

Naval Audit Service



Audit Report



Vendor Legitimacy

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N2009-0034
8 June 2009

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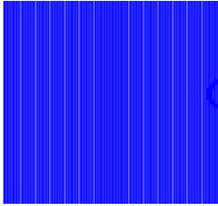
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DEPARTMENT OF THE NAVY
NAVAL AUDIT SERVICE
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7540
N2009-NAA000-0139.000
8 Jun 09

MEMORANDUM FOR COMMANDER, NAVAL AIR WARFARE TRAINING
CENTER TRAINING SYSTEMS DIVISION

Subj: **VENDOR LEGITIMACY (AUDIT REPORT N2009-0034)**

Ref: (a) NAVAUDSVC ltr 7510/N2006-NAA000-0102.000 dated 12 Sep 06.
(b) SECNAV Instruction 7510.7F, "Department of the Navy Internal Audit"

Encl: (1) Status of Recommendations and Corrective Actions
(2) Management Responses from Commander, Naval Air Systems Command

1. Introduction.

a. Reference (a) announced a Naval Audit Service (NAVAUDSVC) audit of vendor legitimacy. This draft report is a result of matters that came to our attention during that audit. We are providing the draft report for your review in accordance with reference (b). Paragraph 6 provides audit results, and paragraph 7 provides our recommendations. Based on in-process review efforts by the contracting activity, Naval Air Warfare Center Training Systems Division (NAWCTSD), we identified that approximately \$606,000 for nine tactical training classes had been invoiced and paid even though the training classes were not actually provided by either Blackwater or its subcontractor (American Shooting Center (ASC)). To address the conditions found (issues with contractor invoicing, documentation, quality control, supervision, and Federal Acquisition Regulation/Defense Federal Acquisition Regulation (FAR/DFAR) compliance), Recommendations 1 through 4 are addressed to Commander, Naval Air Warfare Center Training Systems Division.

b. During our prior audit of vendor legitimacy, in February 2007, we found that NAWCTSD paid invoices to a contractor, Blackwater, for training support, but did not have supporting documentation to demonstrate that the classes were actually held. We referred this concern to the NAWCTSD Command Evaluation and Control Office, which initiated an internal review that included the contracting officer requesting from Blackwater, supporting documentation from Fiscal Year (FY) 2004 to FY 2006. The NAWCTSD review found that between May and October 2005, Blackwater invoiced for, and was paid by, NAWCTSD for eight classes costing \$539,128 which were never

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held. NAWCTSD subsequently identified an additional ninth course, valued at \$67,391, which was invoiced and paid, but not conducted. Navy Center for Security Forces (CSF), the requiring activity for the Navy's contract, gathers information pertaining to training attendance, provides course contents and schedules, and also establishes the schedule of courses from which the contracting activity (NAWCTSD) issues task orders authorizing performance. According to ASC, CSF informed ASC that the questioned course schedules were being revised. Blackwater said they were never informed of the course schedule revisions (or cancellations), but that the services were not performed. NAWCTSD issued task orders to Blackwater, although it appears the task orders should have been cancelled, based on course schedule changes and revisions. Blackwater never updated their scheduled payments to ASC, and paid the subcontractor as if the courses were still being held. Blackwater said it was an administrative oversight.

c. By letter dated 11 September 2007, the NAWCTSD contracting officer, upon coordination and concurrence with the NAWCTSD Command Evaluation and Control Office and NAVAUDSVC, requested from Blackwater, recoupment of funds for \$539,128 worth of classes held, but not conducted, despite the contract's cancellation policy. Blackwater then informed the contracting officer it would repay \$425,000 to the U.S. Treasury, stating that Blackwater was not contractually obligated to return any funds because of a cancellation provision that requires the Government to make full payment for any course for which a task order is issued and cancelled with less than 10 calendar days advance notice, but would remit as good business partners. However these classes were not cancelled, they were never conducted.

3. **Purpose of Audit.** The objective of this audit was to verify that NAWCTSD properly administered training contracts with Blackwater Worldwide (Blackwater). As noted, this audit developed out of issues that came to our attention during our previous audit of Vendor Legitimacy (N2007-0043, 27 June 2007).

