United States Department of State
and the Broadcasting Board of Governors
Office of Inspector General

Office of Audits

Audit of Allegations Pertaining to Contract With DynCorp International for the Security Sector Transformation Project in South Sudan, Africa

Report Number AUD/SI-10-23, August 2010

United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

PREFACE

This report was prepared by the Office of Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared by OIG periodically as part of its responsibility to promote effective management, accountability and positive change in the Department of State and the Broadcasting Board of Governors.

This report is the result of an assessment of the strengths and weaknesses of the office, post, or function under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

The recommendations therein have been developed on the basis of the best knowledge available to the OIG and, as appropriate, have been discussed in draft with those responsible for implementation. It is my hope that these recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of those who contributed to the preparation of this report.

Harold W. Geisel
Deputy Inspector General

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EXECUTIVE SUMMARY

On October 7, 2009, the Department of State, Bureau of Administration, Office of Acquisitions Management (AQM), requested that the Office of Inspector General (OIG) review allegations made by the Bureau of African Affairs, Regional and Security Affairs (AF/RSA), regarding DynCorp International's contract performance on the Security Sector Transformation (SST) Project in South Sudan, Africa. These allegations pertained to timeliness of work completion, quality of construction (base camps), and accuracy in progress reporting.

The objectives of the audit were (1) to determine whether the allegations regarding DynCorp's contract performance were valid and supported and (2) to determine how much, if any, of the $52.8 million in contractor costs claimed (which exceeded the $40 million authorized ceiling) the contractor is entitled to for reimbursement.

OIG found that AF personnel did not have adequate support for some of its allegations regarding contractor performance and that the evidence demonstrating that fraud or malfeasance had occurred was insufficient. However, there were indications that DynCorp's performance was inadequate, as evidenced by instances that included the following:

- DynCorp did not notify the Department timely of a labor dispute with its subcontractor until 2 months had passed, which led to a lengthy work stoppage, delayed the completion of the Project, and may have increased costs. Overall, the Project was originally scheduled to be completed by February 15, 2007, but was not finished until January 31, 2008, which was approximately a year later.

- There were inconsistencies in the manner in which DynCorp billed the Department, making it difficult to correlate costs claimed to the contract task order.

- OIG could not assess the quality of the base camps, since the facilities had been turned over to the South Sudanese almost 2 years before the audit request. However, personnel and documentation attested to the fact that the quality of the work on the camps was poor.

OIG determined that these conditions were caused to some extent by the lack of effective contractor oversight and monitoring by AQM and AF over the performance period of September 2005 through August 2007. (These allegations and the Department's oversight of contract performance are detailed in the section "Analysis of Allegations.")

OIG concluded that DynCorp should not be reimbursed the total amount of the $12.8 million of additional costs claimed. This amount exceeded the task order-funded amount of $40 million that was established by the contracting officer because additional funding was never authorized for cost overruns. However, OIG did find that the contracting officer had stated in an email that an additional $2.6 million had been incorporated into the contract. Although there had been no formal increase in the authorized Project's cost, OIG believes that this email exchange demonstrates a commitment by the Department to increase the cost ceiling. Therefore, the contractor should be entitled to this additional reimbursement as opposed to an additional $8.7 million as suggested in a report issued by the Defense Contract Audit Agency (DCAA).[1] OIG believes that $2.6 million (in addition to the $40 million ceiling that was authorized and paid) is a reasonable reimbursement for the contractor. (This issue is discussed further in the section "Cost Reimbursement to DynCorp.")

In its response, AQM agreed with the intent of Recommendations 1 and 2, which pertained to the sufficiency of on-site technical support and to having contract monitors with the experience and training needed to monitor the contracts, respectively. However, AQM stated that it could not "ensure that AF has sufficient on-site technical support" because AF, not AQM, controls funding for those resources. AQM also stated that its authority "is not to vet" the technical qualifications of its CORs and government technical monitors, as recommended (No. 2), but to "ensure that the A/OPE [Office of the Procurement Executive] designations for COR designations are current and complete."

Although AQM concurred with Recommendation 3, which pertained to paying the settlement amount of $2.6 million to DynCorp, OIG modified the recommendation to include AF as a participant in ensuring payment of the amount.

Based on AQM's response, OIG considers Recommendations 1 and 2 unresolved. The recommendations can be considered resolved, pending OIG's acceptance of the documentation described. Recommendation 3 can be considered resolved pending OIG's acceptance of AF's response to the revised recommendation.

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[1] *Report on Audit of Claimed Costs on Security Sector Transformation Project Under IDIQ Contract No. S-LMAQM-03-C-0034* (DCAA 3181-2009D17900002, July 2, 2009).

Responses from AQM and AF are presented in their entirety in Appendices B and C, respectively, and comments and replies to individual recommendations are presented after each recommendation. Although information from the bureaus has been incorporated into the report as appropriate, extracts from AF's comments and OIG's replies are addressed separately in the section "Bureau of African Affairs Comments and OIG Replies."

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SCOPE AND METHODOLOGY

We conducted this performance audit 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. Our audit was performed during the period of November 5, 2009, through January 15, 2010.

To conduct its audit, OIG reviewed contract documentation and pertinent correspondence; interviewed officials from AF, AQM, and the Office of the Legal Adviser; and spoke with DCAA representatives about their July 2009 report. The documents reviewed included the basic contract, SST task orders with subsequent modifications, weekly site and monthly status reports, contractor vouchers, and relevant independent reports. Further, OIG judgmentally sampled and reviewed four of 30 vouchers submitted by the contractor.

