

November 2009

# DEFENSE ACQUISITIONS

## Further Actions Needed to Address Weaknesses in DOD's Management of Professional and Management Support Contracts



GAO

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Highlights of [GAO-10-39](#), a report to congressional requesters

## Why GAO Did This Study

In fiscal year 2008, the DOD obligated \$200 billion on services contracts, including \$42 billion for professional and management services. GAO previously identified weaknesses in DOD's management and oversight of services contracts, contributing to DOD contract management being on GAO's high-risk list.

For selected professional and management support contracts, GAO was asked to examine (1) the extent to which DOD considered the risks of contractors closely supporting inherently governmental functions at key decision points, (2) how DOD implemented performance-based practices, (3) the extent to which DOD designated trained surveillance personnel, and (4) whether a new review process may improve DOD's management of such contracts.

GAO reviewed federal regulations, agency policies and guidance, and analyzed seven acquisitions approved from 2004 to 2007 and 64 related task orders for services.

## What GAO Recommends

GAO recommends that DOD consider and document how contractors closely support inherently governmental functions during management reviews and to mitigate related risks before issuing task orders, provide additional guidance on enhanced oversight techniques, and better monitor the designation of trained surveillance personnel. DOD concurred with each of the recommendations.

[View GAO-10-39 or key components.](#)  
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## DEFENSE ACQUISITIONS

### Further Actions Needed to Address Weaknesses in DOD's Management of Professional and Management Support Contracts

#### What GAO Found

DOD policies do not require assessments of the risks associated with contractors closely supporting inherently governmental functions as part of its management reviews of acquisition strategies nor when task orders are issued for professional and management services. Such risks include the potential loss of government control over and accountability for mission-related policy and program decisions. Though all seven acquisitions and more than 75 percent of the task orders GAO reviewed provided for such services, GAO found no evidence that these risks were among those considered in the documentation reviewed. DOD guidance issued after these acquisitions were approved requires that consideration be given to using civilian personnel rather than contractors when the activities closely support inherently governmental functions. This guidance, however, does not require DOD personnel to consider and document risks posed when contractors perform these activities. Further, DOD personnel were unaware of the need to provide enhanced oversight when contracting for such services.

DOD faces challenges in defining requirements and outcome-based measures when acquiring professional and management services. DOD personnel generally expressed task order requirements in terms of a broad range of activities that contractors may perform, but used standards and measures that were not always well-suited to assess outcomes. DOD made more use of objective measures to assess cost and schedule performance, but generally relied on subjective measures to assess the quality of the contractors' work. For example, DOD often measured quality based on the number of complaints lodged against the contractor, which provided little detail into how desired outcomes were achieved. DOD also missed opportunities to include objective measures that may have been better suited to assess outcomes. DOD officials stated that developing outcome-based, objective measures is challenging, but noted that initiatives are under way to better utilize such approaches.

DOD has made progress in ensuring that trained surveillance personnel are assigned to monitor contract performance. Surveillance personnel were assigned to all 64 of the task orders GAO reviewed, and all but 3 had received required training. GAO identified, however, 3 instances of surveillance personnel who were not assigned before the contractor began work on a task order and 20 instances of personnel who did not receive training prior to beginning surveillance duties.

In September 2008, DOD implemented a new peer review process that is tasked to address, among other issues, contractors closely supporting inherently governmental functions, the use of performance-based practices, and contractor surveillance. As of October 2009, four pre-award reviews and one post-award review of professional and management support contracts have been conducted and it is too early to tell whether such reviews will encourage DOD personnel to address these issues across the range of DOD's services contracts.

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## Abbreviations

DAU	Defense Acquisition University
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DPAP	Defense Procurement and Acquisition Policy
FAR	Federal Acquisition Regulation
OFPP	Office of Federal Procurement Policy
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, And Logistics

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United States Government Accountability Office  
Washington, DC 20548

November 20, 2009

The Honorable Evan Bayh  
Chairman  
The Honorable Richard Burr  
Ranking Member  
Subcommittee on Readiness and Management Support  
Committee on Armed Services  
United States Senate

The Honorable Daniel K. Akaka  
United States Senate

The Honorable John Thune  
United States Senate

The Department of Defense (DOD) is the federal government's largest purchaser of contractor-provided services, obligating more than \$200 billion on services contracts in fiscal year 2008. DOD obligated \$42 billion (21 percent) of its 2008 obligations for services on professional, administrative, and management support. Examples of such services include budget and program management and contracting support. Often these services are procured through performance-based acquisition approaches, which encourage the private sector to develop innovative solutions to meet DOD's needs.

DOD's reliance on contracted services to support its missions makes effective management and oversight of these contracts essential. Our work over the past several years, however, has identified weaknesses in DOD's management and oversight. For example, in 2005, we found that DOD's surveillance of service contractors needed improvement as staff responsible for assessing contractor performance were not always appointed or trained.<sup>1</sup> In 2006, we found that DOD's approach to managing services acquisitions did not put the department in a position to determine whether its investments in services were achieving the desired outcomes.<sup>2</sup>

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<sup>1</sup> GAO, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, [GAO-05-274](#) (Washington, D.C.: Mar. 17, 2005).

<sup>2</sup> GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, [GAO-07-20](#) (Washington, D.C.: Nov. 9, 2006).

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These shortfalls stemmed, in part, from the limitations of the management reviews DOD established to review and approve high-dollar services acquisitions.<sup>3</sup> Additionally, our recent work has shown that reliance on contractors, including professional and management support contractors, to support core missions can place the government at risk of transferring government responsibilities to contractors.<sup>4</sup> Collectively, such issues continue to place DOD at high risk of fraud, waste, abuse, and mismanagement and result in DOD contract management being on our high-risk list.<sup>5</sup>

In response to your interest in whether DOD's policies and actions to improve the management of services contracts addressed issues affecting professional and management support contracts, we examined (1) the extent to which DOD considered the risks associated with contractors closely supporting inherently governmental functions at key acquisition decision points; (2) how DOD was implementing performance-based acquisition practices, such as identifying requirements in terms of expected and measurable outcomes; (3) the extent to which DOD designated trained surveillance personnel; and (4) whether recent actions to implement a peer review process may improve DOD's management and use of such contracts.

To assess the extent to which DOD's management reviews and policies addressed the risks associated with contractors closely supporting inherently governmental functions at key acquisition points, we reviewed DOD's May 2002 and October 2006 guidance that established its processes for reviewing and approving proposed acquisitions to obtain contractor support. To assess how these risks were addressed during reviews of

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<sup>3</sup> The National Defense Authorization Acts for Fiscal Years 2002 and 2006, respectively, required DOD to establish and implement a management structure to review its procurement of services. For the purposes of this report, we use the term management review to collectively refer to the review and approval procedures established by DOD and the military departments pursuant to this legislation.

<sup>4</sup> GAO, *Defense Management: DOD Needs to Reexamine its Extensive Reliance on Contractors and Continue to Improve Management and Oversight*, [GAO-08-572T](#) (Washington, D.C.: Mar. 11, 2008); and *DOD's High Risk Areas: Actions Needed to Reduce Vulnerabilities and Improve Business Outcomes*, [GAO-09-460T](#) (Washington, D.C.: Mar. 12, 2009). Inherently governmental functions are defined by the Federal Acquisition Regulation as those functions that are so intimately related to public interest that they must be performed by government employees.

<sup>5</sup> GAO, *High-Risk Series: An Update*, [GAO-09-271](#) (Washington, D.C.: January 2009).

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specific services acquisitions, we reviewed a DOD-provided list of 102 services acquisitions approved by the Air Force, Army, or Navy from fiscal years 2004 through 2007. Using contract data from the Federal Procurement Data System–Next Generation,<sup>6</sup> we determined that 32 of these acquisitions, with almost \$15 billion in total combined obligations from fiscal years 2004 through 2008, included contracts for the purchase of professional, administrative, and management support. From these 32 acquisitions, we selected 7 for our review based on the percentage of total obligations that went towards professional, administrative, and management support services; the specific types of services acquired; and the military department responsible for the acquisition. We also determined that the military departments obligated over \$4.3 billion on 1,874 task orders from these 7 acquisitions from fiscal years 2004 through 2008. We randomly selected and reviewed 64 task orders that had obligations of \$500,000 or more and were issued during fiscal years 2004 through 2007 from these acquisitions to assess how such risks were addressed prior to DOD’s decision to award a contract or issue a task order for professional and management support contracts. We did not review acquisitions approved after fiscal year 2007 since our analysis indicated that it was often a year or more from the time that the acquisition strategy was approved to the time when task orders were actually issued. We reviewed the acquisition strategy, base contract, task order, statements of work, and other documentation supporting the need to acquire contract support and any risk assessments prepared. We also interviewed officials who managed these acquisitions to obtain information on why these services were purchased, the risks that were considered, and any steps taken for enhanced contractor oversight.

We assessed the reliability of the Federal Procurement Data System–Next Generation to identify acquisitions and to select task orders that were within the scope of our review by verifying (1) the contract and task order identification numbers, (2) the contract award date, (3) that the task orders associated with the acquisitions were for professional and management support services, and (4) that the task orders had obligations exceeding \$500,000. On the basis of this assessment, we determined that the data were sufficiently reliable for the purposes of this review.

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<sup>6</sup> The Federal Procurement Data System–Next Generation is the federal government’s current system for tracking information on contracting actions.

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To assess how DOD was implementing performance-based acquisitions practices on professional and management support contracts, we reviewed Federal Acquisition Regulation (FAR) requirements and DOD guidance on developing performance work statements and specifically on how to identify contract requirements in terms of expected and measurable outcomes. We then reviewed performance work statements for the 64 task orders to assess whether contract requirements were measurable and outcome based. We interviewed contracting and program officials who managed these task orders to identify how requirements and performance measures were developed and analyzed documentation to determine how contractor performance was measured.

To assess the extent to which DOD designated trained surveillance personnel<sup>7</sup> on professional and management support contracts, we reviewed the Defense Federal Acquisition Regulation Supplement (DFARS) and DOD policies and procedures to identify the department's surveillance and training requirements. We analyzed surveillance personnel appointment and training documentation associated with each of the 64 task orders to determine whether these requirements were met.