4. **Background.** The objective of audit N2007-0043, "Vendor Legitimacy," was to verify that selected purchase card transactions were conducted with legitimate business entities and in accordance with Navy policy. During the audit, we identified problems with the contract invoicing documentation for contract N61339-02-D-0015 with Blackwater. We referred our concerns to NAWCTSD Command Evaluation and Control Office, which initiated an internal review that included the contracting officer requesting supporting invoice documentation from Blackwater for FY 2004 to FY 2006. The NAWCTSD review found that Blackwater had billed to, and was paid by, NAWCTSD for nine classes costing \$606,519 that were ordered, but never held.

a. Blackwater Lodge and Training Center, doing business as Blackwater Worldwide, is a private military contractor and security firm located in Moyock, NC. Blackwater was the largest of the U.S. State Department's three private security contractors at the time of the audit. Blackwater purportedly offers "the most comprehensive private

tactical training facility in the United States.” Blackwater derives at least 90 percent of its revenue from U.S. Government contracts. Approximately 66 percent of its U.S. Government contracts are awarded on a sole-source basis, however the NAWCTSD contract was awarded on a full-and-open competition basis.

(1) Contract N61339-02-D-0015 is a task order contract, which means no specific quantity of items was ordered, and task orders were issued throughout the contract performance period based on course schedules provided by the requiring activity, CSF, to the contracting activity, NAWCTSD. The original contract award maximum was \$35,667,512, but after modifications, it had been increased to \$66,055,328.

5. Criteria. Criteria also included Federal Acquisition Regulations and contract N61339-02-D-0015 provisions.

6. Scope and Methodology.

a. The scope for this audit assist project included:

- Cataloging NAWCTSD’s N61339-02-D-0015 contract documents and data;
- Reviewing N61339-02-D-0015 contract documentation and related information from NAWCTSD, Blackwater, and ASC;
- Reconciling Blackwater’s performance with billing records;
- Interviewing command and contractor personnel regarding contract issues; and
- Identifying material cost impacts and/or potentially improper activities, if any.

b. We did not perform a complete review of internal controls at NAWCTSD or Blackwater. Also, Blackwater was unable to provide contract documentation for FYs 2003 and 2004, which limited our ability to review that information.

c. Our methodology included performing a review of the contract to determine what was required of Blackwater by the contract provisions. We met with personnel at NAWCTSD, Blackwater, and ASC. We reconciled invoices, task orders, and bank statements provided by NAWCTSD and Blackwater in order to determine if any over-billing had occurred.

d. We conducted this limited scope performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the

evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

7. Audit Results.

a. The NAWCTSD Command Evaluation and Control Office, during its internal review of contract N61339-02-D-0015, found that Blackwater had been paid approximately \$606,000 in invoices for nine tactical training classes that had been ordered via the contract, even though the training classes were not actually provided by either Blackwater or its subcontractor. The subcontractor, ASC, never invoiced Blackwater for the courses; Blackwater still sent an invoice to NAWCTSD. NAWCTSD issued valid task orders to Blackwater, although it appears the task orders should have been cancelled based on course schedule changes and revisions. The NAWCTSD contract with Blackwater contained a course cancellation provision requiring 10 calendar days advance notice, otherwise the Government would make full payment for an ordered course. Upon notification of findings from the contracting officer and a request for recoupment, Blackwater informed NAWCTSD it would repay \$425,000 of the initially identified \$539,128 to the U.S. Treasury, stating that Blackwater was not contractually obligated to return any funds, but would do so as good business partners. Upon further review by NAWCTSD, a ninth never-conducted course costing \$67,391 was discovered to have been billed and paid. The contracting officer sent a second letter requesting recoupment for the ninth course. Although Blackwater initially said it would not return any additional money above the \$425,000, it later agreed to refund the U.S. Treasury \$606,000 for the nine not held classes, with no explanation. In total, Blackwater returned \$606,000 to the U.S. Treasury as of 22 April 2008.

