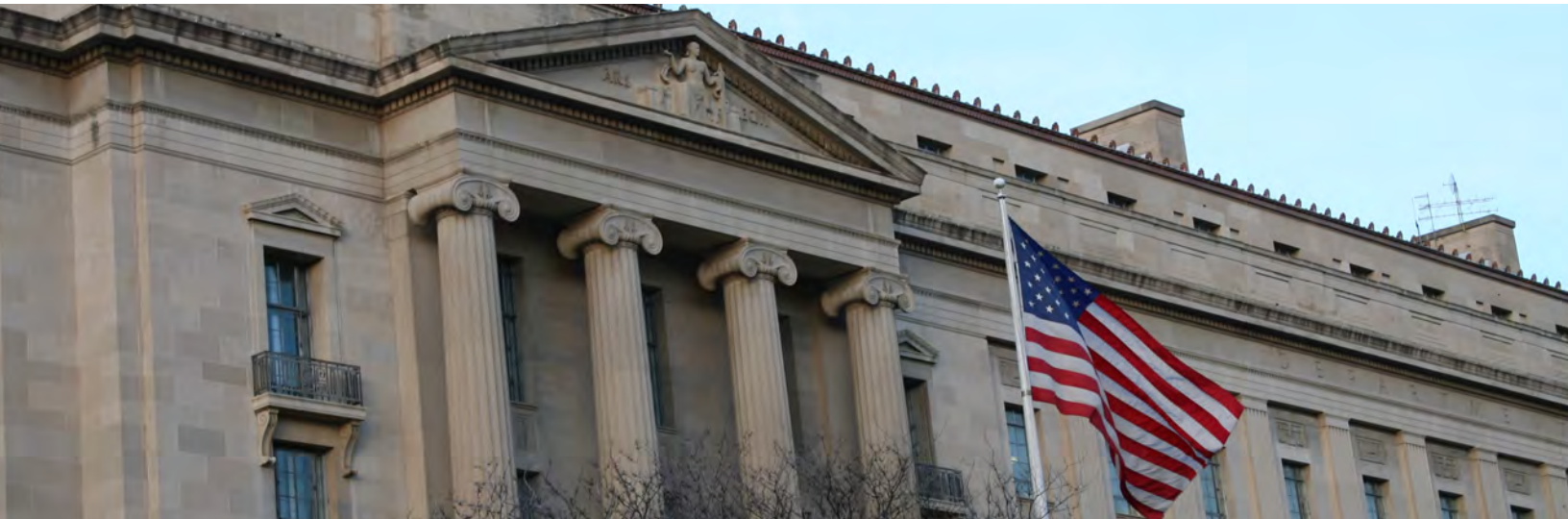




Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Audit of the Justice Management Division Task Orders Awarded to CACI, Inc.—Commercial

REDACTED FOR PUBLIC RELEASE

Redactions were made to the full version of this report. The redactions are contained only in Appendix 4, the contractor's response. Blacked out redactions were made by the OIG for privacy reasons, and are of individuals' names. Redactions marked in brackets were made by the contractor.

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Executive Summary

Audit of the Justice Management Division Task Orders Awarded to CACI, Inc. Commercial

Objective

In August 2013 the Justice Management Division (JMD) awarded task orders to CACI, Inc. - Commercial (CACI) under the MEGA 4 contract to provide litigation support services. The Department of Justice Office of the Inspector General completed an audit to assess JMD's administration of, and CACI's performance and compliance with terms, conditions, laws, and regulations applicable to the contract and task orders we examined to determine whether: (1) costs were reasonable, allocable, and allowable; (2) billings were properly supported and prepared using rates, terms, and conditions established by the contract and task orders; and (3) CACI adhered to internal policies and procedures.

Results in Brief

Overall, we found that the three districts receiving litigation support services from CACI through the task orders we audited were satisfied with the quality of services provided by CACI employees and subcontractors. However, we found that United States Attorney's Office (USAO) Administrative Officers and the Executive Office for United States Attorneys (EOUSA) Contracting Officer's Representative (COR) responsible for the task orders did not exercise effective controls to prevent and detect CACI's noncompliance with the contract and task orders terms and conditions. In particular, we identified issues with CACI's workforce management practices, billings, charged overtime, employee qualifications, and subcontractor oversight. In addition, we identified \$924,540 in questioned costs.

Recommendations

Our report contains 18 recommendations to assist JMD to improve oversight of CACI and the MEGA 4 contract. We discussed the results of our audit with CACI and JMD, and provided a copy of the draft audit report for review and response. CACI and JMD's responses can be found in Appendices 4 and 5 of this report, respectively, and our analysis of those responses in Appendix 6.

Audit Results

Our audit focused on five task orders awarded to CACI under MEGA 4 Contract Number DJJ13-C-2439. The purpose of these task orders was to provide litigation support services to the EOUSA for the USAOs in the District of New Jersey, Southern District of New York (Southern District), and Eastern District of New York (Eastern District) between August 2013 and May 2019. As of September 2016, the five task orders had a value of \$22,545,281 of which CACI billed \$9,601,917.

Project Manager - We found that the CACI on-site Project Manager at the Southern and Eastern Districts did not provide workload assignments and supervise the CACI legal support staff as required by the related task orders. Rather, CACI legal support staff received workload assignments directly from government employees, such as Assistant U.S. Attorneys, which risks the appearance of a personal services contract. The MEGA 4 contract is not a personal services contract because it was not authorized as such by statute, and the structure of the contract included certain controls to prevent it from being implemented as a personal services contract. However, our audit concluded that the CACI Project Manager's ineffective workload management prevented these controls from being followed in the districts we visited, thereby increasing the risk that the contract, as administered, was in violation of the regulatory prohibition against obtaining personal services by contract. We also believe that ambiguous guidance from government officials in those districts may have contributed to this issue.

Also as a result of this ineffective workload management, we found that instead of assigning work and managing the CACI legal support staff, the CACI Project Manager performed administrative type functions (e.g., timekeeping, payroll, etc.) that were incorrectly charged under the contract. Labor rates for the MEGA 4 contract staff were established to include costs for these administrative functions, meaning that contractor labor rates included costs for managing those positions. This inconsistent method of billing was a violation of Federal Acquisition Regulation (FAR) 31.202, which requires contractors to treat costs incurred for the same purpose consistently with regard to direct and



Executive Summary

Audit of the Justice Management Division Task Orders Awarded to CACI, Inc. Commercial

indirect classifications. By billing the costs of administrative functions as direct charges for two of the task orders, we found that the government, in effect, was charged twice for the cost of the administrative function: once by billing the Project Manager and then again as a percentage built into the labor rates of all labor billed under the contract. As a result, we questioned \$175,704 associated with these issues.

Overtime - JMD anticipated that MEGA 4 contract employees may be requested to work overtime and since the contractor may only bill the government the straight time rate awarded in the task order, it instructed contractors on MEGA 4 task orders to consider this overtime requirement when proposing labor rates. While the amount of overtime worked varied widely at the three districts we audited, JMD's inconsistent application of procedures for pre-approval of overtime worked by contract staff resulted in inconsistencies with contract oversight and administration.

During our audit, the Contracting Officer and the COR repeatedly stated that CACI was required to obtain pre-approval of overtime. We agree with the Contracting Officer that actively managing the use of overtime, notwithstanding the fact that it is reimbursed at the straight time rate, is a prudent and normal practice of contract administration and provides important data for determining appropriate labor rates in future contracts. However, in responding to a draft of this report, JMD's Director of Procurement Services told us that pre-approval by the Contracting Officer or COR is not a provision in the MEGA 4 contract and because CACI legal support staff employees worked overtime at the request of the USAO district staff, the overtime was authorized. We agree that the contract does not explicitly state that overtime must be pre-approved by the Contracting Officer or COR. Nevertheless, to avoid uncertainties for the requirements of pre-approving overtime in future contracts, we believe JMD needs to ensure that specific written requirements for overtime approval are included in all future task orders and contracts and that it implements policies and procedures to monitor and manage contractor staffing and overtime.

Qualifications - We found one CACI employee who worked as a Paralegal but did not possess a paralegal certification as required by the contract. This resulted in CACI billing a higher-qualified rate for a less-qualified employee. Consequently, we question \$108,014 in labor costs associated with this employee.

Travel - We found that CACI did not receive pre-approval for travel expenses as required by the contract and did not consistently use federal travel per diem rates required by the FAR. As a result, we question \$8,072 in travel costs billed to the task orders.

Subcontract Monitoring - We found that CACI billed subcontractor costs that the Contracting Officer had not authorized as required by FAR 52.244-2. We question \$67,491 in subcontract labor related to this noncompliance. We also found that CACI did not enforce the subcontract agreement requirement that subcontractors provide supporting documentation, such as timekeeping records and work product/progress reports, when invoices are submitted to CACI for payment. Without such documentation, CACI could not ensure that the payments were being paid for work within the scope and requirements of the subcontract; therefore, we question \$412,666 related to this noncompliance.

Billing Accuracy - We found that CACI submitted billings that were frequently inaccurate, and that both JMD and EOUSA failed to identify and correct the errors before payment was made to CACI. Specifically, we found that CACI incorrectly billed the labor costs associated with the Law Clerk II position for the task orders at the Southern and Eastern Districts. Although the Southern District task order included the Law Clerk II labor category, the employee at that location did not perform the functions of the position; therefore, we question \$79,961 in labor for this employee. In addition, CACI billed a Law Clerk II position to an Eastern District task order although the task order did not authorize this position. This resulted in \$55,101 in questioned labor for this position. We also determined that, at times, CACI used incorrect labor rates, which resulted in EOUSA paying \$17,531 more in labor.

**AUDIT OF THE JUSTICE MANAGEMENT DIVISION
TASK ORDERS AWARDED TO CACI, INC. - COMMERCIAL
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**AUDIT OF THE JUSTICE MANAGEMENT DIVISION
TASK ORDERS AWARDED TO
CACI, INC. - COMMERCIAL**

INTRODUCTION

The Department of Justice (DOJ) Office of the Inspector General (OIG) completed an audit of five task orders awarded by the Justice Management Division (JMD) to CACI, Inc. – Commercial (CACI) under the MEGA 4 Contract Number DJJ13-C-2439. The purpose of these task orders was to provide litigation support services to the Executive Office for United States Attorneys (EOUSA) for the United States Attorney’s Offices (USAO) in the District of New Jersey, Southern District of New York (Southern District), and the Eastern District of New York (Eastern District) between August 2013 and May 2019.

MEGA 4 Automated Litigation Support Contract

The MEGA 4 contract is used to provide automated litigation support products and services to the DOJ and other federal agencies on an indefinite delivery, indefinite quantity task order basis. Individual task orders can be issued as firm fixed price, time-and-materials (T&M), or labor-hour agreements between the DOJ and contractors. The period of performance of the MEGA 4 contract began on August 1, 2013, with the option to exercise five additional 12-month periods with Option Period 5 ending on May 31, 2019.

Automated litigation support encompasses a wide range of professional services and products that help attorneys acquire, organize, develop, and present evidence throughout the course of litigation. The types of litigation support required under this contract generally fall into the following areas: (1) contract and project management, (2) document acquisition, (3) database creation, (4) database utilization, (5) electronic data acquisition and production, (6) pre-trial and trial support, (7) specialized professional services, and (8) special projects.

The MEGA 4 contract was awarded to four contractors with a maximum amount of all task orders not to exceed \$1.1 billion for the entire period of performance. As of September 2016, JMD has awarded 457 task orders to the 4 contractors valued at approximately \$683 million. Table 1 details the value and number of task orders awarded to the MEGA 4 contractors through September 2016.

Table 1

MEGA 4 Contract Information by Contractor

Contractor	Total Value of Task Orders Awarded	Number of Task Orders Awarded
CACI	\$ 364,741,646	184
Labat-Anderson	183,516,563	131
Lockheed Martin	108,676,739	96
Deloitte	<u>25,797,695</u>	<u>46</u>
Total	\$ 682,732,643	457

Source: OIG analysis of JMD contract documents

CACI, Inc. - Commercial

CACI is a holding company with operations run through various subsidiaries located throughout the U.S. and Europe. CACI's primary customer is the U.S. government. CACI provides services in the following areas: (1) business systems, (2) command and control, (3) communications, (4) cyber security, (5) enterprise IT, (6) health, (7) intelligence services, (8) intelligence systems and support, (9) investigation and litigation support, (10) logistics and material readiness, and (11) surveillance and reconnaissance.

CACI has been providing DOJ litigation support for over 20 years, beginning with the original contract, MEGA 1. The MEGA 1 contract was originally awarded with a ceiling of \$375 million, which was later increased to \$558 million. In 2001, the MEGA 2 contract was awarded to CACI and three other contractors with a ceiling of \$950 million, and in 2007 the MEGA 3 contract was awarded to three contractors, including CACI, with a ceiling of \$950 million. As of September 2016, CACI had been awarded the largest number of individual task orders issued under the MEGA 4 contract and received approximately \$365 million through those awards, as shown in Table 1.

MEGA 4 Contract Administration

JMD provides senior management officials with advice relating to basic Department policy for budget and financial management, personnel management and training, procurement, ethics, equal employment opportunity, information processing, telecommunications, security, and all matters pertaining to organization, management, and administration. Within JMD, the Procurement Services Staff provides acquisition support to the Department's Offices, Boards, and Divisions (OBDs). The OBDs include the Department's seven litigating divisions (Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, Tax Division, and EOUSA) as well as other DOJ components such as the U.S. Trustees and JMD Staff. Table 2 includes a breakout of MEGA 4 contract information by litigating division. The MEGA 4 contract has one Contracting Officer located in Washington D.C. who has overall responsibility for the contract and is authorized to amend, modify, or deviate from the contract terms, conditions, requirements, and/or specifications.

Table 2
MEGA 4 Contract Information by DOJ Litigating Division

Litigating Division	Amount Ordered	Number of Task Orders Awarded	Percent of MEGA 4 Contract Dollars
Civil Division	\$ 328,433,004	165	48.1%
Environment & Natural Resources Division	99,548,905	55	14.6%
EOUSA	93,752,555	144	13.7%
Civil Rights Division	57,986,453	17	8.5%
Criminal Division	52,027,695	48	7.6%
Antitrust Division	39,625,868	10	5.8%
Tax Division	<u>11,358,163</u>	<u>18</u>	1.7%
Total	\$ 682,732,643	457	

Source: OIG analysis of JMD contract documents

For MEGA 4 contract task orders supporting the USAOs, the Contracting Officer delegates responsibilities to a Contracting Officer’s Representative (COR) within EOUSA. EOUSA provides executive and administrative support for the 93 USAOs located throughout the 50 states, the District of Columbia, Guam, the Marianas Islands, Puerto Rico, and the U.S. Virgin Islands. The type of support provided includes legal education, administrative oversight, technical support, and other administrative services.

The COR coordinates all technical aspects of the contract, but is not authorized to change the terms and conditions of the contract, as only the Contracting Officer has that authority. The COR is responsible for directing and overseeing all aspects of litigation support for EOUSA, which includes maintaining oversight of the task orders to ensure compliance with the terms of the contract and individual task orders. Also, the COR is responsible for approving requests for overtime and travel and reviewing the contractor’s vouchers to ensure all costs are allowable. The COR coordinates task order competitions, solicits contractors, evaluates contractor proposals, and prepares award recommendations. Once a task order is awarded by the Contracting Officer, the COR has the overall responsibility for oversight of the contractor’s activities.

Each USAO has an on-site Administrative Officer who coordinates requests for contractor support with the COR, and is responsible for the on-site management of the task orders. However, for the purposes of administering the task orders associated with the MEGA 4 contract, the Administrative Officers have no authority to authorize changes to the terms and conditions of the task orders or approve overtime and travel. The Administrative Officer identifies the scope of work and the specific need to be filled, such as personnel (specific labor categories) or electronic support services.

Figure 1 summarizes the responsibilities of the parties involved with the MEGA 4 contract.

Figure 1
Responsibilities of MEGA 4 Contract

JMD Contracting Officer	EOUSA Contracting Officer's Representative	USAO Administrative Officer	CACI
<ul style="list-style-type: none"> * Overall responsibility for MEGA 4 Contract * Authority to amend, modify, or deviate from contract terms, conditions, requirements, and/or specifications * Delegates responsibilities to Contracting Officer's Representative (COR) at each litigating division 	<ul style="list-style-type: none"> * Coordinates all technical aspects of the contract * Oversight of litigation support * Ensures compliance with terms of the contract and task orders * Approves overtime and travel requests * Reviews and approves contractor's vouchers * Task order competition, solicits contractors, evaluates proposals, and prepares award recommendations 	<ul style="list-style-type: none"> * Coordinates requests for litigation support services * Responsible for onsite management of task orders * No formal delegated authority for contract or task order administration 	<ul style="list-style-type: none"> * Provide all contract and corporate level resources to perform work ordered * Provide unbillable overall contract management for contract work at each division * Provide management, staffing, planning, scheduling, and procuring required by task orders * All activities associated with recruiting and hiring staff including background checks * Prepare billings including all supporting documentation * Manage subcontractors including negotiating subcontracts, obtaining government approval for use, reviewing invoices, and ensuring compliance with the contract * Management of support staff including continuously monitoring, managing, and controlling work

Source: OIG analysis of JMD Contract Documents and discussions with officials

Task Orders Audited

As of September 2016, CACI's work for EOUSA comprised over 15 percent of the value of all MEGA 4 contract task orders awarded to CACI for all of the DOJ litigating divisions. Table 3 identifies the value and number of task orders awarded to CACI under the MEGA 4 contract.

