the contractors' performance regarding TIP.
- For Recommendation B.1.e, ACC-RI will issue a memorandum to its contracting officers requiring that they include CTIP violations in CPARS, when appropriate, and that all administrative contracting officer delegation letters will include guidance requiring that CTIP violations be entered into CPARS.

### *Our Response*

Comments from the U.S. Army Contracting Command Deputy to the Commanding General addressed the specifics of the recommendations; therefore, the recommendations are resolved but remain open. We will close:

- Recommendation B.1.a once we verify that ACC-RI reviewed its contracts with performance in Kuwait to ensure that the FAR CTIP clause is included.
- Recommendation B.1.b once we verify that ACC-RI reviewed all QASPs for existing contracts with performance in Kuwait to verify that they include appropriate methods for monitoring the contractor's performance regarding TIP.
- Recommendation B.1.c once we verify that ACC-RI updated contract files with information showing how monitoring for FAR CTIP clause compliance is accomplished for those contracts that do not require a QASP.
- Recommendation B.1.d once we verify that ACC-RI issued a memorandum to all ACC-RI contracting officers and administrative contracting officers requiring that COR appointment letters include a requirement to monitor and document contractors' performance regarding TIP.
- Recommendation B.1.e once we verify that ACC-RI issued a memorandum to its contracting officers requiring that they include CTIP violations in CPARS, when appropriate, and that all administrative contracting officer delegation letters include guidance requiring that CTIP violations be entered into CPARS.

### ***Recommendation B.2***

**We recommend that the Army Contracting Command–Rock Island Executive Director require contracting officers to update surveillance and reporting documents for contracting officer's representatives to record that monitoring of the contractor's performance regarding trafficking in persons is accomplished.**

### *U.S. Army Contracting Command Comments*

The U.S. Army Contracting Command Deputy to the Commanding General, responding on behalf of the ACC-RI Executive Director, agreed with the recommendation. The Deputy stated that ACC-RI will issue a memorandum to all ACC-RI contracting officers and delegated administrative contracting officers requiring that COR appointment letters include a requirement to monitor and document the contractor's performance regarding TIP.



### *Our Response*

Comments from the Deputy to the Commanding General addressed the specifics of our recommendations; therefore, the recommendation is resolved but remains open. We will close the recommendation once we verify that ACC-RI issued a memorandum to all ACC-RI contracting officers and delegated administrative contracting officers requiring that COR appointment letters include a requirement to monitor and document the contractor's performance regarding TIP.

### **Recommendation B.3**

**We recommend that the Army and Air Force Exchange Service Chief Executive Officer update Exchange Policy 08-08, "Combating Trafficking in Persons," to provide guidance on specific responsibilities for monitoring contractor compliance with the combating trafficking in persons provision, including responsibilities of personnel, clearly defined and required monitoring methods and frequency, records maintenance, and reporting requirements.**

### *Army and Air Force Exchange Service Comments*

The AAFES Chief Executive Officer (CEO) agreed with the recommendation and stated that in June 2018, during our evaluation, AAFES updated its Exchange Operating Policy.<sup>26</sup> The revised policy describes how personnel should monitor CTIP compliance; for example, CORs will create a checklist of the contractual obligations of each contractor for each inspection and conduct quarterly sensing sessions and contract reviews.

### *Our Response*

Comments from the AAFES CEO addressed the specifics of our recommendation. We verified that the updated Exchange Operating Policy describes how personnel should monitor CTIP compliance. Therefore, the recommendation is resolved and closed.

<sup>26</sup> Army And Air Force Exchange Service Exchange Operating Policy 08-08, "Exchange Policy On Combating Trafficking In Persons," June 2018.

## Finding C

### DoD Contracting Organizations Lacked a Process for Determining Kuwaiti Labor Law Requirements

Some DoD contracting officials at Army, Air Force, and AAFES organizations relied on contractors to identify Kuwaiti labor laws and determine their applicability to DoD contracts.

This occurred, in part, because the DoD did not have a designated resource or office where contracting officials could find definitive guidance on host-nation labor laws.

As a result, DoD contracting organizations could not fully conduct contract oversight of the FAR CTIP clause, which requires contractors to comply with Kuwaiti labor law, and the DoD and its contractors were at risk of violating Kuwaiti labor law.

### DoD Contracting Officials Did Not Determine Applicability of Kuwait Labor Laws to Contracts

The FAR CTIP clause prohibits U.S. contractors, subcontractors, and their employees from engaging in any form of trafficking in person. Specific subparts define these practices with reference to host-nation laws. For example, it prohibits contractors or their agents from providing or arranging “housing that fails to meet the host-country housing and safety standards.” The FAR CTIP clause also requires contractors to ensure that wages meet applicable host-country legal requirements or explain any variance. Similarly, DFARS section 252.225-7040 requires contractors to pay their employees according to the host-nation rate and provide host-nation quality housing.<sup>27</sup>

Despite these requirements, no contracting organization in our review had established a clearly defined process for identifying, interpreting, and applying Kuwaiti labor laws in the contractors’ employment of Other Country Nationals.<sup>28</sup> We interviewed different officials within the same DoD contracting organization in Kuwait and across different contracting organizations, both in the continental United States and in Kuwait. We found no consistent procedure among them

<sup>27</sup> DFARS Section 252.225-7040, “Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.”

<sup>28</sup> For example, the State of Kuwait law No. 68 promulgates labor laws in the private sector.

for how to determine what Kuwaiti labor law required with regard to either wages or housing and safety standards that apply to labor working on DoD contracts in Kuwait.

### **Army**

Officials at ACC-RI offered contrasting accounts about where they received guidance on interpreting and applying Kuwaiti labor laws. One ACC-RI attorney stated that ACC contracting officers relied on contractors' informal feedback when determining whether a contractor complied with local laws. A contracting officer stated that she could not persuade lawyers at ACC-RI to provide opinions about Kuwaiti labor law, and an ACC official stated that the command did not have a budget to hire an attorney in Kuwait. Another contracting official stated that she simply searched the Internet for the minimum wage in each country for the contracts she oversaw. An ACC-RI senior official told us that its process included seeking legal support from the Army Sustainment Command Legal Office or requesting the USARCENT Staff Judge Advocate to assess host-nation labor laws. The official stated that USARCENT personnel knew how to interpret Kuwaiti labor law because they were "on the ground" in Kuwait. However, a USARCENT Staff Judge Advocate reported to us that USARCENT did not have staff specializing in Kuwaiti labor law. He further stated that understanding and advising on Kuwaiti labor law should be the responsibility of ACC-RI.

### **Air Force**

USAFCENT officials cited different methods for applying host-nation laws. A USAFCENT official in the United States stated that the command contacted subject matter experts at the Library of Congress for specialized information such as which local laws govern employees' work during Ramadan. The Air Force did not have Kuwaiti lawyers or law firms available to interpret and apply Kuwaiti law. The official stated that if a question about contractor compliance with host-nation wage laws arose, they could ask the contractor for payroll information, but that they did not usually ask for that information. The official added that they had not heard of any issues about contractors not properly paying their employees. However, the 408th CSB Inspection Team found that a defense contractor operating dining facilities on both Army and Air Force installations in Kuwait had been underpaying its employees for several years (the contractor declared that it was not required to pay Kuwait's minimum wage rate). The USAFCENT official added that if it discovered that a contractor had not properly paid employees, then the contracting officer could withhold money from the contractor and require the contractor to properly pay employees.

### ***Army and Air Force Exchange Service***

Officials at AAFES told us that they deferred to their contractors to interpret Kuwaiti labor law even if the contractors had a monetary interest in interpreting these laws a particular way. Specifically, three AAFES contracting and procurement officials stated that they relied on their contractors to know the local labor laws and procedures because, as one AAFES contracting official stated, AAFES had not provided a source of expertise or assistance from within AAFES. A senior AAFES legal official stated that AAFES expected the contractor's program managers to understand host-nation laws, not AAFES personnel, some of whom did not necessarily have sufficient education or training to do so. No AAFES official explained how AAFES could ensure that contractors provided unbiased assessments of their own compliance with legal norms.

### **Conclusion**

Contracting officials were not able to provide adequate oversight of the FAR CTIP clause in contracts in Kuwait because there was no designated resource or office to identify and interpret Kuwaiti labor law. Contracting officers for different Services had different approaches to identifying, interpreting, and applying Kuwait's housing and wage laws to their contractors' employees. Furthermore, DoD officials had no way to ensure that contractors provided unbiased assessments of their own compliance.

If U.S. Government contracting officials did not know with certainty the Kuwaiti legal wage rate and subsequently did not verify that this rate was paid, then contractors may have been underpaying employees for years without any remedial action. In the case of the defense contractor who operated food services on Camp Arifjan, Camp Buehring, and Ali Al Salem Air Base, the contractor did not pay the required rate to its dining facility employees for several years. The contractor stated that it had an exemption from the Kuwait minimum wage.

## Recommendations, Management Comments, and Our Response

### **Recommendation C.1**

**We recommend that the Army Contracting Command–Rock Island Executive Director establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.**

#### *U.S. Army Contracting Command Comments*

The Army Contracting Command Deputy to the Commanding General, responding for the ACC-RI Executive Director, agreed with Recommendation C.1. The Deputy stated that ACC-RI agrees with AAFES that contracting officers would benefit from a U.S. Government source of expertise on Kuwaiti labor laws. The Deputy also stated that if USCENTCOM formally designated an appropriate command headquarters in Kuwait to be responsible for CTIP compliance, ACC-RI would recognize that command headquarters as the sole resource for Kuwaiti labor law guidance.