BACKGROUND

DynCorp International was awarded a 5-year indefinite-delivery, indefinite-quantity (IDIQ) contract on January 23, 2003, to provide peacekeeping-related services to African countries. Two task orders were awarded to DynCorp under this contract in September 2005. The task orders had time-and-materials, cost-reimbursable, and fixed-price elements and were to support the transition of the Sudan People's Liberation Army into a professional force by providing advisors, training, base camp construction, and logistical support. The Department also executed six task order modifications, dating from September 2006 to June 2008, which brought the total funded amount to $40 million. The IDIQ performance period was from September 2005 through September 2008.

One task order modification, signed in August 2007, incorporated the definitized statement of work into the task order work. Prior to that change, the contract was operating under an undefinitized statement of work with no firm funding level, although DynCorp had proposed to the contracting officer a number of cost options that were not formally approved. DynCorp's definitized cost proposals, submitted in May and June 2007, totaled $42.6 million. AQM's Business Operations Division (BOD), Quality Assurance Branch (QAB), performed a cost price analysis on these proposals, concluding that DynCorp's documentation was inadequate to support its proposed costs, and it requested that DynCorp reprice its cost proposal. However, no documentation was provided to OIG by AQM showing that DynCorp had provided the support to its proposed costs. Nonetheless, the contracting officer stated in an email exchange that the $42.6 million was incorporated into the statement of work.

Under cost-plus contracts, the government is obligated to reimburse the contractor for its "best efforts," up to the cost limitations established in the contract, in meeting the contract's performance objectives and delivery dates. This type of contract places maximum responsibility on the government to monitor performance to ensure that the contractor stays within budget and time constraints.

On March 27, 2008, DynCorp submitted a request for equitable adjustment to the Department for $52.8 million. AQM/BOD found that the request did not contain the required supporting documentation to demonstrate cost reasonableness, as required by the Federal Acquisition Regulation (FAR) (FAR subpart 15.408, table 15-2) and that justified the additional funding request.

AF contracted with Noblis, an independent not-for-profit consulting firm, to assist AF in assessing DynCorp's performance in South Sudan and Darfur. In South Sudan, Noblis assessed DynCorp's performance on the construction of facilities, logistical support, and training services. In its July 11, 2008, report,[2] Noblis was critical of DynCorp and the Department's oversight of the Project. It cited DynCorp's challenges, which included poor management of subcontractor performance, poor construction quality, changes in corporate and field management, failure to follow corporate policies, and high turnover rates of personnel.

Upon the request of AQM, DCAA performed an audit of the incurred costs claimed under the task orders to express an opinion on the claimed costs and to determine whether the Department owed DynCorp additional funds. DCAA's report questioned $4.1 million of the $52.8 million of total costs incurred on the basis that they exceeded acceptable allowable costs. DCAA also found, during the period September 23, 2005, to October 15, 2008, that the contractor was not in compliance with CAS 401 (Consistency in Estimating, Accumulating, and Reporting Costs), CAS 405 (Accounting for Unallowable Cost), and FAR 52.216-7 ("Allowable Cost and Payment"). DCAA's audit examined cost and pricing data, but it did not review actual performance issues, the established funding ceiling of $40 million, or various correspondence between the government and DynCorp officials.

AQM officials stated that after initial discussions with the contractor regarding the $12.8 million in question, the Department offered DynCorp approximately $8 million ($12.8 million minus the $4.1 million in DCAA questioned costs and a penalty of $645,000, representing the contractor's fee). DynCorp made a counteroffer of $12.4 million on August 17, 2009, and subsequently indicated a willingness to accept AQM's initial offer. However, AF subsequently expressed its concerns about the contractor's performance, and AQM withdrew its $8 million offer.

[2] *Program Management and Acquisition Review for the Department of State, Bureau of African Affairs, Sudan Programs Group* (July 2008).

RESULTS OF AUDIT

OIG found that AF personnel did not have adequate support for some of its allegations regarding contractor performance and that the evidence demonstrating that fraud or malfeasance had occurred was insufficient. OIG also determined that the reasonable amount of additional costs claimed by DynCorp that should be reimbursed is $2.6 million. The allegations, the basis for reimbursement, and the causes of the deficiencies are detailed in sections that follow, and key contractual events are detailed in Appendix A.

Analysis of Allegations

AF made numerous allegations in regard to DynCorp's performance on the SST Project, which OIG has grouped into three general categories: timeliness of work completion, quality of construction, and accuracy in progress reporting.

Timeliness of Work Completion. The Department issued a definitized statement of work, dated March 14, 2007, that outlined the work requirements for the various construction sites. Upon accepting the work, the contractor agreed that the scheduled completion date of the work was an "essential condition" and that the timeline of completion of all described work was reasonable, considering the South Sudan climate conditions and other factors prevailing in the locality of the work. DynCorp also agreed to provide a sufficient number of employees who had the requisite skills needed to perform the work properly, diligently, and effectively so as not to delay or interfere with the Department's scheduled work completion.

In executing modification #3, the contractor agreed to produce timely work products. The three types of timeliness issues alleged by AF pertained to (1) timely notification of a labor dispute; (2) delayed contract performance, which led to additional costs; and (3) delayed implementation of critical elements of a peace agreement, which damaged relations with the host government.

