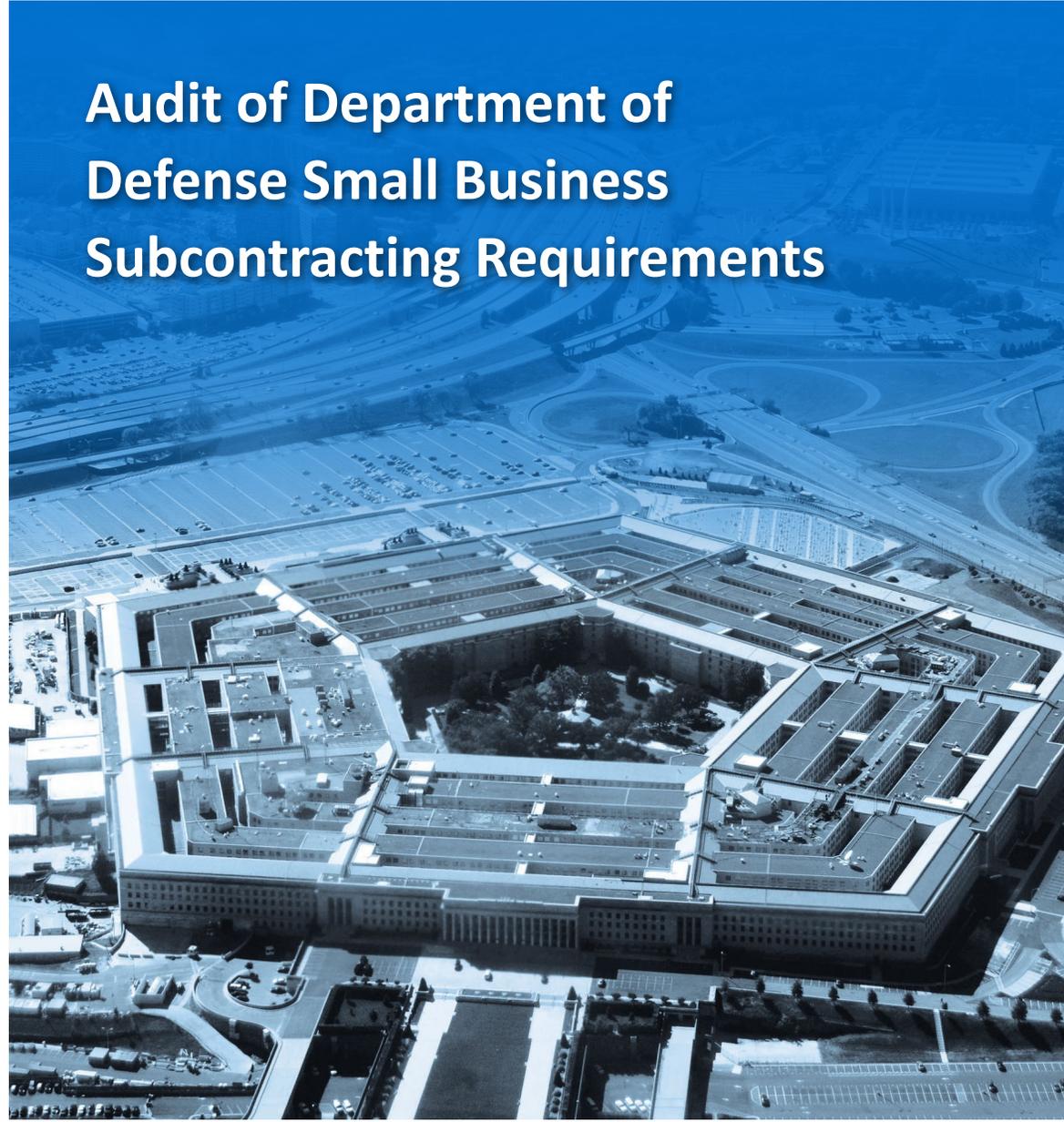




INSPECTOR GENERAL

U.S. Department of Defense

MARCH 7, 2022



Audit of Department of Defense Small Business Subcontracting Requirements

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





Results in Brief

Audit of Department of Defense Small Business Subcontracting Requirements

March 7, 2022

Objective

The objective of this audit was to determine whether DoD contracting officials conducted oversight to ensure that contractors awarded small business set-aside and sole-source contracts complied with small business subcontracting limitations in accordance with applicable laws and regulations.

Background

The Federal Acquisition Regulation (FAR) states that contracting officers may set aside solicitations to allow only small businesses to compete.

According to the Code of Federal Regulations (CFR), small business prime contractors are subject to limitations on subcontracting. The limitations require that small business prime contractors must not pay more than between 50 and 85 percent of the amount paid by the Government to subcontractors that do not have the same small business program status, based on whether the contract is for services (except construction), supplies, general construction, or special trade. Costs of materials are excluded and not considered subcontracted amounts for supply, general construction, and special trade contracts. Any small business prime contractors that violate the subcontracting limitations are subject to a fine of \$500,000, or the dollar amount spent by the prime on subcontractors in excess of permitted levels, whichever is greater.

Finding

DoD contracting personnel awarded small business set-aside and sole-source contracts to contractors that complied with established contracting limitations for 21 of the 31 contracts that were subject to subcontracting limitations. However, DoD contracting personnel actions for ensuring compliance with established subcontracting limitations and subcontract award reporting requirements for small business set-aside and sole-source contracts were not effective. Specifically, of the 49 small business contracts we reviewed, we identified that DoD contracting personnel did not:

- Ensure compliance with subcontracting limitations by tracking and monitoring the amounts prime contractors paid to subcontractors for 27 contracts, valued at \$514.1 million. In addition, DoD contracting personnel could not provide documentation to support compliance with subcontracting limitations for 10 of those contracts, valued at \$26.5 million. This occurred because specific procedures or guidance for tracking and monitoring small business prime contractor compliance with subcontracting limitations did not exist to supplement the FAR requirements. Furthermore, DoD contracting personnel stated that they did not believe they were responsible for overseeing and monitoring subcontracts awarded by small business prime contractors.
- Confirm whether prime contractors for 34 contracts, valued at \$497.9 million, reported first-tier subcontract award information in the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS), and did not review first-tier subcontract reports for 35 contracts, valued at \$522.0 million, on a quarterly basis. Additionally, for the 34 contracts in which prime contractors did not comply with first-tier subcontract award reporting requirements, DoD contracting personnel did not include contractors'



Results in Brief

Audit of Department of Defense Small Business Subcontracting Requirements

Finding (cont'd)

non-compliance in the contractors' performance information. DoD contracting personnel stated that they did not confirm whether prime contractors reported first-tier subcontract awards because they were not aware of the FAR requirements for contractors, including small businesses, to report first-tier subcontracts. DoD contracting personnel also stated that they did not review subcontractor reports quarterly, or report contractor non-compliance with the reporting requirements because they were not aware of their own requirements related to first-tier subcontract reporting.

As a result, the funds the DoD awarded through contracts set aside for small businesses may not have provided the intended benefit to the programs established to support socially and economically disadvantaged individuals when adequate documentation did not exist to support contractors' compliance with subcontracting limitations. We consider the 10 contracts for which documentation was not available to support compliance with subcontracting limitations, valued at \$26.5 million, as unsupported questioned costs. Those contractors may also be subject to at least \$5 million in penalties if they exceeded the applicable subcontracting limitations. Furthermore, when small business prime contractors did not report first-tier subcontract award information in FSRS, contractors and DoD contracting personnel did not uphold the intent of the FFATA to empower the public to hold the Government accountable for spending decisions. Without adequate controls in place, DoD contracting activities will continue to be unable to ensure that small business contractors

are complying with the subcontracting limitations or subcontract award reporting requirements, which hinders accountability and transparency over DoD spending.

Recommendations

We recommended that the Director of the DoD Office of Small Business Programs issue supplemental guidance to increase contracting personnel understanding of the FAR requirements related to determining small business prime contractor compliance with subcontracting limitations and compliance with first-tier subcontract award reporting requirements. In addition, we recommended that the Director issue supplemental guidance to implement procedures for DoD contracting personnel to pursue the collection of penalties from contractors that do not comply with subcontracting limitations. Finally, we recommended that the Director require training for all DoD contracting personnel who monitor contract performance and are responsible for ensuring compliance with subcontracting requirements, in order to increase understanding of small business subcontracting requirements.

We also recommended that DoD contracting leadership from multiple offices perform reviews of the contracts for which adequate documentation related to subcontracting amounts was not maintained and determine whether the small business prime contractors complied with subcontracting limitations, pursue collection of penalties for any contractors that exceeded established limitations, and report any instances of non-compliance in contractor performance information.



Results in Brief

Audit of Department of Defense Small Business Subcontracting Requirements

Management Comments and Our Response

The Office of Small Business Programs Director did not respond to four recommendations in the report; therefore, the recommendations are unresolved. We request that the Director provide comments on the final report.

DoD contracting leadership agreed with our recommendations and stated that they had either completed the contract reviews and determined that the prime contractors did not exceed established subcontracting limitations, or would perform

the reviews and initiate appropriate action if the prime contractors exceeded the limitations. Based on the completed reviews, we closed two recommendations and we no longer consider \$10 million related to three contracts as unsupported questioned costs. Comments also addressed the other six recommendations; therefore, we consider those recommendations resolved but will remain open. We will close the recommendations once we verify that the information provided and actions taken by management fully address the recommendations.

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

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Director, DoD Office of Small Business Programs	A.1.a.1, A.1.a.2, A.1.a.3, A.1.b	None	None
Director, Washington Headquarters Services Acquisition Directorate	None	None	A.2
Director, Defense Information Systems Agency	None	A.3	None
Commanding Officer, Naval Facilities Engineering Systems Command-Mid-Atlantic	None	A.4	None
Commanding Officer, Naval Facilities Engineering Systems Command-Southwest	None	A.5	None
Director, Regional Contracting Office Marine Corps Installation-West	None	A.6	None
Commander, Mission and Installation Contracting Command	None	A.7	None
Commander, U.S. Army Engineering and Support Center	None	None	A.8
Commander, U.S. Army Corps of Engineers Sacramento District	None	A.9	None

Please provide Management Comments by April 6, 2022.

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

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



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

March 7, 2022

MEMORANDUM FOR DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
DIRECTOR, DOD OFFICE OF SMALL BUSINESS PROGRAMS
DIRECTOR, WASHINGTON HEADQUARTERS SERVICE
AUDITOR GENERAL, DEPARTMENT OF THE NAVY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit of Department of Defense Small Business Subcontracting Requirements
(Report No. DODIG-2022-069)

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

This report contains recommendations that are considered unresolved because the Director of the DoD Office of Small Business Programs did not provide a response to the report. Therefore, as discussed in the Recommendations, Management Comments, and Our Response section of this report, the recommendations will remain open. We will track these recommendations until an agreement is reached on the actions that you will take to address the recommendations, and you have submitted adequate documentation showing that all agreed-upon actions are completed. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in progress or alternative corrective actions proposed on the recommendations. Send your response to aud-colu@dodig.mil.

DoD contracting leadership agreed to address all the recommendations presented in the report; therefore, we consider the recommendations resolved and open. As described in the Recommendations, Management Comments, and Our Response section of this report, we will close the recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendation are completed. Therefore, please provide us within 90 days your response concerning specific actions in process or completed on the recommendations. Send your response to followup@dodig.mil.

Comments and associated actions from the Director of the Washington Headquarters Services, Acquisition Directorate and the Director of the Department of the Army Office of Small Business Programs, responding for the Commander of the U.S. Army Engineering and Support Center, addressed the recommendations in this report, and we consider the recommendations closed.

If you have any questions, please contact me at [REDACTED]. We appreciate the cooperation and assistance received during the audit.

A handwritten signature in black ink, appearing to read 'TJWA', with a long horizontal stroke extending to the right.

Timothy Wimette
Deputy Assistant Inspector General for Audit
Acquisition, Contracting, and Sustainment

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Introduction

Objective

The objective of this audit was to determine whether DoD contracting officials conducted oversight to ensure that contractors awarded small business set-aside and sole-source contracts complied with established small business subcontracting limitations in accordance with applicable laws and regulations. See Appendix A for our scope and methodology and the list of prior audit reports.

Background

Small Business Act

The Small Business Act requires the Government to provide the maximum practicable opportunity to participate in the performance of Federal contracts.¹ The Act authorizes the Small Business Administration (SBA), an independent agency of the Government, to aid, counsel, assist, and protect the interests of small businesses.