#### *Our Response*

Although the Army Contracting Command Deputy to the Commanding General agreed with the recommendation, the comments did not describe what actions ACC-RI would take to implement the recommendation. Therefore, the recommendation is unresolved and remains open. We agree that DoD contracting officers working with contracts involving performance in Kuwait would benefit from a single U.S. Government source of expertise on Kuwaiti labor law, whether that single source is a USCENTCOM component or another DoD agency. Relying on USCENTCOM's designated command headquarters, as recommended in Recommendation A.1.b, to be the sole resource for Kuwaiti labor law is problematic because USCENTCOM disagreed with Recommendation A.1.b. Due to these conflicting views between DoD organizations on which organization should determine the definitive guidance on Kuwaiti labor law, we added Recommendation C.4 to the General Counsel of the DoD to resolve this conflict, as required by Joint Publication 4-10.<sup>29</sup> We will close this recommendation, pending a resolution of our added Recommendation C.4, and once we verify that ACC-RI has identified a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.

<sup>29</sup> Joint Publication 4-10, "Operational Contract Support," Chapter II, "Roles and Responsibilities," Section 2.J.5, March 4, 2019.

## **Recommendation C.2**

**We recommend that the Deputy Assistant Secretary (Contracting) establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.**

### *Deputy Assistant Secretary (Contracting) Comments*

The Chief of Contracting Operations, responding on behalf of the Deputy Assistant Secretary (Contracting), disagreed with our recommendation. The Chief stated that the recommendation improperly assigns the Deputy Assistant Secretary (Contracting) with the responsibility to establish a process or identify a resource to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts, and should be revised to recommend that the USCENTCOM Commander establish a process or identify a resource for DoD contracting officials to obtain guidance on Kuwaiti labor law. The Chief of Contracting Operations stated that DoDI 2200.01, Section 11, requires the combatant commander to develop a “program that establishes a clear set of guidelines and procedures for OCONUS [outside the continental United States] units to address TIP in their operating environments.” Further, the Chief of Contracting Operations stated that Joint Publication 4-10, Section 5.a, requires that the combatant commander work closely with Service components to determine operational contract support requirements.

### *Our Response*

Comments from the Chief of Contracting Operations did not address the specifics of the recommendation; therefore the recommendation is unresolved and remains open. We agree that USCENTCOM could play a role in obtaining definitive guidance on Kuwaiti labor law; however, relying on USCENTCOM for this guidance is problematic because USCENTCOM disagreed with implementing its own regulation on CTIP. Due to these conflicting views between DoD organizations on which organization should determine the definitive guidance on Kuwaiti labor law, we added Recommendation C.4 to the General Counsel of the DoD to resolve this conflict, as required by Joint Publication 4-10, Section 2.j.5. We will close this recommendation pending resolution of the added Recommendation C.4, and once we verify that the Deputy Assistant Secretary (Contracting) has identified a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.

### **Recommendation C.3**

**We recommend that the Army and Air Force Exchange Service Chief Executive Officer establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.**

#### *Army and Air Force Exchange Service Comments*

The AAFES CEO agreed with our recommendation. The CEO recommended that a “DoD level policy be implemented which identifies the means and requirements, perhaps in conjunction with the State Department, for securing resources with the requisite expertise to determine and advise on compliance with host nation labor laws.” The CEO stated that AAFES would reach out to the Army Contracting Command and the Deputy Assistant Secretary (Contracting) by March 15, 2019, to “further explore how to close this out in a manner that meets DoD OIG’s intention.”

#### *Our Response*

Comments from the AAFES CEO addressed the intent of our recommendation; however, the recommendation is unresolved and remains open because there are conflicting views between DoD organizations on which organization should determine the definitive guidance on Kuwaiti labor law. We support AAFES for its plan to coordinate with ACC-RI and the Deputy Assistant Secretary (Contracting). However, both ACC-RI and the Deputy Assistant Secretary (Contracting) are relying on USCENTCOM to provide the guidance. This is problematic because USCENTCOM disagreed with implementing its own regulation on CTIP, CCR 570-4. Due to these conflicting views between DoD organizations on which organization should determine the definitive guidance on Kuwaiti labor law, we added Recommendation C.4 to the General Counsel of the DoD to resolve this conflict, as required by Joint Publication 4-10. We will close this recommendation pending a resolution of Recommendation C.4 and once we verify that the AAFES CEO has identified a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.

### **Added Recommendation C.4**

The management responses from ACC-RI, the Deputy Assistant Secretary (Contracting), and AAFES contained conflicting responses regarding which DoD organization is responsible for determining definitive guidance on Kuwaiti labor laws that apply to DoD contracts with performance in Kuwait. The Army Contracting Command Deputy to the Commanding General stated that if USCENTCOM designated a command headquarters in Kuwait to be responsible for CTIP compliance, ACC-RI would recognize that command as the sole resource for Kuwaiti labor law guidance. The Deputy Assistant Secretary (Contracting) stated that in his view USCENTCOM

is required by DoDI 2200.01 to develop a “program that establishes a clear set of guidelines and procedures for OCONUS [outside the continental United States] units to address TIP,” including guidance on Kuwaiti labor law. AAFES stated that it would contact ACC-RI and the Deputy Assistant Secretary (Contracting) to coordinate how best to determine definitive guidance on Kuwaiti labor law.

However, USCENTCOM disagreed with our recommendation to implement CCR 570-4, its own regulation on CTIP, including designating a command headquarters in Kuwait to be responsible for CTIP compliance.

Joint Publication 4-10 states, “The Office of General Counsel (DoD OGC) provides advice to SecDef and the Deputy Secretary of Defense regarding all legal matters and services performed within, or involving, DOD and legal advice to OSD organizations and, as appropriate, other DOD components.” Subsection (3) states that DoD OGC coordinates DoD positions on legislation. This includes CTIP legislation. Subsection (4) states that DoD OGC provides for coordination of significant legal issues. Most notably, Subsection (5) states that DoD OGC is to “determine DOD’s position on specific legal problems and resolve disagreements within DOD on such matters.” Therefore, we added Recommendation C.4 to the General Counsel of the DoD to resolve this conflict, as required by Joint Publication 4-10.

### ***Recommendation C.4***

**We recommend that the General Counsel of the Department of Defense coordinate with the DoD organizations responsible for overseeing contracting in Kuwait, such as USCENTCOM, ACC-RI, Deputy Assistant Secretary (Contracting), and AAFES, to determine the appropriate DoD organization responsible for determining definitive guidance on Kuwaiti labor laws that apply to DoD contracts with performance in Kuwait, work to resolve disagreements among the organizations, and advise the Secretary of Defense and the Deputy Secretary of Defense on a comprehensive solution.**

### ***Management Comments Required***

We request that the DoD General Counsel provide the DoD OIG with an action plan for determining which DoD organization is responsible for determining definitive guidance on Kuwaiti labor laws that apply to DoD contracts with performance in Kuwait.



## Finding D

### The 408th Contracting Support Brigade Internally Filled the Need for Specialized CTIP Contract Surveillance

The Army's 408th Contracting Support Brigade (408th CSB), located in Kuwait, established an internal two-person CTIP Inspection Team from existing personnel without official billets.

This occurred because the 408th CSB identified a pressing need to increase oversight of the FAR CTIP clause in response to multiple allegations of DoD contractors violating TIP laws.

Since its formation, the first CTIP Inspection Team and subsequent iterations have uncovered numerous cases of suspected TIP and brought them to the attention of contracting officers. However, without authorized positions in the organizational structure, this continued success is at risk. Future rotations of 408th CSB leadership could eliminate the CTIP Inspection Team and reduce necessary CTIP oversight.

### Establishment of the 408th CSB CTIP Inspection Team

Until 2015, the Defense Contracting Management Agency (DCMA) oversaw DoD contracts in Kuwait. DCMA's quality assurance specialists filed reports with the DCMA CTIP Technical Lead–Kuwait when they discovered TIP violations. The CTIP Technical Lead then forwarded those reports to contractors for corrective action. In 2013 and 2014, DCMA identified 19 TIP violations at Camp Arifjan in Kuwait and issued 7 Non-Conformance Reports requesting that contractors take corrective action.

When DCMA withdrew from Kuwait in 2014, a series of Army Contracting Support Brigades assumed contract oversight duties for the U.S. Army Central Command.

When we began our fieldwork in November 2017, the 408th CSB had contract oversight responsibility. The 408th CSB's overall mission had two parts:

- provide operational contract support in Southwest Asia, and
- conduct contracting activities for contingency contracting organizations and contracting assets deployed in support of USARCENT.

The 408th CSB did not initially dedicate personnel to address CTIP oversight. However, recognizing the need to have a CTIP oversight capability, the 408th CSB created its CTIP Inspection Team in 2015 from existing personnel.

Since the 408th CSB formed its CTIP Inspection Team, the 408th CSB leadership has assigned two personnel to perform the CTIP inspection duty on a full-time basis.

The CTIP Inspection Team functioned as an independent element in the 408th CSB and reviewed contractor management processes, physically inspected workers' off-base housing, and interviewed employees on and off base. The CTIP Inspection Team also maintained files for historical records and developed processes and procedures.

Part of the CTIP Inspection Team's standard operating procedure was to document any type of contract CTIP noncompliance in a Non-Conformance Report that outlined deficiencies or concerns. The team then sent the Non-Conformance Report to contracting officials, who determined the severity of the non-conformance and sent the report to the contractor. The contractor was then required to submit a Corrective Action Plan describing how it would resolve all of the identified issues.

### *Impact of the 408th CSB CTIP Inspection Team*

In 2016, a member of the CTIP Inspection Team recognized indicators of TIP among contractor employees at one of Camp Arifjan's dining facilities. He recognized those signs in part because he himself was trafficked as a young child. The contractor in question provided workers for dining facilities on Camp Arifjan, Camp Buehring, Ali Al Salem Air Base, and the Kuwait Naval Base. Subsequently, military investigators discovered evidence of numerous violations, such as passport confiscation, failure to pay minimum wage, lack of access to potable water, inhumane living conditions, charging of recruitment fees, and forced overtime without pay. Despite the contractor's disagreement with these findings of violations, ACC-RI issued a Cure Notice to the contractor in August 2016.