b. In order to determine whether invoices were duplicated, contained errors, or exceeded the amount of items actually offered, we performed a partial review of task orders and invoices provided by NAWCTSD, Orlando, FL. We selected 6 task orders from each fiscal year of the contract performance period, totaling 24 task orders from a total universe of 195 task orders. These did not include the invoices for the nine classes in question. We traced the contract line items to their respective invoices. These selected 24 task orders were found to be in accordance with FAR and had none of the issues cited above. We performed an analysis on task order 0156 to determine whether the correct number of instructors was provided to the Navy. We compared independent contractors' timesheets to the list of courses provided during that time period. We determined that 14 independent contractors were required by that particular task order. Based on our analysis, we could not determine whether the correct number of instructors was provided. Blackwater claimed they supplemented the independent instructors with two of their own employees. However, since Blackwater outsourced its payroll, there was no way to trace employees' hours worked to a specific task order. We noted weaknesses in NAWCTSD's administration of the contract. Details follow.

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c. Blackwater personnel informed us that no N61339-02-D-0015 contract course files for FY 2003 and 2004 were available because, allegedly, NAWCTSD personnel informed Blackwater that records only need to be kept for 2 years. However, NAWCTSD had maintained complete contract documentation for the entire contract period of performance. Blackwater later gave us a copy of Naval Education and Training (NAVEDTRA) 135B, referenced in the contract, which states, “all [student] records will be retained by the training activity for at least 2 years.” However, the retention of the training records for 2 years only applies to the training activity, not the contractor. FAR 4.703 states contractors are to retain records “regardless of type and...form” for 3 years after the final payment is made on a contract. The Vice President of Contracts and Compliance at Blackwater said Blackwater would follow the FAR from now on.

d. Under the requirements of the contract, Blackwater’s invoices must list certain information, including: name of the supplier; agreement number; date of call (phone calls made about the service offered); date of the course; names of each student; a list showing each course for each student (if the school charges by credit hours); and a breakdown of charges for each student, including credit hours (if offered), tuition, application fees, and other fees. Each student record should contain an invoice as well as a grand total for all students listed on the invoice. Blackwater’s invoices contained the agreement number, the name of the course, and the date the course took place. However, the invoices provided no information regarding students who attended the class and expenses were not itemized by student. Blackwater’s Navy Program Manager stated he believed the Navy’s CFS had a lot of the information we were looking for, including the daily and monthly attendance reports. We spoke with the contracting officer at NAWCTSD, and he stated that since the audit, Blackwater has been including rosters with its invoices.

e. During an interview with ASC, we were informed that Blackwater had minimal supervision over its contract with ASC. Blackwater notified ASC of classes ordered and class dates via e-mail. The only other correspondence Blackwater had with ASC was an occasional phone call from a Blackwater representative when they were in the San Diego, CA area. According to ASC, no Blackwater representatives have physically been to the ASC compound for oversight and observation of the classes conducted there. ASC personnel have stated they have had more contact with Navy representatives regarding the courses than with Blackwater. Blackwater did not perform proper oversight, which resulted in billing of classes not held. Insufficient oversight could put an activity at risk of fraud, waste, and abuse.

8. Recommendations. We recommend Commander, Naval Air Warfare Center Training Systems Division:

Recommendation 1. Establish controls and provide oversight to ensure that the contractors submit invoices containing the following information for each class in which the contractor enrolls students, as required by contract specification:

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- (a) Name of supplier, agreement number, date of call, and dates of the course;
- (b) Name of each student;
- (c) A listing showing each course for each student if the school charges by credit hours; and
- (d) A breakdown of charges for each student, including credit hours (if offered), tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

NAVAIR Response to Recommendation 1. Concur. By contract Modification P00024 issued on 18 August 2007, NAWCTSD incorporated the following NAVAIR clauses into the contract to control the invoicing process; (1) 5252.246-9512 Inspection and Acceptance, (2) 5252.232.9513 Invoicing and Payment Wide Area Workflow (WAWF) Instructions, and (3) 5252.232-9511 Notice of Requirements for Prompt Payment. This modification replaced the previous invoicing procedures with the implementation of payment through WAWF rather than through payment with a Government Purchase Card. In addition to changing the invoicing process, the modification revised the information to be submitted by the contractor with each invoice, to include: (1) contract number, (2) task order number, (3) line item number, (4) date of performance, (5) course title, (6) location of service and, (7) supporting documentation for the receiving report. The supporting documentation including student rosters or instructor rosters will be attached to the receiving report, depending on the contract line item requirement. Contract Modification P000024 provided as Attachment (A).