According to the SBA, a small business is an entity organized for profit that is located in the United States and operates primarily within the United States or makes a significant contribution to the U.S. economy. A small business is independently owned and operated and is not dominant (a lead) within its field on a national basis. In addition, a small business must not exceed the size standards established by the SBA.² The United States has almost 30 million small businesses which employ over half the nation's workforce.

The Small Business Act also established the Office of Small and Disadvantaged Business Utilization, which was redesignated as the Office of Small Business Programs (OSBP) for the DoD. The primary responsibility of the DoD OSBP is to advise the Secretary of Defense on all matters related to small business. The DoD OSBP is required to develop small business policy and provide oversight to ensure compliance by all Military Departments and Defense agencies.

Small Business Administration

The SBA assists small businesses through various programmatic functions, including Government contracting. The SBA has several contracting programs that allow small businesses to compete only with similar businesses for Government

¹ Public Law 85-536, "Small Business Act," as amended, December 23, 2016.

² Title 13 Code of Federal Regulations (CFR) section 121.201 (2020) defines the SBA size standards.

contracts or receive sole-source awards. These programs provide small businesses an opportunity to win Government contracts without having to compete against larger or more experienced businesses.

The SBA requires every agency to establish, and report at the end of each fiscal year, small business prime contracting and subcontracting goals. For FY 2021, the DoD's small business prime contracting and subcontracting goals were 21.95 and 32.25 percent of the total value of all prime contract and subcontract awards, respectively. According to the SBA, the DoD has achieved the goals for 7 consecutive years and, in FY 2020, awarded over \$80 billion in prime small-business contracts.

Office of Small Business Programs

The OSBP, under the authority of the Office of the Under Secretary of Defense for Acquisition and Sustainment, represents the DoD in working with the SBA, the Department of Commerce, and other Federal agencies regarding small business interests. The OSBP's primary responsibility is to ensure that small businesses, Small Disadvantaged Businesses, Woman-Owned Small Businesses (WOSBs), Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and Historically Under-Utilized Business Zone (HUBZone) businesses are treated fairly and have an opportunity to compete and be selected for DoD contracts.

The OSBP is the focal point for all policy, practice, and procedures relating to small business programs within the DoD. The OSBP develops policy guidance for DoD Components, small business contractors, and subcontractors on all small business issues and programs. The OSBP's responsibilities also include:

- conducting reviews, including compliance reviews of the DoD Components;
- evaluating programs to ensure adherence to approved policies and standards; and
- participating in developing and maintaining the Federal Acquisition Regulation (FAR) by coordinating on all revisions related to small business.

Defense Pricing and Contracting

Defense Pricing and Contracting (DPC), under the authority of the Office of the Under Secretary of Defense for Acquisition and Sustainment, is responsible for all pricing, contracting, and procurement policy matters in the DoD. The DPC executes policy through the timely update of the Defense Federal Acquisition Regulation Supplement and Procedures, Guidance, and Information.

Small Business Contracting Programs

The FAR states that contracting officers may set aside solicitations to allow only small businesses to compete, including 8(a), HUBZone, SDVOSB, Economically Disadvantaged Woman-Owned Small Businesses (EDWOSB), and WOSB contractors.³ The FAR requires no separate justification or determination and findings to set aside a contract action for small businesses.

The 8(a) Program

The 8(a) program assists eligible, small disadvantaged-businesses to compete in the U.S. economy through business development.⁴ To qualify as an 8(a) contractor, a business must be a small business that is unconditionally owned and controlled by one or more U.S. citizens who are socially and economically disadvantaged.⁵ The business must also demonstrate good character and the potential for success. The DoD has a goal to award 5 percent of its total contracting dollars to small disadvantaged-businesses, including 8(a) contractors, each fiscal year. According to the SBA, in FY 2020, the DoD awarded \$30.4 billion to small disadvantaged-businesses, including 8(a) program-qualifying businesses, achieving the goal by awarding 9.26 percent of total prime contracting dollars to small disadvantaged-businesses.

Service-Disabled Veteran-Owned Small Business Program

According to the OSBP, the DoD's official position is that the sacrifices made by veterans need to be recognized, and it is committed to make the maximum prime and subcontracting opportunities available to small businesses owned by service-disabled veterans. The SDVOSB program provides assistance to SDVOSBs. To qualify as an SDVOSB, a business must be a small business that is at least 51-percent unconditionally and directly owned by one or more service-disabled

³ Federal Acquisition Regulation (FAR) Part 6, "Competition Requirements," Subpart 6.2, "Full and Open Competition After Exclusion of Sources," Section 6.204, "Section 8(a) competition"; Section 6.205, "Set-asides for HUBZone small business concerns"; Section 6.206, "Set-asides for service-disabled veteran-owned small business concerns"; and Section 6.207, "Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program."

⁴ Title 13 Code of Federal Regulations (CFR) section 124.1 (2020).

⁵ 13 CFR sec. 124.101 (2020).

13 CFR sec. 124.104 defines economically disadvantaged individuals as socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired because of diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

13 CFR sec. 124.103 defines socially disadvantaged individuals as individuals who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.

veterans.⁶ In addition, one or more service-disabled veterans must control the management and daily business operations, including both long-term decision making and day-to-day management and administration of business operations.⁷ The DoD has a goal to award 3 percent of its total contracting dollars to SDVOSB contractors each fiscal year. According to the SBA, in FY 2020, the DoD awarded \$10.6 billion to SDVOSBs, achieving the goal by awarding 3.22 percent of total prime contracting dollars to SDVOSBs.

Historically Under-Utilized Business Zone Program

The purpose of the HUBZone program is to provide Federal contracting assistance for qualified small businesses located in historically under-utilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas.⁸ To qualify as a HUBZone business, a business must be a small business that is at least 51-percent owned by one or more U.S. citizens, or other approved individuals.⁹ In addition, the principal office of the business must be located in a HUBZone, and at least 35 percent of its employees must reside in a HUBZone. The DoD has a goal to award 3 percent of its total contracting dollars to HUBZone contractors each fiscal year. According to the SBA, in FY 2020, the DoD awarded \$7.2 billion to HUBZone contractors, not achieving its goal by only awarding 2.20 percent of total prime contracting dollars to contractors located in HUBZones.

Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Programs

The WOSB program ensures that WOSBs have equal opportunity to participate in Federal contracting.¹⁰ To qualify as a WOSB, a business must be a small business that is at least 51-percent unconditionally and directly owned and controlled by one or more women who are U.S. citizens.¹¹ In addition, one or more women must control the management and daily business operations, including both long-term decision making and day-to-day management and administration of business operations.¹²

⁶ 13 CFR sec. 125.12 (2020).

13 CFR sec. 125.11 defines a service-disabled veteran as a veteran who possesses either a valid disability rating letter issued by the Department of Veterans Affairs or a valid disability determination from the Department of Defense, or is registered in the Beneficiary Identification and Records Locator Subsystem maintained by the Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran.

⁷ 13 CFR sec. 125.13 (2020).

⁸ 13 CFR sec. 126.100 (2020).

⁹ 13 CFR sec. 126.200 (2020).

¹⁰ 13 CFR sec. 127.100 (2020).

¹¹ 13 CFR sec. 127.200 (2020).

¹² 13 CFR sec. 127.202 (2020).

The EDWOSB program is a subset of the WOSB program. To qualify as an EDWOSB, a business must be a small business that is at least 51-percent unconditionally and directly owned and controlled by one or more women who are U.S. citizens and are economically disadvantaged.¹³ In addition, one or more women who are economically disadvantaged must control the management and daily business operations, including both long-term decision making and day-to-day management and administration of business operations.¹⁴ The DoD has a goal to award 5 percent of its total contracting dollars to WOSB contractors, including EDWOSB contractors, each fiscal year. According to the SBA, in FY 2020, the DoD awarded \$13.3 billion to WOSBs, including EDWOSBs, not achieving its goal by only awarding 4.05 percent of total prime contracting dollars to WOSBs.

Small Business Subcontracting Limitations

According to the Code of Federal Regulations (CFR), small business prime contractors are subject to limitations on subcontracting.¹⁵ Specifically, in the case of a contract for services (except construction) or a contract for supplies or products, the small business prime contractor must not pay more than 50 percent of the amount paid by the Government, excluding the cost of materials for supply contracts, to businesses that are not similarly situated.¹⁶ In the case of a contract for general construction, the small business prime contractor must not pay more than 85 percent of the amount paid by the Government, excluding the cost of materials, to businesses that are not similarly situated. Lastly, in the case of a contract for special trade contractors, the small business prime contractor must not pay more than 75 percent of the amount paid by the Government, excluding the cost of materials, to businesses that are not similarly situated. The CFR also states that amounts paid to similarly situated subcontractors will not be considered subcontracted amounts when determining compliance with the subcontracting limitations. However, any work a similarly situated subcontractor further subcontracts will count toward the respective subcontract percentage that cannot be exceeded.

Any small business prime contractors that violate the subcontracting limitations are subject to a fine of \$500,000, or the dollar amount spent by the prime on subcontractors in excess of permitted levels, whichever is greater.¹⁷

¹³ 13 CFR sec. 127.200 (2020).

¹⁴ 13 CFR sec. 127.202 (2020).

¹⁵ 13 CFR sec. 125.6 (2020).

¹⁶ 13 CFR sec. 125.1 states that a similarly situated entity is a subcontractor that has the same small business program status as the prime contractor.

¹⁷ Section 645, title 15, United States Code (15 U.S.C. § 645 [2013]).

Subcontract Monitoring and Reporting Requirements

The FAR states that contracting officers must insert clause 52.219-14, “Limitations on Subcontracting,” in solicitations and contracts for supplies, services, and construction if any portion of the requirement is to be set aside for small business and if the contract amount is expected to exceed \$250,000.¹⁸ Contracting officers may require a contractor to comply with the subcontracting limitations either by the end of the term of the contract and each subsequent option period, or by the end of the performance period for each order issued under the contract.¹⁹ However, the FAR does not include specific procedures for contracting personnel to track and monitor a small business prime contractor’s compliance with subcontracting limitations.

The FAR also states that contracting officers must insert clause 52.204-10, “Reporting Executive Compensation and First-Tier Subcontract Awards,” in all solicitations and contracts valued at \$30,000 or more.²⁰ The FAR states that a contractor must submit specific first-tier subcontract data into the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS) such as the name of the subcontractor, amount of the subcontract award, and a description of the products or services provided under the subcontract. The contractor must report this information by the end of the month following the month of the subcontract award.²¹ Furthermore, contracting personnel must review contractor reports on a quarterly basis to ensure the information is consistent with the contract information. Finally, if a contractor fails to comply with the reporting requirements, the contracting officer must include the contractor’s failure to comply in the contractor’s performance information.²²

Federal Funding Accountability and Transparency Act

The FFATA’s purpose is to empower every American with the ability to hold the Government accountable for each spending decision, with a goal to reduce wasteful spending.²³ The Act requires the Office of Management and Budget to

¹⁸ FAR Part 19, “Small Business Programs,” Subpart 19.5, “Small Business Total Set-Asides, Partial Set-Asides, and Reserves,” Section 19.507, “Solicitation provisions and contract clauses,” and Subpart 2.1, “Definitions,” Section 2.101, “Definitions.”

¹⁹ FAR Part 52, “Solicitation Provisions and Contract Clauses,” Subpart 52.2, “Text of Provisions and Clauses,” Section 52.219, “[Reserved],” Clause 52.219-14, “Limitations on Subcontracting.”

²⁰ FAR Subpart 4.14, “Reporting Executive Compensation and First-Tier Subcontract Awards,” Section 4.1403, “Contract clause.”

FAR part 52, subpart 52.2, Section 52.204, “[Reserved],” Clause 52.204-10, “Reporting Executive Compensation and First-Tier Subcontract Awards,” defines a first-tier subcontract as a subcontract awarded directly by the contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract.

²¹ FAR 52.204 and clause 52.204-10.

²² FAR subpart 4.14, Section 4.1402, “Procedures.”

²³ Public Law 109-282, “Federal Funding Accountability and Transparency Act of 2006,” as amended, September 26, 2006.

maintain a single, searchable website that contains information on all Federal spending awards. The website, USASpending.gov, includes information on each Federal financial assistance award and contract over \$30,000.²⁴ The website also includes information such as the name, unique identifier, and location of the entity receiving the award; the amount of the award; information on the award such as transaction type, funding agency, and a descriptive purpose; and the names and compensation of highly compensated officers.

Federal Funding Accountability and Transparency Act Subaward Reporting System

The FSRS is the reporting tool for Federal prime contractors to capture and report first-tier subcontract award data. The subcontract information prime contractors enter into FSRS is then displayed on USASpending.gov. The information includes the subcontractor name, subcontract award date, and subcontract amount.

Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls.²⁵

We identified internal control weaknesses related to tracking and monitoring amounts that prime contractors paid to subcontractors. Additionally, we identified weaknesses related to reviewing contractors' subcontract award reports. We will provide a copy of the final report to the senior officials responsible for internal controls at the OSBP; Washington Headquarters Services Acquisition Directorate; Defense Information Systems Agency; Naval Facilities Engineering Systems Command-Mid-Atlantic; Naval Facilities Engineering Systems Command-Southwest; Regional Contracting Office Marine Corps Installation-West; Mission and Installation Contracting Command; U.S. Army Engineering and Support Center; and U.S. Army Corps of Engineers Sacramento.

²⁴ As of October 1, 2015, the threshold for reporting first-tier subcontract information increased from \$25,000 to \$30,000.

²⁵ DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013.

Finding

Most Small Business Contractors Complied With Subcontracting Limitations Despite the DoD's Ineffective Actions for Ensuring Compliance

DoD contracting personnel awarded small business set-aside and sole-source contracts to contractors that complied with established contracting limitations for 21 of 31 contracts that were subject to subcontracting limitations.²⁶ However, the actions of DoD contracting personnel to ensure compliance with established subcontracting limitations and subcontract award reporting requirements for small business set-aside and sole-source contracts were not effective.²⁷ Specifically, of the 49 small business contracts we reviewed, valued at \$570.8 million, we identified that DoD contracting personnel did not:

- Ensure compliance with the subcontracting limitations by tracking and monitoring the amounts the prime contractors paid to subcontractors for 27 contracts, valued at \$514.1 million. In addition, DoD contracting personnel could not provide documentation to support compliance with the subcontracting limitations for 10 of those contracts, valued at \$26.5 million.²⁸ This occurred because specific guidance or procedures for tracking and monitoring small business prime contractor compliance with subcontracting limitations did not exist to supplement the FAR requirements. Furthermore, DoD contracting personnel stated that they did not believe they were responsible for overseeing and monitoring subcontracts awarded by small business prime contractors.
- Confirm whether prime contractors for 34 contracts, valued at \$497.9 million, reported first-tier subcontract award information in FSRS, and did not review first-tier subcontract reports quarterly for 35 contracts, valued at \$522.0 million. Additionally, for the 34 contracts in which the prime contractors did not comply with the first-tier subcontract award reporting requirements, DoD contracting personnel

²⁶ 13 CFR sec. 125.6 (2020).

We nonstatistically selected 49 contracts for review. See Appendix A for our sample selection methodology. The results of this review are not projectable across the DoD as the sample was nonstatistically selected.

We identified that the prime contractors for 18 of the 49 contracts did not subcontract any of the work or met an exemption; therefore, 31 contracts were subject to subcontracting limitations. However, the remaining requirements still applied to all 49 contracts. For 10 of the 31 contracts, DoD contracting personnel could not provide documentation to support amounts the prime contractors paid to subcontractors; therefore, compliance with subcontracting limitations for these contracts was unsupported.

²⁷ 13 CFR sec. 125.6 (2020).

FAR 4.14.

²⁸ For the remainder of the report, we use the term “valued at” to describe the total amount paid to the prime contractors.

did not include contractors' non-compliance in the contractors' performance information. DoD contracting personnel stated that they did not confirm whether prime contractors reported first-tier subcontract awards because they were not aware of the FAR requirements for contractors, including small businesses, to report first-tier subcontracts. DoD contracting personnel also stated that they did not review subcontractor reports quarterly, or report contractor non-compliance with the reporting requirements because they were not aware of their own requirements related to first-tier subcontract reporting.

As a result, the funds the DoD awarded through contracts set aside for small businesses may not have provided the intended benefit to the programs established to support socially and economically disadvantaged individuals when adequate documentation did not exist to support contractors' compliance with subcontracting limitations. In addition, DoD agencies may be overstating the amounts reported for small business participation in DoD contracts and not meeting their established small business participation goals. We consider the 10 contracts where documentation was not available to support compliance with subcontracting limitations, valued at \$26.5 million, as unsupported questioned costs.²⁹ Each of those 10 contractors may also be subject to at least \$500,000 in penalties, or \$5 million total, if they exceeded the applicable subcontracting limitations.³⁰ Furthermore, when small business prime contractors did not report first-tier subcontract award information in FSRS, contractors and DoD contracting personnel did not uphold the intent of the FFATA to empower the public to hold the Government accountable for spending decisions.³¹ Without adequate controls in place, DoD contracting activities will continue to be unable to ensure that small business contractors are complying with the subcontracting limitations or subcontract award reporting requirements, which hinders accountability and transparency over DoD spending.

Most Small Business Contractors Complied With Subcontracting Limitations

DoD contractors that were awarded 21 of 31 small business set-aside and sole-source contracts complied with established subcontracting limitations, despite the lack of contracting oversight. Specifically, available contract documentation supported that the prime contractors did not exceed the amounts they could pay

²⁹ The \$26.5 million paid to is considered unsupported questioned costs because at the time of the audit, the DoD OIG found that the costs were not supported by adequate documentation to support compliance with subcontracting limitations.

³⁰ 15 U.S.C. 645 (2013).

³¹ Public Law 109-282, September 26, 2006.

to subcontractors that were not similarly situated.³² For example, the U.S. Special Operations Command (USSOCOM) awarded a services contract in April 2014, valued at \$158.5 million, to an SDVOSB prime contractor that subcontracted work to 20 contractors, 15 of which were not similarly situated entities. Since the contract was for services, the small business prime contractor could subcontract no more than 50 percent of the amount paid to it by the Government, or \$79.3 million, to subcontractors that were not similarly situated. The small business prime contractor complied with the subcontracting limitations by only paying \$32.3 million to subcontractors that were not similarly situated.

Table 1 identifies the total number of contracts by contract type that were subject to subcontracting limitations and in which the prime contractors complied with subcontracting limitations.

Table 1. DoD Contracts That Complied With Subcontracting Limitations

Type of Contract (Percentage That Can Be Subcontracted)	Number of Contracts Subject to Subcontracting Limitations	Number of Contracts That Complied With Subcontracting Limitations	Total Value of Contracts That Complied	Maximum Amount That Could Be Subcontracted	Amount Subcontracted
Services (50 percent)	15	15	\$458,092,187	\$229,046,094	\$81,405,381
Supplies (50 percent)	0	0	0	0	0
General Construction (85 percent)	10	6	34,007,568	28,906,433	1,816,273*
Construction by Special Trade Contractors (75 percent)	6	0	0	0	0
Total	31	21	\$492,099,755	\$257,952,527	\$83,221,654

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

* This amount may be misstated. For two contracts included in this total, documentation did not exist to support a breakout between materials and other costs; therefore, the subcontractor payments may be overstated. For one contract, the subcontractor payments may be understated because the subcontractor payment documentation was not complete.

Source: The DoD OIG.

³² 13 CFR sec. 125.6 (2020).

Although 21 small business prime contractors complied with the subcontracting limitations, DoD contracting personnel did not conduct oversight to ensure compliance with the limitations. In addition, DoD contracting personnel did not verify that small business prime contractors reported subcontracts as required by the FAR.³³

DoD Contracting Personnel Actions for Ensuring Compliance With Small Business Subcontracting Requirements Were Not Effective

DoD contracting personnel did not track and monitor the amounts small business prime contractors paid to their subcontractors to ensure prime contractors complied with established subcontracting limitations.³⁴ In addition, DoD contracting personnel did not comply with the FAR or ensure small business prime contractors reported first-tier subcontract awards.³⁵

According to the CFR, small business prime contractors cannot pay more than the following amounts paid by the Government to businesses that are not similarly situated.

- 50 percent in the case of a contract for services (except construction)
- 50 percent, excluding the cost of materials, in the case of a contract for supplies or products
- 85 percent, excluding the cost of materials, in the case of a contract for general construction
- 75 percent, excluding the cost of materials, in the case of a contract for special trade contractors³⁶

Additionally, for contracts valued at \$30,000 or more, the FAR requires agencies to ensure contractors report first-tier subcontract awards by the end of the month following the month of subcontract award. The FAR also requires contracting personnel to review contractor reports on a quarterly basis to ensure the information is consistent with contract information. If a contractor fails to comply with reporting requirements, contracting personnel must include the contractor's failure to comply in the contractor's performance information.³⁷ Furthermore, to notify prime contractors of the applicable subcontracting requirements and ensure contracts include the required terms and conditions, the FAR requires contracting officers to insert specific clauses in solicitations and contracts.³⁸

³³ FAR 4.14.

³⁴ 13 CFR sec. 125.6 (2020).

³⁵ FAR 4.14.

³⁶ 13 CFR. sec. 125.6 (2020).

³⁷ FAR 4.14 and clause 52.204-10.

³⁸ FAR 19.507, 2.101, and 4.1403.

DoD Contracting Personnel Did Not Monitor Compliance With Subcontracting Limitations

DoD contracting personnel did not take action to ensure small business prime contractors complied with established subcontracting limitations.³⁹ Specifically, contracting personnel did not track and monitor amounts small business prime contractors paid to subcontractors for 27 contracts, valued at \$514.1 million. For 15 of the 27 contracts, contracting personnel did not request subcontractor payment documentation from the contractor until this audit, and for another 2 contracts, contracting personnel did not review and analyze existing documentation to determine compliance with subcontracting limitations in accordance with the FAR. For 10 of the 27 contracts, contracting personnel could not provide adequate documentation to support subcontracted amounts.⁴⁰ Table 2 identifies the number of contracts by Department, Agency, and Command in which contracting personnel did not monitor compliance with the subcontracting limitations.

Table 2. DoD Contracts Not Monitored for Subcontracting Limitation Compliance

Department, Agency, or Command	Number of Contracts in Sample	Value of Contracts in Sample	Number of Contracts DoD Contracting Personnel Did Not Monitor for Compliance	Value of Contracts DoD Contracting Personnel Did Not Monitor for Compliance
Army	10	\$51,903,832	6	\$48,967,991
Navy	8	49,339,982	7	48,400,886
USSOCOM	4	227,487,876	4	227,487,876
Defense Commissary Agency (DeCA)	4	25,479,339	0	0
Defense Health Agency (DHA)	5	89,819,999	2	81,391,703
Defense Information Systems Agency (DISA)	5	96,671,282	4	84,460,644
Defense Logistics Agency (DLA)	8	3,912,526	0	0
Washington Headquarters Services (WHS)	5	26,177,236	4	23,395,615
Total	49	\$570,792,072	27	\$514,104,715

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

Source: The DoD OIG.

³⁹ 13 CFR sec. 125.6 (2020).

⁴⁰ For some contracts, contracting personnel did not collect, and therefore could not provide, documentation to support the amounts prime contractors paid to subcontractors. For other contracts, contracting personnel either provided documentation that did not include a breakout of materials and other costs, where required, or were not consistent enough to accurately support subcontracted amounts.

DoD Contracting Personnel Did Not Request, Obtain, or Evaluate Subcontractor Payment Documentation

DoD contracting personnel did not request, obtain, or evaluate subcontractor payment documentation for 27 contracts, valued at \$514.1 million. Specifically, DoD contracting personnel did not collect subcontractor payment documentation for 15 contracts, valued at \$458.1 million, until after our request. For example, USSOCOM awarded a services

contract in November 2013, valued at \$36.8 million and subject to a 50 percent subcontracting limitation, to an SDVOSB prime contractor. The prime contractor subcontracted work to two contractors, both of which were not similarly situated

DoD contracting personnel did not request, obtain, or evaluate subcontractor payment documentation for 27 contracts, valued at \$514.1 million.

entities. Although the contracting officer was aware of subcontractors, they did not request subcontractor payment documentation until after our request. As a result, the contracting officer was unaware that the prime contractor paid \$16.8 million to subcontractors, which was 46 percent of the total contract value.

In addition, while DoD contracting personnel collected and maintained adequate subcontractor payment documentation for two contracts, valued at \$29.5 million, they did not take any actions to determine compliance with subcontracting limitations. For example, the Army awarded a general construction contract in May 2019, valued at \$24.1 million, to an 8(a) prime contractor that subcontracted work to four contractors, three of which were not similarly situated entities. The prime contractor reported its subcontract awards in FSRS and provided certified payrolls and additional subcontractor payment reports. The Navy also awarded a general construction contract in August 2016, valued at \$5.4 million, to an 8(a) prime contractor that subcontracted work to one subcontractor, which was not a similarly situated entity. The prime contractor provided certified payroll documentation that supported labor costs paid to the subcontractor. However, for both contracts, DoD contracting personnel did not review and analyze the documentation obtained to identify the amounts the prime contractors paid to subcontractors, and determine whether the contractors complied with the subcontracting limitations.