Because of the TIP violations identified in the Cure Notice, the U.S. Army's SDO proposed in March 2017 that the company be debarred. The contractor signed an Administrative Compliance Agreement on July 28, 2017, which stipulates that the contractor must follow current Kuwaiti labor law, comply with CTIP clauses in its contract, and conduct its business with the honesty and integrity expected of a U.S. Government contractor.

Additionally, from November 2017 through April 2018, the CTIP Inspection Team issued 7 Non-Conformance Reports that identified 24 TIP violations by 4 contractors on U.S. military bases in Kuwait. These violations included

substandard and unsanitary housing, failure to report TIP, seizure of personal items including passports, failure to display CTIP reporting procedures, and inadequate living space.

### *USAFCENT's CTIP Inspection Team Test Program*

In interviews conducted during our fieldwork in Kuwait, USAFCENT officials stated that they did not believe that Air Force officials had the legal authority to inspect housing or interview contract employees off base. When informed of the Army's different approach to enforcing CTIP regulations by inspecting Other Country Nationals' housing, USAFCENT officials questioned the source of legal authority to do this.

In 2017, the Air Force 379th Expeditionary Contracting Squadron, in cooperation with the Air Force Office of Special Investigations, conducted a 60-day test program to determine whether the unit could sustain its own CTIP inspection team. They conducted this test in response to allegations of TIP.

The 60-day test program faced the following four challenges.

- Frequent personnel rotation resulted in inconsistent application of the test program.
- CORs were not included in the test.
- Fraud and Corruption Task Force agents from the Air Force Office of Special Investigations were not available due to competing demands across the USCENTCOM AOR.
- The Test Inspection Team lacked the language skills to speak to the Other Country Nationals in their native language.

During our April 2018 visit to USAFCENT headquarters, a USAFCENT official stated that USAFCENT had not yet decided whether to establish a CTIP Inspection Team.

## **Conclusion**

The 408th CSB established a CTIP Inspection Team that successfully identified contractor TIP violations in Kuwait. To ensure sustainability in the performance of its oversight role, the 408th CTIP Inspection Team requires formal designated billets. Without such billets, future rotations of the 408th CSB leadership could eliminate the CTIP Inspection Team and reduce necessary CTIP oversight.

## Recommendations, Management Comments, and Our Response

### **Recommendation D.1**

**We recommend that the 408th Contract Support Brigade Commander request designated mission and permanent billets to support the brigade's Combating Trafficking in Persons Inspections Team.**

#### *408th Contract Support Brigade Comments*

The 408th CSB Commander agreed with our recommendation and described an alternative action, pledging to add CTIP duties to current position descriptions and implement measures to ensure that the CTIP program the 408th CSB presently employs is enduring, properly staffed, and resourced. According to the Commander, the Army's Regional Contracting Command has already adopted a CTIP Standard Operating Procedure that specifies the composition and duties of the CTIP team members. The Commander concluded that the 408th CSB does not need to add additional billets to the brigade organizational structure at present. However, as the theater of operations and contracts expand, the 408th CSB will adjust its staffing accordingly to include revisiting whether permanent CTIP slots should be added.

#### *Our Response*

Comments from the 408th CSB Commander addressed the intent of our recommendation; therefore the recommendation is resolved and remains open. We will close the recommendation once we verify that the position descriptions have been updated and review the measures implemented to ensure that the CTIP Inspection Team remains properly staffed and resourced.

### **Recommendation D.2**

**We recommend that the Commander of U.S. Central Command create designated Combating Trafficking in Person Inspection Teams and personnel billets to provide oversight of DoD contracts in countries for which it has command responsibility and that have potential trafficking in persons problems.**

#### *U.S. Central Command Comments*

The USCENTCOM Chief of Staff, responding for the USCENTCOM Commander, disagreed with Recommendation D.2, stating that USCENTCOM does not have contracting authority and that the contracting agency executing the contract is responsible for ensuring that DoD policy guidance and applicable contracting clauses are incorporated into USCENTCOM contracts.

### *Our Response*

Comments from the Chief of Staff did not address our recommendation; therefore, the recommendation is unresolved and remains open. Joint Publication 4-10, Chapter II, Section 5.a.(6), assigns to the geographic combatant command the responsibility to “ensure Operational Contract Support-related combating trafficking in persons (CTIP) guidance is established and followed.” Further, Joint Publication 4-10, Chapter II, Section 5.a(1)(d), assigns the geographic combatant command the responsibility to “ensure contracting and contract oversight capabilities, to include theater support contracting C2, contracting authorities, and contracting coordination arrangements, are incorporated into plans.” This also includes leading the operational contract support planning and integration effort within its AOR. Finally, Joint Publication 4-10, Chapter V, Section 1.b.(4) states, “Commanders, in coordination with the requisite contracting officer, should also ensure routine health and safety inspections are conducted on applicable contractor personnel working areas and living spaces and ensure any violations are promptly addressed with the contractor via the COR and contracting officer.”

From our review of Joint Publication 4-10, we conclude that the USCENTCOM Commander has a critical role in planning and integrating operational contract support in the command’s AOR, including inspections of contractor working areas and living spaces, which may require an inspection team. We request that the USCENTCOM Commander provide comments on the final report that detail how the command will implement its responsibilities enumerated in Joint Publication 4-10 regarding “ensuring routine health and safety inspections are conducted on ... contractor personnel working areas and living spaces” which may require a CTIP inspection team.

## Appendix A

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### Scope and Methodology

We conducted this evaluation from September 2017 to May 2019 in accordance with the Council of the Inspectors General on Integrity and Efficiency “Quality Standards for Inspection and Evaluation,” published in January 2012. We planned and performed the evaluation to obtain sufficient and appropriate evidence to provide a reasonable basis for our conclusions based on our evaluation objectives.

This report determined whether DoD contracts in Kuwait complied with CTIP requirements in applicable statutes, the FAR, DFARS, and other DoD guidance; whether DoD officials provided effective oversight in accordance with command responsibility and contracting regulations; and whether DoD officials took effective measures to address any instances of noncompliance.

The scope of this evaluation included determining whether DoD personnel and organizations complied with CTIP regulations, including DoD, combatant command, and Service-level guidance, as well as the FAR. We considered the following to be out of the scope of this report:

- TIP violations or allegations before 2012;
- U.S. Department of Justice, U.S. Department of State, or Kuwaiti government processes for monitoring or prosecuting CTIP complaints or cases; and
- U.S. Navy activities in Kuwait.

The Navy based its operations in the USCENTCOM AOR in Bahrain and had only a small presence in Kuwait. The number of contracts that the Navy administered in Kuwait was, therefore, limited and did not fit the parameters we selected for the Army and Air Force contracts.

### **Criteria**

We reviewed criteria such as Executive orders and regulations as well as DoD and component guidance for CTIP and contract monitoring for entities active in Kuwait. These executive orders and regulations included:

- National Security Presidential Directive-22
- FAR Subpart 9.1, “Responsible Prospective Contractors”
- FAR Subpart 22.17, “Combating Trafficking in Persons”
- FAR Subpart 42.15, “Contractor Performance Information”

- FAR Part 46, “Quality Assurance”
- FAR Subpart 52.1, “Instructions for Using Provisions and Clauses”
- FAR Subpart 52.222-50, “Combating Trafficking in Persons” (CTIP clause)

Additional DoD and component criteria included:

- DFARS 222-17, “Combating Trafficking in Persons”
- DFARS Clause 252.222-7002, “Compliance with Local Labor Laws (Overseas)”
- DoD Strategic Plan for Combating Trafficking in Persons (CTIP) 2014–2018
- DoD Instruction 2200.01, “Combating Trafficking in Persons (CTIP),” April 21, 2015 (with Change 1, April 5, 2017)
- Defense Contingency COR Handbook, September 2012
- Central Command Regulation (CCR) 570-4, “Combating Trafficking in Persons (CTIP),” October 27, 2016
- USARCENT Policy Memorandum 2016-37, May 6, 2016
- Air Force Instruction 36-2921, “Combating Trafficking in Persons (CTIP),” April 30, 2011
- AAFES, EOP 08-08, “Exchange Policy on Combating Trafficking in Persons,” November 2015 and June 2018

### **Field Visits**

We conducted fieldwork in Kuwait in November 2017 and April 2018 and interviewed individuals at the U.S. Embassy in Kuwait City and the following U.S. military installations:

- Camp Arifjan
- Camp Buehring
- Ali Al Salem Air Base
- Al Jaber Air Base
- Kuwait Naval Base

We also attended a human trafficking forum held at Camp Arifjan in April 2018.

We also interviewed Other Country National workers employed by companies in our contract sample. We visited multiple workplaces and employee-housing facilities, which included three “man camps” located in the desert outside of Camp Buehring and three apartment buildings in the Fahaheel neighborhood of Kuwait City.<sup>30</sup>

<sup>30</sup> “Man camp” is a term military and contracting oversight officials use to describe company-provided housing for OCNs.

## ***Interviews with Officials***

In the United States, we met and interviewed individuals at the following organizations:

- Army and Air Force Exchange Service headquarters, Dallas, Texas
- Army Contracting Command–Rock Island, Illinois
- U.S. Central Command headquarters, Tampa, Florida
- Army Central and Air Force Central Command headquarters, Shaw Air Force Base, Sumter, South Carolina
- Office of the Under Secretary of Defense for Personnel and Readiness
  - Defense Human Resources Activity, CTIP PMO
- Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics
  - Defense Procurement Acquisition Policy
- Office of the Under Secretary of Defense for Policy
- Joint Staff
- DoD Hotline
- Defense Criminal Investigative Service
- Army Criminal Investigative Command
- Air Force Office of Special Investigations
- Department of the Army, Office of the Judge Advocate General
  - Procurement Fraud Division
- Department of the Air Force General Counsel
- Department of State, Office to Monitor and Combat Trafficking in Persons Team

## ***Document Collection***

We collected and reviewed the following types of documents:

- contracts and contract monitoring documents related to CTIP for DoD contractors operating in Kuwait, such as QASPs, and CTIP housing inspection reports;
- Cure Notices, Non-Conformance Reports, and Letters of Concern that cited TIP allegations;
- reports of alleged TIP violations from the DoD organization, such as DoD Hotline and military criminal investigation organizations;
- ACC-RI Justification & Approval documents; and
- legal documents such as proposals for debarment for contractors issued by component-level SDOs between 2012 and 2017 that mentioned TIP.