The invoices, receiving reports, and associated course information are verified by the acceptor, with input from the Contracting Officer's Representative (COR) and training site representatives, prior to acceptance. Since the incorporation of these NAVAIR clauses, the contractor consistently provides the required data with each invoice and receiving report. To specifically ensure compliance with the NAVAIR clauses and to provide oversight of the invoicing process, NAWCTSD's contracting office prints out and files the receiving reports and supporting documentation for each contract Task Order file. Action considered complete/closed 18 August 2007.

NAVAUDSVC Comment on Response to Recommendation 1. The actions taken by NAWCTSD meet the intent of the recommendation. NAWCTSD implemented payment and verification of invoices and required course information through WAWF. This recommendation is closed effective 18 August 2007.

Recommendation 2. Establish controls and provide oversight to ensure that the contractor retains documentation supporting student-training records for 3 years after the final payment is made on the contract as required by FAR.

NAVAIR Response to Recommendation 2. Concur. In accordance with FAR Clause 52.212-5(d)(2), the contractor is required to make available at its office the records, materials, and other evidence for examination, audit, or reproduction for three years after final payment. On 22 January 2009, NAWCTSD verified with the Blackwater Contracts Manager that Blackwater is complying with the FAR requirement by maintaining all training and contracts records for the services provided for 3 years after final payment of all task orders under this contract. The contractor's compliance is required through the remainder of the contract and for 3 years after final payment. Action considered complete/closed 22 January 2009.

NAVAUDSVC Comment on Response to Recommendation 2. The actions taken by NAWCTSD meet the intent of the recommendation. Blackwater is following FAR 52.212-(d)(2). This recommendation is closed effective 22 January 2009.

Recommendation 3. Establish controls and provide oversight to ensure that the contractor prepares and implements a quality control program to monitor the performance of the sub-contractor and ensure the subcontractor is performing the services in accordance with contract specifications.

NAVAIR Response to Recommendation 3. Concur. As of June 2008, Blackwater no longer utilizes subcontractors in the performance of contract N61339-02-D-0015. On 22 January 2009 Blackwater indicated to the Contracting Officer that they currently have a structure in place, per company policy, to monitor subcontractor performance should subcontractors be utilized in the future on this contract. Action considered complete/closed 22 January 2009.

NAVAUDSVC Comment on Response to Recommendation 3. The actions taken by NAWCTSD meet the intent of the recommendation. Blackwater has provided its operating procedures for dealing with subcontracts. This recommendation is closed effective 22 January 2009.

Recommendation 4. Establish procedures to ensure the Contracting Officer's Representative performs contract duties in accordance with the FAR and DFAR.

NAVAIR Response to Recommendation 4. Concur. NAVAIR Instruction 4200.28D establishes policies and procedures for contract oversight. These policies and procedures include ensuring COR training is current, performing periodic reviews of the COR's files, and COR's adherence to the appointed duties, ensuring CORs possess copies of the contract and all modifications, and ensuring CORs understand contract requirements and their responsibilities. Additionally, NAVAIR Instruction 4200.28D requires the contracting activity to designate a COR coordinator to monitor the currency of the COR's training and remind contracting officers when refresher training is required. A COR coordinator is in place at NAWCTSD and the Command will continue to raise the awareness level of all involved in the COR program of their roles and responsibilities. In conclusion, NAWCTSD utilizes the FAR, DFARS (including PGI), and NAVAIR Instruction 4200.28D provided as Attachment (B).

Additionally, NAWCTSD has worked closely with the requiring activity, the Center for Security Forces (CSF) in Norfolk, VA, to implement procedures for confirmation of completed training and for communication of changes/cancellations to training ordered under the contract. On 10 October 2007, the CSF Executive Director provided an internal communication process to improve and standardize the manner in which training courses are scheduled and funded. By contract Modification P00027 issued on 3 June 2008, the course cancellation policy was revised to remove the requirement for full payment when cancellation is less than 10 days. Contract Modification P00027 is provided as Attachment (C).