Finally, DoD contracting personnel were unable to provide documentation to support compliance with the subcontracting limitations for 10 contracts, valued at \$26.5 million. For all 10 contracts, contracting personnel either did not collect, and therefore could not provide any documentation to support the amounts prime contractors paid to subcontractors, provided documentation that did not support all subcontracted amounts, or did not include a breakout of materials and other costs, where required.

Specifically, for supplies, general construction, and special trade contractor contracts, material costs are excluded from the amount the prime contractor may pay to firms that are not similarly situated.⁴¹ Multiple contracting offices were unable to support compliance with the subcontracting limitations because they could not provide documentation, including a breakout of materials and other costs. For example, the Army awarded a general construction contract in January 2018, valued at \$6.5 million and subject to an 85 percent subcontracting limitation, to a WOSB prime contractor. The prime contractor subcontracted work to 17 contractors, all of which were not similarly situated entities. Although contracting personnel obtained certified payroll documentation, the documentation only partially supported the amount of labor costs paid to prime and subcontractor employees. In addition, the work breakdown structure included in the prime contractor's proposal only presented the grand total for each project task, and did not show a breakout between materials and other costs. Furthermore, contracting personnel could not provide any additional documentation to support the cost of materials versus other costs for the contract. As a result, we were unable to determine if the prime contractors complied with the limitations using the information collected by contracting personnel. Table 3 identifies the number of contracts by Department, Agency, and Command in which contracting personnel did not collect documentation to support compliance with subcontracting limitations.

⁴¹ 13 CFR. sec. 125.6 (2020).

Table 3. DoD Contracts for Which Contracting Personnel Did Not Collect Documentation to Support Compliance With Subcontracting Limitations

Department, Agency, or Command	Number of Contracts in Sample	Value of Contracts in Sample	Number of Contracts Not Supported by Documentation Collected by DoD Contracting Personnel	Value of Contracts Not Supported by Documentation Collected by DoD Contracting Personnel
Army	10	\$51,903,832	4	\$9,681,363
Navy	8	49,339,982	3	6,469,471
USSOCOM	4	227,487,876	0	0
DeCA	4	25,479,339	0	0
DHA	5	89,819,999	0	0
DISA	5	96,671,282	1	1,545,351
DLA	8	3,912,526	0	0
WHS	5	26,177,236	2	8,785,650
Total	49	\$570,792,072	10	\$26,481,835

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

Source: The DoD OIG.

Guidance or Procedures Did Not Exist to Supplement FAR Requirements for Monitoring Subcontracting Limitation Compliance

DoD contracting personnel did not track and monitor subcontracted amounts because specific guidance or procedures did not exist to supplement FAR requirements.⁴² Specifically, DoD contracting personnel repeatedly pointed to a lack of awareness and specific guidance or procedures to identify subcontractors and monitor compliance with subcontracting limitations as the reasons why they did not track and monitor the amounts small business prime contractors paid to subcontractors. Furthermore, DoD contracting personnel misinterpreted FAR guidance that did not apply to small businesses, which also led to a lack of actions taken to monitor compliance. Finally, DoD contracting personnel stated that they did not include the required subcontracting limitation FAR clause in contracts because of an oversight.⁴³

⁴² FAR 19.507 and clause 52.219-14.

⁴³ Some contracts fell into more than one of these categories; therefore, the numbers discussed in the corresponding sections total more than 27.

DOD CONTRACTING PERSONNEL WERE NOT AWARE OF SUBCONTRACTORS WORKING ON CONTRACTS

DoD contracting personnel were not aware of subcontractors performing work on six contracts, valued at \$32.7 million, with \$4.1 million paid to the subcontractors.⁴⁴

Specifically, DoD contracting personnel stated that they were unaware of subcontractors because of high employee turnover and a lack of procedures to identify subcontractors performing work on small business contracts.

For example, WHS awarded a services contract in September 2014, valued at \$10.8 million and subject to a 50 percent subcontracting limitation, to an SDVOSB prime contractor. The prime contractor

subcontracted work to two contractors, both of which were not similarly situated entities. Furthermore, the prime contractor paid \$2.1 million, which is 19 percent of the total contract value, to its subcontractors. WHS contracting personnel explained that they were unaware of any subcontractors performing work under the contract because the original contracting officer was no longer in that role and the large workload assigned to contracting personnel did not enable them to review all existing contract documentation when taking over contracts. Unidentified subcontractors are problematic because the first step in monitoring compliance with subcontracting limitations is identifying whether the prime contractor subcontracted any of the work.

DoD contracting personnel stated that they were unaware of subcontractors because of high employee turnover and a lack of procedures to identify subcontractors performing work on small business contracts.

DOD CONTRACTING PERSONNEL WERE NOT AWARE OF OR MISINTERPRETED GUIDANCE REQUIRING THEM TO MONITOR SUBCONTRACTING LIMITATIONS

DoD contracting personnel did not take action to determine whether small business prime contractors complied with subcontracting limitations for 16 contracts, valued at \$433.2 million, because they either did not have any procedures to track and monitor subcontracted amounts or performed procedures that did not align with FAR requirements for determining compliance with the limitations. The FAR outlines the subcontracting limitations established in the CFR and states that contracting officers may require a contractor to comply with subcontracting limitations either by the end of the term of the contract and each subsequent option period, or by the end of the performance period for each order issued under the contract.⁴⁵ However, the FAR does not provide specific procedures for contracting personnel to follow to track and monitor subcontracted amounts. DoD contracting

⁴⁴ For two contracts, the total amount paid to subcontractors is unable to be determined; therefore, the total amount paid to subcontractors may be understated.

⁴⁵ 13 CFR sec. 125.6 (2020).

personnel repeatedly stated that they did not monitor prime contractor compliance with subcontracting limitations because they did not have any procedures to do so beyond what is stated in the FAR.

In addition, some contracting personnel explained that they were aware of the amounts prime contractors paid to subcontractors, or the percentage of work performed by subcontractors, but the contracting personnel did not correctly determine compliance with the subcontracting limitations in accordance with the FAR. Specifically, contracting personnel relied on total subcontractor payments or information from the prime contractors' proposals to confirm that prime contractors would perform the amount of work necessary to comply with the limitations. However, in accordance with the FAR, compliance is determined based on the amount paid to the prime contractor by the Government, excluding the cost of materials for some contracts. Therefore, determining compliance based on total subcontractor payments, which may include material costs, or proposal information demonstrating planned workload distribution is not consistent with FAR requirements. For example, USSOCOM awarded a services contract in July 2015, valued at \$12.7 million and subject to a 50 percent subcontracting limitation, to an 8(a) prime contractor. The prime contractor subcontracted work to three contractors, all of which were not similarly situated entities. Contracting personnel relied on the prime contractor's proposal to identify that the major subcontractor would perform 25 percent of the work, and stated that the prime contractor's weekly personnel status reports showed that the prime employed the majority of the workforce. Contracting personnel believed this documentation demonstrated compliance with the subcontracting limitations and did not take additional action to confirm that the prime contractor did not pay its subcontractors more than 50 percent of the amount paid to it by the Government, as required by the limitations.

Furthermore, while DoD contracting personnel awarded two contracts, valued at \$22.3 million, and included the subcontracting limitation clause, they did not perform any oversight.⁴⁶ This occurred because DoD contracting personnel misinterpreted the clause requirements to mean it was solely the prime contractor's responsibility to comply, and that contracting personnel were not responsible for verifying compliance.

DOD CONTRACTING PERSONNEL MISINTERPRETED FAR SUBCONTRACTING PLAN REQUIREMENTS

DoD contracting personnel did not identify subcontractors or ensure compliance with the subcontracting limitations for six contracts, valued at \$43.2 million, because, as DoD contracting personnel stated, a subcontracting plan was not

⁴⁶ FAR clause 52.219-14.

required. Subcontracting plans are required for large businesses that receive a contract and the expected value, including all option periods, is expected to exceed \$750,000.⁴⁷ These plans include information such as subcontracting goals, amounts intended to be subcontracted to specific socioeconomic programs, and a description of the types of supplies or services that are expected to be subcontracted. In accordance with FAR Part 19, subcontracting plans are not required for small business prime contractors.⁴⁸ However, the fact that FAR Part 19 does not require small businesses to submit subcontracting plans does not negate the requirement for small businesses to comply with subcontracting limitations. Therefore, DoD contracting personnel misinterpreted the guidance to mean that they were not required to identify subcontractors or determine compliance with subcontracting limitations for small businesses.

Since a subcontracting plan was not required for the contracts we reviewed, DoD contracting personnel chose not to identify subcontractors, or take action to ensure compliance with the subcontracting limitations for six contracts. For example, the Marine Corps awarded a construction by special trade contract in February 2019, valued at \$1.1 million and subject to a 75 percent subcontracting limitation, to an SDVOSB prime contractor. Although the prime contractor's proposal indicated the use of two subcontractors, the contracting officer stated that they were unaware of subcontractors and did not take action to identify subcontractors because a subcontracting plan was not required. Furthermore, the contracting officer did not take any action to ensure compliance with the subcontracting limitations, including collecting subcontractor payment documentation. Because the contracting officer did not identify subcontractors or ensure compliance with the subcontracting limitations, we were unable to determine, using the information maintained by contracting personnel, if any or all subcontractors were similarly situated entities, or the amounts the prime contractor paid to its subcontractors. As a result, we were unable to determine whether the small business prime contractor complied with the subcontracting limitations and therefore, the prime contractor may also be subject to at least \$500,000 in penalties if it exceeded applicable subcontracting limitations.

DOD CONTRACTING PERSONNEL DID NOT INCLUDE THE SUBCONTRACTING LIMITATION CLAUSE

DoD contracting personnel did not include the applicable FAR clause requiring small business prime contractors to comply with subcontracting limitations for 7 contracts, valued at \$37.7 million, because of an oversight when drafting the

⁴⁷ FAR part 19, Subpart 19.7, "The Small Business Subcontracting Program," Section 19.702, "Statutory requirements."

⁴⁸ FAR 19.702.

contract terms.⁴⁹ According to the FAR, contracting officers must insert clause 52.219-14, "Limitations on Subcontracting," in solicitations and contracts for supplies, services, and construction if any portion of the requirement is to be set aside for small business and if the contract amount is expected to exceed \$250,000.⁵⁰ This clause outlines the subcontracting

limitations established within 13 CFR sec. 125.6 (2020), in addition to periods of performance for which compliance must be met. By not including the required clause, contracting personnel did not ensure the contracts included the required terms and conditions to notify contractors of their responsibility to comply with subcontracting limitations.

Consequently, without specific supplemental guidance or procedures for determining small business prime contractor compliance with subcontracting limitations, DoD contracting personnel were not aware of and did not understand, or correctly apply, FAR requirements. Therefore, the Director of the OSBP, in coordination with the DPC, should issue supplemental guidance to increase contracting personnel understanding of FAR requirements related to determining small business prime contractor compliance with subcontracting limitations. The guidance should include, at a minimum, contracting personnel responsibilities for identifying subcontractors, monitoring the amounts small business prime contractors pay to subcontractors, and determining prime contractor compliance with limitations. In addition, guidance should require maintaining a list of subcontractors and any documentation to support compliance in the official contract file, in order to assist in transferring subcontractor information when a contract is assigned from one contracting officer to another. Furthermore, the guidance should require contracting personnel to report instances of non-compliance with subcontracting limitations in the contractor's performance information.

Furthermore, since DoD contracting personnel did not monitor compliance with subcontracting limitations, DoD contracting personnel were also not aware of the potential penalties small business prime contractors might incur if they

DoD contracting personnel did not include the applicable FAR clause requiring small business prime contractors to comply with subcontracting limitations for 7 contracts, valued at \$37.7 million, because of an oversight when drafting the contract terms.

⁴⁹ FAR clause 52.219-14.

For 4 of the 7 contracts, the prime contractors did not subcontract any of the work. However, in accordance with FAR 19.507, the subcontracting clause is still required in solicitations and contracts expected to exceed \$250,000.