## ***Contract Selection***

We requested lists of contracts and any subcontracts from the Army's 408th CSB, the Air Force's 386th Expeditionary Wing, the Air Force's 407th Air Expeditionary Group, and AAFES that were worth more than \$500,000 and employed low-skill foreign workers. With guidance from the DoD OIG's Quantitative Methods Division, we selected a non-statistical sample of those contracts for review. We excluded contracts from the Navy and Marine Corps because they have only a small presence in Kuwait.

### *Army*

We identified the 408th CSB as the Army's primary contracting oversight entity in Kuwait. Although the 408th CSB does not oversee all Army contracts in Kuwait, it oversees the majority of them.

### *Air Force*

Air Force contracting officials do not require that contractors inform them if they use subcontractors, so we did not include subcontracts in our Air Force sample. We added an additional contract to our sample based on TIP allegations against another contractor performing similar services.

### *Army Air Force Exchange Service*

Because of the nature of AAFES contracts, we assumed that all workers would be low-skill and set an additional parameter of contracts that employ more than 20 Other Country National workers. AAFES contractors did not use subcontractors.

## ***Contract Review***

We reviewed 42 contracts and subcontracts for the Army, Air Force, and AAFES to verify that each contract included the CTIP clause and to determine whether the contracts should have a QASP.

## ***Contractor Review and Comments***

A contractor referred to in the report reviewed and commented on the draft report. The contractor's comments were considered in preparing the final report.

## ***Use of Computer-Processed Data***

We used computer-processed data for this evaluation. Specifically, we used lists of contracts provided by Army and Air Force units located in Kuwait and from the AAFES for a universe of contracts from which we selected a non-statistical sample for our review. We obtained a copy of each contract in our sample and did

not conduct any further testing of the contract list data received. Additionally, we used the same sample list and reviewed information in the Past Performance Information Retrieval System to determine whether contracting officers entered contractor past performance evaluations as required. We reviewed search results and reports retrieved and determined that the information we obtained was sufficiently reliable to support our results.

## **Use of Technical Assistance**

Members of the Quantitative Methods Division (QMD) provided technical assistance by discussing the appropriate parameters for our contract samples. In addition, they randomized the universe of contracts that fit into our parameters. We picked our contracts from this randomized set.

## Appendix B

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### Prior Coverage

During the past 5 years, the Government Accountability Office (GAO), the DoD OIG, the Department of State (DoS), and the Department of Justice (DoJ) issued 16 reports discussing TIP-related statutory provisions, challenges, and issues Federal agencies faced when combating human trafficking, including oversight of contractors' use of foreign workers. These reports may be accessed at:

- Unrestricted GAO reports: <http://www.gao.gov>
- Unrestricted DoD OIG reports: <http://www.dodig.mil/pubs/index.cfm>
- Unrestricted DoS reports: <https://www.state.gov/j/tip/rls/tiprpt/>
- Unrestricted DoJ reports: <https://oig.justice.gov/reports/all.htm>

### **GAO**

Report No. GAO-15-102, "Human Trafficking, Oversight of Contractors' Use of Foreign Workers in High-Risk Environments Needs to be Strengthened," November 18, 2014

GAO found that current policies and guidance governing the payment of recruitment fees by foreign workers on certain U.S. Government contracts do not provide clear instructions to agencies or contractors regarding the components or amounts of permissible fees related to recruitment. In addition, GAO found that some foreign workers, individuals who are not citizens of the United States or the host country, had reported paying for their jobs. Such recruitment fees can lead to various abuses related to TIP, such as debt bondage. Furthermore, the agency monitoring called for by FAR and agency guidance did not always include processes to specifically monitor contractor efforts to combat TIP.

### **DoD OIG**

Report No. DODIG-2014-079, "Evaluation of DoD Combating Trafficking in Persons Program," June 16, 2014

The objective for this project was to review DoD CTIP program performance and compliance with DoD Instruction 2200.01, "Combating Trafficking in Persons," September 15, 2010. This capping report summarizes findings resulting from a DoD OIG multi-year review, which began in 2009, in response to the requirement for the Inspectors General of the Department of Defense, Department of State, and U.S. Agency for International Development to investigate a sample of contracts for which there was a heightened risk that contractors may engage in acts related to TIP.

Report No. DODIG-2017-062, “Kuwait Base Operations and Security Support Services (KBOSSS) Contract,” March 7, 2017

This report found that the Army did not effectively monitor contractor performance for the KBOSSS contract. Specifically, ASG-KU, ACC-RI, and 408th CSB did not establish written guidance that clearly defined the roles and responsibilities of KBOSSS oversight personnel, and did not develop a process to accurately track CORs and COR reporting, which created gaps in contractor monitoring. In addition, ACC-RI and 408th CSB did not define Performance Evaluation Meeting requirements for personnel responsible for contract oversight.

Report No. DODIG-2018-074, “The U.S. Navy’s Oversight and Administration of the Base Support Contracts in Bahrain,” February 13, 2018

This report found that the U.S. Navy did not provide effective oversight of the base support contracts in Bahrain. Specifically, the CORs relied on performance assessment representatives—who were foreign national direct hires at Naval Support Activity-Bahrain and foreign national contractors at Isa Air Base—to execute all quality assurance oversight of the contractors. However, the CORs did not ensure that the performance assessment representatives oversaw all contractual requirements, or possessed the knowledge and experience to oversee their respective annexes.

In addition, the U.S. Navy had no assurance that Naval Support Activity-Bahrain and Isa Air Base Operating Support Services contractors complied with CTIP requirements. Without ensuring compliance with CTIP requirements, Base Operating Support Services contractors could use trafficked persons in the provision of contracted services without U.S. Navy detection.

## ***Department of State***

Report No. DOS 2017, “The 2017 Trafficking in Persons Report,” November 2017

This report determined the trafficking profile for Kuwait by stating that in the past five years, Kuwait has been a destination country for men and women subjected to forced labor and, to a lesser degree, forced prostitution. The report determined that Kuwait is a Tier 2 Watch List country and since 2008 has received over 4,000 North Korean laborers for forced labor on construction projects, including employees who worked 14 to 16 hours a day while the company retained 80 to 90 percent of the workers’ wages.<sup>31</sup> These

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<sup>31</sup> The State Department places each country in its report into one of four tiers. This placement is based not on the size of the country’s problem but on the extent of the government’s efforts to meet minimum standards for the elimination of human trafficking. Tier 1 is the highest ranking.

companies also monitor and confine the workers, who live in impoverished conditions and are in very poor health due to lack of adequate nutrition and health care.

Report No. DOS 2016, "The 2016 Trafficking in Persons Report," June 2016

The 2016 report, like the 2017 report, also indicates that Kuwait is a destination country for men and women subjected to forced labor and, to a lesser degree, forced prostitution. Men and women migrate from South and Southeast Asia, Egypt, the Middle East, and increasingly throughout Africa to work in Kuwait, mainly in the domestic service, construction, hospitality, and sanitation sectors. This report determined that the government of Kuwait does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government investigated 6 cases and prosecuted 20 traffickers during the reporting period in comparison to none the previous year. For the first time, it convicted eight traffickers under the 2013 anti-trafficking law.

Report No. DOS 2015, "The 2015 Trafficking in Persons Report," July 2015

According to this report, efforts to combat human trafficking around the world have advanced steadily over the past 15 years, since the adoption of the Palermo Protocol and the passage of the TVPA in 2000. Scores of countries have expanded implementation of the "3P" strategy enshrined in these instruments, as governments investigate and prosecute trafficking cases, provide protection and services to victims, and put improved measures in place to prevent the crime from happening in the first place.

In the 2015 TIP Report, and like the previous two years, the Kuwait was still Tier 3 in this 2015 report. According to this report, Kuwait is a Tier 3 because the Government of Kuwait does not fully comply with the minimum standards for the elimination of trafficking and is not making sufficient efforts to do so.

Report No. DOS 2014, "The 2014 Trafficking in Persons Report," June 2014

According to this report, "trafficking in persons" and "human trafficking" have been used as umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion. The TVPA of 2000 (Pub. L. 106-386) and the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), describe

this compelled service using a number of different terms, including involuntary servitude, slavery or practices similar to slavery, debt bondage, and forced labor.

In reviewing the narrative portion, specifically the section pertaining to Kuwait, this report determined that as in 2013, Kuwait remains in Tier 3. The reason for Tier 3 designation is that the Government of Kuwait does not fully comply with the minimum standards for the elimination of trafficking and is not making sufficient efforts to do so. Specifically, the Kuwait government did not demonstrate efforts to prosecute or convict trafficking offenders using the 2013 anti-trafficking law or other laws that address trafficking crimes.

Report No. DOS 2013, "The 2013 Trafficking in Persons Report," July 2013

This 2013 Trafficking in Persons Report focuses on victim identification as a top priority in the global movement to combat trafficking in persons. The report determined, like the previous year, that Kuwait remains a Tier 3. The reason for the Tier 3 designation is that Kuwait is a destination country for men and women who are subjected to forced labor and, to a lesser degree, forced prostitution.

This report concluded that the Government of Kuwait does not fully comply with the minimum standards for the elimination of trafficking and is not making sufficient efforts to do so. Although the government enacted an anti-trafficking law in March 2013, the government did not demonstrate significant efforts to prosecute and convict trafficking offenders using previously existing laws. There was no lead national anti-trafficking coordinating body, and the government did not systematically monitor its anti-trafficking efforts. The government's victim protection measures remained weak, particularly due to the lack of proactive victim identification and referral procedures and continued reliance on the sponsorship system, which inherently punishes, rather than protects, trafficking victims for immigration violations

Report No. DOS 2012, "The 2012 Trafficking in Persons Report," June 2012

This 2012 Trafficking in Persons Report stated that "trafficking in persons" and "human trafficking" have been used as umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion. The TVPA and the Palermo Protocol describe this compelled service using a number of different terms, including involuntary servitude, slavery or practices similar to slavery, debt bondage, and forced labor. Human trafficking can include but does not require movement.