To identify how recent actions to implement a new peer review process may improve DOD's management and use of professional and management support contracts, we reviewed relevant legislation and the department's implementation policy and guidance to identify the scope and content of these reviews. We also interviewed officials from the Under Secretary of Defense for Acquisition, Technology, and Logistics' (USD(AT&L)) Office of Defense Procurement and Acquisition Policy (DPAP) and the military departments and reviewed memoranda summarizing the findings and recommendations of reviews performed on professional and management support services contracts. Additional information on our scope and methodology may be found in appendix I.

We conducted this performance audit from July 2008 through November 2009 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

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<sup>7</sup> The military departments, including the contracting offices we visited during this review, use different terms to describe personnel involved in contractor surveillance including: Quality Assurance Personnel, Contracting Officer's Representative, Functional Area Evaluator, and Task Order Contracting Officer's Representative. For purposes of this report, we refer to all these positions as surveillance personnel.



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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.

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## Background

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### DOD Obligations and Workforce Trends

From fiscal years 2001 through 2008, DOD's reported obligations on contracts for services, when measured in real terms, more than doubled—from roughly \$92 billion to slightly over \$200 billion. These obligations accounted for over half of the department's total contract obligations in fiscal year 2008. Over that same time period, DOD's obligations on professional, administrative, and management support contracts nearly tripled from \$14.2 billion to \$42 billion. These services represented about 15 percent of DOD's total obligations on services contracts in 2001 and 21 percent in 2008. As we have reported in the past, this increased use of contractor-provided services has been the result of thousands of individual decisions, not the result of strategic, comprehensive planning for the whole department in which the volume and composition of contracted services have been measured outcomes.<sup>8</sup> We also noted that the absence of well-defined requirements, sound contracting arrangements, or effective management and oversight has contributed to schedule delays, cost overruns, and unmet expectations.

Despite substantial increases in spending on both goods and services from fiscal year 2001 through 2008, DOD's acquisition workforce has declined by 2.6 percent (see table 1). Without an adequate workforce to manage DOD's billion-dollar acquisitions, there is an increased risk of poor acquisition outcomes and vulnerability to fraud, waste, and abuse. We reported in March 2009 that DOD lacked critical, departmentwide information needed to ensure that its acquisition workforce was sufficient to meet its national security mission.<sup>9</sup> We found, for example, that DOD did not collect or track information on contractor personnel, despite the fact that those personnel providing professional and management support services make up a key segment of the total acquisition workforce.

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<sup>8</sup> GAO, *Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts*, [GAO-09-643T](#) (Washington, D.C.: Apr. 23, 2009) and [GAO-07-20](#).

<sup>9</sup> GAO, *Department of Defense: Additional Actions and Data are Needed to Manage and Oversee DOD's Acquisition Workforce*, [GAO-09-342](#) (Washington, D.C.: Mar. 25, 2009).

Additionally, DOD lacked complete information on the reasons personnel are contracted, thus limiting its ability to determine whether decisions to augment the in-house acquisition workforce with contractors were appropriate.

**Table 1: DOD Acquisition Workforce—Military and Civilian Personnel for Fiscal Years 2001 and 2008**

Acquisition workforce by functional career field	Fiscal year 2001	Fiscal year 2008	Percentage change fiscal years 2001 to 2008
Program Management	14,031	12,781	-8.9%
Contracting	25,413	26,680	1.1
Industrial/Contract Property Management	620	451	-27.3
Purchasing	4,121	1,196	-71.0
Facilities Engineering	0	4,920	n/a
Production Quality and Manufacturing	10,547	9,138	-13.4
Business, Cost Estimating, and Financial Management	10,279	7,085	-31.1
Life Cycle Logistics	11,060	13,361	20.8
Information Technology	5,612	3,934	-29.9
System Planning, Research, Development, and Engineering—Systems Engineering	34,899	34,537	-1.0
System Planning, Research, Development, and Engineering—Science and Technology Manager	0	480	n/a
Test and Evaluation	5,113	7,420	45.1
Auditing	3,457	3,638	5.2
Unknown/Other	4,097	1,258	-69.3
<b>Total</b>	<b>129,249</b>	<b>125,879</b>	<b>-2.6%</b>

Source: DOD data.

### Risks of Contractors Closely Supporting Inherently Governmental Functions

Federal agencies acquire basic services, such as custodial and landscaping, to more complex professional and management support services, which may closely support the performance of inherently governmental functions. Tasks that require discretion in applying government authority or value judgments in making decisions for the government are defined by the FAR as inherently governmental functions; as such they are required to be performed by government employees, not private contractors.<sup>10</sup> The FAR provides 20 examples of such work functions, including determining agency policy or federal program budget

<sup>10</sup> FAR § 7.503(a).

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request priorities; directing and controlling federal employees; and awarding, administering or terminating federal contracts.<sup>11</sup>

The FAR also provides examples of functions that, while not inherently governmental, approach the category due to the nature of the function, the manner in which a contractor performs the task, or methods used by the government to administer performance under a contract (see app. II).<sup>12</sup> Services that closely support inherently governmental functions include professional and management support services, such as those that involve or relate to supporting budget preparation; program planning; acquisition planning; technical evaluation for contract proposals or source selections; and development of statements of work.

The decision to turn to contractors can, in some cases, create risks that the government needs to consider and manage. Of key concern is the loss of government control over and accountability for mission-related policy and program decisions when contractors provide services that closely support inherently governmental functions. The closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based, in part, on contractor work. This may result in decisions that are not in the best interest of the government and may increase vulnerability to waste, fraud, and abuse. Given this risk, the FAR and Office of Federal Procurement Policy (OFPP) guidance state that a greater scrutiny and an enhanced degree of management oversight is required when contracting for functions that closely support the performance of inherently governmental functions.<sup>13</sup> Additionally, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 required, among other things, that prior to entering into a contract for performance of acquisition functions that closely support inherently governmental functions, DOD must ensure that its personnel cannot reasonably be made available to perform these activities, that appropriate DOD personnel supervise contractor performance and perform all inherently governmental functions, and that DOD address any potential organizational conflict of interest of the contractor when performing these

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<sup>11</sup> FAR § 7.503(e).

<sup>12</sup> FAR § 7.503(d).

<sup>13</sup> FAR § 37.114 and OFPP Policy Letter 93-1, *Management Oversight of Service Contracting*, May 18, 1994.

tasks.<sup>14</sup> Table 2 provides examples of contracted services and their relative risk of influencing government decision making.

**Table 2: Range of Contracted Services and Related Risk Level**

<b>Basic services</b>	<b>Professional and management support services that do not closely support inherently governmental functions</b>	<b>Professional and management support services that closely support inherently governmental functions</b>
<ul style="list-style-type: none"> <li>• Custodial</li> <li>• Food</li> <li>• Landscaping</li> <li>• Snow removal</li> <li>• Storage</li> <li>• Trash collection</li> </ul>	<ul style="list-style-type: none"> <li>• Advertising</li> <li>• Banking</li> <li>• Parking</li> <li>• Records maintenance</li> </ul>	<ul style="list-style-type: none"> <li>• Acquisition support</li> <li>• Contracting support</li> <li>• Budget preparation</li> <li>• Developing or interpreting regulations</li> <li>• Engineering and technical services</li> <li>• Intelligence services</li> <li>• Policy development</li> <li>• Reorganization and planning</li> </ul>
Low	← Risk level →	High

Source: GAO analysis.

Our previous work has identified that the use of contractors for services that closely support inherently governmental functions introduces other risks due to a potential loss of government control over program decisions.<sup>15</sup> Such concerns include an increased potential for conflicts of interest, both organizational and personal; the potential for improper use of personal services contracts, which the FAR generally prohibits because of the employer-employee relationship they create between the government and contractor personnel; and the potential additional cost to the government of hiring contractors rather than government personnel.

## DOD Management and Peer Reviews

The National Defense Authorization Act for Fiscal Year 2002 required the Secretary of Defense to establish a review process for the approval of DOD services acquisitions.<sup>16</sup> USD(AT&L) issued guidance in May 2002

<sup>14</sup> Section 804 of Public Law 108-375 added section 2383 to Title 10, U.S. Code, which placed limitations on when defense agencies may enter into contracts for the performance of acquisition functions that closely support inherently governmental functions.

<sup>15</sup> GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, D.C.: Sept. 17, 2007) and *Defense Contracting: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists*, GAO-08-360 (Washington, D.C.: Mar. 26, 2008).

<sup>16</sup> Pub. L. No. 107-107, § 801 (2001). See 10 U.S.C. § 2330 (2002).

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establishing its management reviews, intending to ensure that DOD's services acquisitions are based on clear, performance-based requirements with measurable outcomes and that acquisitions are planned and administered to achieve intended results.<sup>17</sup> Under this initial guidance USD(AT&L) was to review all proposed services acquisitions with an estimated value of \$2 billion or more, and military department and other defense component officials were to review those below that threshold. The military departments each subsequently developed their own management review processes for acquisitions that contained several of the same elements. Chief among these was the requirement that written acquisition strategies must be reviewed and approved by senior officials before contracts may be awarded. The content of these strategies included, among other things, information on contract requirements, risks, and business arrangements.<sup>18</sup> Once the acquisition strategies are approved, DOD contracting offices may continue the acquisition process, including soliciting bids for proposed work and subsequently awarding contracts.

Based on further requirements in the National Defense Authorization Act for Fiscal Year 2006,<sup>19</sup> in October 2006, USD(AT&L) issued a memorandum updating DOD's acquisition of services policy.<sup>20</sup> Under the updated policy, all proposed services acquisitions with a value estimated at more than \$1 billion or designated as "special interest" should be referred to USD(AT&L) for review. The dollar threshold for military department reviews was also lowered. While the substance of the management reviews remained largely unchanged from the 2002 policy, it did incorporate a few additional, specific, acquisition strategy requirements concerning inclusion of any required waivers and top-level discussion of source selection processes.

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<sup>17</sup> Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, *Acquisition of Services*, May 31, 2002.

<sup>18</sup> According to the FAR, acquisition planning is a process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition. FAR Subpart 2.1. Acquisition planning is required for all acquisitions, and the FAR includes general procedures and content requirements for written acquisition plans or strategies.

<sup>19</sup> Pub. L. No. 109-163, § 812, rewriting 10 U.S.C. § 2330 (2006).

<sup>20</sup> Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, *Acquisition of Services Policy*, October 2, 2006.