⁵⁰ FAR 19.507 and 2.101.

exceeded the limitations. According to 15 U.S.C. § 645 (2013), an entity that exceeds a limitation on subcontracting must be fined the greater of \$500,000 or the dollar amount expended in excess of permitted levels on subcontractors. For example, the U.S. Attorney's Office executed a \$400,000 settlement agreement with a Michigan container corporation for the SBA and the Defense Logistics Agency (DLA). The agreement settled False Claims Act allegations in connection with a DLA HUBZone contract in Pennsylvania. The Government alleged that the Michigan corporation violated subcontract limitations and the terms of a contract to provide corrugated boxes to the Government from August 2010 through August 2014 by performing 100 percent of the manufacturing requirement. Therefore, each of the 10 small business prime contractors for which compliance with the subcontracting limitations could not be determined may be subject to at least a \$500,000 penalty. Directors and Commanders at the Washington Headquarters Services Acquisition Directorate, Defense Information Systems Agency, Naval Facilities Engineering Systems Command-Mid-Atlantic, Naval Facilities Engineering Systems Command-Southwest, Regional Contracting Office Marine Corps Installation-West, Mission and Installation Contracting Command, U.S. Army Engineering and Support Center, and U.S. Army Corps of Engineers Sacramento should perform a review of the contracts for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractors complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractors paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractors paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractors by the Government. When the percentage exceeds the established subcontracting limitations, contracting leadership should determine whether the small business prime contractors are subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, contracting leadership should report any instances of non-compliance with subcontracting limitations in the contractor's performance information. In addition, the Director of the OSBP, in coordination with the DPC, should issue supplemental guidance to implement procedures for DoD contracting personnel to pursue the collection of penalties from any contractor that does not comply with subcontracting limitations. The guidance should address procedures for documenting contractor non-compliance, calculating the applicable penalty, and initiating collection action.

DoD Contracting Personnel Did Not Comply With First-Tier Subcontract Award Reporting Requirements

DoD contracting personnel did not comply with the FAR requirements related to first-tier subcontract award reporting.⁵¹ Specifically, DoD contracting personnel did not confirm whether prime contractors for 34 contracts, valued at \$497.9 million, reported first-tier subcontract award information in FSRS, and did not review first-tier subcontract reports for 35 contracts, valued at \$522.0 million, on a quarterly basis to determine prime contractors' compliance. Additionally, for the 34 contracts for which the prime contractors did not comply with first-tier subcontract award reporting requirements, DoD contracting personnel did not report contractors' non-compliance in the contractors' performance information.

DoD contracting personnel did not confirm whether prime contractors for 34 contracts, valued at \$497.9 million, reported first-tier subcontract award information in FSRS, and did not review first-tier subcontract reports for 35 contracts, valued at \$522.0 million, on a quarterly basis to determine prime contractors' compliance.

DoD Contracting Personnel Did Not Confirm Whether Small Business Prime Contractors Reported First-Tier Subcontract Awards

DoD contracting personnel did not confirm whether small business prime contractors reported first-tier subcontract awards in FSRS in accordance with the FAR, for 34 contracts, valued at \$497.9 million.⁵² According to the FAR, contractors, including small businesses, are required to report first-tier subcontract award data for all contracts with a value of \$30,000 or more. The FAR requires contractors to report first-tier subcontracts by the end of the month following the month of award of the subcontract.⁵³ Furthermore, agencies must ensure contractors comply with first-tier subcontract award reporting requirements.⁵⁴ For these 34 contracts, based on documentation provided, we identified up to 129 subcontractors, to which small business prime contractors paid \$107.7 million and did not report in FSRS.⁵⁵

⁵¹ FAR 4.14.

A first-tier subcontract is a subcontract awarded directly by the contractor for the purpose of acquiring supplies or services, including construction, for performance of a prime contract. It does not include a contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts.

⁵² FAR subpart 4.14, Section 4.1400, "Scope of subpart," and Section 4.1401, "Applicability."

⁵³ FAR clause 52.204-10.

⁵⁴ FAR 4.1402.

⁵⁵ Documentation was not available to determine whether all 129 subcontractors were first-tier subcontractors; therefore, the total number of subcontracts required to be reported in FSRS may be lower. In addition, documentation was not available to identify the total amount paid to all 129 subcontractors; therefore, the value of unreported subcontracts may be higher.

In addition, DoD contracting personnel did not review first-tier subcontract reports for 35 contracts, valued at \$522.0 million, on a quarterly basis in accordance with the FAR.⁵⁶ According to the FAR, contracting personnel must review contractor reports related to first-tier subcontracts on a quarterly basis to ensure the information is consistent with the contract information. While the FAR provides a reporting exception for contractors and subcontractors with a gross income in the previous tax year of less than \$300,000, only one contract in our sample met this exception.⁵⁷

Finally, the FAR also states that contracting officers must insert clause 52.204-10, “Reporting Executive Compensation and First-Tier Subcontract Awards,” in all solicitations and contracts valued at \$30,000 or more.⁵⁸ DoD contracting personnel did not include the applicable FAR clause requiring small business prime contractors to comply with the first-tier subcontract award reporting requirements in 11 contracts, valued at \$90.8 million.

DoD Contracting Personnel Did Not Report Prime Contractors’ Non-Compliance in Contractor Performance Information

DoD contracting personnel did not report small business prime contractors’ non-compliance with first-tier subcontract award reporting requirements in the contractor performance information for 34 contracts, valued at \$497.9 million. According to the FAR, if a contractor fails to comply with first-tier subcontract award reporting requirements, contracting personnel are required to include the contractor’s failure to comply in the contractor performance information.⁵⁹ Assessments of a contractor’s performance on Government contracts and general information about their adherence to certain Federal rules and regulations are critical to informing source selection and award decisions and ensuring the Government builds relationships with high-performing suppliers. By considering past performance information as part of the source selection, the Government is better able to award contracts to proven performers. DoD contracting personnel must include non-compliance issues in contractor performance information so that contracting personnel can rely on accurate information when awarding future Government contracts.

⁵⁶ FAR 4.1402.

⁵⁷ The Army awarded a contract, valued at \$385,476, to an EDWOSB prime contractor that contracting personnel confirmed had a gross income of less than \$300,000 and, therefore, was not required to report first-tier subcontract awards.

⁵⁸ FAR 4.1403.

⁵⁹ FAR 4.1402.

DoD Contracting Personnel Were Unaware of FAR Requirements for Reporting First-Tier Subcontracts

DoD contracting personnel stated that they did not review FSRS to confirm whether prime contractors reported first-tier subcontracts because the contracting personnel were not aware of the FAR requirements for contractors, including small business contractors, to report first-tier subcontracts. In addition, DoD contracting personnel stated that they were not aware of FAR requirements to review first-tier subcontract reports on a quarterly basis or to report prime contractor non-compliance with first-tier subcontract reporting requirements. Finally, DoD contracting personnel stated that clause 52.204-10, "Reporting Executive Compensation and First-Tier Subcontract Awards," was not included either because of an oversight when drafting the contract terms and conditions, or because they were not aware of the requirements to include the clause.

DoD contracting personnel stated that they did not review FSRS to confirm whether prime contractors reported first-tier subcontracts because the contracting personnel were not aware of the FAR requirements for contractors, including small business contractors, to report first-tier subcontracts.

The FFATA requires first-tier subcontract award reporting, with the intent to empower the public to hold the Government accountable for spending decisions.⁶⁰ Furthermore, the information small business prime contractors report to FSRS for first-tier subcontracts can be an important resource for contracting personnel to consult to identify when prime contractors subcontract portions of the work for set-aside and sole-source contracts, and can be a useful starting point to determine whether the contractors complied with subcontracting limitations. When small business prime contractors do not report first-tier subcontract information in FSRS, the contractors not only non-comply with the FAR, but they also negate the intent of the FFATA to empower the public to hold the Government accountable for spending decisions. Similar to the reasons DoD contracting personnel cited as to why they did not monitor compliance with subcontracting limitations, DoD contracting personnel repeatedly pointed to a lack of awareness or procedures related to first-tier subcontract award reporting requirements. Therefore, the Director of the OSBP, in coordination with the DPC, should issue supplemental guidance to increase contracting personnel understanding of the FAR requirements related to ensuring all prime contractors, including small businesses, comply with first-tier subcontract award reporting requirements. The guidance should also address requirements

⁶⁰ Public Law 109-282, September 26, 2006.

for contracting personnel to review first-tier subcontract award information on a quarterly basis and include any prime contractor's non-compliance with the reporting requirements in the contractor's performance information.

Existing DoD Training Could Address Deficiencies in DoD Contracting Personnel Actions Related to Small Business Subcontracting Requirements

DoD contracting personnel repeatedly demonstrated that the existence of the FAR requirements alone was not enough for them to understand their requirements and responsibilities related to subcontracting regulations. Specifically, DoD contracting personnel did not identify their responsibility, or take actions to:

- monitor compliance with small business subcontracting limitations,
- ensure prime contractors report first-tier subcontracts or hold contractors accountable for non-compliance with the reporting requirements, or
- include required FAR clauses in solicitations and contracts.

However, an elective training course that provides information on monitoring small business subcontracting limitations and first-tier subcontract award reporting is available to DoD contracting personnel. Defense Acquisition University (DAU) course CLC 059, "Management of Subcontracting Compliance," addresses topics such as pre-award considerations affecting post-award subcontracting compliance, set-asides and subcontracting limitations, and subcontracting compliance management. The target attendees for DAU course CLC 059 are contracting and program management personnel with subcontracting compliance responsibilities, and the course length is 5 hours. DAU course CLC 059 discusses the following information that directly addresses the deficiencies identified during this audit.

- Key definitions, such as first-tier subcontract and similarly situated entity
- Percentages small business prime contractors can subcontract to contractors that are not similarly situated
- Inclusion of applicable FAR clauses for subcontracting limitations and first-tier subcontract award reporting in solicitations and contracts
- The importance of monitoring prime contractors' compliance with subcontracting limitations and suggested procedures for monitoring compliance
- The requirement for businesses, including small businesses, to report first-tier subcontracts in FSRS
- Use of the Contract Performance Assessment Reporting System to report prime contractor failure to comply with subcontracting requirements

DAU course CLC 059 is an effective tool to expand contracting personnel understanding of small business subcontracting requirements and can help reinforce guidance stated in the FAR, and their understanding of their roles and responsibilities related to subcontracting compliance. Requiring this training in addition to implementing the

DAU course CLC 059 is an effective tool to expand contracting personnel understanding of small business subcontracting requirements and can help reinforce guidance stated in the FAR, and their understanding of their roles and responsibilities related to subcontracting compliance.

previous recommendations discussed in this report should enable DoD contracting personnel to understand their requirements and responsibilities for ensuring that contractors awarded small business set-aside and sole-source contracts comply with small business subcontracting requirements. Therefore, to ensure all contracting personnel are aware of their responsibilities, including prime contractor responsibilities, related to small business subcontracting, the Director of the OSBP, in coordination with the DPC, should direct all DoD contracting personnel who monitor contract performance and are responsible for ensuring compliance with subcontracting requirements, including contracting officers and contracting officer's representatives, to take DAU course CLC 059, "Management of Subcontracting Compliance." The course should be required for existing personnel and new personnel assigned to a role that involves monitoring compliance with contract terms and conditions. Refresher training should also be offered and conducted as needed.

Conclusion

Without additional guidance, training, and controls, the funds the DoD awards to small businesses may not provide the intended benefit to the programs meant to support socially and economically disadvantaged individuals. Additionally, DoD agencies may be overstating the amounts reported for small business participation in DoD contracts and not meeting their established small business participation goals. Furthermore, the DoD awarded \$26.5 million in contracts to 10 contractors for which adequate documentation was not available to support contractor compliance with subcontracting limitations; therefore, we consider the \$26.5 million as unsupported questioned costs. Those contractors may also be subject to at least \$5 million in penalties if they exceeded applicable subcontracting limitations. Finally, until the DoD OSBP Director issues supplemental guidance increasing contracting personnel awareness and understanding of requirements to ensure prime contractors report first-tier subcontract awards, contractors and DoD contracting personnel will not uphold the intent of the FFATA to empower the public to hold the Government accountable for spending decisions.

Management Actions in Response to Draft Report

In response to the draft report recommendations, contracting officials from the Washington Headquarters Services, Acquisition Directorate and the Department of the Army Office of Small Business Programs responded that contracting personnel performed reviews of three contracts, valued at \$10 million, for which adequate documentation was not available to support prime contractor compliance with subcontracting limitations, and found that the prime contractors either did not subcontract any work or complied with the limitations. Specifically, Washington Headquarters Services, Acquisition Directorate contracting personnel reviewed two contracts, valued at \$8.8 million, and determined that the two small business prime contractors complied with subcontracting limitations. In addition, contracting personnel from the U.S. Army Engineering and Support Center reviewed one contract, valued at \$1.2 million, and determined that the prime contractor did not issue any subcontracts and improperly referred to an accredited laboratory used to test samples collected by the contractor as a subcontractor in the proposal. We no longer consider these three contracts to be unsupported questioned costs; however, the seven remaining contracts where documentation was not available to support compliance with subcontracting limitations, valued at \$16.5 million, are still considered unsupported questioned costs.