The Department places each country in the 2012 TIP Report into one of four tiers, as mandated by the TVPA. This placement is based more on the extent of government action to combat trafficking than on the size of the problem. Like the subsequent 3 years, Kuwait is designated as a Tier 3 in this 2012 report. The reason for Tier 3 designation is that the Government of Kuwait does not fully comply with the minimum standards for the elimination of trafficking and is not making sufficient efforts to do so. The parliament has still not enacted a draft comprehensive anti-trafficking law. While various government ministries are tasked with addressing trafficking-related issues, there is no lead official, ministry, nor national coordinating body that focused on anti-trafficking efforts.

### ***Department of Justice***

#### Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2015

This report detailed the activities and programs carried out by the U.S. Government to eradicate human trafficking in Fiscal Year 2015, including its work to protect victims, investigate and prosecute human trafficking crimes, and prevent further trafficking-related crimes. This report included information reported to the DoJ by other U.S. governmental agencies and departments involved in anti-trafficking efforts. For example, it included information that DoD had reissued guidance in March 2015 that detailed roles and responsibilities assigned to CORs to assist in countering human trafficking.

#### Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2014

This report, the 12th report submitted to Congress since 2004, describes the U.S. Government's comprehensive campaign to combat human trafficking during Fiscal Year 2014. This report included information from other U.S. governmental agencies and departments involved in anti-trafficking efforts. According to the report, USCENTCOM "added seven CTIP specific criteria to its Procurement Management Reviews, which act as checklists for measuring contracting organizations' compliance with training, contract content, and COR activity."

#### Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2013

This report documents the U.S. Government's comprehensive campaign to combat human trafficking during Fiscal Year 2013. According to the report, USCENTCOM's Joint Theater Support Contracting Command issued

Policy Memorandum #13-106 on Combating Trafficking in Persons, which established command-wide guidance regarding CTIP in support of operations in Afghanistan.

Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2012.

This report described the U.S. Government's comprehensive campaign to combat TIP during Fiscal Year 2012, including efforts to carry out the "3Ps" strategy to (1) protect victims by providing benefits and services; (2) investigate and prosecute human trafficking crimes; and (3) prevent further trafficking-related crimes. This report included information reported to the Department by other federal governmental agencies and departments involved in anti-trafficking efforts, including the DoD. According to the report, the Defense Contract Management Agency established a CTIP Program Manager and approved an agency-wide charter to develop a CTIP process to be codified into Defense Contract Management Agency policy.



## Appendix C

### A Brief History of a Defense Contractor in Kuwait

In this appendix, we briefly describe the history of a longtime defense contractor within USCENTCOM's AOR with a multi-year record of substantiated TIP violations in Kuwait (although the Procurement Fraud Division of the Office of the Judge Advocate General, Department of the Army, substantiated the "multi-year record of TIP violations," the contractor disagrees with the phrase).

#### **2006**

The U.S. Government convicted a management official for providing kickbacks and illegal gratuities and providing prostitution services in connection with dining facility (DFAC) operations in Iraq (the contractor stated that the employee was a former employee when he was convicted in 2006).

#### **2009**

ACC-RI awarded the contractor a \$22 million base contract to provide DFAC services on Camp Arifjan, Camp Buehring, Ali Al Salem Air Base, and Kuwait Naval Base in Kuwait. The DFAC base contract included 4 option years ending in November 2014.

A former management official for DFAC operations in Kuwait and Iraq was convicted of witness tampering for violating a previous plea agreement reached in 2006.

#### **2011**

In September, the contractor paid \$13 million to the U.S. Government to resolve the civil and criminal allegations related to kickbacks and illegal gratuities in connection with contracts involving DFAC operations in Iraq and at Camp Arifjan, Kuwait.

#### **2014**

The U.S. Court of Appeals, citing the company for overcharging by three times its negotiated rates, denied the contractor's \$39.9 million reimbursement claim it submitted while working as a subcontractor for DFAC services in Iraq.

The Defense Contract Management Agency issued three Non-Conformance Reports (January 26, June 17, and June 23) to the contractor and rejected the contractor's Corrective Action Plans for its failure to pay the required minimum wage according to Kuwaiti labor law and its failure to provide Individual Employment Agreements in English and Arabic.

When the DFAC contract expired at the end of 2014, ACC-RI awarded the contractor a 1-year contract modification (February 1, 2015 to January 31, 2016).

## **2015**

During the solicitation for a new DFAC contract, questions arose about an Anti-Deficiency Act violation, which caused ACC-RI to extend the contractor's contract to 2016.

## **2016**

In January, ACC-RI executed a one-year contract extension with the contractor using Justification and Approval Document 16-021 (J&A 16-021) stating, "The Army and Air Force would be unable to feed the camp population within the Kuwait AOR without resorting to serving Meals Ready to Eat (MREs) for every meal during that one-year timeframe."

In March, ACC-RI and ASG-KU personnel produced J&A 16-063, which stated that they would need 5 years of Meals Ready to Eat to feed camp populations in Kuwait and that "DoD's MRE stockpile would quickly exhaust in 200 days." The document also noted that only the contractor could meet the U.S. Government's requirement for continued critical DFAC support in Kuwait if the J&A for food services was not approved.

The Defense Criminal Investigative Service and Army Criminal Investigation Command opened a joint investigation of the TIP allegations against the contractor.

In August, ACC-RI issued the contractor a Cure Notice for violating the CTIP clause in 12 separate instances. For example, the contractor's management physically abused employees, required employees to surrender passports after arriving in Kuwait, and failed to pay the legal minimum wage.

In September, ACC-RI purchased the relocatable DFAC buildings for \$7 million. ACC-RI had been leasing the buildings for the previous 5 years and had paid the contractor to construct them during 2009 and 2010.

In a September decision brief, USARCENT proposed to augment the DFACs with U.S. Army Food Service Specialists, if necessary, because it feared that potentially debarring the contractor or terminating the contract would cause a break in food service for personnel in Kuwait.

From September to December, ACC-RI rejected three of the contractor's Corrective Action Plans in response to the August Cure Notice citing TIP and local labor law violations.

In response to ACC-RI's November 2016 solicitation, 23 companies expressed interest in competing to provide food services to DFACs in Kuwait. All were rejected.

In a November decision brief, USARCENT Forward informed the Commanding General of USARCENT about labor trafficking conditions occurring at the contractor-run DFACs on Camp Arifjan, Camp Buehring, Ali Al Salem Air Base, and Kuwait Naval Base. The decision brief recommended extending the DFAC contract by 1 year to reduce the risk of a gap in food service.

## **2017**

In January, ACC-RI granted a sole-source contract extension to the contractor. In J&A 17-037, ACC-RI and ASG-KU again declared, "The Army and Air Force would be unable to feed the camp populations within the Kuwait AOR without resorting to serving Meals Ready to Eat (MREs) for every meal, and it would cost the U.S. Government \$575,000 per day to serve MREs." According to the document's authors, "No other viable source of food services is available in Kuwait" and "U.S. Government personnel have been working tirelessly and have exhausted all efforts in an attempt to competitively award a follow-on contract for DFAC services in Kuwait for the last two years."

In March, based on TIP allegations substantiated by the Defense Criminal Investigative Service and Army Criminal Investigation Command, the Army's SDO issued a Notice of Proposed Debarment against the contractor for violating the Trafficking Victims Protection Act of 2000. A memorandum attached to the letter noted that the contractor "was aware it enacted an exorbitant recruiting fee that created a state of enslaved bondage for its employees." Later, it stated that the "living accommodations it provided did not have access to potable drinking water, were unsanitary, and infested with bed bugs."

In a July letter to the Army's SDO, ACC-RI's procurement contracting officer stated, "Given the U.S. Army's experience with the contractor over the life of the contract, specifically in the last year, I do not have the confidence that the contractor will maintain contract compliance once the Army ceases applying oversight to contract compliance."

Later in July 2017, the Army's SDO signed an Administrative Compliance Agreement with the contractor regarding the TIP violations. This agreement declared the contractor to be "presently responsible" and stated that the contractor "has agreed to take the actions specified herein to demonstrate its business honesty and integrity."

## 2018

In January, when the DFAC contract extension was scheduled to end, ACC-RI informed the Army SDO that the contractor refused to submit a proposal on time, refused to sign a short-term extension due to a looming U.S. Government shutdown, and then demanded a 1-year extension with 3 option years instead of 6 months as originally offered (the contractor disagrees with this statement).

In January, the contractor proposed in a letter to ACC-RI that if the U.S. Government did not insist on compliance with Kuwaiti minimum wage law, the U.S. Government would realize “huge cost savings as they have enjoyed in the past.”

In February, ACC-RI awarded the \$22 million DFAC contract to a new contractor.

In April, the new DFAC contractor, through its subcontractor, tried to hire the current DFAC employees. According to the 408th CSB’s CTIP Inspection Team, the new subcontractor sent three buses to the man camp run by the contractor located in the desert outside Camp Buehring to transport them to a job fair.<sup>32</sup> In response, the contractor’s managers shut the camp’s gates and reportedly would not allow employees to leave. (The contractor stated that the gates were already locked when the buses arrived, so it did not lock the gates.)

As of November 2017, conditions in one contractor’s man camp had improved compared to conditions at neighboring man camps.

Later in April, ACC-RI sent a Letter of Concern directing the contractor to abide by its contractual obligations to “allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract.” In a subsequent letter later that month, the contractor informed ACC-RI that it had not released any employees from their DFAC contract and would not do so until July 5, 2018.