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In 2006, we reported that although DOD had established formal management reviews for the approval of services acquisitions, issues with services contracts at the strategic and transactional level remained.<sup>21</sup> We reported that DOD's approach to managing services acquisitions tended to be reactive and that it had not developed a means for gauging whether ongoing and planned efforts were achieving intended results. At the transactional level, DOD focused primarily on elements associated with awarding contracts, with much less attention paid to requirements or the assessment of the actual delivery of contracted services. Moreover, the results of individual acquisitions were generally not used to inform or adjust strategic direction. We recommended that, among other actions, DOD take steps to determine areas of specific risk that were inherent in acquiring services and that should be managed with greater attention. DOD agreed with this recommendation and has identified actions under way to address our concerns.

In response to a requirement in Section 808 of the National Defense Authorization Act for Fiscal Year 2008, USD(AT&L) established a multiphased, pre- and post-contract award independent management review, or peer review, process for services acquisitions.<sup>22</sup> In December 2008, DOD Instruction 5000.02, *Operation of the Defense Acquisition System*, was revised and incorporated these peer reviews as well as the management reviews and dollar thresholds established in the October 2006 acquisition of services policy.

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<sup>21</sup> The strategic level is where the enterprise—DOD—sets a direction for what it needs, captures knowledge to make informed management decisions, ensures that departmentwide goals and objectives are achieved, and assesses the resources it has to achieve desired outcomes. The strategic level sets the context for the transactional level, where the focus is on making sound decisions on individual service acquisitions using valid and well-defined requirements, appropriate business arrangements, and adequate management of contractor performance. [GAO-07-20](#).

<sup>22</sup> Pub. L. No. 110-181 § 808 (2008).

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## DOD Policies Do Not Require an Assessment of Risk of Contractors Closely Supporting Inherently Governmental Functions at Key Acquisition Decision Points

DOD and the military departments are to assess a number of risks when developing an acquisition strategy for services, but DOD policy does not require an assessment of risks associated with contractors closely supporting inherently governmental functions at two key decision points—when approving acquisition strategies or issuing task orders. All 7 of the proposed acquisitions for professional, administrative, and management services and more than 75 percent of the 64 related task orders we reviewed required the contractor to provide services that closely supported inherently governmental functions. A DOD instruction issued after the approval of the acquisition strategies we reviewed requires that consideration be given to using civilian personnel rather than contractors, specifically when the activities to be performed cannot be separated or distinguished from inherently governmental functions. However, once the decision to rely on contractors is made, DOD personnel are not required to identify and document risks posed when contractors are given responsibility for closely supporting inherently governmental functions or take steps to mitigate those risks.

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## Risks Associated with Contractors Closely Supporting Inherently Governmental Functions Are Not among Those Assessed in Acquisition Strategies Submitted for Management Reviews

DPAP representatives we met with noted that the acquisition strategy is a “big picture” document that examines whether the proposed methods for acquiring services are sound and how the acquisition compares with previous acquisitions. The strategy is developed, in part, with the assistance of both program office representatives, who identify the requirements, and contracting personnel, who will develop the basic contracts and subsequently issue task orders. Agency personnel are required to document in the acquisition strategy their assessment of current and potential technical, cost, schedule, and performance risks; the level of those risks; and a mitigation plan. As part of the acquisition strategy, this assessment is subsequently reviewed by senior DOD officials during management reviews. Documentation for all seven acquisition strategies we reviewed included a discussion of these risks as well as methods to mitigate their impact, as required in policy.

DOD policy, however, does not require the military departments to consider and document in their acquisition strategies the extent to which the proposed services will be used to closely support inherently governmental functions. As a result, none of the acquisition strategies or related risk assessment documentation reviewed under DOD’s management reviews that we analyzed identified such concerns or any related mitigation strategies. The acquisition strategies and supporting documentation we reviewed included broad descriptions of the services to be provided over the course of the acquisition, which included acquisition,

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contracting, and policy development support services. Each of these services are identified in the FAR as examples of those that closely support inherently governmental functions.<sup>23</sup>

DOD and military department officials we spoke with indicated that, to some degree, DOD's management review is not well suited to assess the risks of contractors closely supporting inherently governmental functions. These officials noted that the acquisition strategies generally described requirements in broad terms and that the timing of the review—often months before DOD actually solicits bids from the contractors or awards contracts and issues task orders for specific services—makes it challenging to know what specific risks might be encountered or whether a mitigation strategy is warranted. These officials indicated that identifying such risks would be more appropriate during the planning for the subsequent award of contracts or issuance of task orders, when the program offices have more clearly defined their specific needs and requirements.

In most cases, however, the military departments had prior knowledge about their expected use of contractors to provide such services. For example, all of the acquisition strategies and supporting documentation we reviewed justified the need to obtain contractor support to perform these functions due to a lack of government resources needed to meet daily mission requirements. These documents and contracting officials indicated that the offices supported by these acquisitions have long relied, in some cases for over a decade, on contractor support to augment the government workforce and perform tasks that closely support inherently governmental functions. For example, although the Professional Acquisition Support Services strategy that supports the Air Force's Electronic Systems Center was approved in 2006, the center has contracted for similar acquisition support services continuously since 1984. Likewise, the acquisition management services provided to the Air Force's Air Combat Command through the Technical Acquisition Management Support 3 acquisition have been obtained through previous acquisitions dating back to 1989. Although officials stated that documentation explaining the need to contract for these services in the past was often unavailable, contracting officers and program officials indicated that reductions in government personnel have led to the

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<sup>23</sup> FAR § 7.503(d).



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increased use of contractors to perform activities government personnel would have performed in the past.

Program and contracting officials stated that they would now prefer to use government personnel to perform these activities, but they noted the length of time it takes to hire federal employees and the lack of available personnel funds or positions necessitates them to use contractor support. Program and contract officials also informed us that the decision not to pursue additional federal employees instead of contractors was made by the supported programs before these officials became involved with the acquisition process. Further, they indicated they were not provided with the analyses used to support these decisions. We did not find any analysis or discussion of how these decisions were made in the acquisition strategies or supporting documentation submitted for the management review.

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**Risks of Contractors Closely Supporting Inherently Governmental Functions Are Not Considered and Documented by DOD Personnel When Awarding Contracts or Issuing Task Orders**

According to DOD officials, personnel are not required to consider and document the risks associated with contractors closely supporting inherently governmental functions when awarding contracts or issuing task orders. Forty-nine of the 64 task orders we reviewed included services that, as described in the FAR, are examples of activities that closely support inherently governmental functions, including support for developing statements of work or contract documents; or budget preparation.<sup>24</sup> Program managers and contracting officers we spoke with acknowledged that contractors closely supported inherently government functions, but none of the contract files identified them as such or indicated if any steps were taken to address related risks.

The associated contract files for each of the task orders we reviewed included provisions specifically prohibiting the contractor from performing inherently governmental functions. Program managers and contracting officers informed us that they were aware of the importance of preventing contractors from performing inherently governmental functions as required by the FAR.<sup>25</sup> These officials acknowledged that without contractor support, fulfilling mission requirements or conducting certain program activities could not continue and some recognized that the close working relationships that develop between government and

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<sup>24</sup> FAR Subpart 7.5.

<sup>25</sup> FAR Subpart 7.5.

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contractor support personnel increase the risks of contractors performing inherently governmental functions. To prevent contractors from performing such tasks, program and contracting officials indicated that they reviewed task order requirements to ensure that they are within the scope of the acquisition and do not require contractors to perform tasks that should be left only to government employees. Officials further stated that when developing performance work statements they emphasize that the contractors' role is to provide assistance to the government rather than make program decisions.

Program and contract personnel that we interviewed who were responsible for overseeing the work done under the task orders were unaware, however, of the FAR requirement to provide greater scrutiny and an enhanced degree of management oversight and surveillance when contracting for services that closely support inherently governmental functions.<sup>26</sup> Additionally, federal internal control standards require that agencies conduct an assessment of risks, such as risks that result from heavy reliance on contractors to perform critical agency operations.<sup>27</sup> According to DOD officials, however, no specific guidance has been provided by DOD that defines how contracting and program officials should conduct such enhanced oversight. DPAP officials noted that additional information on how to oversee contractors that closely support inherently governmental functions would be useful to the military departments, but acknowledged that they have no ongoing efforts to do so.

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<sup>26</sup> FAR Part 37.114 states that the government must provide greater scrutiny and enhanced oversight of contractor activities that closely support inherently governmental functions in order to ensure that contractors do not actually perform the inherently government functions and that government officials properly exercise their authority. OFPP Policy Letter 93-1 also requires that agency officials provide an enhanced degree of management controls and oversight when contracting for such services.

<sup>27</sup> GAO, *Internal Control: Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999) supplemented by GAO, *Internal Control Standards: Internal Control Management and Evaluation Tool*, [GAO-01-131G](#) (Washington, D.C.: February 2001).

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## Recent Guidance Requires DOD to Consider Using Civilian or Military Employees to Perform Activities That Closely Support Inherently Governmental Functions

In May 2009, DOD issued guidance<sup>28</sup> in response to legislation requiring DOD to devise and implement guidelines and procedures to ensure that consideration is given to converting, or in-sourcing, functions currently performed by contractors to DOD civilian personnel.<sup>29</sup> This in-sourcing guidance instructs DOD personnel to prioritize the conversion of any currently contracted services to DOD civilian performance if the functions: are valid and enduring mission requirements; are inherently governmental functions; are exempted functions;<sup>30</sup> are unauthorized personal services; have problems with contract administration; or are services that require “special consideration” for in-sourcing. Under the law and the guidance, one of the categories of services that should be given “special consideration” for in-sourcing is services that closely support inherently governmental functions.

The May 2009 guidance also states that when making certain in-sourcing decisions, agency personnel should consult workforce management officials, as specified in DOD’s *Guidance for Determining Workforce Mix*.<sup>31</sup> This instruction requires DOD personnel to pay particular attention when contracting for activities that closely support inherently governmental functions. If an activity is so closely associated with an inherently governmental function that it cannot be separated or distinguished from it, the instruction requires that the function be identified as inherently governmental and precluded from private sector performance. This safeguard is intended to prevent the transferring of governmental authority, responsibility, or accountability to the private sector. However, neither the May 2009 in-sourcing guidance nor DOD’s *Guidance for Determining Workforce Mix* require DOD contracting and program personnel to identify, document, or mitigate risks posed when contractors will be relied on to closely support inherently governmental functions.