Recommendations, Management Comments, and Our Response

Recommendation A.1

We recommend that the Director of the DoD Office of Small Business Programs, in coordination with Defense Pricing and Contracting:

- a. Issue supplemental guidance:**
 - 1. To increase contracting personnel understanding of FAR requirements related to determining small business prime contractor compliance with subcontracting limitations. The guidance should include, at a minimum, contracting personnel responsibilities for identifying subcontractors, monitoring the amounts small business prime contractors pay to subcontractors, and determining prime contractor compliance with limitations. In addition, guidance should require maintaining a list of subcontractors and any documentation to support compliance in the official contract file, in order to assist in transferring subcontractor information when a contract is**

assigned from one contracting officer to another. Furthermore, the guidance should require contracting personnel to report instances of non-compliance with subcontracting limitations in the contractor's performance information.

2. To implement procedures for DoD contracting personnel to pursue the collection of penalties from any contractor that does not comply with subcontracting limitations. The guidance should address procedures for documenting contractor non-compliance with the limitations, calculating the applicable penalty, and initiating collection action.
3. To increase contracting personnel understanding of the FAR requirements related to ensuring all prime contractors, including small businesses, comply with first-tier subcontract award reporting requirements. The guidance should also address requirements for contracting personnel to review first-tier subcontract award information on a quarterly basis and include any prime contractor's non-compliance with the reporting requirements in the contractor's performance information.

b. Direct all DoD contracting personnel who monitor contract performance and are responsible for ensuring compliance with subcontracting requirements, including contracting officers and contracting officer's representatives, to take Defense Acquisition University (DAU) course CLC 059, "Management of Subcontracting Compliance." The course should be required for existing personnel and new personnel assigned to a role that involves monitoring compliance with contract terms and conditions. Refresher training should also be offered and conducted as needed.

Management Comments Required

The Director of the DoD Office of Small Business Programs did not respond to the recommendations in the report. Therefore, the recommendations are unresolved. We request that the Director provide comments on the final report.

Recommendation A.2

We recommend that the Director of the Washington Headquarters Services, Acquisition Directorate review the two contracts for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractors complied with subcontracting limitations.

The reviews should include, at a minimum, collecting information related to amounts the prime contractors paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractors paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractors by the Government. If the percentages exceed established subcontracting limitations, the Director should determine whether the small business prime contractors are subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Director should report the non-compliance with subcontracting limitations in the contractors' performance information.

Washington Headquarters Services Comments

The Director of the Washington Headquarters Services, Acquisition Directorate agreed with our recommendation. Specifically, the Director stated that the Washington Headquarters Services, Acquisition Directorate reviewed both contracts and determined that the two small business prime contractors complied with subcontracting limitations; therefore, no further action was required.

Our Response

Comments from the Director addressed all specifics of the recommendation. Specifically, the Director provided a cost breakout for both contracts showing that the prime contractors paid their subcontractors 44 percent and 39 percent, respectively, of the amount paid by the Government, excluding costs of materials. We verified that the amounts the prime contractors paid to subcontractors were less than the maximum amounts permitted by the established subcontracting limitations. We no longer consider these two contracts, valued at \$8.8 million, as unsupported questioned costs. Therefore, the recommendation is closed.

Recommendation A.3

We recommend that the Director of the Defense Information Systems Agency perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total

amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Director should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Director should report the non-compliance with subcontracting limitations in the contractor's performance information.

Defense Information Systems Agency Comments

The Director of the Defense Information Technology Contracting Organization, responding for the DISA Director, agreed with the recommendation, stating that the contracting officer will obtain the necessary documentation from the small business prime contractor and determine whether the contractor complied with established subcontracting limitations. The Director stated that DISA plans to complete the review by March 31, 2022.

Our Response

Comments from the Director addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that DISA contracting personnel have completed the review and took appropriate action based on the results of the review.

Recommendation A.4

We recommend that the Commanding Officer of the Naval Facilities Engineering Systems Command-Mid-Atlantic perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commanding Officer should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commanding Officer should report the non-compliance with subcontracting limitations in the contractor's performance information.

Naval Facilities Engineering Systems Command-Mid-Atlantic Comments

The Executive Director, Deputy Assistant Secretary of the Navy (Procurement), responding for the Commanding Officer of the Naval Facilities Engineering Systems Command-Mid-Atlantic, agreed with our recommendation. Specifically, the Executive Director stated that the Department of the Navy will review the contract for compliance with subcontracting limitations and, in the case of noncompliance, the contracting officer will exercise appropriate contractual remedies in accordance with the FAR.

Our Response

Comments from the Executive Director addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that the Department of the Navy has completed the review and initiated appropriate action if the small business prime contractor exceeded established subcontracting limitations.

Recommendation A.5

We recommend that the Commanding Officer of the Naval Facilities Engineering Systems Command-Southwest perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commanding Officer should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commanding Officer should report the non-compliance with subcontracting limitations in the contractor's performance information.

Naval Facilities Engineering Systems Command-Southwest Comments

The Executive Director, Deputy Assistant Secretary of the Navy (Procurement), responding for the Commanding Officer of the Naval Facilities Engineering Systems Command-Southwest, agreed with our recommendation. Specifically,

the Executive Director stated that the Department of the Navy will review the contract for compliance with subcontracting limitations and, in the case of noncompliance, the contracting officer will exercise appropriate contractual remedies in accordance with the FAR.

Our Response

Comments from the Executive Director addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that the Department of the Navy has completed the review and initiated appropriate action if the small business prime contractor exceeded established subcontracting limitations.

Recommendation A.6

We recommend that the Director of the Regional Contracting Office Marine Corps Installation-West perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Director should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Director should report the non-compliance with subcontracting limitations in the contractor's performance information.

Regional Contracting Office Marine Corps Installation-West Comments

The Executive Director, Deputy Assistant Secretary of the Navy (Procurement), responding for the Director of Contracting Office Marine Corps Installation-West, agreed with our recommendation. Specifically, the Executive Director stated that the Department of the Navy will review the contract for compliance with subcontracting limitations and, in the case of noncompliance, the contracting officer will exercise appropriate contractual remedies in accordance with the FAR.

Our Response

Comments from the Executive Director addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that the Department of the Navy has completed the review and initiated appropriate action if the small business prime contractor exceeded established subcontracting limitations.

Recommendation A.7

We recommend that the Commander of the Mission and Installation Contracting Command perform a review of the two contracts for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractors complied with subcontracting limitations. The reviews should include, at a minimum, collecting information related to amounts the prime contractors paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractors paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractors by the Government. If the percentages exceed established subcontracting limitations, the Commander should determine whether the small business prime contractors are subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commander should report the non-compliance with subcontracting limitations in the contractors' performance information.

Mission and Installation Contracting Command Comments

The Director of the Department of the Army Office of Small Business Programs, responding for the Commander of the Mission and Installation Contracting Command, agreed with the recommendation. Specifically, the Director stated that contracting personnel at the 418th Contracting Support Brigade and the Mission and Installation Contracting Command-Fort McCoy will review the contracts identified in the audit and will initiate appropriate action based on the findings. The Director stated that the Mission and Installation Contracting Command will complete the review by January 28, 2022.

Our Response

Comments from the Director addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that Army contracting personnel have completed the review and initiated appropriate action if the small business prime contractor exceeded established subcontracting limitations.

Recommendation A.8

We recommend that the Commander of the U.S Army Engineering and Support Center perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commander should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commander should report the non-compliance with subcontracting limitations in the contractor's performance information.

U.S. Army Engineering and Support Center Comments

The Director of the Department of the Army Office of Small Business Programs, responding for the Commander of the U.S. Army Engineering and Support Center, agreed with the recommendation. Specifically, the Director stated that contracting personnel reviewed the contract and determined that the prime contractor did not issue any subcontracts. According to the Director, the small business prime contractor confirmed that an accredited laboratory used to test samples collected by the contractor was improperly referred to as a subcontractor in the proposal; therefore, no further action is required.

Our Response

Comments from the Director addressed all specifics of the recommendation. Specifically, we reviewed the response and acknowledge that because the prime contractor did not subcontract any work, there is no documentation to collect or review to evaluate the prime contractor's compliance with subcontracting limitations. We no longer consider this contract, valued at \$1.2 million, as unsupported questioned costs. Therefore, the recommendation is closed.

Recommendation A.9

We recommend that the Commander of the U.S. Army Corps of Engineers Sacramento District perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commander should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commander should report the non-compliance with subcontracting limitations in the contractor's performance information.

U.S. Army Corps of Engineers Sacramento District Comments

The Director of the Department of the Army Office of Small Business Programs, responding for the Commander of the U.S. Army Corps of Engineers Sacramento District, agreed with the recommendation. Specifically, the Director stated that contracting personnel will perform a review of the contract to determine whether the small business prime contractor complied with established subcontracting limitations. The Director added that contracting personnel will, at a minimum, collect information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, and will initiate appropriate action based on the findings. The Director stated that the U.S. Army Corps of Engineers Sacramento District plans to complete the review by February 28, 2022.

Our Response

Comments from the Director addressed all specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation once we verify that U.S. Army Corps of Engineers Sacramento District has completed the review and initiated appropriate action if the small business prime contractor exceeded established subcontracting limitations.

Appendix A

Scope and Methodology

We conducted this performance audit from January 2021 through September 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We obtained a universe of 24,554 DoD small business contract actions with a total contract value of \$2.9 billion that ended performance during FY 2019 or FY 2020.

We nonstatistically selected 49 contracts with a total amount of \$570.8 million paid to prime contractors.⁶¹ To select the sample, we included contracts which, during our research request, contracting activities identified as having portions of the work subcontracted. We also included contracts from the original universe of DoD contract actions for contracts that ended performance in FY 2019 or FY 2020.⁶² We ensured that the sample included all four contract types that are subject to subcontracting limitations, and contracts awarded under all five socioeconomic programs.⁶³ The sample includes contracts from the Department of the Army, Department of the Navy, U.S. Special Operations Command, Defense Commissary Agency, Defense Health Agency, Defense Information Systems Agency, Defense Logistics Agency, and Washington Headquarters Services.

Review of Documentation and Interviewing Contracting Personnel

For each contract, we obtained the base contract from the Electronic Document Access system and any documentation related to first-tier subcontracts from USASpending.gov. In addition, we requested documentation prepared or maintained by the contracting offices, including the Small Business Coordination Record, prime contractor proposal and related documents, statement of work,

⁶¹ We originally selected a nonstatistical sample of 50 small business set-aside and sole-source contracts to review. However, 1 of the original 50 contracts was mislabeled as an EDWOSB and subsequently scoped out of the review. The results of this review are not projectable across the DoD as the sample was nonstatistically selected.

⁶² During our review, we determined that some contracts had extended performance periods caused by modifications, delays, or other changes to the contracts; therefore, not all contracts ended performance in FY 2019 or FY 2020. However, we were still able to perform the analysis necessary to determine whether the prime contractors complied with subcontracting limitations and reporting requirements and the extended performance periods did not impact the audit results.

⁶³ The four types of contracts that are subject to the subcontracting limitations are services, supplies, general construction, and special trade contractors. The five socioeconomic programs are 8(a), SDVOSB, HUBZone, WOSB, and EDWOSB.

total amount paid to the prime contractor, and any available documentation that described the work performed under the contract and portions performed by the prime contractor and any subcontractors. We also requested any documentation the prime contractor used to identify the size and status of any subcontractors, and any documentation collected or prepared by the contracting activity to track and monitor subcontracting amounts. Lastly, we conducted interviews with DoD contracting personnel responsible for each of the 49 contracts we reviewed to discuss their roles and responsibilities for each contract and identify their policies and procedures for tracking and monitoring the subcontracting limitations and ensuring compliance with first-tier subcontract award reporting requirements.