Table 3
CACI Awarded MEGA 4 Task Orders by DOJ Litigating Division

Litigating Division	Amount Ordered	Number of Task Orders Awarded	Percent of MEGA 4 Contract Dollars
Civil Division	\$ 180,204,984	55	49.4%
EOUSA	56,214,003	62	15.4%
Criminal Division	42,765,015	35	11.7%
Environment & Natural Resources Division	31,631,753	15	8.7%
Civil Rights Division	29,478,296	7	8.1%
Antitrust Division	20,560,929	4	5.6%
Tax Division	<u>3,886,666</u>	<u>6</u>	1.1%
Total	\$ 364,741,646	184	

Source: OIG analysis of JMD contract documents

CACI was awarded 62 of the 144 EOUSA task orders under the Mega 4 contract and we selected a sample of 5 of the 62 task orders for testing based on the location of the work performed and dollar amount of the task orders. The services provided by the task orders selected included labor, subcontract, and travel costs, with labor comprising about 95 percent of the costs we reviewed. Table 4, below, details the funding and billing information for each of the task orders we selected, for the period of contract award through September 2016.

Table 4
Task Order Funding and Billed Amounts
for Five EOUSA Task Orders

Task Order	Type of Task Order	Place of Performance^a	Total Order Amount	Total Order Obligations	Total Billings^b
10	T&M	District of New Jersey	\$ 2,506,787	\$ 1,332,657	\$ 873,294
36	T&M	Eastern District	1,631,453	636,359	633,757
37	T&M	Eastern District	413,797	175,088	136,033
43	T&M	Southern District	13,801,824	8,553,043	6,131,218
67	T&M	Eastern District	<u>4,191,420</u>	<u>2,095,130</u>	<u>1,827,614</u>
Total			\$22,545,281	\$12,792,277	\$9,601,916

^a The District of New Jersey represents the federal government's legal matters within the state of New Jersey. The Eastern District represents the federal government in legal matters in Brooklyn, Queens, Staten Island, and Long Island in New York. The Southern District represents the federal government in legal matters in Manhattan and the Bronx, as well as surrounding counties of Dutchess, Orange, Putnam, Rockland, Sullivan, and Westchester in New York.

^b Total Order Amount represents the maximum value of the task order through Option Year 5. This is the maximum amount CACI can bill for each task order. Total Order Obligations represents the task order amount that has been exercised and funded through Option Year 3 (June 1, 2016, through May 31, 2017). Total Billings represents the amount CACI has incurred and billed EOUSA for each task order through September 2016.

Source: OIG analysis of JMD contract documents and CACI invoices

Office of the Inspector General Audit Approach

The objectives of our audit were to assess JMD's administration of, and CACI's performance and compliance with the terms, conditions, laws, and regulations applicable to the contract and task orders we examined to determine whether: (1) costs were reasonable, allocable, and allowable as defined by the terms of the contract, task orders, and the Federal Acquisition Regulation (FAR); (2) billings were properly supported and prepared using rates, terms, and conditions established by the contract and task orders; and (3) CACI adhered to internal policies and procedures. Our audit covered the period beginning with the awarding of the task orders in September 2013 through September 2016.

To assess JMD's administration and oversight of CACI's performance and compliance, we obtained an understanding of the activities and procedures utilized by JMD and EOUSA personnel overseeing the contractor's activities and obtained an understanding of the processes for overseeing contractor performance, compliance with contract requirements, and processing of contractor vouchers. We also obtained an understanding of the contractor's processes and internal controls for monitoring employee activities, as well as the accumulation and billing of costs under the task orders. We selected a sample of costs billed and reviewed supporting documentation to assess whether the costs were accurately billed and in compliance with contract terms, conditions, and federal regulations. Finally, we conducted interviews with JMD, EOUSA, and contractor personnel to determine the adequacy of contractor performance and other contract activities.

AUDIT RESULTS

We found that JMD and EOUSA were satisfied with the quality of services provided by CACI. However, CACI did not consistently comply with all the contract terms and conditions related to labor requirements, travel authorizations, and subcontractor monitoring. We also found that CACI lacked adequate procedures and internal controls for ensuring costs were billed accurately. These instances of noncompliance and lack of procedures resulted in the government being billed for unallowable and unapproved costs. Further, JMD and EOUSA failed to provide sufficient administration and oversight of CACI's activities to ensure compliance with contract requirements and federal regulations. Specifically, JMD and EOUSA failed to detect and, in some instances, may have contributed to the instances of noncompliance and billing errors we identified.

Contract Oversight

Our audit identified problems with CACI's compliance and billing accuracy that went undetected by the government due to poor coordination among those officials charged with the MEGA 4 contract's administration and oversight at the districts we audited. We also believe that ambiguous guidance from government officials in those districts may have contributed to some of these issues we identified and discuss in the following sections of this report.

Within the three districts we examined, we found that Administrative Officers created the impression that they had more authority than they actually did in areas of contract administration. We believe this occurred because the district Administrative Officers did not fully understand their roles and responsibilities in this area. Although the Administrative Officers may have created the impression of authority, the MEGA 4 contract is clear that the Contracting Officer's formal delegation of authority does not extend beyond the COR down to the Administrative Officer in the districts. Therefore, we also believe that, as an experienced government contractor, CACI should have known to obtain COR approval and directives rather than relying on the Administrative Officers who lacked the appropriate authority.

We also found that misunderstandings between the Washington, D.C. based COR and the Administrative Officers at each district resulted in contract billings that were not properly scrutinized prior to payment. For example, the COR told us that she believed the Administrative Officers were completing detailed reviews of monthly billings when, in fact, they were not. At the Eastern and Southern Districts, where billings included labor, subcontract, and travel costs, the billings were simply scanned for any items that stood out as unusual and none of the costs were verified to supporting documentation. This lack of detailed review led to many of the contractor billing errors, identified in this report, being paid by the districts.

We recommend that the Contracting Officer with responsibility for the MEGA 4 task orders we reviewed work with the COR to develop consistent procedures for monitoring contractor activities. We additionally recommend that JMD develop and

implement policies that define which activities should be completed by the various levels of government personnel to ensure that the limits of authority are understood by all levels, as well as the contractor. This includes clearly defining who is responsible for providing pre-approvals for travel and overtime.

Further, we recommend that the Contracting Officer work with the COR to develop consistent procedures for verification of vouchers and that the procedures include specific information related to verifying billed labor, subcontractor, and travel costs, as well as reviewing the contractor's travel estimates when provided for pre-approval. Also, the procedures should clearly define who is responsible for performing a detailed review of the contractor's vouchers.

Terms and Conditions

We examined CACI's compliance with the contract's terms and conditions for the five task orders detailed in the Introduction section of this report. These task orders consisted primarily of labor costs billed as labor hours at fixed hourly rates for each labor category, as well as costs for subcontractors and travel that were billed on an actual cost basis. During our audit, we found that JMD failed to ensure that CACI complied with the following MEGA 4 contract terms and conditions: (1) labor requirements, (2) travel authorizations, and (3) subcontractor monitoring. Nevertheless, EOUSA personnel we interviewed represented to us that CACI was providing the quality of services required under the contract.

Labor Requirements

CACI provides contract personnel to the USAOs to perform legal support activities, such as organizing and analyzing subpoenaed documents, creating document binders, assisting with witness interviews, preparing evidence for grand jury presentations, and preparing materials and exhibits for trial. According to district personnel CACI employees work very closely with the Assistant U.S. Attorneys (AUSAs) in the sections they are assigned to support. The employees' work schedules typically coincide with the hours of the AUSAs, which includes working a significant amount of overtime for certain allowable activities, such as trial preparation.

The MEGA 4 contract contains labor categories that include specific duties and functions, education, and experience requirements. Each task order is awarded with labor categories and the number of employees specific to the needs of the district and the level of experience required. As of September 30, 2016, each district was awarded the following billable positions to be filled by CACI employees as shown below in Table 5.

Table 5
Awarded Labor Categories

Task Order	Place of Performance	Legal Support Positions^a	Project Management Positions	Total Positions
10	District of NJ	7	0	7
36	Eastern District	1	0	1
37	Eastern District	1	0	1
43	Southern District	29	1	30
67	Eastern District	13	1	14
	Total	51	2	53

Note: The numbers in the table represent the maximum number of CACI employees the location can have for each task order. Some of the positions may be vacant.

^a Legal Support includes the following labor categories from the five task orders: (1) Law Clerk I, (2) Law Clerk II, (3) Paralegal, (4) Senior Paralegal, (5) Document Management Technician, (6) Document Analyst I, (7) Document Analyst II, (8) Clerical, (9) Supervisory Clerical, and (10) IT Support.

Source: OIG analysis of JMD contract documents

Overtime

The MEGA 4 contract anticipates that legal support staff may be required to work in excess of a standard work week in situations where such support must be completed in short timeframes, such as during trial. Specifically, the contract states that 10 percent of the hours requested on a task order may require overtime, which would result in contractors paying their employees premium pay for those hours.¹ While its employees must be paid premium pay for overtime hours, the contractor may only bill the government the straight time (normal) rate awarded in the task order. As a result of this requirement, JMD instructed contractors on MEGA 4 task orders to consider this overtime requirement when proposing labor rates. This resulted in contractors proposing higher labor rates that built in the cost differences between hours worked at a premium rate but only reimbursed at a straight time rate. Further, while the contract authorizes the use of overtime, according to the Contracting Officer, all overtime was to be approved in advance by the COR in order to monitor costs. The Contracting Officer informed us that this authority was initially delegated to the COR. However, beginning in April 2015 and until November 2016, the EOUSA COR position was vacant and the overtime approval authority reverted back to the Contracting Officer. Currently, the approval authority has been re-delegated to the COR.

We determined that the amount of overtime worked and the procedures related to authorizing overtime varied widely at the three districts we audited. This caused inconsistencies with contract oversight and administration. Specifically, we found that many CACI legal support staff at the Southern District worked a significant number of overtime hours as directed by AUSAs, but without COR

¹ "Overtime" as used in this report refers to employee hours that exceed a "normal workweek" of 40 hours as defined under FAR 22.103-1. In making our determination of overtime hours billed, we used the normal workweek used by CACI in its billings under the MEGA 4 contract (Sunday through Saturday).

approval. CACI staff at the Eastern District worked less overtime than the Southern District, but with inconsistent oversight by the Administrative Officer and COR. At the District of New Jersey, there was only one instance of overtime worked and it received prior approval from the Contracting Officer.

At the Southern District, we found that AUSAs dictated the overtime hours worked by CACI employees and that between October 2013 and September 2016 over 19,000 hours were worked in excess of the standard work week, totaling \$835,937 (based on straight time labor rates). We found that assigning CACI employees to work overtime was made on an ad-hoc basis and that JMD failed to implement consistent policies for approving or managing overtime worked by CACI employees within the framework of the MEGA 4 contract. In addition, the Administrative Officer was not overseeing AUSAs' decisions in this regard, other than being generally aware that a CACI employee was working on a case. We discussed the significant amount of overtime worked by the CACI employees with the Contracting Officer and COR who both told us that they did not provide approval for any of the overtime worked at the Southern District and were unaware that such a significant amount of overtime was being worked.

As compared to the Southern District, the amount of overtime worked at the Eastern District was much less, and its oversight of overtime was more robust. However, we determined that its controls were not always implemented and effective at ensuring the Contracting Officer or COR approved overtime in advance. Between October 2013 and October 2015, requests to work overtime were sent from the CACI employee to the Administrative Officer who would review and forward to the Contracting Officer or COR for approval. After October 2015, the process was changed, with the CACI Project Manager and government Supervisor developing overtime estimates for the upcoming month, and then submitting the request to the Administrative Officer who then sent it to the Contracting Officer for approval. When we compared overtime billed with requests for overtime approved prior to the overtime being worked, we determined that \$48,375 of the \$88,800 in overtime costs charged by the Eastern District were not approved at all, employees worked more than requested, or the hours were not approved in advance by the Contracting Officer or COR.

CACI officials told us that they did not believe the MEGA 4 contract required pre-approval of overtime from the Contracting Officer or COR, and that CACI always provided personnel as requested by the districts. CACI officials also told us that they did not believe overtime should be a concern because the labor rate billed was the same straight time rate that was billed when its employees work their regular hours. We discussed this interpretation with the Contracting Officer and the COR, and they reiterated that they believed CACI was required to obtain pre-approval of overtime and directed us to language in the task order statements of work, which state that overtime may be authorized as needed. However, they were unable to direct us to contract language that specifically states pre-approval of overtime by the Contracting Officer or COR is required. Regardless, we agree with the Contracting Officer that actively managing the use of overtime, notwithstanding the fact that it is reimbursed at the straight time rate is a prudent and normal practice

of contract administration.

We identified \$884,312 in overtime costs that were not approved in advance by the Contracting Officer or COR for the Southern and Eastern Districts. While the contract's 10 percent overtime requirement was built into the contractor's labor rates, the review and approval of overtime would allow the government to monitor and track the additional hours to determine if the 10 percent estimate was reasonable and for consideration in increasing staffing levels when increased workload results in excessive overtime. For example, at the Southern District the 19,464 in overtime hours worked represents the average CACI employee working 17 percent more hours over their standard work week.

Furthermore, our review of approvals at the Eastern District showed that not all work performed by contract employees was automatically eligible to be completed outside the employee's regularly scheduled work week or of an essential nature to warrant overtime hours being incurred. During our testing of paid overtime hours, we identified several instances where the Contracting Officer denied overtime requests based on the description of the work to be performed and questioned why the work was not completed during the employee's regularly scheduled work week.

Throughout our audit, the Contracting Officer stated that overtime approval rested entirely with herself or the COR, to whom she had delegated the responsibility in certain districts. The Contracting Officer expressly stated that the staff at the USAO district offices did not have the authority to approve overtime for contract employees. Therefore, in our draft audit report, we recommended that JMD remedy the \$884,312 in labor costs for overtime billed to Task Orders 43 and 67 that were not approved by the COR.

However, in its written response to our draft audit report, JMD's Director of Procurement Services stated that neither the MEGA 4 contract nor the task orders specifically required pre-approval of overtime by the Contracting Officer or COR, and that USAO district office staff knew about the overtime prior to it being worked, requested that it be worked, and thereby authorized the overtime. JMD stated that the USAO district staff's authorization of the overtime hours satisfied task order language that overtime be "authorized as needed."

We agree that the MEGA 4 contract does not explicitly state that overtime must be pre-approved by the Contracting Officer or COR. In addition, we find that the Director of Procurement Services has the authority to determine that USAO district staff can authorize overtime under the MEGA 4 contract and subject task orders, and we do not find that this determination contradicts contract terms or other regulations. As a result, in this final report, we no longer question labor costs for overtime billed to Task Orders 43 and 67 that were not approved in advance by the Contracting Officer or COR. However, to avoid uncertainties for the requirements of pre-approving overtime in future MEGA 4 task orders and contracts, and to enhance JMD's contract management of overtime we recommend that JMD ensure specific written requirements for overtime approval are included in

all future task orders and contracts and policies and procedures are developed to monitor and manage contractor staffing and overtime.

Project Manager

The MEGA 4 contract requires that the contractor provide contract management for its support services that is not separately billable to the government and includes administrative and logistical services. We found that CACI provided these services by either an on-site or off-site supervisor. The Contracting Officer and COR told us that since the inception of the MEGA 4 contract in 2013, all task orders that have more than seven contract employees require an on-site supervisor. This on-site supervisor is included on the task order as a CACI Project Manager, and is responsible for workload management and project supervision. With the exception of approximately five districts, including the Eastern and Southern Districts, that have a relatively large number of contract staff requiring an on-site contractor supervisor, this supervisory function is provided by an off-site contract employee.

We found that both the Southern and Eastern Districts have had an on-site Project Manager included in their active task orders since they were awarded in 2013, and the labor costs associated with this position were billed directly to the task orders. However, in the years prior to the MEGA 4 contract, there had not been an on-site Project Manager. The Administrative Officers at these two districts told us that they were each instructed by the Contracting Officer and COR to include an on-site Project Manager position for two of the four task orders in these districts because those task orders included more than seven legal support staff positions. They stated that they adopted advice from CACI officials to have a part-time on-site Project Manager who would work 3 days per week in the Southern District and 2 days per week in the Eastern District.

