

Military Contractors Perform Inherently Governmental Functions

By David Perera

Apr 10 2012

Contractors continue to perform inherently governmental services for military services, according to the services' own internal reviews, says the Governmental Accountability Office.

Among the examples identified in a review of fiscal 2009 contracting data is a 47-contractor police force operating at the Army base in Kwajalein Atoll in the Marshall Islands, a comma-shaped island in the Pacific Ocean. The contractors perform all the duties expected of a police force, including making arrests, notes the GAO in a report dated April 6.

The Army deputy general counsel for operations and personnel issued on Feb. 22, 2010 a legal opinion that certain functions performed by the contractors couldn't be done by a contractor, but Army manpower and reserve affairs officials told auditors there haven't been any changes as a result.

They also noted--as did other military officials--that converting contractor into civil servant positions is difficult under a Pentagon policy to freeze civilian full time equivalents at fiscal 2010 levels.

Classification of some jobs responsibilities as being doable only by government employees can be a controversial subject, as has is the Defense Department's increased reliance over the past two decades on contractors. However, Pentagon officials acknowledge that initial estimates made in 2010 about savings that could be had by insourcing some positions were overblown.

The GAO report points out that the military doesn't have a good grasp on the number of instances of contractors performing inherently governmental functions in the first place. All three military departments were supposed to do last fiscal year an analysis (based on fiscal 2009 data), but the Navy Department never conducted a review.

Auditors say the Navy sent out guidance in September 2010 telling commands to do an inventory review, but headquarters officials never followed up and some command officials said they couldn't recall the guidance being issued at all.

Of the departments that did do a review, only the Army was able to draw on direct data; the Air Force relies on incomplete data entered into a contracts database known as the FPDS-NG. The problem with FPDS-NG (which, the GAO doesn't say in this report, also has notorious data quality issues) is that it doesn't provide the number of contractor FTEs performing each contracted-for service.

The Defense Department says it plans to start collecting that data directly from contractors. However, the DoD needs permission from the Office of Management and Budget to do so due to the Paperwork Reduction Act, and OMB denied in December an expedited request for approval to begin doing so.

Instead, the DoD published in February 2012 a notice in the *Federal Register*, in accordance with normal Paperwork Reduction Act procedures. Although DoD officials said that putting in place an interoperable data system to directly collect contractor information across the entire DoD would take until fiscal 2016, they also told auditors that lack of expedited authority might delay the system's roll out. (The Army already has OMB approval under the act to directly collect pertinent information from its contractors).

Besides the Army, the only DoD organization to likewise directly collect information is the TRICARE Management Activity, auditors add.