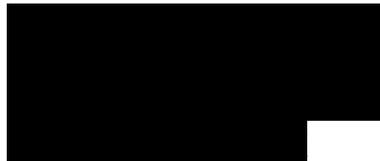
By contract Modification P00033 issued on 22 April 2009, the contract was modified to further enhance the contract terms and tailor the course cancellation policy by requiring the contractor to mitigate the costs associated with any courses cancelled with less than 10 days advance notice, and to clarify there is no presumption the contractor will be entitled to either full or partial payment for training services that have not been provided. In addition to existing contract surveillance and oversight procedures, this modification also incorporated a Quality Assurance Surveillance Plan (QASP) further detailing the roles and responsibilities of how Government personnel will monitor contractor performance to ensure compliance with contract requirements. As with the QASP, the COR appointment letter was revised on 22 April 2009 to include the above procedures for Scheduling, Ordering, Monitoring and Making Payment of courses. Contract Modification P00033 provided as Attachment (D). QASP provided as Attachment (E). COR appointment letter provided as Attachment (F). Action considered complete/closed 22 April 2009.

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NAVAUDSVC Comment on Response to Recommendation 4. The actions taken by NAWCTSD meet the intent of the recommendation. NAWCTSD incorporated a QASP and revised it's COR appointment letter to include new procedures. This recommendation is closed effective 22 April 2009.

9. Any request for this report under the Freedom of Information Act must be approved by the Auditor General of the Navy as required by reference (b). This audit report is also subject to followup in accordance with reference (b).

10. We appreciate the cooperation and courtesies extended to the auditors.



FOIA
(b)(6)

Assistant Auditor General
Research, Development, Acquisition, and Logistics
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Enclosure 1:

Status of Recommendations and Corrective Actions

RECOMMENDATIONS						
Finding ¹	Rec. No.	Page No.	Subject	Status ²	Action Command	Target or Actual Completion Date
1	1	6	<p>Establish controls and provide oversight to ensure that the contractors submit invoices containing the following information for each class the contractor enrolls students for, as required by contract specification:</p> <p>(a) Name of supplier, agreement number, date of call, and dates of the course;</p> <p>(b) Name of each student;</p> <p>(c) A listing showing each course for each student if the school charges by credit hours; and,</p> <p>(d) A breakdown of charges for each student, including credit hours (if offered), tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.</p>	C	Commander, Naval Air Warfare Center Training Systems Division	8/18/07
1	2	7	Establish controls and provide oversight to ensure that the contractor retains documentation supporting student-training records for 3 years after the final payment is made on the contract as required by FAR.	C	Commander, Naval Air Warfare Center Training Systems Division	1/22/09
1	3	7	Establish controls and provide oversight to ensure that the contractor prepares and implements a quality control program to monitor the performance of the sub-contractor and ensure the subcontractor is performing the services in accordance with contract specifications.	C	Commander, Naval Air Warfare Center Training Systems Division	1/22/09
1	4	7	Establish procedures to ensure the Contracting Officer Representative performs contract duties in accordance with the FAR and DFAR.	C	Commander, Naval Air Warfare Center Training Systems Division	1/22/09

¹ / + = Indicates repeat finding

² / O = Recommendation is open with agreed-to corrective actions; C = Recommendation is closed with all action completed;

U = Recommendation is undecided with resolution efforts in progress

Enclosure 2:

Management Responses from Commander, Naval Air Systems Command



DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
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47123 BUSE ROAD, BLDG 2272
PATUXENT RIVER, MARYLAND 20670-1547

IN REPLY REFER TO
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MAY 06 2009

From: Commander, Naval Air Systems Command
To: Naval Audit Service, Assistant Auditor General for Research, Development, Acquisition, and Logistics Audits
Subj: NAVAL AUDIT SERVICE DRAFT AUDIT REPORT ON VENDOR LEGITIMACY (N2009-NAA000-0139.000)
Ref: (a) NAVAUDSVC Memorandum 7540 N2009-NAA000-0139.000 of 8 Apr 09
Encl: (1) NAVAIR Response to Subject Draft Report