OIG confirmed that the contractor had failed to notify the Department timely of a labor dispute with its subcontractor, which led to a work stoppage that delayed contract performance. Specifically, OIG found that one subcontractor (TRAX Construction, LTD) was issued a termination notice by DynCorp on May 2, 2007, although construction delays had been identified more than 2 months earlier, when DynCorp held back payment on the subcontractor's invoices for contract noncompliance. TRAX countersued on May 8, 2007, claiming nonpayment by DynCorp of $1.1 million and noted that it had previously raised breaches of contract with DynCorp on April 16, 2007. DynCorp was not able to bring on a new subcontractor to complete the Project work until 6 months after the dispute began (August 2007). DynCorp did not notify the Department until May 7, 2007, of the dispute with the contractor when it submitted its proposal on the definitized statement of work. However, FAR section 52.222-1, which was incorporated into the contract, requires the contractor to notify the contracting officer immediately and provide relevant details when a labor dispute is delaying or threatens to delay the timely performance of the contract. In addition, the contractor was fully responsible for bringing on a new subcontractor to continue the work and complete it within the agreed-upon timeframe, but this did not occur.

OIG was unable to evaluate the claim that delays in performance caused additional costs to be incurred because the Project's master schedule milestones were not always updated through task order modifications when changes in activity deadlines occurred. Also, because of the inconsistencies in the way the contractor billed for its services, OIG was not able to correlate the costs as claimed in the vouchers presented to those estimated in the contractor's original proposal. For example, one billing for the period of May 21 to August 15, 2007, included a voucher that included costs for work that had been performed as many as 16 months earlier (from January to June 2006). The implied weakness in the contractor billing process was also mentioned in the Noblis report, when it stated that DynCorp staff who were interviewed had indicated that they would not have accepted DynCorp's invoices for the work performed in South Sudan if they had been the government representative, because the invoices did not provide sufficient details and were not organized to allow for government review and analysis.

Quality of Construction. A major limitation of OIG's audit was that the construction work at the base camps was completed and accepted by the Department (and the ownership transferred to the South Sudanese) in early 2008, which was almost 2 years before the audit was requested. Therefore, OIG was unable to corroborate allegations related to the quality of the work. AF officials stated that the contractor work was accepted by the Department in spite of the perceived poor workmanship because the Department wanted to honor the U.S. Government's timeline commitments made to the South Sudanese Government and to foster continued good will between the two governments.

However, in addition to statements from AF officials, the contracting officer, and government technical monitors, OIG noted that significant problems were reported in the program management and acquisition review conducted by Noblis in its July 2008 report. That report concluded the following:

- Poor performance by the contractor's SST field program management resulted in significant delays to and embarrassment for the Department (that is, in the view of the South Sudanese Government, the Department's client in this case).

- Poor quality and construction delays were due to the ineffective handling of subcontractors, schedules, and logistics.

- Poor workmanship and quality of the materials used in the construction may have had an impact on the frequency of repairs at the IGHQ construction camp. These deficiencies in IGHQ construction led to unexpected operations and maintenance issues.

- DynCorp failed to provide adequate direction to its subcontractors and did not provide necessary and expected subcontractor oversight.

- DynCorp's performance in Sudan, especially with the IGHQ, was adversely impacted by limited government on-site oversight and changes in requirements.

In its report, Noblis was not able to determine whether DynCorp had overcharged or undercharged the Department for work programs in South Sudan, but it did conclude that schedule delays in 2007 resulted in additional labor hours.

Accuracy in Progress Reporting. An allegation was made by AF program officials that DynCorp had "intentionally deceived" them by stating that task orders were nearly completed when they were not.

In OIG's review of DynCorp status reports and AQM site reports, in addition to other correspondence, OIG found instances in which the contractor had reported that work was on schedule when construction delays and other noncompliance with its subcontractor were causing delays and reported progress that was inconsistent with what was verified through on-site inspection. For example, DynCorp reported on June 13, 2007, that the IGHQ camp would be completed by July 9, 2007. However, in a site inspection made by Department officials in late July 2007, the officials found that the IGHQ was far from being ready for a final inspection. Specifically, construction debris had not been removed from the site, and a number of safety issues were noted. Actual completion of the IGHQ camp did not take place for another 6 months, on January 31, 2008. Also, at the Malou camp, where DynCorp had held back payment on invoices from its construction subcontractor beginning in February 2007 because of delays in the execution and progress of the work, DynCorp did not report any problems or delays until late April 2007. During the period February through April 2007, weekly site and monthly reports did not disclose any delays related to the construction work.

However, because AF and AQM did not have personnel at the sites early enough to monitor contractor performance and verify progress claimed, OIG could not determine that the contractor had intentionally deceived the government.

Factors Contributing to Allegations

The deficiencies identified in this report occurred in part because AF and AQM officials did not provide adequate oversight and monitoring over the performance period of 2005 to 2007 of the SST Project. Although AF officials expressed concern about DynCorp's not meeting the timelines for completion of the Project, AF officials did not have personnel on-site early enough to monitor contractor performance and verify claimed progress. It was not until September 2007 that AF assigned a government technical monitor with construction experience to oversee the Project's performance. Prior to that period, AF either did not have technical support on-site, or the government technical monitor, who was assigned to the Project in April 2007 and was a political officer working out of the Consulate in Juba, did not have the experience required of a contract technical monitor. The issue of weaknesses in AF's oversight of projects was previously addressed in an OIG August 2009 Office of Inspections report.[3]

Contract Oversight. The lack of effective contractor oversight and monitoring by AQM and AF over the 2005 to 2007 performance period of the contract was caused in part by the lack of experience of the contracting officer's representative (COR) in monitoring construction contracts and the delay in incorporating clear milestone schedules into the contract. According to the contracting officer who took over the Project in 2007, the COR who was assigned to the Project in September 2006 had limited knowledge about handling contracts. In addition, the COR admitted that she did not know of anyone with construction experience who had inspected the sites before the appointment of a government technical monitor on September 30, 2007. Also, the contract lacked schedules or established timeframes

[3] *The Bureau of African Affairs* (ISP-I-09-63, Aug. 2009).

to control Project performance. Given the type of contract, cost plus, which places maximum responsibility on the government to monitor performance to ensure that the contractor stays within budget and time constraints, an added level of oversight was needed.