In a May 4, 2018 Letter of Concern ACC-RI notified the contractor that the Cure Notice issued in August 2016 remains open due to the contractor not fully taking corrective actions as required.

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<sup>32</sup> Man camps are usually unofficial company-provided housing for workers that may or may not include eating facilities, potable water, air conditioning, and sewage.

# Management Comments

## Army and Air Force Exchange Service



JAN 02 2019

MEMORANDUM FOR DoD IG, Strategic Plans and Operations

SUBJECT: AAFES Response to Recommendations from Evaluation of DoD Efforts to Combat Trafficking in Persons in Facilities in Kuwait (Project No. D2017-D000SPO-0180.000)

1. We appreciate the significant time and effort the DoD IG SPO Team invested into providing an evaluation of DoD Efforts to Combat Trafficking in Persons at DoD Facilities in Kuwait. Although DoD IG did not identify any discrepancies in the AAFES program as currently executed, improvements to policy were recommended. Responses below address recommendations B3 and C3 respectively:
2. **Finding B:** *From page 18 of Draft Report:* DoD Personnel did not consistently issue and administer contracts for goods and services in Kuwait in compliance with combating trafficking in persons requirements.
  - A. **Recommendation B.3:** DoD IG recommends that the Army and Air Force Exchange Service Director/CEO update Exchange Policy 08-08, *Combating Trafficking in Persons*, to provide guidance on specific responsibilities for monitoring contractor compliance with the Combating Trafficking in Persons provision, including responsibilities of personnel, clearly defined and required monitoring methods and frequency, records maintenance and reporting frequency.
  - B. **Response:** Concur. When DoD IG review was first initiated, AAFES operated under Exchange Operating Procedure (EOP) 08-08, *Combating Trafficking in Persons*, dated November 2015. In June 2018, we proactively updated the EOP which addresses the recommendations identified. Consistent with AAFES policy, we are constantly reviewing and updating our EOPs to ensure the most current and relevant information is published. This process of continuous improvement leads to enhanced and timely policy formulation and guidance. We remain committed to reviewing our policies regarding combating trafficking in persons based on the recommendation, specifically reviewing clarification which delineates how personnel should monitor CTIP compliance, clarification when the Contracting Office Representative should report results of monitoring to the Contracting Officer, and assignment of more specific roles and responsibilities regarding accomplishment of sensing sessions and make improvements when applicable.
  - C. **Action Taken:** EOP 08-08 was revised and updated with the new version being certified effective June 2018. The EOP was reviewed again following the Draft results of the evaluation report being released and the DoD IG-led exit outbrief on 13 Dec 2018.
3. **Finding C:** *From page 32 of the Draft Report:* Some DoD contracting officials at Army, Air Force, and AAFES organizations relied on contractors to identify Kuwaiti labor laws to determine their applicability to DoD contracts. This occurred, in part, because the DoD did not have a designated resource or office where contracting officials could find definitive guidance on

## Army and Air Force Exchange Service (cont'd)

host-nation labor laws. As a result, DoD contracting organizations could not fully conduct contract oversight of the CTIP clause, which requires contractors to comply with Kuwaiti labor law, and the DoD and their contractors were at risk of violating Kuwait labor law.

- A. **Recommendation C.3:** DoD IG recommends that the Chief Executive Officer for the Army and Air Force Exchange Service establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.
- B. **Response:** Concur with Comments. AAFES is supportive of identifying personnel resources who are qualified to provide guidance on host nation (in this case, Kuwaiti) labor laws. However, the determination of compliance or non-compliance with a potentially very extensive range of requirements which fall under the heading of "host nation labor laws" must be made by individuals qualified to make that determination. DoD contracting officials are not qualified as they are not trained in the labor laws of foreign nations. Furthermore, DoD and JAG attorneys, whose education and training is based in the law of the United States, are also unqualified to make determinations of compliance with host nation labor law. Attorneys with training and experience in the law of the host nation, and labor law in particular, are the only resources qualified and, perhaps, legally permitted, to give legal guidance in this area. It is impractical and cost prohibitive to require that AAFES retain local legal counsel in every contingency area in which it provides support. Accordingly, it is recommended that a DoD level policy be implemented which identifies the means and requirements, perhaps in conjunction with the State Department, for securing resources with the requisite expertise to determine and advise on compliance with host nation labor laws.
- C. **Action to be Taken:** Given that this recommendation was the same for all associated agencies, it is clear more work on this matter is needed. AAFES will reach out to a DoD IG/SPO POC, a POC from Army Contracting Command and a POC from the Deputy Assistant Secretary for Air Force Contracting to further explore how to close this out in a manner that meets DoD IG's intention. This will be complete NLT 15 Mar 2019.

4. Thank you for your recommendations on how to further strengthen our program. As a company that does business in 30 different countries, it is critical we continue to be vigilant with CTIP related issues. We are confident our internal program to combat trafficking in persons continues to be strong and has been viewed as being that in the past. For example, we introduced a Basic Rights document which ensured clear guidance on rights of Other Country Nationals. AAFES will continue conducting and documenting CTIP monitoring on a consistent and regular basis. Findings, such as those you highlighted, will always be promptly addressed to ensure a robust, responsive and fully compliant program.

5. The AAFES POC remains [REDACTED] if any additional information is required.

  
THOMAS C. SHULL  
Director/CEO

## U.S. Air Force Deputy Assistant Secretary (Contracting)



DEPARTMENT OF THE AIR FORCE  
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

10 JAN 2019

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: HQ USAF/AQC  
1120 Air Force Pentagon Suite 4C149  
Washington, DC 20330

SUBJECT: Air Force Response to DoD Office of Inspector General Draft Report, DoD Efforts to Combat Trafficking in Persons in Kuwait (Project D2017-D00SPO-0182.000)

1. This is the Department of the Air Force response to the DoDIG Draft Report DoD Efforts to Combat Trafficking in Persons in Kuwait (Project D2017-D00SPO-0182.000). The Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition reviewed the report and reserved comment for recommendations made to the agency. The Air Force non-concurs with the report as written and welcomes the opportunity to assist in revising recommendation C.2. to reflect current directives.

**RECOMMENDATION C.2.** The DoDIG recommends that the Deputy Assistant Secretary for Air Force Contracting establish a process or identify a resource for DoD contracting officials to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts.

**AIR FORCE RESPONSE:** The Air Force non-concurs.

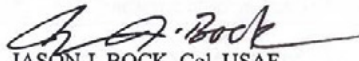
According to DODI 2200.01, *Combating Trafficking in Persons*, enclosure 2, paragraph 11, the combatant commander is responsible for developing an OCONUS program that establishes a clear set of guidelines and procedures for OCONUS units to address TIP in their operating environments. Furthermore, the combatant commander is responsible for developing and implementing combating trafficking in persons policy and program guidance unique to each command, supplementing DoD combating trafficking in persons training, including unique cultural and legal considerations for their respective areas of responsibility. Finally, the combatant commander is responsible for ensuring commanders and directors OCONUS engage local host-nation government agencies to facilitate mutual understanding of processes and procedures to enable collaboration in combating trafficking in persons efforts, as appropriate.

## U.S. Air Force Deputy Assistant Secretary (Contracting) (cont'd)

Joint Publication 4-10, *Operational Contract Support*, chapter II.5.a.(5) suggests that the geographic combatant commander work closely with the appropriate subordinate joint force commands, functional combatant command, theater special operations commands, Service components, and combat support agencies to determine operational contract support requirements. Geographic combatant commander responsibilities include ensuring combating trafficking in persons procedures are in place and followed.

Recommendation C.2. improperly assigns the Air Force Deputy Assistant Secretary for Contracting the responsibility establish a process or identify a resource to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts. Recommendation C.2. should be revised to: "We recommend that the Commander of U.S. Central Command establish a process or identify a resource for DoD contracting officials to obtain guidance on Kuwaiti labor law which apply to DoD contracts." This revision should also be reflected in the Recommendations Table on page iii of the draft report.

2. The Deputy Assistant Secretary for Air Force Contracting point of contact is [REDACTED]

  
JASON J. BOCK, Col, USAF  
Chief, Contracting Operations  
Deputy Assistant Secretary (Contracting)  
Assistant Secretary of the Air Force  
(Acquisition, Technology & Logistics)



## U.S. Central Command



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UNITED STATES CENTRAL COMMAND  
OFFICE OF THE CHIEF OF STAFF  
7115 SOUTH BOUNDARY BOULEVARD  
MACDILL AIR FORCE BASE, FLORIDA 33621-5101

14 January 2019

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DoDIG)

SUBJECT: Evaluation of DoD Efforts to Combat Trafficking in Persons at DoD Facilities in Kuwait Response (Project No. D2017-D000SPO-0180.000)

1. United States Central Command (USCENTCOM) non-concurs with both recommendations (A1 and D2) of subject document for the following reasons:

a. **Regarding recommendation A1:** “We recommend the Commander (CDR), USCENTCOM: a. enforce all aspects of Central Command Regulation (CCR) 570-4, *Combating Trafficking in Persons (CTIP)*, throughout the command's Area Of Responsibility (AOR); b. clearly assign the roles and responsibilities to its subordinate commands regarding combating trafficking in persons, including formally designating an appropriate command headquarters in Kuwait to be responsible for CTIP compliance; and c. collect and report data on all TIP incidents, TIP investigations, TIP prosecutions, and training programs in the USCENTCOM AOR to the DoD’s CTIP Program Management Office.”