Based on discussions with contract staff at both the Southern and Eastern Districts, including the Project Manager and legal support staff, as well as federal employees, including the AUSAs that work with the contract staff on a daily basis, we determined that the Project Manager was not performing any workload management or project supervision in either district. Instead, the Project Manager performed functions such as approving timesheets and other administrative duties. During our interviews with contract personnel in the District of New Jersey, we found that these same administrative functions were provided by an off-site supervisor not billed to the task order.

We discussed our observations with the Contracting Officer and COR who told us that they were unaware of this situation. We also discussed the issue with the Administrative Officers in the Southern and Eastern Districts who did not disagree that the CACI Project Manager was not performing any workload management and supervision duties, and acknowledged that because the AUSAs work so closely with the contracted legal support staff, the on-site Project Manager is unnecessary, which is why they decided to share a single full-time Project Manager.

When we discussed our observations with CACI, officials told us that they attempt to provide the services as defined in the contract and also be responsive to the needs of the district staff. However, CACI stated that the structure at the Southern and Eastern Districts, which has contract employees working across multiple units and on various projects, as well as the fact that the contract staff work very closely with AUSAs led to the AUSAs managing the workload and project supervision of the contractor staff. CACI stated that it never addressed this issue with the Administrative Officer, Contracting Officer, or COR, believing that this situation arose from CACI's attempt to be responsive to the individual needs of the districts.

We also determined that the Project Manager costs being billed directly under several task orders are unallowable because they violate FAR 31.202(a), which prohibits billing for the same activity as indirect and direct.² Specifically, since the contractor included the costs of their off-site supervision as an indirect cost, built into their labor rates, it may not also bill costs incurred for the same function as a direct charge as was done in the task orders with an on-site Project Manager. We also found that the on-site Project Manager at the Southern and Eastern District performed the same supervisory functions for the other two task orders at the Eastern District and CACI did not bill the associated labor as a direct charge.

Because the on-site Project Manager was not fulfilling the contractual obligations of workload management and supervision required under the task order, and the contractor's billing of on-site supervision costs as direct costs, which were incurred for the same purpose as off-site supervision, we have determined that the amounts directly billed and paid for the Project Manager between October 2013 and September 2016, totaling \$175,704, are unreasonable.

Finally, as presently administered, we believe that the task orders we audited risk the appearance of a personal services contract because the work of the contract legal support staff is managed by federal employees, such as AUSAs, rather than a contract supervisor. FAR 2.101 defines a "personal services contract" as "a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees."³ Under FAR 37.104(b), agencies are prohibited from awarding personal services contracts unless they are specifically authorized by statute to do so. The FAR specifies six descriptive elements, which may be used to assess whether a proposed contract is personal in nature, with the key inquiry being whether the Government is exercising relatively continuous supervision and control over the contractor personnel.⁴ The Contracting

² FAR 31.202(a) states that "no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective."

³ FAR 37.101 states a "nonpersonal services contract," which is permissible, is a "contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees."

⁴ FAR 34.104(c), (d).

Officer maintains that the MEGA 4 contract is not a personal services contract because it was not authorized as such by statute. We agree that the MEGA 4 contract is not designed as a personal services contract, and we found that the task orders we audited appropriately delineated to CACI its responsibilities for receiving and managing assigned work. However, we are concerned that the oversight practices in the three USAOs we visited, as described above, potentially place CACI employees in a personal service role. Therefore, we recommend that JMD evaluate the current functions being completed by Project Managers and/or other contract supervision employees to ensure proper execution of contract terms relative to this area. We recommend that JMD remedy \$175,704 (\$137,623 for Task Order 43 and \$38,081 for Task Order 67) representing amounts billed for the Project Manager, and evaluate the position across the MEGA 4 contract. This should include: (1) evaluating the requirement for locations with seven or more employees to automatically include an on-site Project Manager without performing a needs assessment, (2) ensuring the contract employee in this position performs the functions required for the labor category, (3) compliance with FAR 37.104 to avoid administering the contract as a personal services contract, and (4) compliance with FAR 31.202 requiring costs be accumulated and billed consistently.

Qualifications

The MEGA 4 contract includes various labor categories that have specific education and experience requirements. We selected 60 CACI employees who were billed in 11 different labor categories to verify that they met the requirements for the labor category to which their work was billed. This was completed by interviewing some of the CACI employees and reviewing the résumés of the remaining employees.

We found one instance where a CACI employee billed as a Paralegal did not meet the qualifications of the position as required. Task Order 10 included the Paralegal labor category which requires the individual to have a paralegal certificate or an equivalent level of legal training may be substituted with approval from the COR. The employee had a bachelor's degree in criminal justice and 4 years of legal support experience, but did not have a paralegal certificate and CACI had not obtained approval from the COR to waive the requirement. CACI told us that all employees are reviewed by the Administrative Officer prior to being hired by CACI and there were no objections before hiring this employee. However, as stated previously, the Administrative Officer does not have the authority to approve decisions regarding qualifications of contract employees. CACI did acknowledge that no waiver from the COR was sought or received prior to hiring this employee, as required by the contract.

As a result of this finding, we recommend that JMD remedy \$108,014 in labor costs for the individual who was hired for the Paralegal position and billed to Task Order 10 without receiving the necessary waiver from the COR. We also recommend that JMD ensure that CACI implements policies and procedures to verify adherence to task order requirements.

Travel Requirements

Contract legal support staff are occasionally required to travel for training or to accompany the AUSAs for special projects such as witness interviews or depositions. The MEGA 4 contract provides for this type of travel but requires pre-approval by the COR. The contract also states that local travel within 50 miles of the normal job site will not be reimbursed, and that reimbursement for actual travel costs incurred shall be in accordance with Part 31 of the FAR. In addition, CACI has internal travel policies and procedures that their employees must follow.

To determine whether the requisite policies and contract provisions were adhered to by legal support contractors, we examined the procedures related to travel to ensure compliance with the contract and federal regulations. We reviewed all of the travel costs billed under the 5 task orders and found that travel costs were billed to 3 different task orders on 17 vouchers. We reviewed the vouchers to ensure that CACI: (1) obtained pre-approval from the COR, (2) billed travel costs in accordance with the MEGA 4 contract, and (3) complied with internal travel policies and procedures. We found that CACI did not consistently apply procedures for requesting pre-approval of contract employee travel across the districts we reviewed, which contributed to CACI's failure to obtain pre-approval from the COR for 13 of the 17 vouchers we tested. Specifically, we found that the Southern District Administrative Officer, who coordinated the CACI employee travel requests for 10 of the 13 unapproved trips, was not aware that travel requires pre-approval from the COR, and he told us he believed the district had the authority to approve contract employee travel.

In addition, our testing of the travel vouchers found three vouchers where CACI billed the District of New Jersey for local travel even though the contract states that local travel is expressly unallowable. We discussed local travel with the District of New Jersey Administrative Officer and CACI officials, and both were unaware that local travel was unallowable per the MEGA 4 contract.

We also found that contract employees were not complying with CACI's internal policies and procedures related to travel authorizations and travel expense reports. CACI policies and procedures require employees to complete a travel authorization prior to travel and a travel expense report no later than 14 days after completion of a trip. We found six incidences where travel authorizations were completed while the employee was on travel or after they returned. We also found three incidences where travel expense reports were completed after the 14 day requirement. These instances of noncompliance with internal policies and procedures indicate an internal control weakness with CACI's oversight of travel costs.

As a result of our testing, we identified as questioned costs \$11,225 of the travel costs related to all three task orders (\$365 for Task Order 10, \$10,204 for Task Order 43, and \$656 for Task Order 67) because CACI failed to obtain pre-approval from the COR, billed local travel, or failed to comply with its own internal policies and procedures. The questioned costs include duplicate costs of \$3,611

that are questioned for both failure to obtain COR pre-approval and noncompliance with internal policies and procedures. We also recommend that JMD ensure that CACI implements written travel policies and procedures specific to the MEGA 4 contract to include items such as pre-approvals, local travel, and compliance with established internal travel policies and procedures.

Subcontract Monitoring

As established in the MEGA 4 contract and the task orders we reviewed, CACI was authorized to use subcontractors to provide staffing services or industry specific consultants to the districts. Prior to utilizing a subcontractor, CACI is required to submit its subcontractor agreement to the Contracting Officer for approval in accordance with the MEGA 4 contract, which includes the contract clause FAR 52.244-2.⁵ The subcontractor agreement was to include information such as labor categories, labor rates, and documents required for the submission of invoices by the subcontractor. We found that four subcontractors were billed to two of the task orders included in our audit. Of those four subcontractors, two provided industry consultants to the AUSAs in the Eastern District and the other two provided staffing services to the District of New Jersey.

In order to determine whether subcontractor costs billed to the government met the requirements of the contract and were adequately supported, we examined the subcontractor agreements and billings, including supporting documentation. We found that CACI did not ensure that one subcontractor provided timekeeping records or work product or progress reports, which are required by the subcontractor agreement. We identified \$412,666 in questioned costs related to this noncompliance with the subcontractor agreement.

We also found that CACI was not in compliance with FAR 52.244-2. Although CACI obtained written consent from the Contracting Officer to use a subcontractor, we found CACI billed a labor category (industry consultant), which was not included in the subcontractor agreement. When a change occurs to an approved subcontractor agreement, CACI must submit a supplemental request to the Contracting Officer for approval. This requirement is consistent with FAR 52.244-2 and is included in the Contracting Officer's approval letter provided to CACI. We discussed this noncompliance with CACI officials and they told us that their understanding was that once a subcontractor was approved, CACI could bill for any services provided under the MEGA 4 contract. JMD failed to detect CACI's noncompliance with the approved subcontractor agreements. We identified \$67,491 in questioned costs related to this noncompliance with the subcontractor agreement.

We recommend that JMD remedy \$480,157 in subcontract costs billed to Task Order 36 that did not comply with approved subcontractor agreements and FAR 52.244-2. We also recommend that JMD ensure that CACI implements policies

⁵ The clause FAR 52.244-2 states that a contractor must obtain the Contracting Officer's written consent before entering into a subcontract agreement.

and procedures to comply with subcontractor agreements and FAR 52.244-2.

Quality of Services

CACI was contracted to provide personnel to support the AUSAs with a wide variety of litigation activities. We found that CACI employees and subcontractors worked very closely with the AUSAs on a daily basis. According to its proposals for the MEGA 4 contract, CACI strives to provide qualified, highly trained personnel who can meet any project requirements. These employees worked on high profile cases in USAO units such as Business & Securities Fraud, Healthcare Fraud, Organized Crime & Gangs, Public Integrity, Public Corruption, Terrorism & International Narcotics, and Residential Mortgage Backed Securities.

At the three locations we visited, we interviewed several AUSAs about the performance of the CACI employees and subcontractors. We were told by the AUSAs that the CACI employees and subcontractors have generally provided high quality support. The government personnel who monitor and administer the task orders also told us that they believed CACI effectively provided services related to these MEGA 4 task orders.

Billing Accuracy

Under the MEGA 4 contract, CACI submits billings for each task order on a monthly basis. We examined the contractor's procedures for accumulating costs and preparing the vouchers for these billings. Additionally, we reviewed EOUSA's procedures and internal controls for receiving the vouchers, verifying the accuracy of the billed costs, and processing the vouchers for payment. From our testing, we identified several issues related to CACI's MEGA 4 billings, including labor and travel.

Labor

Each task order is awarded with specific labor categories as well as the number of contracted positions to fill those categories. The task order also includes approved labor rates for each labor category for each year. Throughout the period of performance of the task order, a USAO may request to increase or decrease the number of positions, include additional labor categories, or remove labor categories. These changes are completed through a modification to the task order, which must be authorized by the Contracting Officer.

Law Clerk II

The five task orders included in our audit contain various labor categories at the districts. We reviewed the task order contractual documentation to determine which labor categories are awarded to each of the task orders, shown previously in Table 5, and compared the categories to CACI's billings. In reviewing the billings, we identified one instance where an unauthorized position was billed. We found that beginning in July 2015 and continuing through September 2016 CACI billed the Law Clerk II labor category to both Task Orders 43 and 67 for an employee who

was not performing the required duties. We also found that Task Order 67 did not include the Law Clerk II labor category; therefore, CACI was billing an unauthorized labor category to this task order.

We discussed the Law Clerk II labor category issues with CACI officials, and they informed us that they were instructed by the Southern and Eastern District Administrative Officers to bill the employee as a Law Clerk II because the replacement employee proposed for the Project Manager position did not meet the years of experience requirement for the Project Manager position. The rationale provided was that this would allow the employee to gain the experience required for the position and then move to the Project Manager labor category at a later time. However, CACI was unable to provide us documentation to support this discussion.

We discussed CACI's assertion with the Southern and Eastern District Administrative Officers to obtain additional information regarding the Law Clerk II billing issue. The Eastern District Administrative Officer stated that she did not authorize the labor category used for this position, she was not aware that the Project Manager was being replaced until after it happened, and that CACI did not provide the district with a résumé to review and approve for the replacement employee. The Southern District Administrative Officer told us that he was aware of the issue with the replacement Project Manager's lack of experience and that he may have agreed to CACI billing the employee as a Law Clerk II until the experience requirement was met. However, the Administrative Officer lacks the authority to authorize a waiver of the qualifications of the position under which a contract employee is working as displayed previously in Figure 1. Therefore, both CACI and the Administrative Officers contributed to the billing of an employee to a labor category for which the functions were not being fulfilled.

We recommend that JMD remedy \$79,961 in labor costs for Law Clerk II labor billed to Task Order 43 for an employee not performing the functions required by the contract. We also recommend that JMD remedy \$55,101 in unallowable labor costs billed to Task Order 67 for the Law Clerk II labor category not awarded within the task order.

Law Clerk I

The task order labor rates are based on master labor rate tables that are included in the main MEGA 4 contract. Contractors will sometimes discount labor rates when bidding on task orders in order to be competitive with other contractor bids.

We sampled 14 vouchers that included 13 different labor rates billed for the 5 task orders. Based on our testing, we found one instance where CACI billed an incorrect labor rate. Specifically, we found that when CACI bid on Task Order 36, it discounted the labor rate from the master labor rate table for the Law Clerk I position. When CACI billed the Law Clerk I labor during the Base Year of the task order, it incorrectly billed the labor rate from the master table and not the discounted rate that was awarded in the task order. This resulted in EOUSA paying \$17,531 more in Law Clerk I labor than was required per the task order.

Therefore, we recommend that JMD remedy \$17,531 in labor costs for Law Clerk I labor billed to Task Order 36 related to the overpaid labor rate. We also recommend that JMD ensure that CACI implements policies, procedures, and controls to prevent billing incorrect labor rates.

Travel

As discussed previously in the Travel Requirements section, contract legal support staff are occasionally required to travel and we reviewed all the travel costs billed under the five task orders we examined. The travel costs were billed to 3 different task orders on 17 vouchers. We reviewed the vouchers to ensure CACI billed travel costs allowable under the contract as well as under FAR 31.205-46 and maintained proper supporting documentation for the billed travel costs.

Of the 17 vouchers we tested, we found unallowable costs on 8 vouchers. Specifically, we found that all four vouchers that included lodging costs exceeded allowable per diem limits, which is unallowable per FAR 31.205-46.⁶ We also found improperly billed travel costs, such as first class airfare, per diem paid to an employee whose travel was less than 12 hours, and an unsupported cost included on an employee's hotel bill that are unallowable per the FAR.

We discussed lodging costs billed that exceeded per diem amounts with CACI officials who provided us with documentation of trip authorizations that indicated the lodging selection exceeded the per diem rate that was sent to the respective Administrative Officers. CACI had provided trip authorizations via email to the Administrative Officer with an attached cost breakdown that identified per diem costs exceeding allowable limits. None of the travel authorizations were rejected by an Administrative Officer or the COR, however, in discussing with those officials responsible, neither the Administrative Officers nor EOUSA officials were aware that CACI billed lodging costs exceeding per diem amounts.

We recommend that JMD remedy \$1,468 (\$1,010 for Task Order 43 and \$458 for Task Order 67) in questioned travel costs identified above. The questioned costs include duplicate costs of \$1,010 that were previously questioned for failure to obtain COR pre-approval. We also recommend that JMD ensure that CACI develops and implements internal control policies and procedures to ensure that the travel costs incurred and billed are in compliance with the contract terms and federal regulations.

⁶ FAR 31.205-46(a)(2) states that "costs incurred for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel."

CONCLUSION AND RECOMMENDATIONS

Although we found that the districts are satisfied with the quality of services provided by CACI employees and subcontractors, we determined that CACI did not comply with contract terms and conditions, and billings were not always accurate. The noncompliance and billing inaccuracies resulted in CACI's unallowable and unsupported expenditures of \$924,540 related to labor, subcontracts, and travel billed to four of the five task orders included in our audit. We also found that JMD did not effectively manage these task orders due to poor coordination among those charged with oversight, or a failure to include key requirements within the MEGA 4 contract, such as requiring pre-approval for overtime. We further believe that ambiguous guidance from government officials may have contributed to some of these issues. We make 18 recommendations to JMD to improve oversight of CACI and the MEGA 4 contract for the districts we audited.