Although AF and AQM did not provide adequate oversight of the SST Project, AQM did visit the IGHQ and Malou sites in July 2007. During the visit, AQM reported that DynCorp needed to provide more sufficient corporate attention and oversight and that subcontractors were not being adequately managed, overseen, or controlled. Specifically, in a July 25, 2007, email to DynCorp, AQM noted safety issues at the construction sites and also that the sewage system was not functioning at the Malou camp. Overall, AQM concluded that because there were insufficient numbers of personnel to support operations, the projects were falling far behind schedule, which endangered the United States relationship with the South Sudan Government. AQM gave DynCorp 90 days, from August 1 to October 30, 2007, to correct the deficiencies. An AF official, upon subsequent inspection in January 2008, concluded that DynCorp had addressed all but minor deficiencies, and the Department accepted the facilities.

OIG Inspection Report. The August 2009 Office of Inspections report found that because of major increases in contracts in 2009, coupled with the lack of adequate staff to oversee and monitor the current contract workload, AF needed to direct-hire additional contract specialists to provide oversight of its security program contracts. In its response to the 2009 report, AF agreed with the Office of Inspections recommendation to hire additional personnel and stated that it had requested five additional positions. The report also stated that AF's CORs had not received the revised continuous learning the Office of Management and Budget had prescribed. Each agency was to implement those requirements for CORs to receive 40 hours of refresher training every 2 years.

In its comments to the report, AF stated that since the August 2009 inspection, it had hired two additional personnel and had reassigned three other personnel to supplement its contract and program support group, which provides oversight of contracts in Sudan.

Recommendation 1: OIG recommends that the Bureau of Administration, Office of Acquisitions Management, ensure that the Bureau of African Affairs has sufficient on-site contract technical support to regularly monitor and report on contract progress so that issues of potential concern can be identified and resolved in a timely manner.

Management Response: AQM agreed that such on-site support is needed "in a sufficient and timely manner." However, AQM stated that it "cannot 'ensure'" that AF has sufficient on-site technical support because AF, not AQM, controls funding for those resources. AQM further stated that it "always provides prompt acquisition support in response to requisitions for on-site [government technical monitors]."

OIG Reply: Department of State Acquisition Regulations (DOSAR) (DOSAR 642.270 (d)(3) and (f)(4)) state that appointing a COR "is a matter solely within the discretion" of the contracting officer, who may "revoke" the COR's appointment if the COR fails "to adhere to the conditions of the appointment." Conditions of the COR appointment normally include assistance in contract administration. If the contracting officer, who is provided by AQM, anticipates the need for timely contract administration, AQM should try to secure funding from other resources to fund this essential technical support.

Based on the DOSAR sections cited, OIG concludes, because AQM provides the contracting officer, who in turn has authority over the AF-appointed COR and the government technical monitors, that AQM should revoke the appointment of any COR who is not complying with the conditions of the COR appointment.

OIG considers this recommendation unresolved. This recommendation can be resolved when OIG accepts documentation AQM has provided specifying the actions it will take to ensure that AF or other program office has the contract technical support required.

Recommendation 2: OIG recommends that the Bureau of Administration, Office of Acquisitions Management, ensure that the Bureau of African Affairs has contracting officer's representatives and government technical monitors who are assigned to construction contracts that have the requisite experience and training.

Management Response: AQM agreed that CORs and government technical monitors should have the requisite experience and training. AQM stated that "per the FAR [Federal Acquisition Regulation]," CORs are "selected and nominated by [AQM's] program offices (in this case, by AF/RSA)." Therefore, AF/RSA is responsible for vetting and judging the technical qualifications of a COR nominee. AQM agreed that CORs and government technical monitors should have the appropriate expertise to accomplish their duties but stated that it "cannot 'ensure' this happens as it is not within [AQM's] authority to do so."

In its comments, AF stated that as of May 2010, "all AF CORS were up to date on COR training and officially appointed as CORs by AQM for their current contracts."

OIG Reply: As stated for Recommendation 1, the contracting officer has sole authority to appoint and revoke the appointments of CORs and government technical monitors. Revocation of these appointments occurs when the individual in either position does not adhere to the conditions of the respective appointment. Therefore, the contracting officer is responsible for periodically reviewing the qualifications and training acquired by the CORs and government technical monitors.

OIG requests that AQM reconsider its response to this recommendation, which is unresolved. This recommendation can be resolved when OIG accepts documentation AQM has provided specifying the actions it will take to ensure that CORs and government technical monitors who are assigned to construction contracts have the requisite experience and training.

Cost Reimbursement to DynCorp

OIG concluded that DynCorp should not be reimbursed the total amount of the $12.8 million of additional costs claimed because that amount exceeded the task order-funded amount of $40 million. However, OIG did find that the contracting officer had stated in an email that an additional $2.6 million had been incorporated into the contract. Although there had been no formal increase in the contract ceiling, OIG concluded that this email exchange demonstrates a commitment by the Department to increase the cost ceiling to $42.6 million. As a result, OIG believes that DynCorp should receive $2.6 million of the $12.8 million requested.