Procedures to Determine Small Business Prime Contractor Compliance With Subcontracting Limitations

Since DoD contracting personnel did not perform effective procedures to track and monitor small business prime contractor compliance with subcontracting limitations, we conducted separate procedures to determine whether the prime contractors complied with the limitations. Specifically, for each contract, we identified whether the prime contractor subcontracted any of the work and, if so, whether any of the subcontractors qualified as similarly situated entities. We also collected documentation to support the amounts the prime contractors paid to subcontractors, including documentation from prime contractors, when available; identified the applicable subcontracting limitations based on the type of contract; and calculated the maximum amount the prime could subcontract to entities that were not similarly situated. For any subcontractors that did not qualify as similarly situated entities, we summarized the total amount the prime contractor paid to those subcontractors and compared that amount to the maximum allowable amount to determine whether the prime contractor complied with subcontracting limitations.

Procedures to Determine Compliance With First-Tier Subcontract Award Reporting Requirements

In addition, since DoD contracting personnel did not perform procedures to confirm whether prime contractors reported first-tier subcontracts, including reviewing first-tier subcontract reports quarterly or documenting non-compliance with the reporting requirements in contractor performance information, we conducted separate procedures to determine whether prime contractors complied with reporting requirements. Specifically, for each contract, we searched the USASpending.gov website to identify whether the prime contractor reported any

first-tier subcontract awards. We also requested contracting personnel to provide documentation supporting whether they reviewed first-tier subcontract reports or reported contractors' non-compliance with reporting requirements.

Criteria

We evaluated subcontracting limitations and first-tier subcontract award reporting according to the following Federal criteria.

- Public Law 109-282, "Federal Funding Accountability and Transparency Act of 2006," as amended, September 26, 2006
- 13 CFR Part 125, "Government Contracting Programs," January 1, 2020
- United States Code Title 15, "Commerce and Trade," Section 645, "Offenses and Penalties," January 2, 2013
- FAR Part 19, "Small Business Programs"
- FAR Subpart 4.14, "Reporting Executive Compensation and First-Tier Subcontract Awards"
- FAR Clause 52.219-14, "Limitations on Subcontracting"
- FAR Clause 52.204-10, "Reporting Executive Compensation and First-Tier Subcontract Awards"

Internal Control Assessment and Compliance

We assessed internal controls and compliance with laws and regulations necessary to satisfy the audit objective. We assessed the policies and procedures that contracting personnel used to track and monitor the amounts small business prime contractors paid to subcontractors and ensure that prime contractors reported first-tier subcontracts. However, because our review was limited to these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Use of Computer-Processed Data

We used data from the Federal Procurement Data System–Next Generation to perform this audit. To test the reliability and validate the accuracy of the data, we obtained contract documentation from the Electronic Document Access system and the contracting offices that awarded the contracts. We discussed any discrepancies between the Federal Procurement Data System–Next Generation data and the contract documentation with contracting personnel, and we requested that they confirm the correct values and provide a reason for the discrepancies. We determined that the data were sufficiently reliable for our purposes.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the DoD Office of Inspector General (DoD OIG), the Small Business Administration (SBA) OIG, the Department of Justice (DOJ) OIG, and the U.S. Department of the Interior (DOI) OIG issued 5 reports discussing subcontracting limitations.

Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>. Unrestricted SBA OIG reports can be accessed at <https://www.sba.gov/about-sba/oversight-advocacy/office-inspector-general/reports>. Unrestricted DOJ OIG reports can be accessed at <https://oig.justice.gov/reports>. Unrestricted DOI OIG reports can be accessed at <https://www.doioig.gov/reports>.

GAO

Report No. GAO-18-648, “VA Needs to Address Implementation Challenges and Strengthen Oversight of Subcontracting Limitations,” September 24, 2018

The GAO determined that the U.S. Department of Veterans Affairs conducted limited oversight of contractor compliance with limitations on subcontracting and had few mechanisms for ensuring compliance.

DoD OIG

Report No. DODIG-2020-063, “Audit of DoD Service-Disabled Veteran-Owned Small Business Contract Awards,” February 18, 2020

The DoD OIG determined that DoD contracting personnel did not verify compliance with SDVOSB subcontracting requirements for six contracts awarded to three contractors valued at \$164.7 million. This occurred because the OSBP did not have procedures in place for contracting personnel to track subcontracting amounts for compliance with SDVOSB subcontracting limitations.

DOJ OIG

Report No. 19-15, “Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Sole-Source Small Business Contracting,” March 2019

The DOJ OIG determined that the ATF needed to draft, formalize, and implement policies and procedures that require contracting officials to conduct monitoring activities to ensure compliance with SBA, FAR, and contractual requirements.

DOI OIG

Report No. 2016-FIN-072, "Management Advisory Issues Identified During Our Audit of Bureau of Indian Affairs (BIA) Contract No. A16PC00003 with Cherokee Nation Technologies," May 8, 2017

The DOI OIG determined that the BIA did not oversee Cherokee Nation Technologies' compliance with the FAR's "Limitations on Subcontracting" clause.

SBA OIG

"Semiannual Report to Congress October 1, 2018 – March 31, 2019," April 30, 2019

The SBA OIG identified a case in which the U.S. Attorney's Office executed a \$400,000 settlement agreement with a Michigan container corporation on behalf of the SBA and the DLA. The agreement settled False Claims Act allegations in connection with a DLA HUBZone contract in Pennsylvania. The Government alleged that the Michigan corporation violated subcontract limitations and the terms of a contract to provide corrugated boxes to the Government from August 2010 through August 2014 by performing 100 percent of the manufacturing requirement.

Appendix B

Summary of Contract Reviews

The following table continues for more than one page.

Contract #	Contracting Department, Agency, or Command	Total Amount Paid to Prime Contractor (\$)	Type of Contract	Subcontracts Identified	Subcontracted Amounts ¹	Contract Included FAR Clause 52.219-14 ²	Prime Contractor Complied With Subcontracting Limitations ³	Contract Included FAR Clause 52.204-10 ⁴	Prime Contractor Reported Subcontracts in FSRS	Service or Agency Reviewed Subcontract Reports Quarterly	Service or Agency Included Reporting Non-Compliance in Performance Information
1	DLA	\$48,422	Supplies	Y ⁵	N/A ⁵	N/A	N/A	N ⁵	N	N	N
2	DLA	29,727	Supplies	Y	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3	Army	10,706	Supplies	N	N/A	N/A	N/A	Y	N/A	N/A	N/A
4	DLA	7,150	Supplies	Y	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5	DLA	248,060	Supplies	Y	N/A	N/A	N/A	Y	N	N	N
6	DLA	77,981	Supplies	Y	N/A	N/A	N/A	N	N	N	N
7	WHS	10,767,146	Services	Y	2,071,491	N	Y	Y	N	N	N
8	WHS	3,842,819	Services	Y	725,742	Y	Y	Y	N	N	N
9	DeCA	6,139,324	Services	N	N/A	Y	N/A	Y	N/A	N/A	N/A
10	DeCA	4,302,467	Services	N	N/A	Y	N/A	Y	N/A	N/A	N/A
11	DeCA	3,354,720	Supplies	Y	N/A	Y	N/A	Y	N	N	N
12	DISA	12,217,064	Services	Y	3,508,176	Y	Y	Y	N	N	N
13	DISA	5,358,356	Services	Y	872,417	Y	Y	Y	N	N	N
14	DISA	65,339,873	Services	Y	5,885,623	Y	Y	Y	N	N	N
15	DISA	12,210,638	Services	N	N/A	N	N/A	N	N/A	N/A	N/A
16	USSOCOM	158,512,332	Services	Y	32,332,668	Y	Y	Y	N	N	N
17	USSOCOM	19,477,515	Services	Y	2,953,290	Y	Y	Y	N	N	N
18	DHA	6,960,129	Services	Y	2,259,186	Y	Y	Y	N	N	N
19	DHA	74,431,574	Services	Y	469,464	Y	Y	Y	N	N	N
20	DLA	3,089,700	Supplies	N	N/A	N	N/A	Y	N/A	N/A	N/A

Summary of Contract Reviews (cont'd)

Contract #	Contracting Department, Agency, or Command	Total Amount Paid to Prime Contractor (\$)	Type of Contract	Subcontracts Identified	Subcontracted Amounts ¹	Contract Included FAR Clause 52.219-14 ²	Prime Contractor Complied With Subcontracting Limitations ³	Contract Included FAR Clause 52.204-10 ⁴	Prime Contractor Reported Subcontracts in FSRS	Service or Agency Reviewed Subcontract Reports Quarterly	Service or Agency Included Reporting Non-Compliance in Performance Information
21	DLA	40,803	Supplies	Y	N/A	N/A	N/A	Y	N	N	N
22	DLA	Scoped out	Scoped out	Scoped out	Scoped out	Scoped out	Scoped out	Scoped out	Scoped out	Scoped out	Scoped out
23	Army	15,204,867	Services	Y	734,887	Y	Y	Y	N	N	N
24	Navy	4,032,784	Services	Y	685,508	Y	Y	Y	N	N	N
25	Navy	8,549,457	Services	Y	2,170,436	Y	Y	Y	N	N	N
26	Navy	23,900,242	Services	Y	6,754,911	Y	Y	N	N	N	N
27	DHA	1,537,253	Supplies	N	N/A	Y	N/A	Y	N/A	N/A	N/A
28	USSOCOM	12,674,307	Services	Y	3,184,790	Y	Y	Y	N	N	N
29	USSOCOM	36,823,722	Services	Y	16,796,792	Y	Y	N	N	N	N
30	DeCA	11,682,829	Services	N	N/A	Y	N/A	Y	N/A	N/A	N/A
31	DHA	2,794,237	Services	N	N/A	Y	N/A	Y	N/A	N/A	N/A
32	Army	371,730	Supplies	N	N/A	N	N/A	N	N/A	N/A	N/A
33	DHA	4,096,807	Services	N	N/A	N	N/A	Y	N/A	N/A	N/A
34	DLA	370,683	General construction	Y	61,550	Y	Y	Y	N	N	N
35	Army	24,081,761	General construction	Y	528,976 ⁶	Y	Y	Y	Y	N	N/A
36	Army	6,502,110	General construction	Y	N/A	Y	N	N	N	N	N
37	Navy	5,448,932	General construction	Y	444,264	Y	Y	Y	N	N	N
38	Navy	3,850,696	General construction	Y	N/A	Y	N	Y	N	N	N
39	Navy	1,540,706	General construction	Y	N/A	Y	N	N	N	N	N

Summary of Contract Reviews (cont'd)

Contract #	Contracting Department, Agency, or Command	Total Amount Paid to Prime Contractor (\$)	Type of Contract	Subcontracts Identified	Subcontracted Amounts ¹	Contract Included FAR Clause 52.219-14 ²	Prime Contractor Complied With Subcontracting Limitations ³	Contract Included FAR Clause 52.204-10 ⁴	Prime Contractor Reported Subcontracts in FSRS	Service or Agency Reviewed Subcontract Reports Quarterly	Service or Agency Included Reporting Non-Compliance in Performance Information
40	Navy	939,096	General construction	Y	124,549	Y	Y	Y	N	N	N
41	Army	385,476	General construction	Y	130,657 ⁷	Y	Y	Y	N/A	N/A	N/A
42	WHS	2,781,620	General construction	Y	526,278 ⁷	Y	Y	Y	N	N	N
43	WHS	2,784,502	General construction	Y	N/A	Y	N	Y	N	N	N
44	DISA	1,545,351	Construction by special trade contractors	Y	N/A	Y	N	Y	N	N	N
45	Army	643,192	Construction by special trade contractors	Y	N/A	Y	N	Y	N	N	N
46	Army	1,345,061	Construction by special trade contractors	Y	N/A	Y	N	Y	N	N	N
47	Army	1,191,000	Construction by special trade contractors	Y	N/A	N	N	N	N	N	N
48	Navy	1,078,069	Construction by special trade contractors	Y	N/A	Y	N	Y	N	N	N

Summary of Contract Reviews (cont'd)

Contract #	Contracting Department, Agency, or Command	Total Amount Paid to Prime Contractor (\$)	Type of Contract	Subcontracts Identified	Subcontracted Amounts ¹	Contract Included FAR Clause 52.219-14 ²	Prime Contractor Complied With Subcontracting Limitations ³	Contract Included FAR Clause 52.204-10 ⁴	Prime Contractor Reported Subcontracts in FSRS	Service or Agency Reviewed Subcontract Reports Quarterly	Service or Agency Included Reporting Non-Compliance in Performance Information
49	WHS	6,001,148	Construction by special trade contractors	Y	N/A	N	N	N	N	N	N
50	Army	2,167,930	Construction by special trade contractors	N	N/A	Y	N/A	N	N/A	N/A	N/A

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

¹ Subcontracted amounts do not include amounts that were paid to subcontractors that were similarly situated entities. In addition, contracts listed as “N/A” in this column either did not have subcontractors, were not subject to subcontracting limitations, or we were unable to identify the amounts paid to subcontractors.