We recommend that JMD⁷:

1. Develop consistent procedures for monitoring contractor's activities.
2. Develop and implement policies that define which activities should be completed by the various levels of government personnel to ensure that the limits of authority are understood by all levels, as well as the contractor. This includes clearly defining who is responsible for providing pre-approvals for travel and overtime.
3. Develop consistent procedures for verification of vouchers. These procedures should: (1) clearly define who is responsible for performing a detailed review of the contractor's vouchers; (2) include specific information related to verifying billed labor, subcontractor, and travel costs; and (3) include specific information related to reviewing contractors' travel estimates when provided for pre-approval.
4. Remedy \$884,312 in labor costs for overtime billed to Task Orders 43 and 67 that were not approved in advance by the COR.⁸
5. Ensure that specific written requirements for overtime approval are included in all future task orders and policies and procedures are developed to monitor and manage contractor staffing and overtime.

⁷ In Appendix 6 of this report, we made clarifying edits to recommendations 9, 11, 13, 16, and 18 to address disagreement that JMD expressed regarding its authority to require a contractor to take specific actions that were not explicitly included within the MEGA 4 contract and task orders. The language of the edited recommendations appears in Appendix 6.

⁸ In its written response to a draft of this report, JMD's Director of Procurement Services asserted that the overtime billed was authorized. As a result, we consider this recommendation to be closed and do not question the costs in this final audit report. Please see page 9 for additional details on overtime costs reviewed during the audit.

6. Remedy \$175,704 in direct labor costs for the Project Manager position billed to Task Orders 43 and 67 for the employee that did not perform the functions of the position as required by the contract.
7. Evaluate the Project Manager position across the MEGA 4 contract. This should include: (1) evaluating the requirement for locations with seven or more employees to automatically include an on-site Project Manager without performing a needs assessment; (2) ensuring the contract employee in this position performs the functions required for the labor category; (3) compliance with FAR 37.104 to avoid administering the contract as a personal services contract; and (4) compliance with FAR 31.202 requiring costs be accumulated and billed consistently.
8. Remedy \$108,014 in labor costs for the individual who was hired for the Paralegal position and billed to Task Order 10 without receiving the necessary waiver from the COR.
9. Ensure that CACI implements policies and procedures to verify adherence to task order requirements.
10. Remedy \$11,225 in travel costs related to three task orders because CACI failed to obtain pre-approval from the COR, billed local travel, or failed to comply with its own internal policies and procedures.
11. Ensure that CACI implements written travel policies and procedures specific to the MEGA 4 contract to include items such as pre-approvals, local travel, and compliance with established internal travel policies and procedures.
12. Remedy \$480,157 in subcontract costs billed to Task Order 36 that did not comply with approved subcontractor agreements and FAR 52.244-2.
13. Ensure that CACI implements policies and procedures to comply with subcontractor agreements and FAR 52.244-2.
14. Remedy \$79,961 in labor costs for the Law Clerk II position billed to Task Order 43 for an employee not performing the functions required by the contract. Remedy \$55,101 in unallowable labor costs billed to Task Order 67 for the Law Clerk II labor category not awarded within the task order.
15. Remedy \$17,531 in labor costs for Law Clerk I labor billed to Task Order 36 related to the overpaid labor rate.
16. Ensure that CACI implements policies, procedures, and controls to prevent billing incorrect labor rates.
17. Remedy \$1,468 (\$1,010 for Task Order 43 and \$458 for Task Order 67) in questioned travel costs for lodging amounts that exceeded per diem amounts and items such as first class airfare, per diem paid for a day trip, and an unsupported cost included on an employee's hotel bill.

18. Ensure that CACI develops and implements internal control policies and procedures to ensure that travel costs incurred and billed are in compliance with the contract terms and federal regulations.

STATEMENT ON INTERNAL CONTROLS

As required by the Government Auditing Standards, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of JMD's internal controls in the administration of MEGA 4 Contract Number DJJ13-C-2439 awarded to CACI to provide litigation support to the DOJ was not made for the purpose of providing assurance on JMD and CACI's internal control structure as a whole. JMD and CACI's management is responsible for the establishment and maintenance of internal controls.

As noted in the Audit Results section of this report, we identified deficiencies in CACI's internal controls that were significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect CACI's ability to identify costs prohibited by the contract, task orders, and regulations. We also identified deficiencies in JMD's internal controls that were significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affected JMD's ability to identify costs prohibited by the contract, task orders, and regulations. Specifically, JMD must ensure that CACI adhere to the terms and conditions in the contract and task orders. JMD also must ensure that proper review and verification of contractor vouchers is completed by the litigating components awarded task orders under the MEGA 4 contract.

Because we are not expressing an opinion on JMD's and CACI's internal control structure as a whole, this statement is intended solely for the information and use of JMD and CACI. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that JMD and CACI management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. JMD's and CACI's management are responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objective:

- Federal Acquisition Regulation (FAR) Subpart 22.1, *Basic Labor Policies*
- FAR 37.104, *Personal Services Contracts*
- FAR Part 52, *Solicitation Provisions and Contract Clauses*
- FAR Subpart 31.2, *Contracts with Commercial Organizations*

Our audit included examining, on a test basis, JMD's and CACI's compliance with the aforementioned laws and regulations that could have a material effect on JMD's and CACI's operations, through inspection of accounting records and interviews with JMD and CACI personnel, as well as EOUSA personnel. As noted in the Audit Results section of this report, we found that CACI did not comply with FAR 22.103-4(a), 31.202(a), 52.244-2, and 31.205-46 as required by the MEGA 4 contract and task orders we reviewed.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of our audit were to assess JMD’s administration of and CACI’s performance and compliance with the terms, conditions, laws, and regulations applicable to the contract and task orders we examined to determine whether: (1) costs were reasonable, allocable, and allowable as defined by the terms of the contract, task orders, and the FAR; (2) billings were properly supported and prepared using rates, terms, and conditions established by the contract and task orders; and (3) CACI adhered to internal policies and procedures. We also assessed JMD’s administration and oversight of the task orders in the districts we examined.

Scope and Methodology

We conducted this contract audit in accordance with generally accepted government auditing standards. These 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.

In conducting our audit, we interviewed officials at the USAOs and CACI employees located at the District of New Jersey, the Southern District, and the Eastern District. We additionally interviewed JMD and EOUSA employees located in Washington, D.C. JMD awarded the MEGA 4 Contract Number DJJ13-C-2439 to CACI in August 2013 to provide litigation support services to seven litigating components of the DOJ. Our audit focused on five task orders under this contract to provide support to EOUSA locations in the District of New Jersey, the Southern District, and the Eastern District between August 2013 and May 2019. The five task orders have an estimated value of over \$22.5 million for the base year and five option years. Actual costs billed for these task orders through September 2016 were \$9,601,917.

To determine whether incurred costs and billings were reasonable, allocable to the contract, and allowable as defined by the terms and conditions of the contract and task orders, the FAR, and internal control standards, we reviewed a judgmental sample of the contractor’s vouchers. We tested timesheets, payroll documents, employee qualifications to labor category requirements, background checks, subcontractor agreements, subcontractor invoices and payments, and travel documentation. Our non-statistical sample design does not allow projection of our results to the populations from which the samples were selected.

APPENDIX 2

SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>Description</u>	<u>Amount</u>	<u>Page</u>
Unallowable Questioned Costs:		
Terms and Conditions		
Labor Requirements		
Overtime	\$884,312	10
Project Manager	175,704	12
Qualifications	108,014	13
Travel Requirements	11,225	14
Subcontract Monitoring	480,157	15
Billing Accuracy		
Labor		
Law Clerk II	135,062	17
Law Clerk I	17,531	17
Travel	1,010	18
Unsupported Questioned Costs:		
Travel	<u>458</u>	18
<i>Gross Questioned Costs</i> ⁹	\$1,813,473	
Less Duplicate Questioned Costs ¹⁰	(4,621)	
Less Remedied Costs ¹¹	<u>(884,312)</u>	
NET QUESTIONED COSTS	<u>\$924,540</u>	

⁹ Questioned costs are costs that do not comply with regulatory or contractual requirements or are not supported by adequate documentation at the time of the audit. Questioned costs can be remedied by offset, waiver, recovery of funds, the provision of supporting documentation, or contract ratification, where appropriate.

¹⁰ Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amount, which includes \$4,621 in travel costs.

¹¹ In its written response to a draft of this report, JMD's Director of Procurement Services asserted that the overtime billed was authorized because USAO district office staff knew about the overtime in advance and requested that it be worked. While this determination conflicts with the position of JMD's Contracting Officer and COR provided to us during the audit, we find that the Director of Procurement Services has the authority to make this determination on behalf of JMD, and we do not find that this determination contradicts contract terms or other regulations. As a result, we consider this recommendation to be closed and do not question the costs in this final audit report. Please see page 9 for additional details on overtime costs reviewed during the audit.

APPENDIX 3

SCHEDULE OF DOLLAR-RELATED FINDINGS BY TASK ORDER

<u>Description</u>	<u>Amount</u>	<u>Page</u>
Task Order 10		
Qualifications	\$108,014	13
Travel Requirements	<u>365</u>	14
Total Questioned Costs	\$108,379	
 Task Order 36		
Subcontract Monitoring	\$480,157	15
Law Clerk I	<u>17,531</u>	17
Total Questioned Costs	\$497,688	
 Task Order 43		
Overtime	835,937	9
Project Manager	137,623	13
Travel Requirements	10,204	14
Law Clerk II	79,961	17
Travel	<u>1,010</u>	18
<i>Gross Questioned Costs</i>	1,064,735	
Less Duplicate Questioned Costs	(4,621)	
Less Remedied Costs	<u>(835,937)</u>	
Net Questioned Costs	\$224,177	
 Task Order 67		
Overtime	\$48,375	9
Project Manager	38,081	13
Travel Requirements	656	14
Law Clerk II	55,101	17
Travel	<u>458</u>	18
Less Remedied Costs	<u>(48,375)</u>	
Net Questioned Costs	\$94,296	

CACI, INC. - COMMERCIAL'S RESPONSE TO THE DRAFT AUDIT REPORT



February 22, 2018

By Email and First-Class Mail

Mr. Jason R. Malmstrom
Assistant Inspector General for Audit
U.S. Department of Justice
Office of the Inspector General

Re: Audit of the Justice Management Division; Task Orders Awarded to CACI, Inc. - Commercial

Mr. Malmstrom:

CACI, LLC – Commercial (“CACI”) respectfully submits this response to the Department of Justice Office of Inspector General Audit Division (“OIG”) Draft Audit Report entitled “Audit of the Justice Management Division Task Orders Awarded to CACI International, Inc.¹”, which was received on February 1, 2018.

DOJ’s Justice Management Division (“JMD”) awarded CACI the task orders at issue in this audit in 2013 to provide litigation support services to the United States Attorney’s Offices in the District of New Jersey, the Southern District of New York (“SDNY”) and the Eastern District of New York (“EDNY”). Throughout the duration of these task orders, the DOJ Contracting Officers have consistently rated CACI as very good or exceptional in all areas of performance, including quality, schedule, cost control, management, and regulatory compliance.

As requested, CACI provides the following response to the Draft Audit Report.

I. Response to Terms and Conditions Questioned Costs

A. Overtime: We recommend that JMD remedy \$884,312 in labor costs for overtime billed to Task Orders 43 and 67 that were not approved in advance by the COR.

CACI does not concur with the Draft Audit Report’s recommendation.

¹ The Draft Audit Report incorrectly states that the task orders in question were awarded to “CACI International, Inc.” The task orders at issue were in fact awarded to CACI, Inc. – Commercial, which is now CACI, LLC – Commercial. CACI, LLC – Commercial is a subsidiary of CACI, Inc. – Federal, which itself is a subsidiary of CACI International Inc.

The implicit finding of the Draft Audit Report is that task orders 43 and 67 affirmatively prohibited overtime unless authorization was obtained in advance from the Government. This is incorrect. Neither the IDIQ nor the task orders contain that requirement. Those contract documents simply do not contain any term, FAR clause or other requirement that provides the contractor must obtain advance approval for overtime from either the COR or the Contracting Officer.² Indeed, the draft audit report acknowledges this very point, stating “[the Contracting Officer and COR] were unable to direct us to contract language that specifically states pre-approval of overtime by the COR or Contracting Officer is required”. Absent an advance approval requirement for overtime, CACI submits that there is no reasonable basis to question overtime costs on the grounds that advance approval was not obtained.

The Government’s administration of the task orders confirms the correctness of CACI’s position. For each task order, CACI submitted monthly invoices that included a labor detail report to the COR as required by the MEGA contract payments clause. This report provided detail for each CACI employee who billed time to the task order for that month and the number of hours each CACI employee worked each week for the time periods included in the monthly invoice. The overtime worked by any CACI employee was evident on the face of each invoice. Yet at no time did the Government ever object to, question, or dispute the fact that CACI employees were consistently working overtime. Instead, over the course of performance of the task orders, DOJ approved every invoice that specifically reflected hours of overtime worked by CACI employees. The review and approval of invoices clearly reflecting overtime evidences the Contracting Officer’s understanding that no advance approval was required. The government’s course of conduct from 2013 to present in approving invoices that clearly reflected overtime worked prohibits it from disallowing overtime that it now alleges required pre-approval.

Acknowledging that none of CACI’s current task orders or the IDIQ contractually require advance overtime approval, the Draft Audit Report recommends that JMD “ensure that specific written requirements for overtime approval are included in all future task orders”. That is the Government’s prerogative and CACI will comply with future contractual requirements. Those requirements should clearly explain what constitutes ‘overtime,’ what approval is required and what form.

B. Project Manager: Because the on-site Project Manager was not fulfilling the contractual obligations of workload management and supervision required under the task order, and the contractor’s billing of on-site supervision costs as direct costs, which were incurred for the same purpose as off-site supervision, we have determined that the amounts directly billed and paid for the Project Manager between October 2013 and September 2016, totaling \$175,704, are unreasonable.

CACI does not concur with the Draft Audit Report’s recommendation.

² Neither task order defines “overtime.” CACI notes that all hours worked were billed at straight time rates, not at time-and-a-half. The Draft Audit Report notes that contractors were instructed to propose higher labor rates in anticipation of paying straight time for work in excess of 40 hours/week, but does not explain how that instruction amounts to a requirement that advance approval for overtime be obtained from the Contracting Officer or COR.

While it is not clear to CACI, the basis for the auditors' assertion that the onsite Project Manager was not fulfilling the contractual obligations of workload management and supervision appears to be based upon interviews with contract staff and Government employees in which CACI did not participate. We requested that CACI management be allowed to attend the interviews of CACI employees, but that request was denied. CACI also requested an opportunity to interview the same Government employees interviewed by the auditors, but that request, too, was denied. The Government did not interview the CACI Project Manager. CACI would not expect the employees interviewed to possess the requisite knowledge of the Project Manager's day to day activities on the task orders, particularly if they did not interact directly with him on a regular basis or possess a full understanding of his role and responsibilities.

Significantly, the task orders *required* CACI to provide a Project Manager. The SOW for SDNY required the contractor to have a Project Supervisor to perform the following tasks:

The Project Supervisor shall manage and develop the on-site team of supervisory clericals and law clerk II who provide support throughout all phases of criminal and civil case development, investigation, and litigation. Act as the point of contact for the USAO in regards to vendor policies and procedures, such as timekeeping, overtime, leave, and invoices. This contractor will interface with the attorneys, support staff and management to anticipate and manage changes to the projects, task requirements, scope, and schedule and will determine if additional resources are needed. In addition, this contractor will ensure communication and understanding of project deadlines, assignments, and objectives as well as perform ongoing review of project status to identify any potential risks.

The SOW for the EDNY also specified a Project Supervisor, albeit without a corresponding description of duties. The Draft Audit Report acknowledges that the Government had determined that a Project Manager for these task orders was needed:

The Administrative Officers at these two districts told us that they were each instructed by the Contracting Officer and COR to include an onsite Project Manager position for two of the four task orders in these districts because those task orders included more than seven legal support staff positions.

Clearly, the Contracting Officer and the COR decided that a contract-specific Project Manager was necessary and appropriate for the task orders in question. Accordingly, CACI's proposals for the task orders identified [REDACTED] as the employee who would act as CACI's Project Manager, and both task orders as awarded contained a labor category for the Project Manager. As a result, the Government knew and expected that CACI would provide a Project Manager. Consistent with that contractual requirement, CACI provided and billed the Government for [REDACTED] time as Project Manager. At no time did the Government ever question those invoices on the grounds that [REDACTED] was not performing contract-specific work or otherwise. It is neither reasonable nor permissible for the Government to now conclude that the

Contracting Officer's decision was improvident and therefore the Project Manager costs were unreasonable.