On January 23, 2003, AQM awarded DynCorp a 5-year IDIQ contract to provide peacekeeping-related services to African countries. The contract contained a limitation of funds clause (Department of State Acquisition Regulations, section 652.232-72) that stated that if a contractor considered the funds obligated under the contract to be insufficient to cover the work to be performed, the contractor was required to notify the contracting officer in writing and indicate the date on which it expected expended funds to approximate 75 percent of the total amount obligated. DynCorp did not inform the Department in a timely manner and therefore did not meet this requirement.

On September 30, 2006, AQM issued DynCorp an undefinitized task order modification (No. SAQMPDO5F4880-M002) increasing the contract cost ceiling to $35.2 million. DynCorp first reported its funding status on January 25, 2007, when its incurred and committed funds were at 86 percent of the obligated amount. However, DynCorp did not report the estimated amount of additional funds required to continue performance through Project completion, although this reporting was also required. On February 22, 2007, DynCorp notified the contracting officer that it had used 103 percent of the funds, reflecting a funding deficit of $944,457 for the Project. On March 9, 2007, the Department and DynCorp met regarding concerns about the funding level, technical direction, property, and monitoring. On March 14, 2007, the Department sent DynCorp the definitization requirement for Task Order SAQMPD-05-F-4880-M002, requiring DynCorp to complete the revised technical and cost proposal by April 16, 2007. On May 25, 2007, DynCorp submitted a revised cost proposal on the definitized statement of work with a total cost of $42.6 million. The definitized statement of work was finalized on August 15, 2007, when it was incorporated into the contract task order as Modification #3. This modification was silent on increasing the $35.2 million cost ceiling, even though DynCorp had proposed increasing the cost ceiling to $42.6 million.

On August 27, 2007, DynCorp submitted a notification to the Department that the current funding for the IGHQ camp was sufficient to allow the Project to be completed within 90 days. However, on September 12, 2007, DynCorp submitted another notification to the Department that the current funding for the IGHQ camp was not sufficient and would require additional funding of $216,171, which would cover delivery of construction materials in 120 days. The funding to complete Malou camp would require an additional $2.6 million. On September 29, 2007, a funding request (Modification #4) totaling $2.8 million was approved under the SST Project task order for construction modifications to the IGHQ and the Malou camp. This modification increased the contract cost ceiling to $38 million.

On January 31, 2008, all base camps were completed, accepted by the Department, and turned over to the South Sudan Government. On March 27, 2008, DynCorp filed an equitable adjustment proposal that was later modified to $52.8 million. AQM personnel stated that this request was unanticipated because at this point in the Project, most of the task order work had been completed. They also stated that it appeared to them that DynCorp had delayed notifying AF that the costs had exceeded the funding limit to avoid being issued a stop work order or having the contract terminated. On May 6, 2008, AQM notified DynCorp of an interim billing cap of $40 million, while the Cost Analysis Branch did a review of Dyncorp's definitized proposal.

However, in a May 20, 2008, email to DynCorp, the contracting officer stated that the definitized statement of work that was included in DynCorp's proposal of $42,580,336 was incorporated into the statement of work (Modification #3), along with a government cost analysis of DynCorp's proposal. That modification was signed by the Department and DynCorp. The contracting officer further stated that he "assume[d]" that DynCorp had agreed to "a total cost of $42,580,336 for everything by what is incorporated into modification 3." However, in contrast to what the contracting officer stated, Modification 3 in and of itself did not address a new cost ceiling (no additional funding) but just incorporated the definitized statement of work into the contract.

On July 14, 2008, AQM issued Modification #6, which increased the contract by $1.97 million. Based on all the definitized statements of work and subsequent modifications that had been incorporated into the contract task orders and signed and agreed to by both parties, the contract ceiling was ultimately capped at $40 million.

OIG concludes that DynCorp is entitled to an additional payment of $2.6 million ($42.6 million minus the $40 million already paid to DynCorp) because the contracting officer stated in an email to DynCorp that the $42.6 million proposal had been incorporated into Modification 3, thereby committing the Department to an increase in the cost ceiling.

Recommendation 3. OIG recommends that the Bureau of Administration, Office of Acquisitions Management (AQM), in coordination with the Bureau of African Affairs, offer DynCorp International additional reimbursement of $2.6 million.

Management Response: In its response, AQM concurred with the recommended settlement amount and stated that the contracting officer "shall proceed with making the formal offer to DynCorp." However, AQM further stated that AF has to agree to pay and fund a requisition in that amount, because "AF and AQM are two separate organizations, and [AQM] cannot fund anything absent [AQM's] customer bureau (in this case AF/RSA) providing the money via ARIBA requisition."

OIG Reply: Subsequent to its written response, AQM advised OIG that AF had agreed to fund the reimbursable amount. Therefore, OIG considers this recommendation resolved, pending OIG's acceptance of AF's documentation showing that a formal offer has been made to DynCorp for the settlement amount specified.

Bureau of African Affairs Comments and OIG Replies

In its June 14, 2010, email to OIG (Appendix C), AF provided comments to OIG's report. Extracts of these comments and OIG's replies are as follows:

Contract Oversight – AF stated that it recognized that oversight was insufficient and that it had hired a full-time employee to ensure direct oversight was conducted. AF further stated that the full-time employee "ensured that direct oversight was conducted by the Consul General political officer" who was assigned to Juba in the summer of 2006. OIG has updated the report to reflect this information.

Updating Contract Milestones – AF stated that there was no requirement to update contract times when the definitized statement of work (SOW) was executed and that the milestone dates in the definitized SOW and the earlier undefinitized SOW were the same.

However, many of the milestone dates in the definitized SOW had already expired when the definitized SOW was issued. For example, the definitized SOW was submitted as Modification #3 on August 15, 2007, while the expected completion date for the Malou camp site on the milestone schedule was February 15, 2007, almost 7 months earlier. Therefore, the milestone dates in the definitized agreement were not realistic target dates and, from a project management standpoint, would not have been an effective tool in monitoring progress.