(1) Any corrections to CCR 570-4 are on hold until Department of Defense Instruction (DoDI) 2200.01, “Combating Trafficking in Persons (CTIP), currently in the coordination process, is published. At that time, the CCR will be updated accordingly to reflect how the Combatant Command (CCMD) is to function. We will enforce all aspects that are within CCMD authority. Both DoDI 2200.01, which identifies TIP intelligence as a combatant commander responsibility, and CCR 570-4, which identifies TIP intelligence as a USCENTCOM J2 responsibility, appear to be in conflict with Intelligence Oversight requirements set forth in Executive Order 12333 (2008), DoD Regulation 5240.1-R, and DoD Manual 5240.01, which forbid collection on US persons (citizen, resident alien, corporate entity). DoD 5240.1-R Procedure 12 allows only “incidentally acquired” information (reasonably believed to indicate a violation of Federal, State, local, or foreign law) to be shared with law enforcement authorities. Both DoDI 2200.01 and in turn CCR 570-4 appear to mandate the intentional collection, processing, and dissemination of TIP-related intelligence regarding activities on U.S. installations in the CENTCOM AOR.

(2) Currently, CCR 570-4 requires our components to “Develop CTIP policy and programs, to include awareness training unique to the cultural and legal considerations for each area of operations; and engage local host-government agencies to facilitate mutual understanding of processes and procedures to enable collaboration in CTIP efforts, as appropriate.” Our service components do not always have a headquarters in country to allow for formally designated responsibility for CTIP compliance throughout the AOR. Additionally, having a service component responsible for an entire country is not practical, as it would cause one service component to oversee another service component and potentially result in service specific guidance to be missed.

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## U.S. Central Command (cont'd)

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(3) We recommend replacing the last paragraph on page 12 with the following: "USCENTCOM Inspector General (CCIG) recorded and reported all allegations of TIP incidents it received in accordance with the procedures outlined by DoD Hotline reporting guidelines. Still, the Command was unable to fully meet the intent of DoDI 2200.01 and CCR 570-4. Although, DoDI 2200.01 directs all TIP reporting to be submitted to DoD Hotline, TIP incidents are criminal by nature, and are not CCMD IG appropriate. DoD Hotline refers TIP allegations to Defense Criminal Investigative Service (DCIS) for evaluation and potential referral to the Military Criminal Investigative Office or another appropriate federal agency. CCIG is not notified by DoD Hotline nor DCIS of TIP allegations, referrals, or prosecutions. The CCIG recorded all TIP cases in the CENTCOM AOR either reported to or discovered by the CCIG in Automated Case Tracking System (ACTS) referred same to DoD Hotline, and reported as part of the annual CTIP report to the CTIP Program Office, per requirements. USCENTCOM recently non-concurred with DoDI 2200.01, which is currently under revision."

b. **Regarding recommendation D2** – "We recommend that the CDR, USCENTCOM create designated CTIP inspection teams and personnel billets to provide oversight of DoD contracts in countries for which it has command responsibility and that have potential trafficking in persons problems."

(1) Headquarters (HQ) USCENTCOM does not have contracting authority. It is the responsibility of the contracting agency executing the contract to ensure DoD policy guidance and applicable clauses are incorporated into the HQ USCENTCOM contracts.

(2) CCR 570-4 will be reworded during the next review to accurately reflect USCENTCOM's Directorate of Logistics and Engineering's (CCJ4) role in the contracting process as this has changed in recent years and the regulation has not caught up to this change. The section referenced on page 11 is outdated and CCJ4 no longer performs this function. CCJ4 does set contract policy and procedures for the supporting contracting activities to follow. The supporting contracting activity is responsible for ensuring current DoD policy, guidance, and applicable CTIP clauses are incorporated into HQ USCENTCOM contracts.

2 The point of contact for this matter is [REDACTED], who can be reached by phone [REDACTED]

  
MICHAEL E. KURILLA  
Major General, U.S. Army

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## U.S. Air Forces Central Command



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DEPARTMENT OF THE AIR FORCE  
UNITED STATES AIR FORCES CENTRAL COMMAND (USAFCENT)  
SHAW AIR FORCE BASE SOUTH CAROLINA 29152-5029

17 January 2019

MEMORANDUM FOR USCENCOM

FROM: USAFCENT/Chief of Staff  
524 Shaw Drive  
Shaw AFB SC 29152-5029

SUBJECT: AFCENT Comments on Draft DoD IG Report *DoD Efforts to Combat Trafficking in Persons (CTIP) in Kuwait*

References: (a) Inspector General U.S. Department of Defense Project No. D2017-D00SPO-0182.00

(b) Exit Conference for DoD Efforts to Combat Trafficking in Persons in Kuwait, conducted 13 Dec 18 at 0930EST

1. This memorandum serves as an USAFCENT official partial concurrence to the draft DoD IG report No. D2017-D00SPO-0182.00, *DoD Efforts to Combat Trafficking in Persons in Kuwait*. The following is USAFCENT's response to the specific USAFCENT recommendations provided in this report, namely Recommendation A.2. and Recommendation B.1. Recommendation C.2., a Deputy Assistant Secretary for Air Force Contracting recommendation, will be answered by SAF/AQC.

**Recommendation A.2. "We recommend that the Commander of U.S. Air Forces Central Command develop and implement a combating trafficking in persons program as required by the Central Command Regulations 570-4."**

USAFCENT Response: Concur with Comment. USAFCENT will develop and implement combating trafficking in person's guidance as required by Central Command Regulation 570-4 in coordination with USCENCOM and under the advisement of USCENCOM policy changes in response to recommendation A.1. and D.2. of the draft audit report.

**Recommendation B.1. "We recommend that the U.S. Air Forces Central Command Chief of Contracting ... ensure contracting officers:**

- a. **Include Federal Acquisition Regulation clause 52.222-50 in all contracts, and update the clause, as needed, to reflect the current version of the clause;**
- b. **Ensure quality assurance surveillance plans are prepared for all contracts that require them and include appropriate methods for monitoring the contractor's performance regarding trafficking in persons;**

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## U.S. Air Forces Central Command (cont'd)

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- c. **Document in the contract file how monitoring for compliance with the CTIP clause will be accomplished and by whom if a contract does not require a quality assurance surveillance plan;**
- d. **Verify that contracting officer's representatives accomplish and document proper monitoring of contractor compliance with DoD combating trafficking in persons regulations; and**
- e. **Enter contractor past performance information, including combatting trafficking in persons violations, promptly into the Contractor Performance Assessment Reporting System (CPARS)."**

USAFCENT Response: Concur with comment.

- a. Finding B.1.a. Concur with Comment; USAFCENT/A7K will inform all USAFCENT Expeditionary Contracting Squadrons (ECONS) Commanders and Superintendents of the requirement to include Federal Acquisition Regulation (FAR) 52.222-50 in all contracts. This requirement will be reinforced in writing during the monthly USAFCENT Teleconference for at least three (3) months. Furthermore, the Deputy Assistant Secretary of the Air Force Contracting is considering an update to the mandatory contracting self-assessment checklist and the publication of additional learning resources to increase awareness across the enterprise.
- b. Finding B.1.b. Concur with Comment; USAFCENT/A7K will brief all USAFCENT ECONS Commanders and Superintendents to ensure proper contract documentation, proper reviews are conducted prior to award, and contract administration IAW the FAR and applicable guidance. USAFCENT/A7K is revamping our Quality Assurance program as a whole and is schedule to conduct initial training with our ECONS February 2019. This training includes quality assurance and CTIP procedure as well as tracking tools and templates. Furthermore, requirement owner leadership shall ensure their SMEs comply, enforce, and report all aspects of CTIP accordingly through nomination of Contracting Officer Representatives (CORs).
- c. Finding B.1.c. Concur with Comment; USAFCENT/A7K will inform all USAFCENT ECONS Commanders and Superintendents of FAR Part 1 COR responsibilities and FAR Part 46 quality assurance requirements. This requirement will be reinforced during the annual ECONS commanders' orientation and quarterly training with Contingency Contracting Officers managing unit's quality assurance program.
- d. Finding B.1.d. Concur with Comment; This will be done in accordance with the QASP and/or contractors compliance plan. AFCENT/A7K will review contracts files for compliance during annual Staff Education Visit (SEV) as well as during quarterly training with Contingency Contracting Officers.
- e. Finding B.1.e. Concur with Comment; Per CPARS guidance dated Jul 18, p51 para A3.32, Regulatory Compliance, USAFCENT/A7K will direct all ECONS to ensure each contract in CPARS has a CTIP review/evaluation/documentation notes section.

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## U.S. Air Forces Central Command (cont'd)

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2. If you have any questions concerning this memorandum or need additional information, please contact [REDACTED], or via email [REDACTED]

LACZKO.GYOR  
GY [REDACTED]

Digitally signed by  
LACZKO.GYORGY [REDACTED]  
Date: 2019.01.22 20:50:33 Z

GYORGY LACZKO, Col, USAF  
Chief of Staff, HQ USAFCENT

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## U.S. Army Contracting Command–Rock Island



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

31 JAN 2019

ASCC-IG

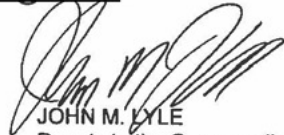
MEMORANDUM THRU Headquarters, U.S. Army Materiel Command, Executive Deputy to the Commanding General, 4400 Martin Road, Redstone Arsenal, AL 35898-5000

FOR Department of Defense, Inspector General, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Inspector General, Department of Defense (DoD) Draft Report

1. Reference DoD Inspector General Draft Report, Project No. D2017-D00SPO-0182.000, dated 11 December 2018, subject: DoD Efforts to Combat Trafficking in Persons in Kuwait.
2. The subject draft report identified the objectives, findings and recommendations associated with the evaluation and requested U.S. Army Contracting Command (ACC) to provide comments. After review of the report, enclosed are the responses from ACC-Rock Island (Finding B.1, B.2, and C.1) and 408<sup>th</sup> Contracting Support Brigade (Finding D.1).
3. The ACC point of contact for this memorandum is [REDACTED]

- 2 Encls
1. DoDIG Report
  2. ACC Response

  
JOHN M. KYLE  
Deputy to the Commanding General

## U.S. Army Contracting Command–Rock Island (cont'd)

### US Army Contracting Command – Rock Island (ACC-RI) Response (18-JAN-2019)

AUDIT –DoD Efforts to Combat Trafficking in Persons in Kuwait (Project No. D2017-D00WPO-0182.000 Comments

Author of the Response [REDACTED]

**Recommendation B1 (a-e):** We recommend that the U.S. Air Forces Central Command Chief of Contracting and the Army Contracting Command - Rock Island Executive Director ensure contracting officers:

- a. include Federal Acquisition Regulation clause 52.222-50 in all contracts, and update the clause, as needed, to reflect the current version of the clause;
- b. ensure quality assurance surveillance plans are prepared for all contracts that require them and include appropriate methods for monitoring the contractor's performance regarding trafficking in persons;
- c. document in the contract file how monitoring for compliance with the CTIP clause will be accomplished and by whom if a contract does not require a quality assurance surveillance plan;
- d. verify that contracting officer's representatives accomplish and document proper monitoring of contractor compliance with DoD combating trafficking in persons regulations; and
- e. enter contractor past performance information, including combating trafficking in persons violations, promptly into the Contractor Performance Assessment Reporting System.