In fact, [REDACTED] *was* performing exactly the work specified in the SOW. Working with the Department of Justice in Manhattan and Brooklyn, the PM performed the following:

- Supervised a staff of three dozen individuals, including law clerks, paralegals, IT support professionals, financial industry experts, and document management technicians.
- Coordinated litigation support for federal criminal and civil trials with DOJ administrators, attorneys, and paralegals.
- Staffed and managed litigation support projects – such as hard drive processing; loading of electronic discovery into databases for review; searching and indexing of database documents; and courtroom presentations and set-up.
- Assisted with managing e-discovery civil investigation document review projects for DOJ's Manhattan and Brooklyn offices.
- Served as on-site Point of Contact for Brooklyn DOJ e-discovery project, involving coordination of communication between DOJ attorneys and administrators and CACI managers.
- Oversaw Brooklyn DOJ e-discovery review team, comprised of two dozen attorneys, utilizing Relativity and Palantir document review platforms.
- Monitored employee work performance through first hand observation and by meetings and conversations with DOJ administrators.
- Acted as POC for the USAO regarding vendor policies and procedures, such as timekeeping, overtime, leave, and invoices as well as recruiting and hiring, funding, and project scope.

The Draft Audit report's use of the term "on-site" with reference to the Project Manager is inconsistent with the SOW. Specifically, the SOW did not require the Project Manager to be on-site at all times. The PM did have to manage and develop the "on-site team of supervisory clericals and law clerk," but there is no requirement that the PM do so while on-site at all times. Moreover, the PM did not work "off-site" as this term is commonly understood. There were two DOJ sites at issue here, EDNY and SDNY, and the PM was always working at one of them. The task order work was not sufficient to support a unique PM at both the SDNY and EDNY, but was sufficient – as DOJ recognized by requiring a PM – to support one PM who could manage both sites. [REDACTED] was able to perform his contract specific responsibilities to each District and task order effectively even when located at the other site. Perhaps that is why the individuals interviewed by the Government lacked a full understanding of [REDACTED] activities.

The conclusion that the direct billing of the Project Manager's time violated FAR 31.202(a) because the Program Manager did not perform contract specific tasks or activities, and that therefore all his costs should have been considered and treated as general, indirect management overhead, is unfounded.

C. Qualifications: As a result of this finding, we recommend that JMD remedy \$108,014 in labor costs for the individual who was hired for the Paralegal position and billed to Task Order 10 without receiving the necessary waiver from the COR.

CACI acknowledges that the employee billed as a Paralegal did not possess a Paralegal certificate, and that a formal waiver was not obtained from the COR allowing the employee's four years of prior legal experience and bachelor's degree in Criminal Justice to serve as an acceptable substitute. The resume of the paralegal at issue, however, which clearly reflects that the individual did not possess a paralegal certificate, was provided to the Deputy Administrative Officer as a candidate for the position. The Deputy Administrative Officer notified CACI by email that DOJ selected that individual to fill the paralegal position. The Contracting Officer's Representative was copied on the email approving the individual. CACI submits that this constitutes a de facto waiver to place this individual in this position.

In addition to the presence of a de facto waiver, based upon our experience in requesting such waivers when we believe alternative qualifications warrant their approval, we believe an explicit waiver, had it been sought, would have been granted given the employee's qualifications, and that the \$109,715 of direct costs cited by the auditors are not in need of a remedy.

D. Travel Requirements: As a result of our testing, we identified as questioned costs \$11,225 of the travel costs related to all three task orders (\$365 for Task Order 10, \$10,204 for Task Order 43, and \$656 for Task Order 67) because CACI failed to obtain pre-approval from the COR, billed local travel, or failed to comply with its own internal policies and procedures. The questioned costs include duplicate costs of \$3,611 that are questioned for both failure to obtain COR pre-approval and noncompliance with internal policies and procedures.

CACI concurs with the auditors' questioning of net travel costs of \$7,614.

E. Subcontract Monitoring:

(1): We found that CACI did not ensure that one subcontractor provided timekeeping records or work product or progress reports, which are required by the subcontractor agreement. We identified \$412,666 in questioned costs related to this noncompliance with the subcontractor agreement.

CACI does not concur with the Draft Audit Report's recommendation for two reasons. First, CACI's contract with its subcontractor is not part of or incorporated into CACI's prime contract or task orders with the DOJ. Moreover, the task orders did not require subcontractors to provide CACI with weekly or monthly progress reports and this is also not a valid basis to question CACI's costs.

Whether CACI's subcontractor complied with the terms and conditions of its agreement with CACI is a matter as between CACI and that subcontractor. CACI has neither an express or implied obligation with DOJ under the MEGA contract nor a regulatory requirement under FAR Part 44 or elsewhere to ensure that a subcontractor comply with the terms and conditions of its subcontract with CACI.

Second, CACI, as the prime contractor, was responsible for the overall contract performance. Task Order 0036 contained reporting requirements of monthly invoices via electronic mail or hard copy from CACI, not from CACI's subcontractors. Rather, the subcontractor's time and costs were to be included in CACI's invoices. They were. CACI received weekly emails from its subcontractor regarding the hours that the individual in question worked, and that detail was then reflected in CACI's invoices to the Government.

CACI was in full compliance with all contractual requirements relating to its subcontractor. There is no reasonable basis to question those costs, particularly where there is no dispute that the subcontractor in fact worked the hours invoiced to and paid by the Government without question or objection.

(2): We also found that CACI was not in compliance with FAR 52.244-2. Although CACI obtained written consent from the Contracting Officer to use a subcontractor, we found CACI billed a labor category (industry consultant), which was not included in the subcontractor agreement. When a change occurs to an approved subcontractor agreement, CACI must submit a supplemental request to the Contracting Officer for approval. This requirement is consistent with FAR 52.244-2 and is included in the Contracting Officer's approval letter provided to CACI. We discussed this noncompliance with CACI officials and they told us that their understanding was that once a subcontractor was approved, CACI could bill for any services provided under the MEGA 4 contract. JMD failed to detect CACI's noncompliance with the approved subcontractor agreements. We identified \$67,491 in questioned costs related to this noncompliance with the subcontractor agreement.

CACI does not concur with the Draft Audit Report's recommendation.

CACI received consent to include [subcontractor] in support of the MEGA Contract Vehicle for "High Level Staffing" under CLIN 05-0009. CLIN 05-0009 under the MEGA Contract is classified as an "Industry Specialist Consultant". CACI's approved consent package identifies the "Industry Specialist Consultant" within the "MEGA Subcontract Consent Request Form" required in each consent package submitted to the Contracting Officer.

[REDACTED]

The labor category was included in our subcontractor agreement, though not by the exact same name as the category in our prime contract with the government. See page 3 of the following attachment.

[REDACTED]

CACI maintains that the approval to use a subcontractor is valid across all task orders. The original Task Order that [subcontractor] was supposed to support was TO 0117 but they also supported TO 0161 and TO 0036, as an "Industry Specialist Consultant" (CLIN 05-0009). CACI has an email, dated April 26, 2017, between the Government Customer and Contracting Officer that discusses the switch of [subcontractor] employee from TO 0161 to TO 0036.

[REDACTED]

Each Task Order contains the required Cost Category of an Industry Specialist Consultant, CLIN 05-0009. CACI believes that the email gave CACI the approval to bring on [subcontractor] in support of Task Order 0036, since it was a staffing decision and not a consent or pricing issue.

We also disagree with the auditors' conclusion that CACI was not in compliance with FAR 52.244-2. This clause states:

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

This becomes operative only if consent is required under paragraphs (b), (c), or (d).

Paragraph (b) is not applicable as this is not a fixed price contract. Paragraph (c) is not applicable as CACI has an approved purchasing system. And paragraph (d) is not applicable because the Contracting Officer did not specify any types of subcontracts.

The IDIQ does, however, contain a clause that is relevant:

H.17 Subcontractor Consent

Subcontractors approved to perform work under this contract are included in Attachment (11). The addition of any other subcontractor that is not named in Attachment (11) is subject to the prior written consent of the Contracting Officer.

As mentioned above, CACI did receive the Contracting Officer's consent for [subcontractor] to perform work under the IDIQ, as required by this clause, and the work was covered in our subcontract agreement with them.

II. Response to Billing Accuracy Questioned Costs for Labor and Travel

- A. Law Clerk II: We recommend that JMD remedy \$79,961 in labor costs for Law Clerk II labor billed to Task Order 43 for an employee not performing the functions required by the contract. We also recommend that JMD remedy \$55,101 in unallowable labor costs billed to Task Order 67 for the Law Clerk II labor category not awarded within the task order.

CACI does not concur with the Draft Audit Report's recommendation.

As noted in the Draft Audit Report, after CACI's PM, [REDACTED], left the project, he was replaced by an employee who performed the duties the Project Manager but was billed as a Law Clerk II. This was done with the Government's awareness and approval. CACI recommended a woman who was working on the project as a Law Clerk II to replace [REDACTED], and in doing so informed the Government that she did not satisfy the labor category requirements for Project Manager. CACI suggested, and the Government approved, that she serve as Project Manager but be billed in a labor category that she did satisfy – Law Clerk II. We recommend that the OIG speak with [REDACTED] and [REDACTED] to conform these facts.

CACI agrees with an assertion by the auditors that this matter was not optimally from a contractual standpoint. CACI should have insisted on a formal waiver of the years of experience requirement that would have been incorporated into the task orders in question via a modification. The Government, however, certainly knew exactly what the Law Clerk II was doing with respect to project management and consistently approved the invoices that specifically listed this employee working on both task orders. DOJ had no issues with the employee's performance and received good value for the services provided.

CACI does not believe the costs questioned by the auditors here, given the facts and circumstances, require remedy.

- B. Law Clerk I: When CACI billed the Law Clerk I labor during the Base Year of the task order, it incorrectly billed the labor rate from the master table and not the discounted rate that was awarded in the task order. This resulted in EOUSA paying \$17,531 more in Law Clerk I labor than was required per the contract.

CACI concurs with these questioned costs.

- C. Travel: Of the 17 vouchers we tested, we found unallowable costs on 8 vouchers. Specifically, we found that all four vouchers that included lodging costs exceeded allowable per diem limits, which is unallowable per FAR 31.205-46.8. We also found improperly billed travel costs, such as first class airfare, per diem paid to an employee whose travel was less than 12 hours, and an unsupported cost included on an employee's hotel bill that are unallowable per the FAR. We recommend that JMD remedy \$1,468 (\$1,010 for Task Order 43 and \$458 for Task Order 67) in questioned

travel costs identified above. The questioned costs include duplicate costs of \$1,010 that were previously questioned for failure to obtain COR pre-approval

CACI concurs with the auditors' questioning of net costs of \$458.

III. Other Audit Report Items

A. Auditors' concerns regarding personal services contracts

We understand the auditors' concerns in this area, and are working with our customer to provide them with improved workload management services such that they do not feel a need to perform that task themselves. As previously stated, however, this is not the sole task of a Project Manager, and thus we do not concur with the auditors' conclusion that we were in non-compliance with FAR 31.202(a).

B. Auditors' conclusion that CACI's billings were frequently inaccurate

Given our responses above to the costs questioned by the auditors, and the fact that total billings for the five task orders audited during the period under audit were \$9.6 million, we think this conclusion is overstated and misleading. We thus also disagree with the auditors' conclusion that CACI lacks adequate procedures and internal controls to ensure costs are billed accurately. We believe our procedures are adequate. We acknowledge that in the case of some of the costs questioned, we did not fully comply with the letter of the contract, and where we believe the facts and circumstances warrant remedy, have concurred with the auditors. Significantly, these are *de minimis* matters. The Draft Audit Report questions \$1,808,852 in costs. CACI concurs with \$25,603, or approximately 1.4%, of the questioned costs.

C. Auditors' Conclusions that CACI did not comply with the Federal Acquisition Regulations

Given our responses above to the costs questioned by the auditors, we do not agree with those conclusions.

D. Overtime

While we disagree with the auditors questioning of costs on the basis that overtime was not approved, because such approval was not contractually required, we understand and appreciate the Government's desire to have it more tightly controlled. Towards that end, and in anticipation of appropriate contract modifications being forthcoming as a result of this audit, we have voluntarily put the following processes into place:

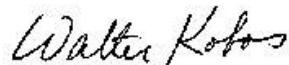
- At the beginning of each month, our CACI manager (onsite or off-site depending on district) gathers overtime requirements from each employee and e-mails the requirements to the USAO Administrative Officer (AO).

- The AO e-mails the OT requests to the EOUSA COR for approval copying the CACI manager. (We are expecting the COR to reply to all when approving or denying.)
- If necessary during the month, the CACI manager makes additional overtime requests to the AO who then submits the request to the EOUSA COR.
- The CACI manager notifies each employee of the number of approved OT hours to work.
- The CACI manager closely monitors the number of hours worked and requests additional support be pulled in if necessary.

IV. Summary

We appreciate the professional way this audit was performed by the Department of Justice's Office of the Inspector General's Audit Division, and the care and thoughtfulness that went into the preparation of the report to which we are responding. The Justice Management Division has been and continues to be a good, valued customer of CACI's, and we pledge to work cooperatively with them to improve how this contract is executed and administered by all parties to it, and satisfactorily resolve the auditors' findings and recommendations.

Respectfully,



Walter Kobos
VP – Internal Audit & Government Compliance

**THE JUSTICE MANAGEMENT DIVISION'S RESPONSE TO THE
DRAFT AUDIT REPORT**



U.S. Department of Justice

Justice Management Division

Procurement Services Staff

Washington, D.C. 20530

MEMORANDUM

TO: JAMES R. MALMSTROM
ASSISTANT INSPECTOR GENERAL FOR AUDIT
OFFICE OF THE INSPECTOR GENERAL

FROM: MARK SELWESKI MARK SELWESKI Draftify signed by MARK
SELWESKI
Date: 20180308 15:1237-0500
DIRECTOR

DATE: March 8, 2018

SUBJECT: Response to Office of Inspector General Draft Audit Report, Audit of the Justice
Management Division Task Orders Awarded to CACI International, Inc.

The Department of Justice (Department), Justice Management Division, Procurement Services Staff (JMD) reviewed the Office of the Inspector General's (OIG's) Draft Audit Report – Audit of the Justice Management Division Task Orders Awarded to CACI International, Inc. (Report). The Report identifies 18 recommendations related to the contract administration of the Department's MEGA 4 contracts, which provide litigation support services to the Department's litigating components, including all ninety-four (94) United States Attorney's Offices, (USAO), the Civil Division, the Criminal Division, the Environmental & Natural Resources Division, and the Tax Division. JMD concurs with the OIG's recommendations except where noted. Based on JMD's review and analysis of the Report below, of the total of \$1,808,852 in questioned costs, JMD has a legal right to seek, and will seek, reimbursement of \$18,999 in costs, and will request additional information from CACI regarding an additional \$67,491 in costs to determine whether any of this amount is legally recoverable.

The following is JMD's response to each of the specific recommendations:

Recommendation 1 – 3, and 5: The Report recommends that JMD develop consistent procedures for monitoring contractors' activities under the MEGA 4 contracts and task orders (Recommendation 1); implement policies that define which activities should be completed by various levels of government personnel, including defining who is responsible for providing preapprovals for travel and overtime (Recommendation 2); and develop consistent procedures for the verification of vouchers, including ensuring that specific written requirements for overtime approval are included in all future task orders and developing policies and procedures to monitor and manage contractor staffing and overtime (Recommendations 3 and 5). These recommendations are based on the OIG's findings that Administrative Officers (AOs) at the U.S.

Attorney's Offices (USAOs) "created the impression that they had more authority than they actually did" and that the OIG "believe[s that] this occurred because the district Administrative Officers did not fully understand their roles and responsibilities in this area."

JMD concurs with these recommendations. JMD previously provided guidance to Government personnel involved in both the procurement and administration of litigation support services acquired under the MEGA 4 contracts, including a delegation letter or memorandum to the Contracting Officer's Representatives (CORs) and Alternative COR, describing their duties and responsibilities under the contracts. However, due to the IG findings involving the AOs at the United States Attorney's Offices (USAOs), the JMD Contracting Officer (CO) will issue a subsequent memorandum to the AOs, explaining their role in the contract administration process and reiterating the appropriate roles and responsibilities of each of the various government personnel. This memorandum will explain, among other things, that the authority of the AOs is limited to the day-to-day technical guidance of the litigation support being performed within their respective offices under the MEGA 4 contracts and task orders; that any advance approvals required of the contractors delineated under the MEGA 4 contracts and task orders, including requests for travel and overtime, are the responsibility of the COR or CO; and that any changes impacting the material terms and conditions of the contracts and/or task orders, including pricing or costs incurred by the Government, are the responsibility of the CO. The memorandum also will include the process for the review and approval of invoices and vouchers submitted by contractors for payment. Specifically, the memorandum will explain that the AO overseeing the day-to-day activities of the contractor will conduct the initial review of the invoice and voucher, and that the COR will conduct a subsequent review and approve the invoice and voucher, prior to payment. Additionally, JMD will include specific language in the task orders indicating the need for the MEGA 4 contractors to obtain approval in advance of any required travel and overtime, and that the approval must be submitted to and obtained from either the COR or CO, unless otherwise excepted (e.g., emergent circumstances).