CORs and GTMs With Construction Experience – AF stated that its program manager, during 2006 and 2007, relied on the Consular General's office in Juba to assist in inspecting facilities until September 2007, when a government technical monitor with construction experience arrived in Southern Sudan. AF also clarified that the program manager's statement about not knowing of anyone with construction experience having inspected the sites referred to the time period before August 2007. OIG has updated the report to reflect this information.

LIST OF RECOMMENDATIONS

Recommendation 1: OIG recommends that the Bureau of Administration, Office of Acquisitions Management, ensure that the Bureau of African Affairs has sufficient on-site contract technical support to regularly monitor and report on contract progress so that issues of potential concern can be identified and resolved in a timely manner.

Recommendation 2: OIG recommends that the Bureau of Administration, Office of Acquisitions Management, ensure that the Bureau of African Affairs has contracting officer's representatives and government technical monitors who are assigned to construction contracts that have the requisite experience and training.

Recommendation 3: OIG recommends that the Bureau of Administration, Office of Acquisitions Management (AQM), in coordination with the Bureau of African Affairs, offer DynCorp International additional reimbursement of $2.6 million.

APPENDIX A

DynCorp Security Sector Transformation Project: Timeline of Key Contractual Events

Date	Description	Amount Formally Authorized
1/23/2003	DynCorp awarded a 5-year indefinite- delivery, indefinite-quantity (IDIQ) contract to provide peacekeeping-related services to African countries.	
9/22/2005	Initial funding of $7 million was provided for the SST Project under original Task Order SAQMPD05F5193.	$7,000,000
9/23/2005	Initial funding of $7 million was provided for the SST Project under original Task Order SAQMPD05F4880.	$14,000,000
9/23/2006	Funding of $3.9 million was provided for three vehicles under Task Order Modification SAQMPDO5F4880-M001.	$17,903,133
9/30/2006	Undefinitized Task Order Modification SAQMPDO5F4880-M002 was issued at the end of FY 06 using notwithstanding authority, which added additional funds of $17.3 million for Malou, Aviation, and Vehicles; Interim General Headquarters; Communication; and Bentiu/Molbok.	$35,220,789
1/25/2007	DynCorp notified the contracting officer that it had used 86 percent of its funds.	
2/22/2007	DynCorp notified the contracting officer that it had used 103 percent of the funds, showing a deficit of $944,457 for the SST Project.	

(Table continued on the next page)

(Table continued)

Date	Description	Amount Formally Authorized
2/24/2007	DynCorp projected a completion date of March 30, 2007, for Camp Malou.	
3/9/2007	The Department met with DynCorp regarding concerns about the funding level, technical direction, property, and monitoring.	
3/14/2007	The Department sent DynCorp the definitization requirement for Task Order SAQMPD-05-F-4880-M002. DynCorp was required to complete a revised technical and cost proposal by April 16, 2007.	
5/7/2007	DynCorp notified the Department of its intent to terminate TRAX.	
5/25/2007	DynCorp revised its cost proposal price to $42.6 million.	
5/30/2007	A/LM/AQM/IP submitted its request to A/LM/AQM/BOD/QA for a cost analysis, including review of supporting documentation of DynCorp's revised submission.	
6/5/07	DynCorp notified the Department TRAX employees no longer on site.	
7/3/2007	A/LM/AQM/BOD/QA completed a cost and price analysis, finding that the cost proposal contained significant mathematical errors. It determined that the contractor should re-price its cost proposal.	
7/25/2007	AQM officials visted the IGHQ and Malou sites and gave DynCorp a 90-day notice (August 1 to October 30, 2007) to correct the problems identified.	

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Date	Description	Amount Formally Authorized
8/15/2007	The definitized statement of work was completed (Task Order SAQMPDO5F4880-M003).	$35,220,789
8/27/2007	DynCorp submitted notification that the current funding for the IGHQ camp was sufficient (no additional funds) and would allow completion of the Project within 90 days.	
9/12/2007	DynCorp submitted notification that the current funding for the IGHQ camp was not sufficient and would require an additional funding amount of $216,171. This amount would also cover delivery in 120 days (not 90 days, as previously stated). To deliver in 90 days would require an additional $642,185. The funding to complete camp Malou would require an additional $2.6 million.	
9/29/2007	Funding request was approved (Task Order SAQMPDO5F4880-M004) for $2.6 million plus $216,171.	$38,029,824
1/28/2008	AQM met with DynCorp to discuss operation and maintenance requirements and funding shortfalls. To address shortfalls per M003, the contracting officer asked DynCorp to provide complete cost information. Follow-up meetings for operation and maintenance or funding were to be determined once the operation and maintenance proposal and financial data were provided to AQM. The contracting officer reiterated to DynCorp that the Project was funded for $38 million. The contracting officer reinforced the fact that only he could make changes to the existing task order or authorize work through contract modification.	