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<sup>28</sup> Deputy Secretary of Defense, *In-Sourcing Contracted Services—Implementation Guidance*, May 28, 2009.

<sup>29</sup> Pub. L. No. 110-181, § 324. See 10 U.S.C. § 2463.

<sup>30</sup> Certain commercial functions are exempted from private sector performance by law, Executive Order, treaty, or international agreement and should be performed by DOD civilian or military personnel.

<sup>31</sup> Department of Defense Instruction 1100.22, *Guidance for Determining Workforce Mix*, April 6, 2007.

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Further, under the May 2009 in-sourcing guidance, the conversion of services that require “special consideration” to government performance is to be based solely on cost and not risk; that is, these services may be in-sourced only if a cost analysis shows that performance by DOD civilian employees is more cost-effective. Officials from the Office of the Director for Cost Assessment and Program Evaluation<sup>32</sup> stated that guidance for standardizing how these cost analyses should be performed was expected to be issued by December 2009. The May 2009 in-sourcing guidance also requires that when cost analyses indicate that the private sector is the more cost-effective provider of services, a written confirmation should be provided to contracting officers. Further, the guidance states that all documents leading to the decision to contract for such services should be retained in contract files. DPAP and military department officials stated that cost analyses are not required to be submitted in the documentation supporting management reviews.

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## DOD Faces Challenges In Implementing Performance-Based Practices on Professional and Management Support Task Orders

DOD faces challenges in defining requirements and outcome-based measures when using a performance-based approach to acquire professional and management support services. DOD personnel generally expressed task order requirements in terms of a broad range of services that the contractors might be required to perform and used a mix of objective and subjective measures to determine whether the contractor achieved assigned tasks within expected cost, schedule, and quality parameters. For example, 63 percent of the task orders that assessed contractor cost performance principally used objective performance measures, while two-thirds of the task orders that assessed the quality of contractor performance principally used subjective measures. We found objective measures generally provided more discrete information to assess contractor performance. In contrast, subjective measures, especially those to assess the quality of contractor work, tended to rely on customer feedback, such as the number of complaints lodged against the contractor. In several instances, DOD missed opportunities to include objective performance measures that may have been better suited to assess contract outcomes, in part because DOD personnel used the performance measures established in the base contract rather than attempt to measure the specific services being provided under the task order. DOD officials acknowledged there are challenges in developing measures that assess the

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<sup>32</sup> This office was previously known as the Office of the Director for Program Analysis and Evaluation.

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outcomes of professional and management support contracts and noted recent actions to improve existing guidance.

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## FAR and DOD Guidance Established Preference for Performance-Based Services Acquisition

In 2000, Congress established performance-based approaches as the preferred acquisition method for acquiring most services.<sup>33</sup> Under the FAR, all performance-based acquisitions should include:

- a performance work statement that describes outcome-oriented requirements in terms of results required rather than the methods of performance of the work;
- measurable performance standards describing how to measure contractor performance in terms of quality, timeliness, and quantity; and
- the method of assessing contract performance against performance standards, commonly accomplished through the use of a quality assurance surveillance plan.<sup>34</sup>

DOD issued its *Guidebook for Performance-Based Services Acquisition in the Department of Defense* in December 2000 to educate DOD personnel on, and promote the use of, performance-based practices. The guidebook suggests that personnel develop performance objectives that encompass at a top level all the tasks that must be completed to arrive at the desired outcome. The guidebook states that performance standards should be identified for the performance objectives so personnel will know if the desired outcome was satisfactorily achieved. It further states that determining an appropriate performance standard is a judgment call based on the needs of the mission and available expertise. DOD's guidance also identifies that surveillance personnel may use various measures to assess the contractor's performance, such as random or periodic sampling of the contractor's work as well as customer feedback. The guidebook indicates, however, that customer feedback should be used prudently as it is subjective and does not always relate to the requirements of the contract. Lastly, the guidebook provides examples of performance objectives with corresponding standards and measures for various

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<sup>33</sup> Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106-398, § 821(a) (2000), required that the FAR be revised to establish a preference for the use of a performance-based approach in the acquisition of services. The requirement was implemented in FAR § 37.102(a).

<sup>34</sup> FAR Subpart 37.6.

services and activities, but not specifically for professional and management support services (see table 3).

**Table 3: Examples of Performance Requirements in DOD’s *Guidebook for Performance-Based Services Acquisition in the Department of Defense***

Type of service	Performance objective	Performance standard	Assessment methods
Call center operations	Maintain all equipment and materials.	Equipment failures, non-availability, or maintenance shall not interfere with operations for more than x minutes during a month (day, etc.).	Random inspection; audit or review by third party
Call center operations	Assure customers are satisfied with quality of service.	At least x percent of customers contacted must be satisfied with service.	Review and validate customer surveys; conduct independent surveys
Reporting to the government	Deliver required reports.	No more than x (or x percent) of the reports to appropriate government contact may be later than the specified time period.	Review reports and logs
Satellite control center service	Conduct an effective position certification program to ensure qualified personnel are provided for orbital analysis.	95 percent of personnel certified within x timelines per year.	Not specified

Source: DOD’s *Guidebook for Performance-Based Services Acquisition in the Department of Defense*, 2000.

### Performance Standards and Measures Were Not Always Well Suited to Assess the Outcomes of the Broad Range of Contracted Services

While DOD identified as performance-based all but one of the task orders we reviewed, we found that almost all of the task orders had broadly defined requirements that listed various categories of services and related activities the contractor may be required to perform over the course of the order rather than expected results. The task orders we reviewed were issued from base contracts that identified the categories of support services a contractor may be required to perform. The task orders then identified a broad range of activities that the contractor may be required to perform based on the customer program office’s needs. For example, the base contract for one task order identified four different categories of support services: acquisition, financial management, contracting, and administrative and human resources support. In turn, the task order identified several activities the contractor could perform, such as preparing acquisition-related documents, updating commanders on policies and procedures, tracking and analyzing funds, maintaining contract files, and preparing travel orders.

DOD generally grouped contractor performance into a number of different performance objectives, including cost, schedule, and quality, and set standards that the contractor had to meet. These performance objectives

required the contractor to, among other things, maintain control of costs by completing work within an acceptable range of projected costs, adhere to the government's schedule by delivering products on time, and provide the government with high-quality work products. DOD personnel used a mix of objective and subjective measures to assess the contractors' performance against the cost, schedule, and quality standards in 54 of the 64 task orders we reviewed; not all task orders established performance measures in all three categories (see table 4). The measures used varied depending on the area of performance assessed. For example, 63 percent of the task orders that assessed the contractor's cost performance principally used objective performance measures, while two-thirds of the task orders that assessed the quality of the contractor's performance principally used subjective measures.

**Table 4: Principal Measures Used to Assess Selected Performance Objectives**

Performance objective	Performance standard measured objectively	Performance standard measured subjectively	Performance objective not included or assessed <sup>a</sup>
Maintain cost control	34	20	10
Meet schedule requirements	29	25	10
Provide high-quality services	20	40	4

Source: GAO analysis of 64 selected task orders.

<sup>a</sup>In lieu of measuring cost, schedule, or performance, contractors were assessed in such areas as maintaining good business relations with the government and how well the contractor retained and replaced its personnel.

We found that the objective performance measures yielded better information on how well the contractor met desired cost and schedule contract outcomes than subjective measures. For example, the objective performance standards in one task order required the contractor to remain within projected costs and perform tasks within schedule 97 percent of the time. In this instance, the surveillance personnel maintained a database of the contractor's cost and periodically contacted customers to identify if the contractor's work was completed on time. The other task orders that included cost and schedule performance standards were assessed subjectively, based on the number of complaints lodged against the contractor. According to task order documentation and surveillance personnel we spoke with, a customer complaint is generated when a contractor fails to meet performance requirements. Ten of these task orders required the contractor to provide accurate cost forecasts and accomplish tasks with minimum delay to program mission objectives. None of these task orders, however, identified what would constitute a level of performance that would result in a valid customer complaint.

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Contractor performance documentation we reviewed for these task orders indicated that DOD assessed the contractor as having met performance requirements, but provided little to no information on what the contractor accomplished.

Both the subjective and objective performance measures used to assess the quality of the contractors' services provided little insight into the outcomes of the contractors' work. DOD personnel relied on subjective measures to assess the quality of contractor services provided in 40 of the 64 task orders we reviewed. For example, 30 of these tasks orders directed surveillance personnel to assess quality based on the number of customer complaints a contractor received. Surveillance personnel we spoke with indicated that they regularly contacted government customers to inquire about their overall satisfaction with the contractor's performance. Some surveillance personnel explained that it was difficult to determine if the contractor met or exceeded performance standards because guidance on making these determinations was not available. Consequently, they generally documented the contractor's performance as acceptable if the customer said they were satisfied with the contractor's performance. We found that when the contractor's performance was rated as meeting requirements, surveillance personnel documented little detail about the quality of the contractor's work because such descriptions were often required only when the contractor either exceeded or did not meet expectations. In another 10 task orders involving the purchase of engineering, technical, business, and acquisition support services, such as helping to identify the program office's contracting requirements and assisting with developing requests for proposals and statements of work to fill those requirements, quality performance standards required the contractor to complete task order activities with little rework and with few minor and no significant problems at least 80 percent of the time. According to the documentation we reviewed, surveillance personnel indicated they periodically sampled the contractor's work to verify the percentage that was redone and often rated the quality of the work as exceptional because little rework was reported.

On four task orders for translation services in Afghanistan, Cuba, and other areas, DOD personnel did not attempt to measure the quality of the contractor's services. In these cases, the task orders' requirements included that the contractor deploy translators in response to mission requirements. The corresponding performance standard required the



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contractor to meet staffing requirements<sup>35</sup> no less than 95 percent of the time, which was measured and documented by surveillance personnel. The task orders, however, did not include a performance objective for obtaining high-quality translation services. Contracting and program officials explained that they did not try to measure the quality of the translations provided because DOD lacks the personnel with translation skills necessary to make such an assessment. These officials stated that ensuring qualified personnel are provided in a timely manner is the best alternative to determining if the translations provided are of high quality.