Recommendation 4: The Report recommends that JMD "remedy \$884,312 in labor costs for overtime billed to Task Orders 43 and 67 that were not approved in advance by the COR." According to the Report, the OIG found that overtime was required, at least in part, because there were positions left vacant and these periods of "understaffing" purportedly led to the requirement that the contractor work overtime.

JMD does not concur with this recommendation. As explained below, reimbursement of these costs from CACI is neither factually nor legally supported. As noted by JMD during the subject audit, and as noted in the Report and in CACI's response, the Government did not pay any unallowable overtime costs to CACI; therefore, the Government is not entitled to reimbursement for any costs related to overtime.

First, as specifically noted in the Report, neither the MEGA 4 contracts nor the subject task orders specifically required preapproval of overtime hours by the COR (and/or the CO). While the subject task orders provided that overtime will be “authorized as needed,” the person or persons with authorizing authority is not delineated in the MEGA 4 contract or the task orders. Clearly, before any overtime work was performed, the USAO district offices for which this litigation support work was being performed determined that overtime by the contract personnel working on a particular case or cases was needed, requested that it be done, and thereby authorized the subject overtime. In other words, there is no evidence that any overtime work was done without the knowledge and direction of the Government.

Second, as also noted by JMD during the audit, in the Report, and in the contractor’s response, the Government suffered no financial harm; that is, the Government paid no premium when the contractor worked overtime. Under the MEGA 4 contracts, the labor rate billed by contractor, whether billing for “straight” time or “overtime,” is the same rate. In other words, under the MEGA 4 contracts, the Government is never required to pay a premium to the contractor: all work, whether regular time or overtime, is billed at the same “straight time” rate.

Third, the Report does not allege that, and JMD is unaware of any instance where, the contractor invoiced the Government for hours that were not worked. The invoices submitted by the contractor were approved by the USAO district offices and the COR, indicating that the work billed was in fact performed as required and authorized and was acceptable. Indeed, as noted in the Report, all three USAO offices audited indicated that they were satisfied with the services provided by the contractor, stating that they believed the contractor effectively provided services under the MEGA 4 task orders.

Finally, OIG’s conclusion that overtime was required, at least in part, because certain positions ordered under the subject task orders were allegedly left vacant and therefore the task orders were understaffed is without support. As was explained during the audit, in the context of an indefinite delivery indefinite quantity contract providing services on a time and materials basis, when a task order is competed initially, the number of positions required is essentially an estimate of the Government’s anticipated needs. Over the period of performance of the subject task order, that need can change – both with regard to the number of hours and the positions and types of positions required. This is especially true in the context of litigation and litigation support, as litigation is fluid, with work ebbing and flowing on a case-by-case basis. Cases may sit dormant for long periods of time, then move quickly with looming deadlines, and then sit dormant again for an indeterminate period of time. Moreover, it is not simply a matter of plugging contract staff into positions as the litigation ebbs and flows: in some cases, a single individual working on a particular matter or case gains in depth knowledge and essentially becomes irreplaceable, such that the addition of more staff is not a viable solution when a case becomes active. Here, JMD is unaware of any information suggesting that overtime was required because of alleged “understaffing.”

Recommendation 6 and 7: The Report recommends that JMD “remedy \$175,704 in direct labor costs for the Project Manager (PM) position billed to task orders 43 and 67 for the employee that did not perform the functions of the position as required by the contract” (Recommendation 6), and “evaluate the PM position across the MEGA 4 contract,” including the need for a PM (Recommendation 7). The OIG bases these recommendations on its finding that the person designated as PM for the position in question was not performing the functions of a PM as defined in the MEGA 4 contract, but instead was providing administrative support functions, including such tasks as approving timesheets, and based on its belief that the workload of the contract legal support staff appeared to be managed by federal employees, including the Assistant United States Attorneys (AUSAs) in charge of the cases on which the legal support staff worked, potentially giving rise to an appearance of violating the prohibition of obtaining personal services by contract.

JMD concurs in part with these recommendations. With regard to the recommendation that JMD seek reimbursement for the costs of the so-called PM, JMD does not concur, as reimbursement of these costs is neither factually nor legally supportable. The task orders did not require that the contractor provide a “Project Manager” as defined in the MEGA 4 contracts. Instead, as noted in the Report, the statements of work for the subject task orders required that the contractor provide a “project supervisor” – not a PM – for the subject task orders. The task orders contemplated that, to the extent necessary, the project supervisor would manage and develop the on-site team to support the USAO district offices and AUSAs throughout all phases of criminal and civil case development, including, among other tasks, timekeeping, overtime, leave, and invoices. Based on the Report, there is no indication the contractor did not provide a “project supervisor” as required by the subject task orders, or that it otherwise failed to fulfill the duties required by the task orders, the USAO district offices, and AUSAs.

Additionally, to the extent that the contractor’s project supervisor did not in all instances provide project supervision as contemplated by the task order, the cause likely lies with the Government, not the contractor. As noted in the Report, the AUSA handling a particular case is required to, and does in fact, work closely with those persons working on the case, including but not limited to contracted litigation support personnel. At times an AUSA will provide direction to a contractor employee. This is unavoidable given the pace and unpredictability of litigation.

We note, moreover, that the giving of direction alone does not give rise to a personal services contract. The guidance provided in the Federal Acquisition Regulation (FAR) does not prohibit communication between a federal employee and a contract employee, or a federal employee from providing direction to a contract employee. In fact, the FAR specifically provides that “giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.” FAR

37.104(c)(1)(ii). As explained by the FAR, “[e]ach contract arrangement must be judged in the light of its own facts and circumstances.” FAR 37.104(c)(2). The FAR offers a number of elements as a guide in assessing the existence of a personal services contract, FAR 37.104(d); however, the presence of any or all of these elements is not dispositive of whether a contract is a prohibited personal services contract. The purpose of the FAR’s prohibition against personal services contracts is to prevent the circumvention of federal civil services laws and procedures applicable to hiring federal employees; that is, its purpose is to prevent agencies from obtaining personal services by contract, rather than by direct hire of federal employees through the federal hiring processes. FAR 37.104(a). There is nothing in the Report, or otherwise, that supports the conclusion that the acquisition or administration of the MEGA 4 contracts and/or task orders circumvent federal civil services laws with regard to the direct hire of federal employees. Instead, contracting for these services provides flexibility and efficiencies necessary for the Department’s litigating components to fulfill their obligations in representing the United States under circumstances where workload demands fluctuate greatly and unpredictably.

Finally, JMD concurs with the recommendation that it reevaluate its policy to require an additional project supervisor position to be included on a task order whenever a task order anticipates seven or more contract legal support staff. In fact, JMD intends to eliminate the requirement that the contractor automatically add an additional project supervisor position whenever a task order anticipates seven or more contract legal support staff. Instead, JMD, with the advice of the relevant COR and litigating program office, will determine on a task order by task order basis whether an additional project supervisor position is in the best interest of the Government. As an alternative, should JMD determine that an additional project supervisor position is not in the best interest of the Government, JMD will require the contractor to designate one of the proposed positions to operate as the on-site point-of-contact for the Government and other contracted litigation support personnel.

Recommendation 8: The Report notes that in its review of 60 contractor employees who were billed in 11 different labor categories under the subject task orders, the OIG found one instance where a contract employee billed as a Paralegal did not meet the full qualifications for the position as required under the contract. The Report noted that, although the employee holds a bachelor’s degree in criminal justice and 4 years of legal support experience, the employee did not hold a paralegal certification, and that although approved by the USAO district office’s AO, he was not formally approved by the CO as required under the MEGA 4 contract for such deviations. Accordingly, the Report recommends that JMD “[r]emedy \$108,014 in labor costs for the individual who was hired for a paralegal position and billed to Task Order 10 without receiving the necessary waiver from the CO.”

JMD does not concur with this recommendation. Based on the Report, the failure to seek and grant a waiver for this individual appears to be a simple oversight by both the contractor and the USAO district office, including the COR, and JMD does not intend to seek reimbursement

for the costs associated with this individual. According to the Report, prior to performance, the USAO district office reviewed the resume of the individual and was satisfied that the person met the requirements for the tasks at issue. Additionally, the individual successfully performed the tasks required under the subject task order, and the USAO district office was satisfied with the individual's performance. Accordingly, had the contractor sought a waiver, JMD believes that the waiver would have been recommended to the CO by the COR. Nevertheless, JMD PSS does intend to reiterate, in the memorandum identified in response to Recommendations 1 - 3 and 4, the need for AOs to ensure that, when required, waiver requests be forwarded to the COR and CO for review and approval prior to contract performance.

Recommendations 9, 11, 13, 16, and 18: The Report makes a number of recommendations that the contractor develop and implement internal policies and procedures related to certain contractual and regulatory requirements, including policies and procedures related to the adherence of task order requirements (Recommendation 9); travel (Recommendations 11 and 18); compliance with subcontractor agreements (Recommendation 13); and controls to prevent billing incorrect labor rates (Recommendation 16).

JMD does not concur with these recommendations. It is not the role of the agency, including the procurement staff, to require a contractor to develop and implement internal policies to ensure that the contractor comply with contractual requirements in the performance of a Government contract. Instead, it is the role of the agency to administer the contract and task orders to ensure to the best of its ability that the contractor complies with the requirements of the contract and task orders and that the Government receives goods or services at the contracted prices. Whether the contractor considers it necessary to develop written internal policies and procedures in order to perform the requirements and meet the terms and conditions of a contract, and the scope of those internal policies and procedures, if any, is within the discretion of the contractor, not the agency.

Recommendation 10: The Report recommends that JMD "remedy \$11,225 in travel costs related to three task orders because CACI failed to obtain preapproval from the COR, billed local travel, or failed to comply with its own policies and procedures."

JMD concurs in part with this recommendation. JMD intends to seek reimbursement from the contractor for any travel costs related to local travel and duplicative costs. JMD does not intend to seek reimbursement based on CACI's failure to comply with its own internal policies and procedures. See response to Recommendations 9, 11, 13, 16, and 18, above. With regard to the failure of the contractor to receive preapproval of travel, the CO will reiterate in her memorandum to the AOs the requirement that the contractor seek and receive approval prior to incurring costs for travel and the need to review and verify that invoices submitted for such costs are proper, including documentation evidencing preapproval.

Recommendation 12: The Report recommends that JMD “remedy \$480,157 in subcontract costs billed to Task Order 36.” The OIG based this recommendation on its finding that CACI did not comply with its subcontractor agreements and FAR 52.244-2. Specifically, the OIG concluded that CACI failed to ensure that one of its subcontractors provide timekeeping records, work product reports, and progress reports as required by its contract with CACI. The OIG also determined that CACI billed for a labor category that was not approved by the CO.

JMD concurs in part with this recommendation. With regard to the alleged failure of a subcontractor to comply with certain terms and conditions of its contract with CACI, that is a matter between the MEGA 4 contractor and its subcontractor, and does not involve the Government. The CO simply approves the contractor’s request to use a subcontractor labor category (and rate); she does not consent to, or even review, let alone incorporate into the MEGA 4 contract or task orders, the specific terms and conditions of the contracts between the MEGA 4 contractor and its subcontractors. Those terms and conditions are immaterial to the Department’s contractual relationship with the MEGA 4 contractor. The CO does not, and should not, review, consent to, and incorporate into the MEGA 4 task orders the terms and conditions of a subcontractor’s contract with a MEGA 4 contractor. This includes the purported requirement that the subcontractor provide the contractor with certain timekeeping records, work product reports, and progress reports. Consequently, whether a particular subcontractor has complied with the terms and conditions between it and a MEGA 4 contractor is of no contractual significance to, and has no impact on, the Government’s contract with the MEGA 4 contractor, and therefore as a legal matter cannot be the basis of a Government request for reimbursement. Ultimately, the Government’s concern is whether the MEGA 4 contractor meets the terms and conditions of the MEGA 4 contract and subject task orders, and whether the contractor’s performance of the requirements under the subject task orders is acceptable, regardless of whether the work is performed by employees of the MEGA 4 contractor or the employees of the MEGA 4 contractor’s subcontractor. Apparently, here, the contractor met the contract’s requirements, including providing sufficient documentation to support performance of the required tasks, and therefore there is no factual or legal basis to seek reimbursement for the costs associated with this aspect of the recommendation (\$412,660).

With regard to the conclusion that the contractor billed for a labor category that was not approved by the CO, JMD concurs. As a general matter, under the MEGA 4 contracts, once the CO has approved the use of a subcontractor’s labor category (including the labor hour rate), the MEGA 4 contractor may use that labor category on any task order issued against its MEGA 4 contract, so long as the approved labor category meets the requirement of the task order. In this instance, however, JMD is unable to verify that the contractor sought approval of a subcontractor’s labor category prior to performance of the subject task order. Accordingly, JMD will provide the contractor with the opportunity to provide documentation evidencing prior approval or, alternatively, to request approval, *nunc pro tunc*, of the subcontractor labor category. If sufficient documentation is provided, or the labor category is approved, JMD will

not seek reimbursement of these of costs. JMD will seek reimbursement for the costs associated with this labor category (\$67,491) to the extent that adequate supporting documentation is not forthcoming or the labor category is not approved.

Recommendation 14: The Report recommends that JMD “remedy \$79,961 in labor costs for the Law Clerk II position billed to Task Order 43 for a person not performing the functions required by the contract ... [and] \$55,101 in unallowable labor costs billed to Task Order 67 for the Law Clerk II labor category not awarded within the task order.”

JMD does not concur with this recommendation. As noted in the Report and the contractor’s response, the contractor utilized the Law Clerk II position, with the Government’s knowledge, to perform the duties of the project supervisor. The previous project supervisor was billed at a higher labor rate than the Law Clerk II position, and therefore performance of these duties at the Law Clerk II rate likely was a cost savings to the Government. As noted in the report, there is no indication that the individual did not successfully fulfill the duties of the position. Accordingly, JMD does not intend to seek reimbursement for these costs.

With regard to the use of the Law Clerk II labor category that was not included in task order 67, JMD does not intend to seek reimbursement. As explained in response to Recommendations 4, 6 and 7, when a task order is competed initially, the number of positions required is essentially an estimate of the Government’s anticipated need, and those needs often change throughout the life of the task order. This can result in the addition of labor categories to a task order, as well as number of positions, depending on needs. Again, this is particularly true when providing litigation support services. There is no question that the Law Clerk II position was part of the underlying contract, and therefore priced and otherwise generally permissible to obtain. Moreover, there is no indication in the Report, or otherwise, that the individual did not actually provide services to the Government for which the contractor was paid. And, importantly, the position ultimately was added to the task order. For all these reasons, therefore, JMD does not intend to seek reimbursement of these costs.

Nevertheless, JMD PSS does intend to reiterate in the memorandum identified in response to Recommendations 1 - 3 and 4 the need for AOs to ensure that, when required, written waivers be submitted to and approved by the CO as appropriate prior to contract performance and that any modifications to the task order be submitted to the CO.

Recommendation 15: The Report recommends that JMD “remedy \$17,531 in labor costs for Law Clerk I labor billed to Task Order 36 related to the overpaid labor rate.”

JMD concurs with this recommendation and will seek reimbursement from the contractor.

James R. Malmstrom
Assistant Inspector General for Audit
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Recommendation 17: The Report recommends that JMD remedy \$1,468 in travel costs for Task Order 43 that exceed the per diem amounts and/or unsupported costs.

JMD concurs with this recommendation. JMD will provide the contractor the opportunity to provide supporting documentation to support the questioned travel costs, including the need to exceed per diem amounts, and to the extent that it is unable to do so, JMD will seek reimbursement.

JMD appreciates the opportunity to comment on the OIG's Draft Report. We also appreciate the time and effort of the OIG Audit Staff in its review of the MEGA 4 contract. Should you have any questions regarding this topic, including JMD's comments, please do not hesitate to contact Richard Theis, Department of Justice, Audit Liaison, on (202) 514-0469.

**OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY
OF ACTIONS NECESSARY TO RESOLVE THE REPORT**

The Department of Justice (Department) Office of the Inspector General (OIG) provided a draft of this audit report to the Justice Management Division (JMD) and CACI, Inc. - Commercial (CACI). CACI's response is incorporated in Appendix 4 and JMD's response is incorporated in Appendix 5 of this final report. In its response, JMD expressed disagreement with certain recommendations – specifically Recommendations 9, 11, 13, 16, and 18 – regarding its authority to require a contractor to take specific actions that were not explicitly included within the MEGA 4 contract and task orders. With respect to those recommendations, we acknowledge that JMD is constrained by contractual terms in its ability to require CACI to implement internal policies. However, as JMD agrees, it is JMD's role to administer the contract in a manner sufficient to ensure CACI's compliance with MEGA 4 contract and task order requirements. Accordingly, we considered JMD's position and role, and we made clarifying edits to these recommendations to focus on JMD's need to strengthen its oversight of this contract and to consider revising the terms in future task orders and legal support services contracts to ensure that it is best positioned to effectively manage its contracts.