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(Table continued)

Date	Description	Amount Formally Authorized
1/31/2008	All military base camp projects were completed and turned over to the South Sudan Government.	
3/27/2008	DynCorp's request for equitable adjustment proposal was for $55.7 million (subsequently modified to $52.8 million).	
5/1/2008	DynCorp notified the Department that as of March 28, 2008, costs incurred and forecasted through April 2008 totaled $51.7 million. This exceeded the total contract funded value of $38 million by $13.7 million.	
5/6/2008	The Department notified DynCorp of the interim billing cap of $40 million, while the Cost Analysis Branch did a review.	
5/14/2008-5/20/2008	The Department and DynCorp exchanged emails regarding funding. DynCorp stated its need for funding or stop work because it was a cost contract. The Department stated that costs were being disputed and that the U.S. Government had the right to do an analysis of the costs. DynCorp then stated, "We acknowledge receipt of your direction to continue to perform under the terms of the contract even in the absence of funding." In response, the Department stated, "The absence of funding is a statement that cannot be made until the cost analysis is completed." The contracting officer also stated: "The definitized statement of work included DynCorp's proposal of $42,580,336 which was incorporated into the statement of work along with a Government Cost Analysis of DynCorp's proposal. This modification (Mod #3) was also signed by both DynCorp and the Government. I have to assume	

(Table continued on the next page)

(Table continued)

Date	Description	Amount Formally Authorized
5/14/2008-5/20/2008	that DynCorp agreed to a total cost of $42,580,336 for everything by what is incorporated into modification 3." The contracting officer further stated that the Government "disputes" the proposed cost overrun and, in addition, "also disputes that DynCorp incurred costs at the ceiling of $42,580,336."	
6/10/2008	A cost/price analyst reviewed DynCorp's March 28, 2008, proposal and determined that DynCorp had submitted inadequate documentation to support its proposed costs and did not identify subcontractors, cost/price analysis, and other required rates and allocations.	
7/11/2008	Noblis report was issued.	
7/14/2008	Funding request was approved (Task Order SAQMPDO5F4880-M006) for $1.97 million.	$40,000,000
9/27/2008-12/19/2008	The Department and DynCorp discussed supporting documentation needed for DynCorp's cost proposal. DynCorp stated it would provide missing documentation by January 2009. DynCorp's cost proposal as of December 19, 2008, was $52.8 million.	
1/6/2009	Cost/price analyst emailed DynCorp to follow up on documents.	
1/9/2009	DynCorp provided electronic version of cost proposal spreadsheets.	
2/05/2009	The Department requested that DCAA perform an incurred cost audit.	
7/2/2009	DCAA's audit report was issued.	
7/29/2009	AQM offered DynCorp $8 million. DynCorp made a counteroffer on August 17, 2009.	
10/7/2009	OIG was contacted to conduct an audit.	

(Table continued on the next page)

APPENDIX B

Bureau of Administration Repsponse

From: Coniglio, Lisa A
Sent: Thursday, June 24, 2010 1:51 PM
To: Irving, William S (OIG); Klemstine, Evelyn (OIG)
Cc: Read, Cathy J; Lower, Robert S; Truitt, Ann H; McGuire, Joseph H
Subject: AQM response to OIG Report on DynCorp and SST Audit

Importance: High

Please see AQM's comments/response to subject draft report prepared by Ann Truitt and cleared by Cathy Read.
Let us know if you need anything else at this time.
Thank you.

Recommendation 1. *OIG recommends that the Bureau of Administration, Office of Acquisitions Management, ensure that the Bureau of African Affairs has sufficient on-site contract technical support to regularly monitor and report on contract progress so that issues of potential concern can be identified and resolved in a timely manner.*

AQM Response to #1. AQM agrees that such on-site support is needed in a sufficient and timely manner. AQM's International Programs Division (AQM/IP) works closely AF/RSA on all aspects of contract placement and administration. AF/RSA is very aware of the need for on-site technical monitoring of projects, and to that end they have funded third-party contractors (that is, contractors from companies that are not bidding nor participating in the operational AFRICAP contracts) to serve as "government technical monitors". Additionally, DOS personnel form AF/RSA regularly travel to Africa to inspect the technical progress. While AQM cannot "ensure" that AF has sufficient on-site technical support (because the funding of those resources is controlled by AF and not by AQM), AQM always provides prompt acquisition support in response to requisitions for on-site GTM's. Further, we have made our availability known to AF/RSA for AQM personnel to travel to Africa (using AQM funding) to participate in on-site reviews. Again, this has to be initiated at invitation of AF/RSA, but there is no expectation that such joint-trips won't continue to take place in the future.

Recommendation 2. *OIG recommends that Bureau of Administration, Office of Acquisitions Management, ensure that the Bureau of African Affairs has contracting officer's representatives and government technical monitors who are assigned to construction contracts that have the requisite experience and training.*

AQM Response to #2. AQM agrees that qualified COR's and GTMs must be selected by AF/RSA that have the requisite technical experience in construction projects issued via task orders under AFRICAP. However, per the FAR, COR's are selected and nominated by our program offices (in this case, by AF/RSA). Our authority in AQM is not to vet their technical qualifications, but rather to ensure that the A/OPE training for COR designations are current and complete. We cannot vet nor judge if a particular nominee is technically qualified - that is up to the program office responsible for the requirements and technical oversight. However, AF/RSA is in full agreement with AQM that COR's and GTM's need to have all the appropriate technical background to monitor and oversee any given task order. Therefore AQM cannot "ensure" this happens as it is not within our authority to do so.

Recommendation 3. *OIG recommends that the Bureau of Administration, Office of Acquisitions Management, offer DynCorp International additional reimbursement of $2.6 Million.*

AQM Response to #3. AQM concurs with the recommended settlement amount, and the Contracting Officer shall proceed with making the formal offer to DynCorp. However, the AF Bureau will have to agree to pay the amount, and fund a requisition in that amount, in order for the Contracting Officer to issue a settlement modification to DynCorp. Again, AF and AQM are two separate organizations, and we cannot fund anything absent our customer bureau (in this case AF/RSA) providing the money via ARIBA requisition.