The military departments may have missed opportunities to include and use objective performance measures that were better suited to assess contract outcomes in several of the task orders we reviewed. In part, this occurred because DOD personnel used the general performance measures that were established in the base contract rather than develop measures that were tailored for the specific work required in the task orders in more than 80 percent of the task orders we reviewed. Consequently, in each of the following examples, the quality of the contractor's performance was measured based on the number of validated complaints submitted by government personnel.

- Four task orders issued for acquisition, financial management, contracting, and administrative support required contractors to indicate at the end of each contract year at least two lessons learned, best practices, or improvements it made to the government's processes in areas including acquisition and program management. The requirements did not, however, identify at the outset of the task order the type or extent of the improvements that DOD desired, such as reductions in the time required to complete activities or costs savings.
- In a \$1.8 million task order for information and project management support, the contractor was required to identify and reduce the government's unliquidated obligations by 25 percent in 6 months and by 50 percent in a year when measured against an identified baseline. Nevertheless, the task order did not include any performance measures that were directly related to whether the contractor met the reduction targets. The official responsible for assessing the

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<sup>35</sup> According to the performance standards in the task orders we reviewed, translators were to arrive at a designated place of duty with all required documentation, equipment, training, logistical support, and information required to begin work not later than the time and date specified on movement and deployment orders.

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contractor's performance noted, however, that he considered the contractor's efforts to reduce unliquidated obligations when he assessed the contractor's performance.

- In four other task orders for acquisition and information management support, the contractor was required to review technical proposals and validate prices submitted by other contractors and make recommendations on the acceptance or rejection of these proposals as part of the support it provided to the program office's pre-award activities. The task orders, however, did not include objective performance measures to assess the contractor's performance, such as whether the contracting officer returned the contractor's work to correct deficiencies or whether the reviews resulted in reducing the government's costs.

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## DOD Officials Identified Challenges in Developing Objective, Outcome-Oriented Measures

Our previous work at the Department of Homeland Security noted that defining outcome-oriented requirements and measurable performance standards may be challenging for professional and management support services.<sup>36</sup> We found similar concerns expressed by the DOD contracting, program, and surveillance officials we interviewed. These officials acknowledged that they find it difficult to identify and objectively measure the outcomes of professional and management support services contracts due to the broad range of support provided. They stated that these task orders encompassed a range of activities which, while not inherently governmental, would typically be performed by federal employees. Consequently, officials stated the performance work statements needed to be written broadly to provide the flexibility to obtain specific support as needed and that contractors were often viewed as simply augmenting the government's workforce. Further, these officials noted that it was often not practical to measure the work contractors performed and that subjective measures, such as the number of customer complaints received, are frequently used as an alternative to assess whether the contractor met the government's requirements. As a result, they generally considered the outcome of these task orders to be obtaining qualified people rather than a specific result the contractor was required to achieve.

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<sup>36</sup> GAO, *Department of Homeland Security: Better Planning and Assessment Needed to Improve Outcomes for Complex Service Acquisitions*, [GAO-08-263](#) (Washington, D.C.: Apr. 22, 2008).

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To address the challenges of developing performance-based requirements and measures for professional and management support, a Defense Acquisition University (DAU) official noted that DAU was reviewing performance work statements and surveillance plans from professional and management support contracts across DOD to identify good examples of outcome-based performance objectives, standards, and measures. DAU plans to launch a Web site in January 2010 that includes templates derived from these examples for contracting and program officials across DOD to tailor to their own needs. Additionally, this official noted that since January 2009, DAU has offered a 4-day services acquisition workshop tailored to individual acquisitions developed by program offices across DOD. According to the DAU official, the workshop brings together key acquisition personnel, from contracting officers to customers, to support the development of new acquisition strategies before they are reviewed by the military departments. The official added that by the end of the workshop, the requiring activity has a draft performance work statement and a quality assurance surveillance plan that meets performance-based requirements.

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## DOD Efforts to Designate Trained Surveillance Personnel Show Progress, but Concerns Remain

DOD's efforts to ensure that trained surveillance personnel are assigned to monitor contractor performance on services contracts have shown progress, though on a number of task orders personnel were not always designated or trained in a timely fashion. Surveillance personnel are required to be qualified by training and designated in writing.<sup>37</sup> In response to our and inspector general reports on continued shortcomings in DOD's contract surveillance practices,<sup>38</sup> DOD issued guidance on December 6, 2006, requiring that surveillance personnel be properly trained and designated before contract performance begins, and that properly trained surveillance personnel are identified on active contracts for services.<sup>39</sup>

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<sup>37</sup> DFARS Subpart 201.6 requires that a contracting officer's representative (COR) be qualified by training and experience commensurate with the responsibilities delegated and the COR designation must be in writing. Senior DOD officials stated that when DOD regulations use the term "COR", that such policy applies to all surveillance personnel throughout DOD.

<sup>38</sup> For example, in 2005, we found that DOD's surveillance personnel were not designated on 15 of the 90 services contracts reviewed, and that 13 of the 104 surveillance personnel did not receive the required training before beginning their assignments. See [GAO-05-274](#).

<sup>39</sup> Office of the Secretary of Defense, *Designation of Contracting Officer's Representatives on Contracts for Services in Support of Department of Defense Requirements* (Dec. 6, 2006).

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At the time of our review, trained surveillance personnel were designated to all 64 task orders. DOD personnel responsible for five of the seven acquisitions we reviewed, however, did not maintain documentation on all surveillance personnel assigned over the task orders' entire period of performance. DOD officials stated that in some cases additional personnel may have been designated to the task orders, and that some personnel may have received surveillance training on a date earlier than was indicated in the contract files, but were unable to provide documentation.

In most cases, DOD was able to provide documentation of the first person designated to conduct surveillance and the person assigned at the time of our review. On the basis of this information, we found that surveillance personnel were designated after contract performance began on 3 of the 37 task orders awarded after the issuance of the December 2006 guidance.<sup>40</sup> In 1 of these 3 cases, the person was designated more than 90 days after performance began on the task order.

We also found that 61 of the 64 surveillance personnel designated on the task orders we reviewed had received training. For 1 of the 3 instances where personnel were not trained, a program official explained that the person was recently assigned and had been notified of the training requirements, but had not completed the training. In the 2 other instances, DOD officials were not able to identify a reason for the lack of training. For the 61 task orders with trained personnel assigned, 20 personnel had not received training prior to beginning their assignments. Furthermore, in 3 of these cases, surveillance personnel did not receive the required training until at least a year after they were assigned to monitor a contractor's performance.

The training that surveillance personnel received varied across and within the military departments, ranging in duration from 2 hours to 1 week, and included, among other things, reviewing training slides, completing an on-line course offered through DAU's Web site, and completing an in-class course tailored by the program office responsible for the acquisition. There are no DOD-wide requirements for the content of surveillance training and personnel we spoke with provided mixed feedback on how well their training prepared them to conduct surveillance. Surveillance

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<sup>40</sup> We found that 7 of the 27 task orders that were issued prior to the issuance of the December 2006 guidance also lacked designated surveillance personnel before work was to begin.

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personnel noted that training provided an adequate basis for conducting their duties, but did not always provide enough instruction on how to effectively oversee contractors, especially for those who had little to no previous experience with assessing contractor performance. Several personnel stated that the most useful information that training provided was the contact information for personnel in the contracting offices that surveillance personnel could speak with if they had questions. DPAP officials acknowledged that the type and content of the training surveillance personnel receive varied and indicated that DOD is considering a certification system for these personnel that may include both training and experience requirements.

Surveillance personnel identified a number of challenges that may affect their surveillance duties, such as numerous contractors to oversee in multiple locations and surveillance responsibilities being secondary to primary duties. For example, on one task order for translation services in Afghanistan, surveillance personnel were each responsible for monitoring over 1,000 contractors dispersed throughout the country. An official who oversaw this task order stated the ratio of surveillance personnel to contractors was so large that it affected the government's ability to assess contractor performance.<sup>41</sup> For a task order for translation services in Cuba, the contracting officer's letter of designation to the contracting officer's representative stressed the importance of on-site surveillance. Nevertheless, we found that there was an 8-month period during which surveillance personnel were absent from the site of contractor performance. Despite the absence of on-site surveillance personnel, contracting officials determined that the contractor should receive the full award fee based upon performance reports submitted before and after this 8-month period. Several personnel from other commands we visited told us they did not have sufficient time to focus on their surveillance responsibilities in addition to their primary duties. Finally, surveillance personnel at many of the commands we visited stated that they were unaware of requirements to provide enhanced oversight of contractors that closely support inherently governmental functions.

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<sup>41</sup> We and the DOD Inspector General have previously reported on the challenges in providing contract oversight during contingency operations. See GAO, *Military Operations: DOD Needs to Address Contract Oversight and Quality Assurance Issues for Contracts Used to Support Contingency Operations*, [GAO-08-1087](#) (Washington, D.C.: Sept. 26, 2008) and Office of the Inspector General, Department of Defense, *Logistics Support Contracting for the United States Special Operations Command*, D-2009-083 (May 28, 2009).

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## Recent Initiative May Improve DOD's Insight into Issues Affecting Professional and Management Support Contracts

DOD is in the process of implementing additional processes to review services contracts both prior to and after contract award, which may provide additional insight into DOD's management and oversight of professional and management support contracts. These reviews are intended to assess a number of issues that are not currently addressed by DOD's management review, including contractors that closely support inherently governmental functions, implementation of performance-based practices, and proper surveillance of contractors.

The National Defense Authorization Act for Fiscal Year 2008 required DOD to issue guidance to implement an independent management review of services contracts.<sup>42</sup> In response, the Director of DPAP issued memorandums in September 2008 outlining pre- and post-award peer reviews and in February 2009 detailing criteria for the peer reviews for services acquisitions with estimated values of \$1 billion or more, consistent with the threshold for reviewing proposed services acquisitions.<sup>43</sup> To do so, DOD convenes peer review teams that consist of senior contracting leaders from across DOD as well as legal counsel to work closely with the offices responsible for developing acquisition strategies. This policy also required the military departments to establish their own procedures to conduct peer reviews for service acquisitions valued at less than \$1 billion. As of October 2009, DPAP conducted 48 pre-award peer reviews on 31 different proposed supplies and services acquisitions. DPAP also conducted three post-award reviews on approved and ongoing services acquisitions, which included a review of task order documents. Of the 51 reviews conducted by DPAP, four pre-award reviews and one post-award review were conducted on three different professional and management support services acquisitions.<sup>44</sup>

The peer review process differs from DOD's management reviews in a number of areas that may provide opportunities for the department to address key aspects of managing and overseeing professional and

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<sup>42</sup> Pub. L. No. 110-181, § 808. The Act also requires GAO to report on DOD's implementation guidance, which we will do under a separate engagement.