In its response, JMD presumes that the remedy for a questioned cost is limited to reimbursement of funds. As we discussed with JMD throughout the audit and on page 14 of this report, JMD, where appropriate, may consider other available remedies, such as offset, waiver, the provision of supporting documentation, contract ratification, or other means. We determined that JMD's planned actions were sufficient to close or resolve 9 of the 18 recommendations, with the remaining 8 recommendations issued in an unresolved status. As a result, the status of the audit report is Unresolved. We will work with JMD to ensure sufficient and appropriate actions are taken to resolve and close each of the recommendations in this report. The following provides the OIG analysis of the responses and summary of actions necessary to resolve the report.

Recommendations for JMD:

1. Develop consistent procedures for monitoring contractor activities.

Resolved. JMD concurred with our recommendation. JMD stated in its response that the Contracting Officer will issue a memorandum to the Administrative Officers that will explain their role in the contract administration process and the roles and responsibilities of the various government personnel.

CACI did not provide a response to this recommendation.

This recommendation can be closed when we receive documentation demonstrating that JMD has implemented procedures for monitoring

contractor activities.

2. **Develop and implement policies that define which activities should be completed by the various levels of government personnel to ensure that the limits of authority are understood by all levels, as well as the contractor. This includes clearly defining who is responsible for providing pre-approvals for travel and overtime.**

Resolved. JMD concurred with our recommendation. JMD stated in its response that it will issue a memorandum to the Administrative Officers that will explain their role in the contract administration process and reiterate the appropriate responsibilities of each of the various government personnel. In addition, JMD stated that the memorandum will also explain that the authority of the Administrative Officer is limited to day-to-day technical guidance within their office related to the MEGA 4 contract and task orders and that advance approvals, including for travel and overtime, required by the MEGA 4 contract and task orders are the responsibility of the Contracting Officer or Contracting Officer's Representative (COR).

CACI did not provide a response to this recommendation.

This recommendation can be closed when we receive documentation demonstrating that JMD has implemented policies that define which activities should be completed by the various levels of government personnel to ensure that the limits of authority are understood by all levels, as well as the contractor. This includes clearly defining who is responsible for providing pre-approvals for travel and overtime.

3. **Develop consistent procedures for verification of vouchers. These procedures should: (1) clearly define who is responsible for performing a detailed review of the contractor's vouchers; (2) include specific information related to verifying billed labor, subcontractor, and travel costs; and (3) include specific information related to reviewing contractors' travel estimates when provided for pre-approval.**

Resolved. JMD concurred with our recommendation. JMD stated in its response that it will issue a memorandum to the Administrative Officers explaining that they will perform the initial review of the invoice and voucher and the COR will complete another review and approve the invoice and voucher prior to payment.

CACI did not provide a response to this recommendation.

This recommendation can be closed when we receive documentation demonstrating that JMD has implemented procedures for verification of vouchers that includes specific information related to verifying billed labor, subcontractor, and travel costs, as well as specific information related to reviewing contractors' travel estimates when provided for pre-approval.

4. Remedy \$884,312 in labor costs for overtime billed to Task Orders 43 and 67 that were not approved in advance by the COR.

Closed. In JMD's written response to our draft report, the Director of Procurement Services stated that pre-approval of overtime by the Contracting Officer or COR was not contractually required and that the United States Attorney's Office (USAO) district office staff's authorization of the overtime hours satisfied the relevant task order language. This position is different from the information provided to us by the Contracting Officer and COR during the audit. We agree that the contract does not explicitly state that overtime must be pre-approved by the Contracting Officer or COR. In addition, we find that the Director of Procurement Services has the authority to determine that USAO district staff can authorize overtime under the MEGA 4 contract and task orders, and we do not find that this determination contradicts contract terms or other regulations. As a result of the new information provided to us in response to our draft report, we consider this recommendation to be closed and do not question the costs in this final audit report.

5. Ensure that specific written requirements for overtime approval are included in all future task orders and policies and procedures are developed to monitor and manage contractor staffing and overtime.

Resolved. JMD concurred with our recommendation. JMD stated in its response that it will include a specific requirement in task orders for MEGA 4 contractors to obtain advanced approval from either the Contracting Officer or COR.

CACI did not provide a response to this recommendation.

This recommendation can be closed when we receive documentation demonstrating that JMD has included specific written requirements for overtime in all future task orders and that policies and procedures are developed to monitor and manage contractor staffing and overtime.

6. Remedy \$175,704 in direct labor costs for the Project Manager position billed to Task Orders 43 and 67 for the employee that did not perform the functions of the position as required by the contract.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that Task Orders 43 and 67 did not state that the contractor provide a "Project Manager" but were instead required to provide a "Project Supervisor." JMD stated that the task orders contemplated that, to the extent necessary, the Project Supervisors would manage and develop the on-site team to support the USAO district offices and Assistant United States Attorney's (AUSAs) throughout all phases of criminal and civil case development, including, among other tasks, timekeeping, overtime, leave, and invoices. JMD stated that this report does not provide any indication that CACI failed to provide a Project Supervisor as required, or that it

otherwise failed to fulfill the duties required by the task orders, the USAO district offices, and the AUSAs.

CACI did not concur with the recommendation. CACI stated in its response that it is unsure of the OIG's basis for questioning the costs, which it believes are based on interviews with contractor and government personnel that they were not permitted to witness or recreate. CACI stated that it did not believe that its employees or the government personnel interviewed by the OIG possessed adequate knowledge of the "day to day" activities of the Project Manager in order for the OIG to obtain a full understanding of their role and responsibilities.

Furthermore, CACI stated that the task orders required that CACI provide a "Project Supervisor" with specific duties outlined. CACI maintained that by including this position within the task orders, the Contracting Officer and the COR decided that a contract specific Project Manager was necessary and appropriate for the task orders. CACI stated that its proposals identified the employee working as a Project Manager and by the government awarding the task orders with that position, and later reviewing and approving, without question, the invoices where that employee's time was billed, the government acknowledged that the employee was completing their required functions.

We agree with JMD that the Statement of Work for the subject task orders required the contractor to provide a Project Supervisor to the Southern and Eastern Districts. However, CACI billed this position as a Project Manager under these two task orders, a position that is billed at a higher rate than the Project Supervisor. Regardless of that fact, the employee billed in this role failed to meet the contractual duties of either position.

JMD's response stated that the "task orders contemplated that, to the extent necessary, the Project Supervisors would manage and develop the on-site team to support the USAO district offices and AUSAs throughout all phases of criminal and civil case development, including, among other tasks, timekeeping, overtime, leave, and invoices." Although JMD might have intended for the Project Supervisor to complete these tasks, the labor category responsibilities and duties written in the contract do not include responsibility for timekeeping, overtime, leave, and invoices. Instead, the contract does outline Project Supervisor duties to include specific involvement in cases. The MEGA 4 contract details the responsibilities and duties of a Project Supervisor as follows:

Works under the direction of the Project Manager. For very large cases, may be directly responsible for all work in a major task area. For example, on a case involving document discovery of millions of pages, a Project Supervisor may be responsible for all document discovery/document collection activities for the case. For a case involving an out of town trial, a Project Supervisor may be the individual in charge of

the out of town trial support center. Alternatively, may assist several Project Managers on a multitude of smaller cases simultaneously. For example, the Project Supervisor may be responsible for coordinating delivery of document coding in one case, while simultaneously overseeing production of witness binders in another. Requires direct supervision of a variety of Contractor staff, including clerical staff and first line supervisors. May require frequent contact with Government COR, Case Managers, trial attorneys, client agency staff, etc., as well as with other Contractor components.

Our understanding of the actual "day to day" duties of the employee billed as the Project Manager, was based on conversations with the employee working in that role under Task Orders 43 and 67. That individual had performed as Project Manager since July 2015. We also obtained our understanding from CACI contract employees and USAO district staff, including the districts' Administrative Officers, Paralegal Supervisors, and various AUSAs who work directly with CACI litigation support staff assigned to their cases.

Both the Project Manager and Project Supervisor responsibilities and duties outlined in the MEGA 4 contract and task orders require the employee working in that role to manage the contractor staffs' workload activities. Specifically, it provides that the Project Manager/Supervisor will communicate with attorneys, support staff, and management to anticipate and manage changes to the projects, task order requirements, scope, and schedule, and will determine if additional resources are needed for individual projects. The Project Manager/Supervisor is responsible for assigning staff and maintaining communication and understanding of project deadlines, assignments, and objectives as well as performing ongoing review of a project's status to identify any potential risks.

The employee working as a Project Manager under Task Orders 43 and 67 informed the OIG that she had no involvement in the "day to day" workload, had no involvement in cases that CACI employees were supporting, and was not aware of the cases on which CACI employees were working. She stated that she did not interact with AUSAs or any other government employees to manage project or task completion. In fact, when we asked the AUSAs in the districts about their interaction with the CACI employee working as a Project Manager, not one knew who she was or could remember ever speaking to her. Our conversations with both CACI staff assigned to cases within the district, as well as government paralegal supervisors and AUSAs, made it clear that all direction on the "day to day" activities related to workload of the CACI employees was being directed by government personnel and not the Project Manager/Supervisor as intended under the MEGA 4 contract and task orders. We discuss this further in Recommendation 7 below.

Therefore, this recommendation is unresolved. This recommendation can be resolved when JMD provides an adequate corrective action plan to remedy

the \$175,704 in direct labor costs for the Project Manager position billed to task orders at the Southern and Eastern districts for the employee that did not perform the functions of the position as required by the contract.

- 7. Evaluate the Project Manager position across the MEGA 4 contract. This should include: (1) evaluating the requirement for locations with seven or more employees to automatically include an on-site Project Manager without performing a needs assessment; (2) ensuring the contract employee in this position performs the functions required for the labor category; (3) compliance with FAR 37.104 to avoid administering the contract as a personal service contract; and (4) compliance with FAR 31.202 requiring costs be accumulated and billed consistently.**

Resolved. JMD concurred in part with our recommendation. JMD stated in its response that it intends to eliminate the requirement that the contractor automatically add an additional project supervisor position whenever a task order anticipates seven or more contract legal support staff. Instead, JMD will determine on a task order by task order basis whether an additional project supervisor position is in the best interest of the government. For districts where the position is deemed to not be in the best interest of the government, the contractor will designate one of the proposed positions to operate as the on-site point-of-contact for the government and other contracted litigation support personnel.

JMD objected to any determination that the MEGA 4 contract is a personal service contract. However, we did not conclude that the MEGA 4 contract or task orders, as administered, are in violation of the FAR's prohibition against personal service contracts. Rather, we observed that federal employees were the sole source of workload management to the contractor's litigation support employees in the Eastern and Southern Districts, which risks the appearance of a personal service contract, and did not meet the requirement to have a contract supervisor (Project Manager/Supervisor) as the primary contact for workload management.

CACI did not concur with the report conclusion that labor costs billed for the Project Manager at the Eastern and Southern Districts were not compliant with FAR 31.202(a) because workload management services are not the sole task of a Project Manager. CACI further stated that it understands our concerns regarding personal services contracts and is working with its customer to provide improved workload management services so that its customer does not feel a need to perform that task themselves.

The MEGA 4 contract states that "the contractor is also required to provide administrative and logistical services as part of its normal business operations and overhead; their administrative and logistical services are not separately billable." In USAO districts that do not have seven or more contractor employees, these same administrative functions (timekeeping, scheduling time off requests, and other HR functions) are actually completed

by a single contractor employee who was not separately billed under the MEGA 4 contract (indirect labor). This inconsistent treatment (direct vs. indirect) of the same duties is a direct violation of FAR 31.202(a), which requires labor costs incurred for same purpose to be treated consistently.

This recommendation can be closed when we receive evidence or documentation that JMD has evaluated the Project Manager position across the MEGA 4 contract. This should include: (1) evaluating the requirement for locations with seven or more employees to automatically include an on-site Project Manager without performing a needs assessment; (2) ensuring the contract employee in this position performs the functions required for the labor category; (3) compliance with FAR 37.104 to avoid administering the contract as a personal service contract; and (4) compliance with FAR 31.202 requiring costs be accumulated and billed consistently.

8. Remedy \$108,014 in labor costs for the individual who was hired for the Paralegal position and billed to Task Order 10 without receiving the necessary waiver from the COR.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that the failure to seek and grant a waiver for this individual appears to be a simple oversight by both the contractor and the USAO district office, including the COR. JMD referred to language in the report that the USAO reviewed the resume of the individual and was satisfied that the person met the requirements for the tasks at issue. JMD further stated that the individual successfully performed the tasks required under the task order, and the district office was satisfied with the individual's performance. JMD stated that it believed that, had the contractor sought a waiver for this individual, one would have been granted by the COR. JMD further stated that it intends to reiterate the need that Administrative Officers ensure that, when required, waiver requests be forwarded to the Contracting Officer and COR for review and approval prior to contract performance.

CACI did not concur with our recommendation. CACI stated in its response that it acknowledges that the employee billed as a Paralegal did not possess a Paralegal certificate, that it did not obtain a formal waiver for the employee's education, and as a result, it did not meet contract requirements. CACI also stated that the employee's resume, which clearly reflects that the individual didn't possess a paralegal certificate, was reviewed by the District Administrative Officer prior to being selected to fill the position. CACI further stated that the COR was copied on the email containing the approval, which constituted a de facto waiver to place this individual in this position.

Neither JMD's nor CACI's response dispute the finding that the employee's qualifications were not in compliance with the MEGA 4 contract requirements for a Paralegal, and that no waiver was sought or granted. As stated in the body of this audit report, the employee's resume was reviewed by the district prior to the employee being approved for the position, and the employee's

performance was deemed to be acceptable. However, no evidence has been provided to support the claim that this employee was hired despite the explicit knowledge that the individual did not meet the only specific qualification contained in the contract. Although JMD asserts that this was a "simple oversight" for which a waiver would have been granted had one been sought, JMD has not provided us with documentation of a waiver to remedy these questioned costs. JMD's assertions also are contrary to statements from the Contracting Officer during our audit fieldwork, who represented to us that she was unaware that CACI recommended and hired an employee who did not meet required qualifications. The Contracting Officer assured the OIG that no waiver would have been granted if it made the request.

This recommendation is unresolved. The recommendation can be resolved when JMD provides an adequate corrective action plan to remedy the \$108,014 in labor costs for the individual who was hired for the Paralegal position and billed to Task Order 10 without receiving the necessary waiver from the Contracting Officer or COR, which may include, among other remedies, the Contracting Officer or COR providing a retroactive waiver for this individual.

9. Ensure that CACI implements policies and procedures to verify adherence to task order requirements through enhanced monitoring of CACI's performance under current task orders and due consideration of terms to address these issues in future task orders and contracts.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that it is not the role of the agency to require a contractor to develop and implement internal policies to ensure compliance with contractual requirements and that it is the contractor's decision to develop policies and procedures to comply with requirements and meet the terms and conditions of a contract. Additionally, JMD stated that it is the role of the agency to administer the contract and task orders to ensure to the best of its ability that the contractor complies with the requirements and that the Government receives goods or services at the contracted prices.

CACI did not provide a response to this recommendation.

In our audit report, we identified several instances of CACI's noncompliance with MEGA 4 contract and task order requirements. JMD's failure to detect these instances of noncompliance indicates that JMD needs to strengthen its oversight of this contract and to consider revising the terms in future task orders to ensure that it is best positioned to effectively manage its contracts.

This recommendation can be resolved when JMD provides its plan to more effectively monitor CACI's compliance with task order requirements, such as increasing its detective controls to better ensure it is able to identify instances of CACI's noncompliance. Further, we believe it would be prudent for JMD to work with CACI to understand the policies and procedures CACI is

using to ensure its compliance with MEGA 4 contract and task order requirements, particularly for areas where we identified deficiencies.

This recommendation can be closed when JMD provides evidence that it has given due consideration to incorporating terms into future task orders and contracts designed to verify the contractor's adherence to task order requirements.

10. Remedy \$11,225 in travel costs related to three task orders because CACI failed to obtain pre-approval from the COR, billed local travel, or failed to comply with its own internal policies and procedures.

Resolved. JMD concurred with our recommendation to remedy travel costs questioned due to local travel and stated that it will seek reimbursement from CACI for these costs. As discussed in its response to Recommendations 1, 2, 3, and 5, JMD stated that it intends to issue a memorandum to Administrative Officers noting travel must receive prior approval from the Contracting Officer or COR, and that there is a requirement to review and verify invoices prior to payment, including documentation evidencing pre-approval.