ACC-RI Response to Recommendation B.1 (a-e): Concur.

Actions to Be Taken:

B1.a. Army Contracting Command – Rock Island will review its contracts with performance in Kuwait to ensure FAR clause 52.222.50 is included. If it is not, the contract will be modified to incorporate the current version of the clause.

B1.b. Army Contracting Command – Rock Island will review the Quality Assurance Surveillance Plans for existing contracts that include a Quality Assurance Surveillance Plan, with performance in Kuwait, to verify the appropriate methods for monitoring contractor's performance regarding trafficking in persons is included. If it is not, a recommendation will be made to the Requiring Activity, owner of the Quality Assurance Surveillance Plan Performance Requirements Summary, to include this and incorporate the change via a modification to the contract. Please note, not all contracts may have a Quality Assurance Surveillance Plan. In those cases, the same performance monitoring narrative will be included bilaterally into the contract.

B1.c. Army Contracting Command – Rock Island will identify and document in the contract file how monitoring for compliance with the CTIP clause is accomplished for those contracts that do not contain a Quality Assurance Surveillance Plan. ACC-RI will ensure that all required

Audit SOF Template, Rev 1, 9-20-18

## U.S. Army Contracting Command–Rock Island (cont'd)

performance standards are bilaterally incorporated into the contract allowing for thorough performance monitoring.

B1.d. Please see response to B2. Below.

B1.e. Army Contracting Command – Rock Island will issue a memorandum to all RI contracting officers requiring that all contracting officers include CTIP violations in CPARS when appropriate. The memorandum will also direct that all ACO delegation letters include this guidance.

Audit SOF Template, Rev 1, 9-20-18



## U.S. Army Contracting Command–Rock Island (cont'd)

### US Army Contracting Command – Rock Island (ACC-RI) Response (18-JAN-2019)

AUDIT –DoD Efforts to Combat Trafficking in Persons in Kuwait (Project No. D2017-D00WPO-0182.000 Draft Comments

Author of the Response [REDACTED]

**Recommendation B.2: We recommend that the Army Contracting Command - Rock Island Executive Director require contracting officers to update surveillance and reporting documents for contracting officer's representatives to record that monitoring of the contractor's performance regarding trafficking in persons is accomplished.**

ACC-RI Response to Recommendation B.2: Concur.

Action to Be Taken: Army Contracting Command – Rock Island will issue a memorandum to all ACC-RI contracting officers and delegated ACOs requiring that Contracting Officer Representative appointment letters include a requirement to monitor and document the Contractors' performance regarding trafficking in persons.

Audit SOF Template, Rev 1, 9-20-18

## U.S. Army Contracting Command–Rock Island (cont'd)

### US Army Contracting Command – Rock Island (ACC-RI) Response (18-JAN-2019)

AUDIT –DoD Efforts to Combat Trafficking in Persons in Kuwait (Project No. D2017-D00WPO-0182.000 Draft Comments

Author of the Response [REDACTED]

**Recommendation C.1: We recommend that the EXECUTIVE DIRECTOR of Army Contracting Command-Rock Island establish a process or identify a resource for contracting officials THAT OVERSEE ARMY CONTRACTS IN KUWAIT to obtain definitive guidance on Kuwaiti labor laws that apply to DoD contracts."**

ACC-RI Response to Recommendation C.1: Concur subject to comments below. The determination of compliance or non-compliance with a potentially extensive range of requirements which fall under the heading of "host nation labor laws" must be made by individuals qualified to make that determination, usually attorneys licensed in the host nation or officials of the host nation designated to make such determinations. Accordingly, Army Contracting Command – Rock Island contracts require Contractors to obtain necessary expert advice to ensure they perform their contract in compliance with Kuwaiti labor law. Army Contracting Command – Rock Island is in agreement with AAFES that contracting officers would benefit from a U.S. Government source of expertise on Kuwaiti labor laws. Should the recommendation at A.1b for Central Command to formally designate an appropriate command headquarters in Kuwait to be responsible for CTIP compliance be implemented, ACC-RI would recognize said entity as the sole resource for Kuwait labor law guidance. We concur with recommendation A.1b and further recommend that said headquarters be resourced to hire an attorney fluent in Arabic and familiar with the Kuwaiti legal system to provide advice on Kuwaiti labor laws that apply to DoD contracts across all U.S. Contracting entities operating in Kuwait.

Audit SOF Template, Rev 1, 9-20-18

## U.S. Army Contracting Command–Rock Island (cont'd)

### US Army Contracting Command – 408<sup>th</sup> Contracting Support Brigade (408<sup>th</sup> CSB) Response (18-JAN-2019)

AUDIT – DoD Efforts to Combat Trafficking in Persons in Kuwait (Project No. D2017-D00WPO)  
#182,000 Comments

Author of the Response [REDACTED]

**Recommendation D.1: We recommend that the Commander of the 408th Contract Support Brigade request a designated mission and permanent billets to support its Combating Trafficking in Persons Inspections Team.**

Commander, 408<sup>th</sup> CSB Response to Recommendation D.1: Concur subject to below comments.

It will add CTIP duties to certain Position Descriptions and implement measures to ensure its CTIP program is enduring and properly staffed and resourced. As such, at the present time, it is unnecessary to add additional billets to the brigade organizational structure.

The 408<sup>th</sup> CSB's contracting mission currently includes execution of its CTIP oversight functions by warranted contracting officers who have been supported by a task organized, two-person CTIP inspection team since 2015. The CTIP inspection team is resourced by and located within the Regional Contracting Center-Kuwait (RCC-KU); a subordinate organization of the 408<sup>th</sup> CSB. The brigade leadership considers the current organization sufficient to meet mission requirements, including its responsibility for CTIP oversight.

Actions taken: RCC-KU has a CTIP Standard Operating Procedure (SOP) to ensure the brigade, through its contracting officers, has the resources needed to perform its CTIP oversight role. The SOP ensures sufficient permanence of the CTIP team by specifying the composition and duties of the CTIP team members and that the CTIP team be appointed in writing by the RCC-KU Commander. The SOP mandates that the RCC-KU CTIP overview is a part of the new RCC-KU commander in-brief, that the CTIP Team provide a monthly brief to the RCC-KU Commander on CTIP inspections, actions, and issues, and that CTIP issues are discussed at the 408<sup>th</sup> CSB procurement updates which includes the Brigade Commander and Staff and all RCC Commanders. The SOP is updated annually.

The RCC-KU Commander moved the CTIP Team from the RCC-KU Staff to the RCC-KU Quality Assurance Section to create a more robust effort to monitor contractor CTIP performance. Quality Assurance Specialists (QAS) conduct frequent oversight on Contractor services and products and have the most interface with Contracting Officer's Representatives, who play a key role in identifying CTIP issues. This structure change will result in the QAS Section and the CTIP team developing a greater understanding of each other's surveillance processes, improve CTIP compliance and oversight, enhance the importance and accomplishment of the CTIP roles, mission and functions, and ensure that the CTIP mission endure beyond the recurring changes of the organizational staff and its leaders. The 408<sup>th</sup> CSB will incorporate CTIP duties in certain civilian Position Descriptions within the QAS Section. It will also implement robust CTIP training into its QA and COR training programs.

## U.S. Army Contracting Command–Rock Island (cont'd)

As the theater of operations and/or contracts expand, the 408<sup>th</sup> CSB will adjust staffing accordingly – to include re-visiting whether permanent CTIP slots should/can be added to the unit's MTOE/TDA. Finally, the Brigade will adopt many of ACC-RI's recommendations to further ensure CTIP best practices.

## Acronyms and Abbreviations

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<b>AAFES</b>	Army and Air Force Exchange Service
<b>ACC-RI</b>	U.S. Army Contracting Command–Rock Island
<b>AOR</b>	Area of Responsibility (lowercase in text)
<b>ASG-KU</b>	Area Support Group–Kuwait
<b>CEO</b>	Chief Executive Officer
<b>COR</b>	Contracting Officer’s Representative
<b>CPARS</b>	Contractor Performance Assessment Reporting System
<b>CSB</b>	Contracting Support Brigade
<b>CTIP</b>	Combating Trafficking in Persons (lowercase in text)
<b>DCMA</b>	Defense Contract Management Agency
<b>DFAC</b>	Dining Facility (lowercase in text)
<b>DFARS</b>	Defense Federal Acquisition Regulation Supplement
<b>FAR</b>	Federal Acquisition Regulation
<b>J&amp;A</b>	Justification and Approval
<b>PPIRS</b>	Past Performance Information Retrieval System
<b>PMO</b>	Program Management Office
<b>SDO</b>	Suspension and Debarment Official
<b>TIP</b>	Trafficking in Persons (lowercase in text)
<b>TVPA</b>	Trafficking Victims Protection Act
<b>USAFCENT</b>	U.S. Air Forces Central Command
<b>USARCENT</b>	U.S. Army Central Command
<b>USCENTCOM</b>	U.S. Central Command
<b>QASP</b>	Quality Assurance Surveillance Plan



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