<sup>43</sup> Office of the Under Secretary of Defense, *Peer Reviews of Contracts for Supplies and Services* (Sept. 29, 2008) and Office of the Under Secretary of Defense, *Review Criteria for the Acquisition of Services* (Feb. 18, 2009).

<sup>44</sup> As of October 2009, the Air Force and Navy have established policies for conducting pre- and post-award peer reviews. The Army has established policies for conducting pre-award peer reviews but has not yet done so for post-award peer reviews.

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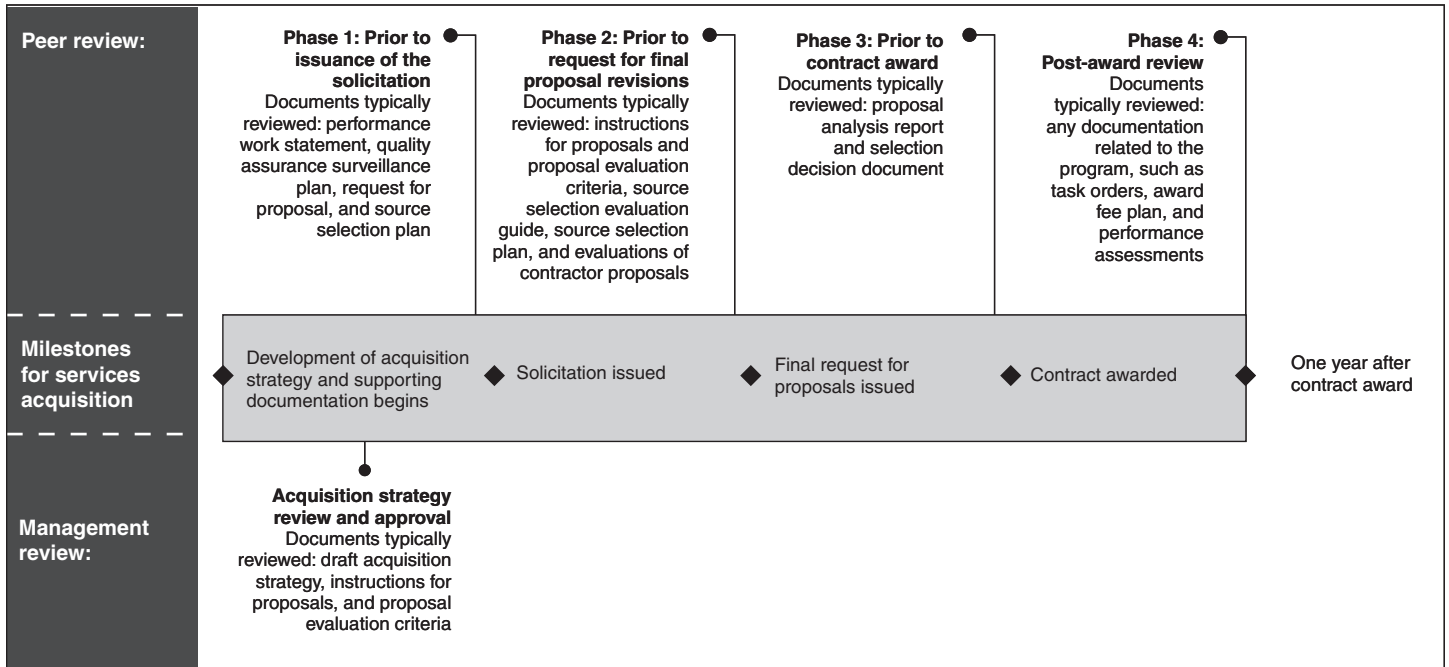
management support contracts. Whereas the premise of the management review is to assess and approve proposed acquisition strategies, the peer reviews are conducted after strategies have been approved and are intended to be advisory in nature. Peer reviews are designed to help:

- ensure that contracting officers across DOD implement policy and regulations in a consistent and appropriate manner;
- improve the quality of DOD's contracting processes; and
- facilitate cross-sharing of best practices and lessons learned.

Currently, a peer review team summarizes the results of its review in a memorandum provided to both the contracting office responsible for the acquisition and DPAP. According to DPAP officials, DOD is still determining how to share best practices and lessons learned from these reviews with the department's acquisition community.

While both the peer reviews and the management reviews contain pre-award components, the multiple phases of the peer reviews provide DOD the opportunity to address additional issues and examine documents not available during the management review (see fig. 1). For example, the pre-award management review of proposed services acquisitions occurs before performance work statements and quality assurance surveillance plans are developed. As a result, the management reviews do not include an assessment of how performance-based practices are implemented and whether proper contractor surveillance is conducted. Further, as previously noted, DOD's management review guidance does not require department personnel to identify whether the services to be provided closely support inherently governmental functions or how the risks associated with contractors providing such services will be addressed. In contrast, the pre-award peer reviews occur later in the acquisition cycle and include the review of additional documents that may provide reviewers an opportunity to recommend improvements to performance work statements and surveillance plans.

**Figure 1: Comparison of DPAP's Peer Reviews and Management Reviews for Services Acquisitions for Acquisitions Estimated to be Valued at \$1 Billion or More**



Source: GAO analysis of DOD policy and guidance.

Additionally, the peer review process provides for a post-award phase for services that expands upon the management review requirements. The post-award peer review has eight metrics that provide criteria that reviewers use to evaluate ongoing acquisitions in terms of how contractor performance is assessed, including the use of objective criteria; whether surveillance personnel are appropriately staffed; and the extent of reliance on contractors to perform tasks closely associated with inherently government functions. Table 5 shows the various areas of focus of the peer reviews.



**Table 5: Focus Areas of the Peer Review Process**

<b>Before contract award</b>	<b>After contract award</b>
<ul style="list-style-type: none"><li>• Clearly defined requirements</li><li>• Contractors performing functions closely associated with inherently governmental functions</li><li>• Contractor conflicts of interest</li><li>• Utilization of performance-based characteristics</li><li>• Contract surveillance</li></ul>	<ul style="list-style-type: none"><li>• Contractor cost, schedule, and performance assessments</li><li>• Maintaining competition</li><li>• Contractor’s management of subcontractors</li><li>• Contract surveillance</li><li>• Pass-through charges<sup>a</sup></li><li>• Contractors performing certain functions closely associated with inherently governmental functions</li><li>• Contractor conflicts of interest</li><li>• Objective criteria for contracts with award or incentive fee</li></ul>

Source: GAO analysis based on DOD policy.

<sup>a</sup>Pass-through charges are contractor charges for the costs associated with subcontracting work.

Our review of the summary memoranda for the five peer reviews conducted on professional and management support contracts found that while the memoranda generally focused on business aspects, some memoranda made recommendations related to performance-based approaches and surveillance issues specific to the individual acquisition. For example, a pre-award peer review team recommended that the contracting office work with DAU to develop performance-based statements of work. The peer review team for the one post-award review recommended that the program office identify objective performance measures and present them to the contractor. Another pre-award peer review team recommended that the contracting office appoint surveillance personnel prior to the award of a contract. None of the memoranda we reviewed noted issues with contractors closely supporting inherently governmental functions. DOD officials stated that these issues were discussed, but that none appeared to warrant inclusion in the memoranda.

While DPAP has completed peer reviews on 34 individual supplies and services acquisitions since September 2008, developing an approach that will lead to the achievement of the peer review’s objectives enterprisewide may prove challenging given the nature and volume of service contract activity. Nearly 1,900 task orders were issued under the seven professional and management support services acquisitions we reviewed, all of which required a contractor to perform multiple and varying tasks. Furthermore, we identified thousands of individual task orders associated with the professional and management support services acquisition strategies approved by the military departments from fiscal years 2004 through 2007, all of which require management and oversight by the department. These numbers are even greater when looking at all services acquisition

strategies approved by the military departments in that same time period (see table 6).

**Table 6: Award of Contracts and Issuance of Task Orders from Fiscal Years 2004 through 2008 Subsequent to the Military Departments' Approval of Acquisition Strategies**

Type of contract	Acquisitions approved <sup>a</sup>	Base contracts awarded	Task orders issued	Total obligations
Professional and management support services <sup>b</sup>	32	192	8,817	\$15.0 billion
All services	91 <sup>c</sup>	361	13,650	\$27.3 billion

Source: GAO analysis of DOD contract data reported in the Federal Procurement Data System–Next Generation.

<sup>a</sup>These acquisitions were approved by DOD during fiscal years 2004 through 2007.

<sup>b</sup>Other services may have been purchased in these contracts and tasks orders.

<sup>c</sup>An additional 11 acquisitions were approved during fiscal years 2004 through 2007, but had not awarded any contracts during the period covered by our review.

## Conclusions

DOD's reliance upon contractor-provided professional, administrative, and management services to support its missions makes effective management and oversight of these contracts critical. Certain activities such as budget preparation, acquisition planning, and policy development can create risks that the government needs to consider and effectively manage. Of key concern is the loss of government control over and accountability for policy and program decisions. Nevertheless, DOD's policies do not require that DOD personnel include an assessment of these risks when their proposals for contractor support are submitted for approval under DOD's management review process. While recent legislation and DOD's implementing guidance require that DOD consider whether to continue the use of contractors for critical services, including conducting a cost analysis if the situation warrants, these determinations and analyses are largely disconnected from the acquisition review process. Consequently, senior DOD leadership does not have the benefit of such analyses when making strategic decisions on obtaining long-term, high-dollar-value professional and management support.