1. Reference (a) forwarded subject draft report for review and comments. Accordingly, enclosure (1) provides our response.
2. Please direct questions concerning the response to [REDACTED] at [REDACTED].
[REDACTED]
Inspector General
Acting

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**NAVAL AIR SYSTEMS COMMAND RESPONSE TO
NAVAUDSVC DRAFT AUDIT REPORT ON
"VENDOR LEGITIMACY"
(N2009-NAA000-0139.000, DATED 08 APRIL 2009)**

FINDING 1: The Naval Air Warfare Center Training Systems Division (NAWCTSD) Command Evaluation and Control Office, during its internal review of contract N61339-02-D-0015, found that Blackwater had been paid approximately \$606,000 in invoices for nine tactical training classes that had been ordered via the contract, even though the training classes were not actually provided by either Blackwater or its subcontractor. The subcontractor, American Shooting Center (ASC), never invoiced Blackwater for the courses; Blackwater still sent an invoice to NAWCTSD. NAWCTSD issued valid task orders to Blackwater, although it appears the task orders should have been cancelled based on course schedule changes and revisions. The NAWCTSD contract with Blackwater contained a course cancellation provision requiring ten calendar days advance notice; otherwise the Government would make full payment for an ordered course. Upon notification of findings from the contracting officer and a request for recoupment, Blackwater informed NAWCTSD it would repay \$425,000 of the initially identified \$539,128 to the U.S. Treasury, stating that Blackwater was not contractually obligated to return any funds, but would do so as good business partners. There was no evidence the Government cancelled these classes because they were never conducted. Upon further review by NAWCTSD, a ninth never-conducted course costing \$67,391 was discovered to have been billed and paid. The contracting officer sent a second letter requesting recoupment for the ninth course. Although Blackwater initially said it would not return any additional money above the \$425,000, it later agreed to refund the U.S. Treasury \$606,000 for the nine not held classes, with no explanation. In total, Blackwater returned \$606,000 to the U.S. Treasury as of 22 April 2008.

In order to determine whether invoices were duplicated, contained errors, or exceeded the amount of items actually offered, we performed a partial review of task orders and invoices provided by NAWCTSD, Orlando, FL. We selected six task orders from each fiscal year of the contract performance period, totaling 24 task orders from a total universe of 195 task orders. These did not include the invoices for the nine classes in question. We traced the contract line items to their respective invoices. These selected 24 task orders were found to be in accordance with Federal Acquisition Regulation (FAR) and had none of the issues cited above. We performed an analysis on task order 0156 to determine whether the correct number of instructors was provided to the Navy. We compared independent contractors' timesheets to the list of courses provided during that time period. We determined that 14 independent contractors were required by that particular task order. Based on our analysis, we could not determine whether the correct number of instructors was provided. Blackwater claimed they supplemented the independent instructors with two of their own employees. However, since Blackwater outsourced its payroll, there was no way to trace employees' hours worked to a specific task order. We are noting weaknesses in NAWCTSD's administration of the contract. Details follow.

Blackwater personnel informed us that no N61339-02-D-0015 contract course files for FY 2003 and 2004 were available because allegedly NAWCTSD personnel informed Blackwater that records only need to be kept for two years. However, NAWCTSD had maintained complete contract documentation for the entire contract period of performance. Blackwater later gave us a

Enclosure (1)

copy of Naval Education and Training (NAVEDTRA) 135B, referenced in the contract, which states, "all [student] records will be retained by the training activity for at least two years." However, the retention of the training records for two years only applies to the training activity, not the contractor. FAR 4.703 states contractors are to retain records "regardless of type and...form" for three years after the final payment is made on a contract. The Vice President of Contracts and Compliance at Blackwater said Blackwater would follow the FAR from now on.