In its response, JMD also stated that it did not intend to seek reimbursement based on CACI's failure to comply with its internal travel policies and procedures. However, this position has no effect on JMD's agreement to seek remedy for the questioned costs. Nevertheless, we believe CACI's adherence to its own internal policies and procedures is important to helping ensure that CACI complies with the terms of the contract related to travel costs.

CACI concurred with our recommendation. CACI stated in its response that it concurs with \$7,614 of the questioned travel costs, which is the amount of questioned travel costs once the duplicated amounts for pre-approval of travel and noncompliance with internal policies and procedures are removed.

This recommendation can be closed when we receive documentation demonstrating that JMD remedied the questioned travel costs.

11. Ensure that CACI implements written travel policies and procedures specific to the MEGA 4 contract to include items such as pre-approvals, local travel, and compliance with established internal travel policies and procedures through enhanced monitoring of CACI's performance under current task orders and due consideration of terms to address these issues in future task orders and contracts.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that it is not the role of the agency to require a contractor to develop and implement internal policies to ensure compliance with contractual requirements, and that it is the contractor's decision to develop policies and procedures to comply with requirements and meet the terms and

conditions of a contract. Additionally, JMD stated that it is the role of the agency to administer the contract and task orders to ensure to the best of its ability that the contractor complies with the requirements and that the Government receives goods or services at the contracted prices.

CACI did not provide a response to this recommendation.

As noted in the report, we found instances where CACI failed to comply with contractual requirements and federal regulations related to travel. JMD's failure to detect these instances of noncompliance indicates that JMD needs to strengthen its oversight of this contract and consider revising the terms in future task orders to ensure that it is best positioned to effectively manage its contract.

This recommendation can be resolved when JMD provides evidence that it has modified its practices with regard to overseeing pre-approvals, local travel, and compliance with established internal policies and procedures for contractor travel, in a way that improves its ability to detect and mitigate noncompliance by the contractor, or that steps have been taken by CACI, such as the implementation of policies and procedures that ensure compliance with the MEGA 4 contract and task orders with regard to the travel requirements identified in this report.

This recommendation can be closed when JMD provides evidence that it has given due consideration to incorporating terms into future task orders and contracts designed to verify adherence to contract terms addressing contractor travel.

12. Remedy \$480,157 in subcontract costs billed to Task Order 36 that did not comply with approved subcontractor agreements and FAR 52.244-2.

Unresolved. JMD concurred in part with our recommendation, but disagreed with key parts of our recommendation. As a result, this recommendation is unresolved. We analyze the part of our recommendation that JMD agrees with separately from the part that it disagrees with in the following sections.

Labor Category

JMD agreed that CACI did not comply with FAR 52.244-2. JMD stated in its response that it was unable to verify that CACI sought approval of the subcontractor labor category in question prior to performance of the task order. JMD stated that it will provide CACI with the opportunity to provide documentation evidencing prior approval, or in the alternative, to request approval of the subcontractor category retroactively. JMD further stated that it won't seek reimbursement of the costs if sufficient documentation is provided, but to the extent that adequate supporting documentation is not provided or the labor category is not approved, it will seek reimbursement for the costs associated with that category (\$67,491).

CACI did not concur with our recommendation. CACI stated in its response that it received approval for the Industry Specialist Consultant labor category when the subcontractor was approved in May 2015. CACI also provided an e-mail dated April 26, 2016, between the Administrative Officer and Contracting Officer discussing the transfer of the subcontractor position from one task order to another. CACI stated that it believes that this email provides approval to use a subcontractor across all task orders. CACI also stated that it disagrees with our determination that it is not in compliance with FAR 52.244-2 because this FAR clause is not applicable to CACI. However, CACI stated that the Indefinite Delivery/Indefinite Quantity contract clause H.17 is applicable and that it obtained prior written consent by the Contracting Officer for the subcontractor in question.

We reviewed the documentation provided by CACI with its response and determined that the labor category approved with the subcontractor agreement is not the same labor category billed to Task Order 36; therefore, the labor category in question was not approved by the Contracting Officer to perform work under the contract. The Industry Specialist Consultant who worked on Task Order 36 was not included in the subcontractor agreement until Modification 7 in December 2015, which was not submitted to the Contracting Officer for approval. We found that when the Contracting Officer provided approval for a subcontractor to perform work on the MEGA 4 contract in May 2015, she included the requirement that if any changes occur, a supplemental request must be submitted for approval. CACI did not submit the changes to the subcontractor's agreement to the Contracting Officer for approval; consequently, it is not in compliance with the requirements of the MEGA 4 contract. Additionally, we reviewed the email discussion provided by CACI and determined that this was only approval to transfer a subcontractor working on one task order to another and did not include a request to bill a new labor category.

This part of the recommendation can be closed when we receive documentation demonstrating that JMD received sufficient documentation of prior approval of the labor category, was granted approval of the labor category, or received reimbursement for costs of the unapproved labor category.

Subcontractor Agreement

JMD did not concur with our finding that CACI did not comply with approved subcontractor agreements. JMD stated in its response that, "With regard to the alleged failure of a subcontractor to comply with certain terms and conditions of its contract with CACI, that is a matter between the MEGA 4 contractor and its subcontractor, and does not involve the Government." JMD also stated that the terms and conditions between the MEGA 4 contractor and subcontractor are, "immaterial to the Department's contractual relationship with the MEGA 4 contractor." Additionally, JMD stated that the government's only concern is whether the MEGA 4 contractor adheres to the terms and conditions of the contract and task orders.

CACI did not concur with this part of the recommendation. CACI stated in its response that, "whether CACI's subcontractor complied with the terms and conditions of its agreement with CACI is a matter between CACI and that subcontractor. CACI has neither an express or implied obligation with DOJ under the MEGA 4 contract nor a regulatory requirement under FAR Part 44 or elsewhere to ensure that a subcontractor comply with the terms and conditions of its subcontract with CACI." CACI also stated in its response that it was responsible for the overall contract performance and that it was in full compliance with contractual requirements related to the subcontractor.

We disagree with JMD and CACI that compliance with subcontractor agreement terms and conditions is not the concern of the government. JMD issued the MEGA 4 contract with CACI with the expectation and requirement that it adhere to the contract terms and conditions. Government contracts require contractors to comply with FAR Subpart 31.2, which includes determining the allowability of all costs billed to the government. Specifically, FAR 31.201-2(d) states that contractors are responsible for maintaining records, including supporting documentation, to demonstrate that billed costs are allocable to the contract and comply with applicable regulations and contract terms and conditions.

During our audit, because CACI could not support subcontractor costs that it billed the government, we were unable to determine whether the costs associated with work performed by one of the subcontractors were allowable in accordance with applicable regulations and contract terms and conditions. CACI provided only the subcontractor invoices without supporting documentation, such as timekeeping records. We also reviewed the subcontractor agreement and determined that it included a requirement for subcontractors to provide timesheets for individuals billed to CACI with its invoice. CACI did not provide the required timesheets during the audit or any other documentation that supported the hours worked. As a result, we question the \$480,157 billed by CACI to the government for subcontractor costs as unallowable. We address JMD's assertions regarding its purview of CACI's subcontractor monitoring policies and procedures in our analysis of Recommendation 13.

This recommendation can be resolved when JMD provides an adequate corrective action plan to remedy the subcontract costs billed that we were unable to determine were allowable and in accordance with applicable regulations and contract terms and conditions.

- 13. Ensure that CACI implements policies and procedures to comply with subcontractor agreements and FAR 52.244-2 through enhanced monitoring of CACI's performance under current task orders and due consideration of terms to address these issues in future task orders and contracts.**

Unresolved. JMD did not concur with our recommendation. JMD stated in its

response that it is not the role of the agency to require a contractor to develop and implement internal policies to ensure compliance with contractual requirements and that it is the contractor's decision to develop policies and procedures to comply with requirements and meet the terms and conditions of a contract. Additionally, JMD stated that it is the role of the agency to administer the contract and task orders to ensure to the best of its ability that the contractor complies with the requirements and that the Government receives goods or services at the contracted prices.

CACI stated in its response that, "whether CACI's subcontractor complied with the terms and conditions of its agreement with CACI is a matter between CACI and that subcontractor. CACI has neither an express or implied obligation with DOJ under the MEGA 4 contract nor a regulatory requirement under FAR Part 44 or elsewhere to ensure that a subcontractor comply with the terms and conditions of its subcontract with CACI." CACI also stated in its response that it was responsible for the overall contract performance and that it was in full compliance with contractual requirements related to the subcontractor.

JMD is responsible for providing oversight of the contract sufficient to ensure that all costs billed under the contract are in accordance with applicable regulations and contract terms and conditions and, therefore, allowable. However, because CACI could not support certain subcontractor costs that it billed the government, we were unable to determine whether the costs associated with work performed by one of the subcontractors were allowable.

This recommendation can be resolved when JMD provides evidence that the Contracting Officer is engaged in sufficient monitoring to ensure that CACI can support the subcontractor costs it bills the government.

This recommendation can be closed when JMD provides evidence that it has given due consideration to incorporating terms into future task orders and contracts designed to verify adherence to contract terms addressing the work of subcontractors.

14. Remedy \$79,961 in labor costs for the Law Clerk II position billed to Task Order 43 for an employee not performing the functions required by the contract. Remedy \$55,101 in unallowable labor costs billed to Task Order 67 for the Law Clerk II labor category not awarded within the task order.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that CACI utilized the Law Clerk II position, with the government's knowledge, to perform the duties of the Project Supervisor and that the Project Supervisor's billed rate was likely a cost savings to the government. With regard to the fact that the Law Clerk II labor category was not included under Task Order 67, JMD maintained that when task orders are initially competed, the number of positions required is essentially an estimate of the

government's anticipated need, and those needs often change throughout the life of the task order. JMD notes that this can result in additional labor categories being added to the task orders depending on such needs. JMD stated that because the Law Clerk II position and rate was established in the underlying contract, it was permissible to utilize this labor category, even though it was not included in the task order. JMD stated that it intends to reiterate in a memorandum the need for Administrative Officers to ensure that, when required, written waivers be submitted to and approved by the Contracting Officer as appropriate prior to contract performance, and that any modifications to task orders be submitted to the Contracting Officer.

CACI did not concur with our recommendation. CACI stated in its response that when the previous Project Manager left that position, that individual was replaced by an employee who performed the Project Manager duties but was billed as a Law Clerk II. CACI stated that this was done with the awareness and approval of the government.

The costs questioned under Law Clerk II related to the employee working at the Eastern and Southern districts as a Project Manager. As previously stated in Recommendation 7, the employee working in the role of Project Manager/Supervisor was not fulfilling the contract requirements and duties of that position. That individual was also not fulfilling the duties of the Law Clerk II position. Task Order 43 states that the Law Clerk II shall, "provide support to the government prosecutors during all phases of criminal and civil investigations, litigation, and appeals by performing complex legal research, drafting legal documents such as motions and memoranda or law, assisting during hearings and at trial, writing appellate briefs as well as communicating directly with experts." As we have previously discussed, this employee told us that she only completed administrative coordination of the employee's timekeeping, time off, and human resource functions and did not have any interaction with AUSAs or involvement with individual cases. The MEGA 4 contract states that administrative functions, as described by the employee being billed as a Law Clerk II, are, "not intended to be separately billable" and should not have been paid by the government as a direct cost under this task order. Additionally, in other districts where there are not seven or more contractor employees, this administrative role was fulfilled by another CACI employee, who is not separately billed under the MEGA 4 task orders. This disparity in billing is a violation of FAR 31.202(a), which requires that costs incurred for the same purpose and under like circumstances be treated consistently when assigning a final cost objective or indirect cost pool.

CACI sought approval to fill the Project Manager position, with an unqualified employee, from the districts' Administrative Officers and not the Contracting Officer or COR. The Administrative Officers lacked the authority to issue a waiver or otherwise approve this action. Only the Contracting Officer or COR had authority to grant such a request, and would not have been otherwise aware that an employee was unqualified to fill the role through simply reviewing the invoices, as CACI billed the employee as a Law Clerk II.

Additionally, we disagree with JMD's comment that task orders are awarded with estimates of the government's needs and, as those needs change, the government can add numbers of positions, hours, and even new positions not originally awarded under the task order. By awarding new positions that were not originally included in the solicitation and bidding process of the task order, the government could be diminishing competition and directing work to particular contractors. Even changing the number of contractor employees within a particular labor category can have a material effect on the pricing competition as contractors have different labor rates for various positions. By changing the mix of labor categories and number of employees under the task order, the basis for the original award of the task order could be effected as the contractor awarded might end up no longer representing the lowest bid.

Therefore, this recommendation is unresolved. This recommendation can be resolved when JMD provides an adequate corrective action plan to remedy the \$79,961 in labor costs for the Law Clerk II position billed to Task Order 43 for an employee not performing the functions required by the contract, and the \$55,101 in unallowable labor costs billed to Task Order 67 for the Law Clerk II labor category not awarded within the task order.

15. Remedy \$17,531 in labor costs for the Law Clerk I labor billed to Task Order 36 related to the overpaid labor rate.

Resolved. JMD concurred with our recommendation. JMD stated in its response that it will seek reimbursement from the contractor.

CACI concurred with our recommendation.

This recommendation can be closed when we receive documentation demonstrating that JMD received reimbursement from CACI for the \$17,531 in labor costs for the Law Clerk I labor billed to Task Order 36, or otherwise remedied the costs.

16. Ensure that CACI implements policies, procedures, and controls to prevent billing incorrect labor rates through enhanced monitoring of CACI's performance under current task orders and due consideration, of terms to address these issues in future task orders and contracts.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that it is not the role of the agency to require a contractor to

develop and implement internal policies to ensure compliance with contractual requirements, and that it is the contractor's decision to develop policies and procedures to comply with requirements and meet the terms and conditions of a contract. Additionally, JMD stated that it is the role of the agency to administer the contract and task orders to ensure to the best of its ability that the contractor complies with the requirements and that the Government receives goods or services at the contracted prices.

CACI also did not concur with our recommendation. CACI stated in its response that it has adequate internal controls and procedures in place to ensure costs are billed accurately. However, we note that these controls failed to prevent an incorrect billing rate entered into its system and billed to the MEGA 4 contract.

As our report explains, CACI did not adhere to the requirements of the MEGA 4 contract and task orders, and we found that this noncompliance was, in part, caused by deficiencies in CACI's policies and procedures that would help ensure its compliance with the specific requirements of the MEGA 4 contract and task orders.

JMD has a responsibility to provide oversight sufficient to ensure that it detects incorrect billings. Therefore, this recommendation can be resolved when JMD demonstrates that it has sufficient monitoring and controls to detect incorrectly billed labor rates.

This recommendation can be closed when JMD provides evidence that it has given due consideration to incorporating terms into future task orders and contracts designed to verify accurate billing at correct labor rates.

17. Remedy \$1,468 (\$1,010 for Task Order 43 and \$458 for Task Order 67) in questioned travel costs for lodging amounts that exceeded per diem amounts and items such as first class airfare, per diem paid for a day trip, and an unsupported cost included on an employee's hotel bill.

Resolved. JMD concurred with our recommendation. JMD stated in its response that it will review any supporting documentation CACI provides for the questioned costs, including per diem amounts that were exceeded. JMD further stated that if CACI is unable to provide documentation, JMD will seek reimbursement of the questioned costs.

CACI concurred with our recommendation for the \$458 in travel costs under Task Order 67. The remaining \$1,010 in questioned travel costs are also part of Recommendation 10 that CACI agreed to remedy.

This recommendation can be closed when we receive documentation demonstrating that JMD has remedied the questioned travel costs.

18. Ensure that CACI develops and implements internal control policies and procedures to ensure travel costs incurred and billed are in compliance with the contract terms and federal regulations through enhanced monitoring of CACI's performance under current task orders and due consideration of terms to address these issues in future task orders and contracts.

Unresolved. JMD did not concur with our recommendation. JMD stated in its response that it is not the role of the agency to require a contractor to develop and implement internal policies to ensure compliance with contractual requirements, and that it is the contractor's decision to develop policies and procedures to comply with requirements and meet the terms and conditions of a contract. Additionally, JMD stated that it is the role of the agency to administer the contract and task orders to ensure to the best of its ability that the contractor complies with the requirements and that the Government receives goods or services at the contracted prices.

CACI did not provide a response to this recommendation.

JMD's administration of the contract did not detect CACI's failure to adhere to MEGA 4 contract and task order requirements.

This recommendation can be resolved when JMD provides an adequate corrective action plan for oversight of the contract and task orders to ensure that CACI is billing the government for travel costs incurred and billed under the MEGA 4 contract in compliance with the contract terms and federal regulations.

This recommendation can be closed when JMD provides evidence that it has given due consideration to incorporating terms into future task orders and contracts designed to ensure that travel costs incurred and billed are in compliance with the contract terms and federal regulations.

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