Similarly, key decisions at the transactional level— such as to award a contract or to issue a task order—are made with the recognition that DOD is dependent on contractors to support its missions and operations. Despite this dependency, DOD officials generally did not consider whether contractors may be unduly or inappropriately influencing government decision making. Further, while these services were often acquired through performance-based approaches, such efforts were hindered by

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DOD's use of broad statements of work and the use of performance measures established in the base contract rather than attempting to measure the specific services being provided under the task order. Within DOD's acquisition community, there is widespread recognition that developing outcome-oriented measures is particularly difficult for professional and management support contracts. DOD has efforts under way to help develop better outcome-oriented measures for professional and management support contracts, but it is too soon to know whether this effort will prove successful. Perhaps the most critical tool in assessing contractor performance is having properly trained personnel in sufficient numbers to effectively monitor contractor performance. While improvements were evident, lapses in designating such personnel, in particular during the initial stages of the contract, continue to expose DOD to an increased risk of poor contractor performance.

DOD consideration, at both the strategic and transactional levels, of the risks of using contractors to closely support inherently governmental functions can help improve the context for successful professional and management support outcomes. DOD's peer review process is beginning to assess this issue just prior to and then after contract award, but with only a handful of reviews performed on such contracts, it is too early to gauge whether the process will be successful in encouraging DOD personnel to address these issues across the range of DOD's services contracts. Having similar information provided at a level of detail appropriate for when senior DOD and military department leadership review proposed acquisition strategies would inform decision makers and engender more proactive consideration earlier in the acquisition cycle. As DOD gets closer to awarding contracts or issuing task orders for specific services, risks move from potential to the more tangible. Reducing the possibility that DOD would enter into a contractual arrangement that exposes it to unintentional and undesired consequences requires that DOD personnel consider—based on the facts and circumstances of a particular acquisition—whether such risks are present and, if so, how best to mitigate them. The fact that DOD program and contracting personnel we contacted were generally unaware of the long-standing requirement to provide greater scrutiny and enhanced oversight on services closely supporting inherently governmental functions underscores the need to address these problems at multiple levels and manners.

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## Recommendations for Executive Action

To better inform acquisition decisions, assist DOD personnel in performing their management oversight responsibilities, and improve DOD's surveillance of services contracts, we recommend that the Secretary of Defense take the following four actions:

- revise documentation requirements for DOD's current management review to include information on the extent to which services to be provided will closely support inherently governmental functions as well as the consideration given to using DOD civilian employees to perform such functions;
- require before the award of any contract or issuance of task order for services closely supporting inherently governmental functions that program and contracting officials consider and document their assessment of the unique risks of these services and the steps that have been taken to mitigate such risks;
- develop guidance to identify approaches that DOD should take to enhance management oversight when contractors provide services that closely support inherently governmental functions; and
- direct the military departments to review their procedures to ensure that properly trained surveillance personnel have been assigned prior to and throughout a contract's period of performance.

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## Agency Comments and Our Evaluation

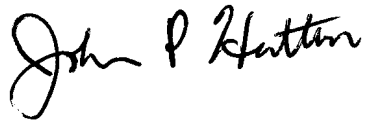
DOD provided written comments on a draft of this report. DOD concurred with the four recommendations and also identified a number of actions that would be taken to address them. DOD acknowledged the need to continually refine its policies and procedures regarding the management of support contracts. DOD noted that while it intended to decrease funding for contracted support and scale back the use of contractors, DOD will continue to rely on service contracts to support its mission, making the effective management of professional, administrative, and management support contracts critical. DOD also provided technical comments, which were incorporated as appropriate. DOD's comments are reprinted in appendix III.

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We are sending copies of this report to the Secretary of Defense; the Secretaries of the Air Force, Army, and Navy; the Administrator of the Office of Federal Procurement Policy; and interested congressional committees. In addition, the report will be made available at no charge on GAO's Web site at <http://www.gao.gov>.

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If you or your staff have any questions concerning this report, please contact me at (202) 512-4841. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.



John P. Hutton  
Director  
Acquisition and Sourcing Management

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# Appendix I: Scope and Methodology

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To determine whether the Department of Defense's (DOD) policies and actions to improve its management of services contracts addressed issues affecting professional and management support contracts, we examined (1) the extent to which DOD considered the risks associated with contractors closely supporting inherently governmental functions at key acquisition decision points;(2) how DOD was implementing performance-based acquisitions practices, such as identifying requirements in terms of expected and measurable outcomes; (3) the extent to which DOD designated trained surveillance personnel; and (4) whether recent actions to implement a peer review process may improve DOD's management and use of such contracts.

To assess the extent to which DOD considered the risks associated with contractors closely supporting inherently governmental functions at key acquisition decision points, we reviewed relevant provisions of the National Defense Authorization Acts for fiscal years 2002 through 2009 that pertained to DOD's acquisition of services. We also reviewed guidance issued by DOD in May 2002 and October 2006, as well as DOD Instruction 5000.02, *Operation of the Defense Acquisition System*, reissued in December 2008, which collectively established DOD's management review processes to identify the risks that should be considered during these reviews. Further, we reviewed Office of Federal Procurement Policy Letter 93-1, *Management and Oversight of Service Contracting* and Federal Acquisition Regulation (FAR) requirements for the management and oversight of contractors that closely support inherently governmental functions. We also reviewed DOD Instruction 1100.22, *Guidance for Determining Workforce Mix* and DOD's May 2009 in-sourcing guidance, *In-Sourcing Contracted Services—Implementation Guidance*, to determine how personnel should consider and document the risks of contractors performing activities that closely support inherently governmental functions and assess the appropriate mix of DOD civilian, military, and contractor personnel. We interviewed representatives from the Office of Defense Procurement and Acquisition Policy (DPAP), and representatives from each of the military departments that are responsible for implementing these policies, guidance, and reviews to identify how these risks are accounted for prior to approval of the proposed acquisition strategy.

To assess how these risks were addressed under DOD's management review for specific services acquisitions, we reviewed a DOD-provided list of 102 services acquisition strategies that were reviewed and approved by the Air Force, Army, or Navy from fiscal years 2004 through 2007. We obtained information from the military departments on the contracts that

had been awarded after these 102 strategies had been approved. Using this information and data derived from the Federal Procurement Data System–Next Generation,<sup>1</sup> we determined that the military departments had awarded 361 contracts and issued 13,650 task orders from these 102 acquisitions during fiscal years 2004 through 2007. We then identified product service codes associated with these contracts and used the Federal Procurement Data System–Next Generation to determine the number of contract actions and obligations for professional and management support services. We found that 32 of these acquisitions, with almost \$15 billion in total combined obligations from fiscal years 2004 through 2008, included contracts for professional and management support. From these 32 acquisitions, we selected 7 acquisitions based on such factors as the percentage of obligations that were made for professional and management support services, the specific types of services acquired, and the agency awarding the contract.<sup>2</sup> The 7 acquisitions we selected had over \$4.3 billion in total combined obligations from fiscal years 2004 through 2008 (see table 7 for more information on these acquisitions).

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<sup>1</sup> Federal Procurement Data System–Next Generation is the federal government’s current system for tracking information on contracting actions.

<sup>2</sup> We used the following product service codes in the Federal Procurement Data System–Next Generation to identify acquisitions for professional, administrative, and management support services: R408 for Program Management/Support Services; R706 for Management Services/Logistics Support; R707 for Management Services/Contract and Procurement Support; R425 for Engineering and Technical Services; R799 for Other Management Support Services; and AD25 for Services (Operational).

**Table 7: Reviewed Services Acquisitions and Total Task Orders Issued and Obligations from Fiscal Year 2004 through 2008**

<b>Services acquisition (year approved) and supported command</b>	<b>Total task orders</b>	<b>Total obligations</b>	<b>Total number of task orders reviewed<sup>a</sup></b>	<b>Total obligations for task orders reviewed</b>
Consolidated Acquisition of Professional Services (2005) Air Force, Aeronautical Systems Center, Wright-Patterson Air Force Base, Ohio	317	\$290,059,894	10	\$19,129,251
Global Engineering Integration and Technical Assistance 5 (2004) Air Force, Center for Engineering and the Environment, Brooks City Air Force Base, Texas	974	377,343,260	10	12,786,624
Professional Acquisition Support Services (2006) Air Force, Electronic Systems Center, Hanscom Air Force Base, Massachusetts	48	167,184,450	10	19,147,786
Technical and Acquisition Management Support 3 (2004) Air Force, Material Command, Eglin Air Force Base, Florida	75 <sup>b</sup>	97,136,450	10 <sup>b</sup>	32,889,624
AMCOM Express (2003) Army, Aviation and Missile Command, Redstone Arsenal Army Base, Alabama	272	2,468,630,948	10	121,247,457
INSCOM Linguistics [Part 2] (2006) Army, Intelligence and Security Command, Fort Belvoir, Virginia	66	826,095,932	4 <sup>c</sup>	247,618,693
Systems Engineering and Technical Assistance (2005) Navy, Space and Naval Warfare Systems Center, New Orleans, Louisiana	122	83,440,664	10	11,959,827
<b>Total</b>	<b>1,874</b>	<b>\$4,309,891,598</b>	<b>64</b>	<b>\$464,779,262</b>

Source: GAO.

<sup>a</sup>The task orders we reviewed were issued during fiscal years 2004 through 2007 and had obligations over \$500,000.

<sup>b</sup>Task orders were not issued from the contracts awarded for services purchased under Technical and Acquisition Management Support 3. The program office used contract modifications, which it referred to as tasks, to purchase services and provided us a list of these tasks. For the purposes of our review, we randomly selected 10 contract modifications or tasks that met our selection criteria and are referring to these as task orders.

<sup>c</sup>At the time of our review, the Army Intelligence and Security Command had issued only four task orders with total obligations over \$500,000 during fiscal years 2004 through 2007.

The seven acquisition strategies we reviewed were approved under DOD's May 2002 acquisition of services policy, which required the Under Secretary of Defense for Acquisition, Technology, and Logistics to review



acquisitions with an expected value of over \$2 billion and for each of the DOD components, which includes the military departments, to review those acquisitions that were under that threshold. None of the acquisition strategies we selected were approved after DOD issued its October 2006 acquisition of services policy, which lowered the dollar thresholds for management reviews. The substance of the management reviews remained largely unchanged, incorporating a few additional, specific, acquisition strategy requirements, such as the inclusion of any required waivers and top-level discussion of source selection processes that were not significant to the objectives of our review.