Under the requirements of the contract, Blackwater's invoices must list certain information, including: name of the supplier; agreement number; date of call (phone calls made about the service offered); date of the course; names of each student; a list showing each course for each student (if the school charges by credit hours); and a breakdown of charges for each student, including credit hours (if offered), tuition, application fees, and other fees. Each student record should contain an invoice as well as a grand total for all students listed on the invoice. Blackwater's invoices contained the agreement number, the name of the course, and the date the course took place. However, the invoices provided no information regarding students who attended the class and expenses were not itemized by student. Blackwater's Navy Program Manager stated he believed the Navy's Center for Security Forces (CFS) had a lot of the information we were looking for, including the daily and monthly attendance reports. We spoke with the contracting officer at NAWCTSD, and he stated that since the audit, Blackwater has been including rosters with its invoices.

During an interview with ASC, we were informed that Blackwater had minimal supervision over its contract with ASC. Blackwater notified ASC of classes ordered and class dates via e-mail. The only other correspondence Blackwater had with ASC was an occasional phone call from a Blackwater representative when they were in the San Diego, CA area. According to ASC, no Blackwater representatives have physically been to the ASC compound for oversight and observation of the classes conducted there. ASC personnel have stated they have had more contact with Navy representatives regarding the courses than with Blackwater. Blackwater did not perform proper oversight, which resulted in billing of classes not held. Insufficient oversight could put an activity at risk of fraud, waste, and abuse.

NAVAIR RESPONSE: Concur.

RECOMMENDATION 1: Commander, NAWCTSD establish controls and provide oversight to ensure that the contractors submit invoices containing the following information for each class the contractor enrolls students for, as required by contract specification:

- (a) name of supplier, agreement number, date of call, and dates of the course;
 - (b) name of each student;
 - (c) a listing showing each course for each student if the school charges by credit hours;
- and,

(d) a breakdown of charges for each student, including credit hours (if offered), tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

NAVAIR RESPONSE: Concur. By contract Modification P00024 issued on 18 August 2007, NAWCTSD incorporated the following NAVAIR clauses into the contract to control the invoicing process; (1) 5252.246-9512 Inspection and Acceptance, (2) 5252.232-9513 Invoicing and Payment Wide Area Workflow (WAWF) Instructions, and (3) 5252.232-9511 Notice of Requirements for Prompt Payment. This modification replaced the previous invoicing procedures with the implementation of payment through WAWF rather than through payment with a Government Purchase Card. In addition to changing the invoicing process, the modification revised the information to be submitted by the contractor with each invoice, to include; (1) contract number, (2) task order number, (3) line item number, (4) date of performance, (5) course title, (6) location of service and, (6) supporting documentation for the receiving report. The supporting documentation including student rosters or instructor rosters will be attached to the receiving report, depending on the contract line item requirement. Contract Modification P00024 provided as Attachment (A).

The invoices, receiving reports, and associated course information are verified by the acceptor, with input from the contract Contracting Officer Representative (COR) and training site representatives, prior to acceptance. Since the incorporation of these NAVAIR clauses, the contractor consistently provides the required data with each invoice and receiving report. To specifically ensure compliance with the NAVAIR clauses and to provide oversight of the invoicing process, NAWCTSD's contracting office prints out and files the receiving reports and supporting documentation for each contract Task Order file. Action considered complete/closed 18 August 2007.

RECOMMENDATION 2: Commander, NAWCTSD establish controls and provide oversight to ensure that the contractor retains documentation supporting student-training records for three years after the final payment is made on the contract as required by FAR.

NAVAIR RESPONSE: Concur. In accordance with FAR Clause 52.212-5(d)(2), the contractor is required to make available at its office the records, materials, and other evidence for examination, audit or reproduction for three years after final payment. On 22 January 2009, NAWCTSD verified with the Blackwater Contracts Manager that Blackwater is complying with the FAR requirement by maintaining all training and contracts records for the services provided for three years after final payment of all task orders under this contract. The contractor's compliance is required through the remainder of the contract and for three years after final payment. Action considered complete/closed 22 January 2009.

RECOMMENDATION 3: Commander, NAWCTSD establish controls and provide oversight to ensure that the contractor prepares and implements a quality control program to monitor the performance of the sub-contractor and ensure the subcontractor is performing the services in accordance with contract specifications.

NAVAIR RESPONSE: Concur. As of June 2008, Blackwater no longer utilizes subcontractors in the performance of contract N61339-02-D-0015. On 22 January 2009 Blackwater indicated to the Contracting Officer that they currently have a structure in place, per company policy, to monitor subcontractor performance should subcontractors be utilized in the future on this contract. Action considered complete/closed 22 January 2009.