² In accordance with FAR part 19, clause 52.219-14 is not required for contracts and solicitations under \$250,000. Contracts listed as “N/A” within this column were valued below \$250,000.

³ Contracts listed as “N/A” in this column either did not have subcontractors or the subcontracting limitations did not apply.

⁴ In accordance with FAR subpart 4.14, clause 52.204-10 is not required in contracts and solicitations under \$30,000. Contracts listed as “N/A” within this column were valued below \$30,000. Furthermore, for contracts listed as “N/A” within this column, contractors were also not required to report subcontracts in FSRS, and contracting personnel were not required to review subcontractor reports quarterly or include the contractor’s non-compliance with the reporting requirements in performance information. Therefore, those columns will also be listed as “N/A.”

⁵ Y = Yes, N/A = Not Applicable, N = No

⁶ This amount may be understated because complete subcontractor payment documentation was not provided for all subcontractors.

⁷ This amount may be overstated because documentation did not exist to support a breakout between materials and other costs and we relied on the total amount paid to subcontractors.

Source: The DoD OIG.

Management Comments

Defense Information Systems Agency



DEFENSE INFORMATION SYSTEMS AGENCY
P. O. BOX 549
FORT MEADE, MARYLAND 20755-0549

2 December 2021

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DOD IG)

SUBJECT: Audit of Department of Defense Small Business Subcontracting Requirements (Project No. D2021-D000AX-0075.000)

The audit objective was to determine whether DoD contracting officials conducted oversight to ensure that contractors that were awarded small business set-aside and sole-source contracts complied with small business subcontracting limitations in accordance with applicable laws and regulations. The DoD IG reviewed five DISA contracts and found one lacked sufficient documentation to make the determination of compliance with FAR clause 52.219-14, Limitations on Subcontracting.

Recommendation A.3:

We recommend that the Director of the Defense Information Systems Agency perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. When the percentage exceeds established subcontracting limitations, contracting leadership should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, contracting leadership should report any instances of non-compliance with subcontracting limitations in the contractor's performance information.

Response: Concur. Planned completion date: second quarter fiscal year 2022.

The available contract documentation did not provide sufficient information to allow the contracting officer to assess actual amounts paid to the subcontractor to determine compliance with the clause, under the fixed-price contract. The Contracting Officer will obtain the necessary documentation from the contractor and determine that amounts paid to the subcontractor comply with the clause.

PACKARD.DOUGL [REDACTED]
AS.W. [REDACTED]
DOUGLAS W. PACKARD
Procurement Services Executive
Director, Defense Information
Technology Contracting Organization

Washington Headquarters Services



ACQUISITION
DIRECTORATE

DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155



December 6, 2021

██████████
Program Director for Audit Acquisition, Contracting and Sustainment
US Department of Defense Office of Inspector General
4800 Mark Center Drive
Alexandria, VA 22350-1500

Dear ██████████,

I am in receipt of the Department of Defense Office of Inspector General’s (DoD OIG’s) Draft Report No. Project No. DODIG-2021-001 entitled “Audit of the Department of Defense Small Business Subcontracting Requirements,” Project No. D2021-D000AX-0075.000, dated November 4, 2021. The Washington Headquarters Services, Acquisition Directorate (WHS/AD) appreciates the opportunity to address and recommend close out on the requested recommendations identified under A.2 in the referenced report.

Recommendations	WHS/AD Status & Actions
A.2- We recommend that the Director of the Washington Headquarters Services Acquisition Directorate perform a review of the two contracts for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractors complied with subcontracting limitations.	Concur for HQ003418C0013: WHS AD has reviewed the contract and determined that small business prime contractor complied with subcontracting limitations. Supporting documents are provided. Therefore, the Director has determined the small business prime contractors are not subject to a penalty and does not require non-compliance reporting. (See attachment 1)
A.2- We recommend that the Director of the Washington Headquarters Services Acquisition Directorate perform a review of the two contracts for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractors complied with subcontracting limitations.	Concur for HQ003418C0129: WHS AD has reviewed the contract and determined that small business prime contractor complied with subcontracting limitations. Supporting documents are provided. Therefore, the Director has determined the small business prime contractors are not subject to a penalty and does not require non-compliance reporting. (See attachment 2)

Thank you for the opportunity to respond to the draft report recommendations, WHS/AD is committed to complying with all statutes, regulations and strengthening its internal controls to ensure full compliance with the OIG’s recommendations. In addition, we are requesting the comments be considered for the final report. The assigned point of contact for this topic is ██████████

Department of the Navy



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

From: Executive Director, Deputy Assistant Secretary of the Navy (Procurement)
To: U.S. Department of Defense Inspector General

Subj: DEPARTMENT OF THE NAVY RESPONSE TO THE DRAFT REPORT -
AUDIT OF DEPARTMENT OF DEFENSE SMALL BUSINESS SUBCONTRACTING
REQUIREMENTS (PROJECT NO. D2021-D000AX-0075.000)

Ref: (a) [REDACTED] email, same subject, dated 4 November 2021 with attachment

1. The Department of the Navy (DON) appreciates the opportunity to review the draft report, Audit of Department of Defense Small Business Subcontracting Requirements, dated 4 November 2021 (Project No. D2021-D000ax-0075.000), provided by Reference (a). The DON's response to recommendations A.4, A.5, and A.6 are provided below, as required by Reference (a).

Recommendation A.4: We recommend that the Commanding Officer of the Naval Facilities Engineering Systems Command-Mid-Atlantic perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commanding Officer should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commanding Officer should report the non-compliance with subcontracting limitations in the contractor's performance information.

DON RESPONSE: Concur. The DON will review the contract for compliance with subcontracting limitations and in the case of noncompliance, the contracting officer will exercise appropriate contractual remedies in accordance with the Federal Acquisition Regulation.

Recommendation A.5: We recommend that the Commanding Officer of the Naval Facilities Engineering Systems Command-Southwest perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commanding Officer should determine whether the small

Department of the Navy (cont'd)

Subj: DEPARTMENT OF THE NAVY RESPONSE TO THE DRAFT REPORT -
AUDIT OF DEPARTMENT OF DEFENSE SMALL BUSINESS SUBCONTRACTING
REQUIREMENTS (PROJECT NO. D2021-D000AX-0075.000)

business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commanding Officer should report the non-compliance with subcontracting limitations in the contractor's performance information.

DON RESPONSE: See response to A.4 above.

Recommendation A.6: We recommend that the Director of the Regional Contracting Office Marine Corps Installation-West perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Director should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Director should report the non-compliance with subcontracting limitations in the contractor's performance information.

DON RESPONSE: See response to A.4 above.

NICKLE,STEVEN

.A

Steven A. Nickle
Executive Director
Deputy Assistant Secretary of the Navy
(Procurement)

Department of the Army



DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
OFFICE OF SMALL BUSINESS PROGRAMS
106 ARMY PENTAGON
WASHINGTON DC 20310-0106

SASB

MEMORANDUM FOR [REDACTED], Program Director for Audit
Department of Defense Office of Inspector General
4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Headquarters Army Office of Small Business Programs Response for the Department of Defense Office of Inspector General Draft Report, Titled: "Audit of Department of Defense Small Business Subcontracting Requirement" (Project Number D2021-D000AX-0075-000, dated 4 November 2021

1. Reference: Draft DoDIG Audit of DoD Small Business Subcontracting Requirements Project Number D2021-D000AX-0075.000

2. The Office of Small Business Programs (OSBP), in coordination with the U.S. Army Materiel Command (AMC) for Recommendation A.7 and U.S. Army Corps of Engineers (USACE) for Recommendations A.8 and A.9, reviewed the subject draft report and concur with all findings and recommendations. Responses to the recommendations are enclosed. This represents the official Army position for the subject draft report.

3. The point of contact on my staff is [REDACTED]

[REDACTED]
BUEHLER.KIMBERL
Y.DIANE [REDACTED]

Encl

[REDACTED]
Kimberly D. Buehler
SES, USA
Director, Small Business Programs

Department of the Army (cont'd)

Enclosure

**Project Number D2021-D000AX-0075.000
AMC Mission and Installation Contracting Command**

Recommendation A.7:

DoDIG recommends that the Commander of the Mission and Installation Contracting Command perform a review of the two contracts for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractors complied with subcontracting limitations. The reviews should include, at a minimum, collecting information related to amounts the prime contractors paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractors paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractors by the Government. If the percentages exceed established subcontracting limitations, the Commander should determine whether the small business prime contractors are subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commander should report the non-compliance with subcontracting limitations in the contractors' performance information.

Command Comment: Concur.

Command Response: The 418th Contracting Support Brigade and MICC-Fort McCoy will review the contracts identified in the audit and make a recommendation to Commander on actions that may require collection from the contractors. The offices will update the contractors' performance information if required after the review. The MICC will complete this action by 28 January 2022.

Department of the Army (cont'd)

Enclosure

Project Number D2021-D000AX-0075.000
USACE US. Army Engineering & Support Center

Recommendation A.8:

DoDIG recommends that the Commander of the U.S Army Engineering & Support Center perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commander should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commander should report the noncompliance with subcontracting limitations in the contractor's performance information.

Concur with comment.

The USACE concurs with comments. The Commander of the U.S Army Engineering & Support Center (CEHNC) directed contracting to perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected. The CEHNC Directorate of Contracting reviewed the contract and found that there was not a subcontractor for the contract. In accordance with FAR 44.101, a subcontractor is an individual or a business that signs a contract to perform part or all of the obligations of another's contract.

For the contract in question, the prime contractor performed 100% of the work for the requirement. An accredited laboratory was used to test samples collected by the prime contractor and the laboratory was not a subcontractor to the prime. The prime contractor confirmed that their relationship with the laboratory was improperly termed a subcontract in their proposal. There was no subcontract with the laboratory associated with this contract action. As such, there was no documentation to be collected or maintained related to subcontracting amounts or exceeded limitations. No penalties should be levied against the prime contractor.

Department of the Army (cont'd)

Enclosure

Project Number D2021-D000AX-0075.000
USACE Sacramento District

DoD OIG Recommendation A.9:

DoDIG recommends that the Commander of the U.S. Army Corps of Engineers Sacramento District perform a review of the contract for which adequate documentation related to subcontracting amounts was not collected or maintained by contracting personnel and determine whether the small business prime contractor complied with subcontracting limitations. The review should include, at a minimum, collecting information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculating the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government. If the percentage exceeds established subcontracting limitations, the Commander should determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection. In addition, the Commander should report the noncompliance with subcontracting limitations in the contractor's performance information."

Action Taken or Planned:

CESPK concurs with comment to the DoD OIG's recommendation. The Commander of the U.S. Army Corps of Engineers Sacramento District will direct the District's Contracting Division to perform a review of the contract.

For the selected contract:

- (1) CESPK Commander will direct CESPK Contracting Division (CT) obtain adequate documentation related to subcontracting amounts to determine whether the small business prime contractor complied with subcontracting limitations. At a minimum, CESPK-CT will collect information related to amounts the prime contractor paid to any subcontractors, including a breakout between materials and other costs, where applicable, and calculate the percentage the prime contractor paid to subcontractors that are not similarly situated based on the total amount paid to the prime contractor by the Government.
- (2) If the percentage exceeds established subcontracting limitation, CESPK-CT will determine whether the small business prime contractor is subject to a penalty, identify the amount of the penalty, and pursue collection.
- (3) CESPK-CT will report any non-compliance with subcontracting limitations in the contractor's performance information.

Actions to be completed by 28 February 2022.

Acronyms and Abbreviations

CFR	Code of Federal Regulations
DAU	Defense Acquisition University
DeCA	Defense Commissary Agency
DHA	Defense Health Agency
DISA	Defense Information Systems Agency
DLA	Defense Logistics Agency
DPC	Defense Pricing and Contracting
EDWOSB	Economically Disadvantaged Woman-Owned Small Business
FAR	Federal Acquisition Regulation
FFATA	Federal Funding Accountability and Transparency Act
FSRS	FFATA Subaward Reporting System
HUBZone	Historically Under-Utilized Business Zone
OSBP	Office of Small Business Programs
SBA	Small Business Administration
SDVOSB	Service-Disabled Veteran-Owned Small Business
USSOCOM	U.S. Special Operations Command
WHS	Washington Headquarters Services
WOSB	Woman-Owned Small Business

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U.S. DEPARTMENT OF DEFENSE

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