To assess how such risks were addressed at the contract or task order level, we used data from the Federal Procurement Data System–Next Generation to determine the number of task orders that had obligations of \$500,000 or more that were issued from fiscal years 2004 through 2007 from each of these seven acquisitions. From that list, we randomly select 10 task orders for each acquisition, with the exception of the INSCOM Linguistics Part 2 acquisition for which we selected all four task orders that had been issued as of September 2007 that exceeded this threshold. Overall, we selected 64 task orders, which ranged from \$530,000 to \$227 million in obligations, for review. We did not review acquisitions approved after fiscal year 2007 since our analysis indicated that it was often a year or more from the time that the acquisition strategy was approved to the time when task orders were actually issued. For each of the task orders, we reviewed the acquisition strategy, base contract, task orders, statements of work, and other documentation supporting the need to acquire contract support and any risk assessments prepared. We also interviewed program and contracting officials who managed these acquisitions to obtain information concerning why these services were contracted for, the risks that were considered, and any additional steps that had been taken to enhance oversight of the contractors.

We assessed the reliability of the Federal Procurement Data System–Next Generation to identify acquisitions and to select task orders that were within the scope of our review by verifying (1) the contract and task order identification numbers; (2) the contract award date; (3) that the task orders associated with the acquisitions were for professional and management support services; and (4) that the task orders had obligations exceeding \$500,000. On the basis of this assessment we determined that the data were sufficiently reliable for the purposes of this review.

To assess how DOD implemented performance-based acquisitions practices on contracts for professional and management support, we reviewed relevant provisions in the FAR and DOD guidance. We interviewed DOD and military department officials responsible for reviewing and approving services acquisitions to identify how these reviews addressed the implementation of performance-based practices. We reviewed performance work statements from each of the 64 task orders to assess whether contract requirements and performance measures were consistent with performance-based guidance, such as whether contract requirements were measurable and outcome based. We also analyzed documentation to determine how contractor performance was measured. We interviewed contracting and program officials associated with these acquisitions to identify how contract requirements and performance measures were developed. Finally, we interviewed DPAP officials and a representative from the Defense Acquisition University to obtain information on efforts to develop additional DOD guidance for implementing performance-based services acquisitions.

To assess the extent to which DOD designated trained surveillance personnel, we reviewed the Defense Federal Acquisition Regulation Supplement and DOD policies and procedures to identify the department's surveillance and training requirements. We then analyzed surveillance personnel appointment letters and training documentation associated with each of the 64 task orders to determine whether these requirements were met. We also interviewed DOD officials who were designated as surveillance personnel on one or more of the task orders we reviewed to obtain information on their training and responsibilities.

To identify how actions to implement additional reviews of services acquisitions may improve DOD's management and use of services contracts, we reviewed provisions contained in the National Defense Authorization Act for Fiscal Year 2008 that required DOD to establish an independent management review process. We review memoranda issued by DOD in September 2008 and February 2009 that provided guidance on the scope of these reviews, which DOD refers to as peer reviews. To obtain information on how peer reviews differ from the management reviews, we spoke with officials from DPAP and the military departments responsible for these reviews. We also obtained copies of the memoranda summarizing the findings and recommendations of the five peer reviews performed on professional and management support contracts as of September 2009.

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We conducted this performance audit from July 2008 through November 2009 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.

# Appendix II: Examples of Inherently Governmental and Approaching Inherently Governmental Functions

Federal Acquisition Regulation section 7.503 provides examples of inherently governmental functions as well as services or actions that are not inherently governmental, but may approach being inherently governmental functions based on the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers contractor performance. These examples are listed in tables 8 and 9 below.

**Table 8: Examples of Inherently Governmental Functions**

1.	Directly conduct criminal investigations.
2.	Control prosecutions and performance of adjudicatory functions other than those relating to arbitration.
3.	Command military forces.
4.	Conduct foreign relations and determine foreign policy.
5.	Determine agency policy, including regulations.
6.	Determine federal program priorities for budget requests.
7.	Direct and control federal employees.
8.	Direct and control intelligence and counterintelligence operations.
9.	Select or interview individuals for federal government employment.
10.	Approve position descriptions and performance standards for federal employees.
11.	Determine the disposal of government property.
12.	In federal procurement activities with respect to prime contracts: Determine the supplies or services acquired by the government; participate as a voting member on any source selection boards; approve contractual documents, including documents defining requirements, incentive plans, and evaluation criteria; award contracts; administer contracts; terminate contracts; determine whether contract costs are reasonable, allocable, and allowable; and participate as a voting member on performance evaluation boards.
13.	Approve agency responses to Freedom of Information Act requests.
14.	Conduct administrative hearings to determine eligibility for security clearances, or that affect personal reputation or eligibility to participate in government programs.
15.	Approve federal licensing actions and inspections.
16.	Determine budget policy, guidance, and strategy.
17.	Collect, control, and disburse public funds, unless authorized by statute. Does not include the collection of public charges to mess halls, national parks, and similar entities and routine voucher and invoice examination.
18.	Control treasury accounts.
19.	Administer public trusts.
20.	Draft congressional testimony, responses to congressional correspondence, or agency responses to audit reports.

Source: GAO analysis of Federal Acquisition Regulation section 7.503(c).

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**Appendix II: Examples of Inherently  
Governmental and Approaching Inherently  
Governmental Functions**

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**Table 9: Examples of Services That May Approach Being Inherently Governmental Functions**

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1.	Involve or relate to budget preparation.
2.	Involve or relate to reorganization and planning activities.
3.	Involve or relate to analyses, feasibility studies, and strategy options to be used in developing policy.
4.	Involve or relate to developing regulations.
5.	Involve or relate to evaluating another contractor's performance.
6.	Support acquisition planning.
7.	Assist in contract management.
8.	Provide technical evaluation of contract proposals.
9.	Assist in developing statements of work.
10.	Support the preparation of responses to Freedom of Information Act requests.
11.	Work in situations that may permit access to confidential business information.
12.	Provide information regarding agency policies or regulations.
13.	Participate in situations where contractors may be assumed to be agency employees or representatives.
14.	Participate as technical advisors to source selection boards or as members of a source evaluation board.
15.	Serve as arbitrators or provide alternative methods of dispute resolution.
16.	Construct buildings intended to be secure.
17.	Provide inspection services.
18.	Provide legal advice and interpret regulations and statutes for government officials.
19.	Provide non-law enforcement security activities that do not directly involve criminal investigations.

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Source: GAO analysis of Federal Acquisition Regulation section 7.503(d).

# Appendix III: Comments from the Department of Defense



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
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WASHINGTON, DC 20301-3000

Mr. John Hutton  
Director, Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

NOV 20 2009

Dear Mr. Hutton:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-10-39, "DEFENSE ACQUISITIONS: Further Actions Needed to Address Weaknesses in DoD's Management of Professional and Management Support Contracts," dated October 20, 2009 (GAO Code 120745). Detailed comments on the report recommendations are enclosed.

The Department appreciates the work of the GAO in this important area. Your report underscores the need for continued refinement of our policies and procedures regarding the management of support contracts. Despite the fact the Department is currently implementing a Total Force Management strategy that involves decreased funding for contracted support and a scaled back role for contractors performing support services in favor of in-sourcing new civilian manpower authorizations, the Department will continue to rely on service contracts to support the mission. Therefore, our effective management of these contracts, particularly the professional, administrative and management support service contracts, remains critical.

Finally, in reviewing the draft, we identified a few items to call to your attention. We provided informal feedback to your staff on these technical points of clarification.

Sincerely,

Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Enclosure:  
As stated

GAO Draft Report Dated October 20, 2009  
GAO-10-39 (GAO CODE 120745)

**“DEFENSE ACQUISITIONS: FURTHER ACTIONS NEEDED TO ADDRESS  
WEAKNESSES IN DOD’S MANAGEMENT OF PROFESSIONAL AND  
MANAGEMENT SUPPORT CONTRACTS”**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATIONS**

**RECOMMENDATION 1:** The GAO recommends that the Secretary of Defense revise documentation requirements for DoD’s current management review to include information on the extent to which services to be provided will closely support inherently governmental functions as well as the consideration given to using DoD civilian employees to perform such functions.

**DOD RESPONSE:** Concur. The Department will revise documentation requirements for management reviews to ensure consideration is given to address the extent to which contracted services support functions that closely support inherently governmental functions. Furthermore, revised documentation will account for consideration given to the use of DoD civilian employees to perform such functions.

**RECOMMENDATION 2:** The GAO recommends that the Secretary of Defense require before the award of any contract or issuance of task order for services closely supporting inherently governmental functions that program and contracting officials consider and document their assessment of the unique risks of these services and the steps that have been taken to mitigate such risks.

**DOD RESPONSE:** Concur. The Department will institute a required procedure to consider and document an assessment of unique risks associated with contracts and task orders for services closely supporting inherently governmental functions. [Currently, DoD Instruction 1100.22, Guidance for Determining Workforce Mix (paragraph 5.3.3), requires the Heads of DoD Components to “ensure that guidance in this Instruction is considered before contracting for support services so that activities that are inherently governmental or exempt from private sector performance are not contracted.” Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 207.5 requires a written determination that none of the functions to be performed by contract are inherently governmental.]

**RECOMMENDATION 3:** The GAO recommends that the Secretary of Defense develop guidance to identify approaches that DoD should take to enhance management

oversight when contractors provide services that closely support inherently governmental functions.

**DOD RESPONSE:** Concur. The Department will develop guidance to identify approaches that can be taken to enhance management oversight of contractors that closely support inherently governmental functions. This guidance will be developed in conjunction with guidance that is being developed to address issues relating to personal services as required by the Fiscal Year 2009 National Defense Authorization Act, section 831.

**RECOMMENDATION 4:** The GAO recommends that the Secretary of Defense direct the military departments to review their procedures to ensure that properly trained surveillance personnel have been assigned prior to and throughout a contract's period of performance.

**DOD RESPONSE:** Concur. The Department will direct military departments to review procedures to ensure that properly trained surveillance personnel have been assigned prior to and throughout the period of performance of a given contract. This matter will be addressed in conjunction with policy direction currently in development to institute contracting officer representative (COR) standard training and certification requirements.



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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

John P. Hutton, (202) 512-4841 or huttonj@gao.gov

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## Acknowledgments

In addition to the individual named above, key contributors to this report were Timothy DiNapoli, Assistant Director; Gary Guggolz; Justin Jaynes; Christopher Mulkins; Thomas Twambly; Richard Winsor; Arthur James, Jr.; Julia Kennon; Susan Neil; and Noah Bleicher.

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