RECOMMENDATION 4: Commander, NAWCTSD establish procedures to ensure the Contracting Officer Representative performs contract duties in accordance with the FAR and Defense Federal Acquisition Regulation (DFAR).

NAVAIR RESPONSE: Concur. In addition to FAR and DFARS (including Procedures, Guidance and Instructions (PGI)) requirements, NAWCTSD adheres to NAVAIR Instruction 4200.28D which establishes policies and procedures for contract oversight. These policies and procedures include ensuring COR training is current, performing periodic reviews of the COR's files and COR's adherence to the appointed duties, ensuring CORs possess copies of the contract and all modifications, and ensuring CORs understand contract requirements and their responsibilities. Additionally, NAVAIR Instruction 4200.28D requires the contracting activity to designate a COR coordinator to monitor the currency of the COR's training and remind contracting officers when refresher training is required. A COR coordinator is in place at NAWCTSD and the Command will continue to raise the awareness level of all involved in the COR program of their roles and responsibilities. In conclusion, NAWCTSD utilizes the FAR, DFARS (including PGI) and NAVAIR Instruction 4200.28D requirements in the administration of the audited Blackwater Lodge contract. NAVAIR Instruction 4200.28D provided as Attachment (B).

Additionally, NAWCTSD has worked closely with the requiring activity, the Center for Security Forces (CSF) in Norfolk, VA, to implement procedures for confirmation of completed training and for communication of changes/cancellations to training ordered under the contract. On 10 October 2007, the CSF Executive Director provided an internal communication process to improve and standardize the manner in which training courses are scheduled and funded. By contract Modification P00027 issued on 3 June 2008, the course cancellation policy was revised to remove the requirement for full payment when cancellation is less than ten days. Contract Modification P00027 provided as Attachment (C).

By contract Modification P00033 issued on 22 April 2009, the contract was modified to further enhance the contract terms and tailor the course cancellation policy by requiring the contractor to mitigate the costs associated with any courses cancelled with less than ten days advance notice, and to clarify there is no presumption the contractor will be entitled to either full or partial payment for training services that have not been provided. In addition to existing contract surveillance and oversight procedures, this modification also incorporated a Quality Assurance Surveillance Plan (QASP) further detailing the roles and responsibilities of how Government personnel will monitor contractor performance to ensure compliance with contract requirements. As with the QASP, the COR appointment letter was revised on 22 April 2009 to

include the above procedures for Scheduling, Ordering, Monitoring and Making Payment of courses. Contract Modification P00033 provided as Attachment (D). QASP provided as Attachment (E). COR appointment letter provided as Attachment (F). Action considered complete/closed 22 April 2009.

NAVAIR GENERAL COMMENTS:

1. Page 2, Third Paragraph, "3. Purpose of Audit": The purpose/objective of the audit has evolved from the Discussion Draft Assist Report, Naval Criminal Investigative Service (NCIS) Assist Vendor Legitimacy, Draft Report Number A2009-XXXX, dated XX January 2009. The discussion draft assist report identified the objective as "providing audit support to NCIS preliminary review of Blackwater Worldwide (Blackwater) to determine if any investigation is warranted". The current draft audit report identifies the purpose of audit as, "verifying that NAWCTSD properly administered training contracts with Blackwater Worldwide (Blackwater)".

Please change first sentence, paragraph 3 on page 2 to read, "The objective of this audit was to verify that NAWCTSD properly administered training contract, N61339-02-D-0015, with Blackwater Worldwide (Blackwater)".

2. Enclosure (1), "Section B: Status of Recommendations": Request the status of Recommendations 1 through 4 be updated to "Closed", and reflect the completion dates identified in the responses to the recommendations listed above.

FREEDOM OF INFORMATION ACT (FOIA) MARKING: NAWCTSD FOIA Coordinator found nothing in the Naval Audit Service's Draft Audit Report which warrants protection under Exemptions 4, 5 and 6 of the Freedom of Information Act; therefore, NAWCTSD has no objections to the release of the report and our response to the report.

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