Lisa A. Coniglio
DEPARTMENT OF STATE
Logistics Management Specialist
A/LM - Procurement Shared Services
PH-703-875-5841 Fax-703-875-5895
E-mail: ConiglioLA@state.gov <mailto:ConiglioLA@state.gov>

APPENDIX C

BUREAU OF AFRICAN AFFAIRS REPSPONSE

Irving, William S (OIG)

From:	Bittrick, Michael J
Sent:	Monday, June 14, 2010 11:01 AM
To:	Irving, William S (OIG)
Cc:	Savino, Jimmy R; Klemstine, Evelyn (OIG); Peters, Forrest (OIG); Chalfin, Julie E; McCarty, Susan L
Subject:	RE: Comments on Draft Report - Audit of Allegations Pertaining to Contract With DynCorp International for the Security Sector Transformation Project in South Sudan, Africa
Attachments:	AF RSA Comments to the OIG report.docx
AttachmentsClassification:	UNCLASSIFIED
Classification:	UNCLASSIFIED

Mr. Irving:

Please see the attached, which we hope provides clarification to some of the Draft Report's commentary.

Sincerely,
Mike

Michael J. Bittrick
Dep. Director, Office of Regional and Security Affairs
Africa Bureau, Dept. of State
(202) 736-4097

This email is UNCLASSIFIED.

From: Irving, William S (OIG)
Sent: Thursday, June 10, 2010 1:38 PM
To: Bittrick, Michael J
Cc: Savino, Jimmy R; Klemstine, Evelyn (OIG); Peters, Forrest (OIG)
Subject: Comments on Draft Report - Audit of Allegations Pertaining to Contract With DynCorp International for the Security Sector Transformation Project in South Sudan, Africa

Mr. Bittrick, we are following up with you to see whether AF was planning to submit comments on the subject draft audit report that was sent to your office on May 11, 2010. The deadline for comments was May 26. However, we received an earlier call from Jimmy Savino who indicated that a response was being prepared for AF, but, to date, we have not received anything. Could you please let me know as soon as possible whether AF is submitting comments and when we should expect to receive them.   Thank you for your prompt attention to this request.

Regards,

-Bill Irving
Audit Manager
OIG Office of Audits
(703) 284-2618

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AF/RSA Comments to the draft OIG report
"DynCorp Sudan SST"

OIG found that AF personnel lacked convincing evidence to support some of their allegations regarding contractor performance and that there was no evidence demonstrating that fraud or other malfeasance had occurred. OIG also determined that the reasonable amount of additional costs claimed by DynCorp, that should be reimbursed, is $2.6 million. The allegations, the basis for reimbursement, and the causes of the deficiencies are detailed in sections that follow, and key contractual events are detailed in Appendix A.
AF/RSA Comment: AF believes that the information submitted to the OIG, including a letter from a former DynCorp employee to his State Congressman, invoices with wholly inappropriate charges, and documentation illustrating DynCorp personnel use of contract-funded aircraft for private use, presented evidence of malfeasance as well as "potential fraud".

Contract Oversight. The lack of effective contractor oversight and monitoring by AQM and AF throughout the performance of the contract was caused in part, by the lack of experience of the contracting officer's representative (COR), in monitoring construction contracts and the delay in incorporating clear milestone schedules into the contract.
AF/RSA Comment for clarity: AF/RSA recognized this oversight arrangement was insufficient and in August 2006 hired a full-time employee in Washington who then ensured that direct oversight was conducted by the Consul General political officer who arrived in Juba that summer. There was no requirement to update contract milestones. The definitized statement of work incorporated milestones presented in the original statement of work, on which the contract was based. The contractor failed to achieve these established milestones.

According to the contracting officer who took over the Project in 2007, the COR who was assigned to the project in September 2006, had limited knowledge about handling contracts. In addition, the COR admitted that she did not know of anyone with construction experience who had inspected the sites. Also, the contract lacked schedules or established timeframes to control Project performance. Given the type of contract, cost plus, which places maximum responsibility on the Government to monitor performance, to ensure that the contractor stays within budget and time constraints, an added level of oversight was needed.
AF/RSA Comment for clarity: There was a handover of program management responsibility during the 2006-2007 timeframe. The program manager during that time relied on the Consular General's office in Juba to assist in the inspections of the facilities until September 2007 when a government technical monitor (GTM) with construction experience arrived in Southern Sudan. The statement made by the program manager about not knowing of anyone with construction experience having inspected the sites referred to the time period before August 2007.

OIG Inspection Report. The August 2009 inspection found that, because of major increases in contracts in 2009, coupled with the lack of adequate staff to oversee and monitor the current contract workload, AF needed to direct-hire additional contract specialists to provide oversight of its security program contracts. In its response to the report, AF agreed with ISP's recommendation to hire additional personnel and stated that it had requested five additional positions. However, at the time of this report, these positions had not yet been funded. The report also stated that AF's CORs had not received the revised continuous learning the Office of Management and Budget had prescribed. Each agency was to implement those requirements for CORs to receive 40 hours of refresher training every 2 years.

AF/RSA comments for clarity: Following the August 2009 AF Bureau OIG inspection, AF hired two additional personnel to assist with the program managers' oversight of contracts. A program management specialist with contract experience was also assigned to AF a few months prior to the report. These three additional contract and program support personnel supplemented one contract specialist and one contract program assistant already hired by AF/RSA. In addition, two contract support personnel were assigned to the Sudan office to assist working with AF/RSA on Sudan-related contracts. These seven positions were in place well before this OIG DynCorp SST audit was generated. As of May 2010, all AF CORS were up to date on COR training and officially appointed as CORs by AQM for their contracts.

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